

Fourteenth Loksabha

Session : 4

Date : 22-03-2005

Participants : [Suman Shri Ramji Lal](#), [Tripathy Shri Braja Kishore](#), [Jitin Prasad Kunwar](#), [Swain Shri M.A. Kharabela](#), [Banerjee Kumari Mamata](#), [Malhotra Prof. Vijay Kumar](#), [Bansal Shri Pawan Kumar](#), [Pal Shri Rupchand](#), [Prasad Shri Lal Mani](#), [Kuppusami Shri C.](#), [Fernandes Shri George](#), [Gandhi Smt. Maneka](#), [Singh Shri Mohan](#), [Yadav Shri Ram Kripal](#), [Veerendra Kumar Shri M. P.](#), [Yerrannaidu Shri Kinjarapu](#), [Baxla Shri Joachim](#), [Kamal Nath Shri](#), [Rawat Shri Bachi Singh](#), [Kamal Nath Shri](#), [Singh Shri Uday](#), [Mehta Shri Alok Kumar](#), [Chandrapan Shri C.K.](#), [Kurup Shri Suresh](#), [Chowdhury Shri Adhir Ranjan](#), [Thomas Shri P.C.](#)

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Title: Combined discussion on the Statutory Resolution regarding disapproval of Patents (Amendment) Ordinance, 2004 (No.7 of 2004) and the Patents (Amendment) Bill, 2005. (Resolution negatived and Bill Passed).

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14.17 hrs.

**STATUTORY RESOLUTION RE : DISAP PROVAL OF
PATENTS (AMENDMENT) ORDINANCE**

AND

PATENTS (AMENDMENT) BILL, 2005

MR. SPEAKER: Now, the House will take up Item Nos. 21 and 22 together.

श्री बची सिंह रावत 'बचदा' (अल्मोड़ा) : अध्यक्ष महोदय, मैं प्रस्ताव करता हूँ

“कि यह सभा राष्ट्रपति द्वारा 26 दिसम्बर, 2004 को प्रख्यापित पेटेंट (संशोधन) अध्यादेश, 2004 (2004 का संख्यांक 7) का निरनुमोदन करती है।”

THE MINISTER OF COMMERCE & INDUSTRY (SHRI KAMAL NATH):

I beg to move:

“That the Bill further to amend the Patents Act, 1970 be taken into consideration.”

श्री बची सिंह रावत 'बचदा' (अल्मोड़ा) : माननीय अध्यक्ष जी, जब 18 मार्च, 2005 को ऑर्डिनेन्स को रिप्लेस करने हेतु यह विधेयक यहां प्रस्तुत किया गया, तो लगभग सारा विपक्ष और वामपंथी पक्ष सहित सभी ओर से इस बिल की कॉन्स्टीट्यूशनैलिटी और लीगल कॉम्प्लिटेन्स को लेकर विरोध किया गया। इसके अलावा सब की एक प्रखर और जोरदार मांग थी कि विधेयक को स्टैंडिंग कमेटी के पास भेजा जाए जो नियत समय के भीतर उस पर विचार करे और विचार करने के बाद जो आशंकाएं देश, सदन के भीतर, तथा देश के बाहर व्यक्त की गई हैं, उन सब के अनुरूप उस पर विचार हो सके। इस प्रकार एक कनक्रीट विधेयक सदन के सामने आए ताकि संसद के सभी सैक्शन्स इसका पुरजोर तरीके से समर्थन करें और देश हित में विधेयक को पारित कर सकें। इतनी देर क्यों हुई? 21 मई को यह सरकार आई। तब से बहुत लंबा अंतराल बीत गया। सबको आशा थी कि विधेयक प्रस्तुत होगा। अभी कल जब इस पर चर्चा हो रही थी तो सत्ता पक्ष, मंत्री महोदय और दूसरे कई सदस्यों की ओर से कहा गया कि यह भारतीय जनता पार्टी और एनडीए सरकार का बेबी था। हाँ, था। हमने बहुत मेहनत करने के बाद, एक अच्छी नीयत के साथ इस विधेयक का ड्राफ्ट तैयार किया था। ड्राफ्ट बिल को प्रस्तुत करके अध्यक्ष महोदय के निर्देश पर उसे संसद की स्टैंडिंग कमेटी को रैफर किया गया। हमारी मंशा थी कि इसके हरेक पहलू पर स्टैंडिंग कमेटी में विचार-विमर्श हो और एक कनक्रीट बिल यहां सदन में प्रस्तुत हो लेकिन पॉलिटिकल सिचुएशन ऐसी बनी कि 6 फरवरी 2004 को लोक सभा भंग होने के कारण विधेयक लैप्स हो गया। विधेयक मौजूद था। गवर्नमेंट का बिल था। नई सरकार 21 मई को आ गई। 21 मई को उन्हें यह बिल प्राप्त हुआ। 21 मई से 26 दिसम्बर 2004 तक जब यह अध्यादेश प्रख्यापित हुआ, उस बीच में इतना पर्याप्त समय सरकार के पास था परन्तु उसका उपयोग नहीं किया गया जिससे विधेयक में बहुत सारी कमियां रहीं। आज सरकार स्वयं अनेक संशोधन स्वीकार कर रही है जो सुबह सर्कुलेट हुए। कुछ संशोधन अभी सर्कुलेट हो रहे हैं [\[R26\]](#)।

मैं समझता हूँ कि माननीय सदस्य इसे पूरा पढ़ नहीं पाए। ऐसी स्थिति में हमने अपने बेबी की प्रॉपर नर्सिंग के लिए, ताकि उसकी प्रॉपर देखभाल हो सके और उसमें आवश्यक संशोधन जुड़ सकें, उसे पार्लियामेंटरी स्टैंडिंग कमेटी में भेजा। लेकिन आपने जिस बेबी को अडॉप्ट किया था, उस बेबी की कतई चिंता नहीं की और उसे ज्यों का त्यों आर्डिनेन्स के माध्यम से लेकर आए हैं। आर्डिनेन्स क्यों लाए, जब 23 दिसंबर, 2004 तक पार्लियामेंट सेशन में थी? कोई ऐसा एक्सप्लेनेशन इसमें नहीं है कि 26 दिसंबर को आप क्यों आर्डिनेन्स लेकर आए हैं। इससे साफ ज्ञान होता है कि आपकी नीयत ठीक नहीं थी और इस पर प्रॉपर डिबेट नहीं चाहते थे। अब एक दिन का और समय बचा है, परसों प्राइवेट मैम्बर डे है और इतने महत्वपूर्ण विधेयक पर प्रॉपर चर्चा होनी चाहिए थी, लेकिन मैं समझता हूँ कि अब वह चर्चा नहीं होगी। अभी दो दिन का समय हमारे पास है तथा लगभग डेढ़ माह का समय और मिल सकता है। संविधान का अनुच्छेद-123 बाध्यता हमारे सामने रखता है कि जब संसद के दोनों सदन चल रहे हों तो छः सप्ताह के भीतर सदन के सामने आपको जाना होगा। जहां संविधान रोक लगाता है, वहीं मदद भी करता है। संविधान के अनुच्छेद 85 में सरकार के पास अधिकार है कि -

Article 85 of the Constitution, on Sessions of Parliament, prorogation and dissolution says:

“(1) The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The president may from time to time--

(a) prorogue the Houses or either House; ... ”

अनुच्छेद 123 के अनुसार यह आवश्यक है कि जब पार्लियामेंट सेशन में हो, तब आप आर्डिनेन्स नहीं ला सकते हैं, और तब आपका बिल लैप्स होगा। लेकिन हाऊस में सरकार अगर सभी माननीय नेताओं से तय करके कोई प्रॉपर मोशन लाती है और अपने बिल को स्टैंडिंग कमेटी में भेजने के लिए तैयार होती है, तो भी हमारे ऊपर बाइंडिंग्स हैं कि इसे हमें 8 अप्रैल से पहले तय करना है। 8 अप्रैल से पहले सुविधानुसार इसे पारित कराया जा सकता है क्योंकि तब तक कोई भी हाउस प्रोरोग नहीं होता है। क्योंकि अभी 24 तारीख को संसद में रिसेस होगी, उसके बाद उसे पारित करा लिया जाए, ताकि विचार के लिए पूरा समय स्टैंडिंग कमेटी में लगे और दोनों सदन के समवेत होने के बाद फिर दोबारा उसे

प्रस्तुत किया जाए। तब से 6 अप्रैल तक लगभग दो महीने का समय है। मुझे नहीं लगता है कि सरकार की तरफ से इस दिशा में कोई विचार होगा।

इसमें फंडामेंटल राइट का विाय आया है। अनुच्छेद 21 में, जीवन के अधिकार के अंतर्गत स्वास्थ्य का अधिकार भी है। इस बिल में मुख्य रूप से फार्मास्यूटिकल्स, फूड और कैमिकल टेक्नोलॉजी, तीन विाय हैं। उस समय तीन विायों को बाहर रखा गया था और यह मेंडेटरी था कि 1 जनवरी, 2004 के बाद इस तरह का प्रोडक्ट पेटेंट लेकर आना था। बाकी के पेटेंट की व्यवस्था पहले हो गई, लेकिन जो देश के भीतर आशंका है और उस आशंका के कई उदाहरण सामने आ रहे हैं, जिनसे आशंका को बल मिल रहा है क्योंकि आपने इसके एक्सक्लूसिव मार्केटिंग राइट एक कंपनी को दिया गया था, जो स्विटजरलैंड की नवारटिस कम्पनी है। उससे पहले रक्त कैंसर की इनेवेटिव मेसिलेट की दवाइयां हमारे देश के भीतर तमिलनाडु में आठ कंपनियां बना रही थीं, उनकी दवा की रेंज थी दस से बारह हजार रुपए। जब आपने नोवारटिस कम्पनी को एक्सक्लूसिव मार्केटिंग राइट्स दे दिये, तो कम्पनी ने मद्रास हाई कोर्ट से इसका उत्पादन रुकवा दिया और उसने एक लाख बीस हजार रुपए, यानी दस गुना अधिक दाम पर ये दवाएं बेचना शुरू कर दिया। इतना ही नहीं पहले दौर में 1 जनवरी, 2001 से, जो डेवलपड कंट्रीज़ थी, उनमें इटली का उदाहरण हमारे सामने है। पहले चरण में उनके प्रोडक्ट का पेटेंट उसी दिन से लागू हो गया और पेटेंट की व्यवस्था लागू हो जाने के बाद, दवाओं की कीमतों में लगभग दो सौ प्रतिशत की वृद्धि नोट की गई [3327E](#)।

अध्यक्ष जी, इसे एक और उदाहरण से स्पष्ट किया जा सकता है। मैं दो ऐसी दवाओं को रैफर कर रहा हूँ। एक एंटी-अल्सर दवा है, जिसका नाम रैनिटैडिन है। उसकी 150 मि.ग्रा की 10 गोलियों का दाम भारत में 6 रुपये 2 पैसे, पाकिस्तान में 74 रुपये 9 पैसे, ब्रिटेन में 247 रुपये और अमरीका में 863 रुपये है। इसी तरीके से ओमाप्रीजोल का 30 मि.ग्राम कैप्सूल का मूल्य भारत में 22.50 रुपये, पाकिस्तान में 578 रुपये, ब्रिटेन में 870 रुपये और अमरीका में 2047 रुपये है। आप देख सकते हैं कि मूल्यों में कितना बड़ा अंतर है। जब हम प्रोडक्ट पेटेंट कहते हैं और उसका एकाधिकार देने जा रहे हैं तो उसके बाद मूल्यों में कितनी वृद्धि होगी, इसे आप महसूस कर सकते हैं। इसलिये यह कहा जा सकता है कि जब दवायें महंगी होंगी, वे आम आदमी की पहुंच के बाहर हो जायेगी, यह आशंका निश्चित रूप से सही है। भारत के

संविधान में धारा-21 के अंतर्गत हर व्यक्ति को जीने का अधिकार दिया गया है। भारत के संविधान के अलावा सर्वोच्च न्यायालय ने समय समय पर व्याख्या की है कि स्वास्थ्य का अधिकार भी जीने के अधिकार में शामिल है, जिसकी अप्रत्यक्ष रूप से धारा-13 में गारंटी दी गई है और निश्चित रूप से वह इसे प्रभावित करेगा।

मेरा कहना है कि यह बिल राष्ट्रीय हितों के विपरीत है और मल्टी नेशनल कम्पनीज के हितों की पूर्ति करता है। इस संबंध में जो प्रोडक्ट पेटेंट व्यवस्था लागू की जा रही है, या इसे जिस तरीके से लागू किया जा रहा है, उससे न केवल दवाओं की उपलब्धता में कमी आयेगी, बल्कि जो प्रोडक्ट पेटेंट करते हैं, यह जरूरी नहीं कि वे हिन्दुस्तान में प्रोडक्ट करें, इसमें प्रावधान किया गया है कि वे उसे इम्पोर्ट भी कर सकते हैं, इससे जीवन रक्षा दवाओं से जुड़े हुये जितने उद्योग हैं, उनका अस्तित्व ही समाप्त हो जायेगा। मोनोपोली के कारण दवाओं के मूल्य बेतहाशा बढ़ेंगे। मैं एक उदाहरण चिल्ली का दूंगा। वहां पांच मल्टी नेशनल कम्पनीज - फाइजर, पार्क डेविस, बॉयर, स्कूइब और शेरिंग ए.जी.- काम कर रही हैं। जब वहां पेटेंट व्यवस्था लागू हुई, जिसे हम अब लागू करने जा रहे हैं, उसके बाद उनके अपने कारखाने बंद हो गये और उन्होंने इम्पोर्ट करके बाजार में सामान मनमाने दामों पर बेचना शुरू कर दिया। जो व्यवस्था यहां आई है, उसमें एक आपत्ति है। सरकार की ओर से आज के संशोधन के द्वारा प्रयास किया गया है कि हम उन्हें प्रोटेक्शन दे सकें और जो रिवर्स प्रोसैस है, जिनके पास पेटेंट है, उन्हें राहत मिल सके, लेकिन स्थिति पूरी तरह से स्पष्ट नहीं है क्योंकि उन्हें रौयल्टी पे करनी होगी। अगर रौयल्टी तय नहीं करते हैं तो वे कितने रेंज पर पहुंचेंगे। पेटेंट होल्डर और मैन्युफैक्चरर के बीच में एक गैप होगा और एक कठिनाई खड़ी हो जायेगी। हमारे सामने सब से बड़ा प्रश्न पेटेंट योग्य पात्रता की संभावना का होगा। स्कोप ऑफ पेटेंटेबिलिटी की परिभाषा अभी दुरुस्त नहीं हुई है। इस बिल के अंदर जितना लचीलापन, जितनी विस्तृत परिभाषा आप लेकर आये हैं उससे हम उम्मीद कर रहे थे कि आविष्कार में मौलिक और विलक्षण शब्द जोड़े जायेंगे, लेकिन उसमें बेसिक मौलिक शब्द नहीं जोड़ने से, और यह कहकर कि जिन्हें नये रूप में उपयोग किया जा सकता है, ऐसे उत्पादों को पेटेंट किया जा सकता है। यह चीन और अमरीका के पेटेंट लाज़ के समान है। इस प्रावधान के कारण जो परेशानी आज अमरीका और चीन को है, उसका उदाहरण मैं देता हूँ।

अध्यक्ष जी, श्री बी.के. केइला ने फरवरी, 2005 में नेशनल वर्किंग ग्रुप ऑन पेटेंट लॉज. पर एक किताब लिखी है। उन्होंने यह किताब सभी सांसदों को भेजी है और संसद की लाइब्रेरी में यह पुस्तक उपलब्ध है। उन्होंने पुस्तक के पेज 5 पर अमरीका के बारे में वर्ष 2003 को रैफर

किया है जो काफी लम्बी रिपोर्ट है[RB28]।

उसमें केवल एक संबंधित अंश है, उसी को मैं आपके सामने रखना चाहता हूँ -

“Patent applications have doubled in the last twelve years and are increasing at about ten per cent per year. With yearly applications approximately 3,00,000, they arrive at the rate of about 1,000 each working day. A corps of some 3,000 examiners must deal with the flood of filings. Hearings participants estimated that patent examiners have from 8 to 25 hours to read and understand each application, search for prior art, evaluate patentability, communicate with the applicant, work out necessary revisions and reach and write up conclusions.”

इसके आधार पर यह कहा जा सकता है कि जब इन देशों में तीन-तीन लाख के आवेदन हो रहे हैं तो हमारे यहां भी एक प्रकार से इनकी बाढ़ आ जायेगी और जो वास्तविक पेटेन्ट्स हैं, उनके ऊपर ध्यान नहीं दिया जा सकेगा। लेकिन जहां यह मैनेजेबल नहीं होगा तो ‘WIPO’ वर्ल्ड इन्टेलेक्चुअल प्रोपर्टी ऑर्गेनाइजेशन भी आपके पेटेन्ट केस अगर मैनेज नहीं कर सकता तो वह अपने हाथ में ले सकता है। इसलिए इसकी संभावना है कि इसे दूर करते हुए या लचीली परिभाषा को दूर करते हुए जो आविष्कार मौलिक हैं, उनके साथ औषधि के संबंध में पर्याप्त ध्यान देने की आवश्यकता है।

अध्यक्ष महोदय, मैं अनुरोध करना चाहूंगा कि जब र्वा 1999 में सिएटल में मिनिस्टीरियल कांफ्रेंस हुई थी, उस समय तमाम एक्टिविस्ट्स, एन.जी.ओज. और तमाम संगठनों ने इकट्ठे होकर इसी पब्लिक हैल्थ को लेकर भारी विरोध प्रदर्शन किया था और उनके दबाव के कारण सिएटल कांफ्रेंस पूरी नहीं हो सकी। उसी दबाव के कारण पुनः र्वा 2001 में दोहा में कांफ्रेंस हुई। उस समय स्वर्गीय श्री मुरासोली मारन जी हमारे वाणिज्य मंत्री थे। उन्होंने भारत सहित तमाम अविकसित और अल्प विकसित देशों का पक्ष मजबूती के साथ प्रस्तुत किया था। उसमें एग्रीमैन्ट ऑन ट्रिप्स एंड पब्लिक हैल्थ विाय पर चर्चा हुई थी तथा दूसरी जो रियायतें उस समय आई हैं, आज अगर हम उन्हें इनकारपोरेट करना चाहें तो कर सकते हैं, क्योंकि जो प्रावधान हम लेकर आ रहे हैं, उसके लिए इसमें अनुमति और गुंजाइश है, जिसका पूरा उपयोग सरकार द्वारा किया जाना चाहिए। लेकिन उसका उपयोग नहीं किया है।

अध्यक्ष महोदय, जो एक मेल बॉक्स की व्यवस्था की गई है, जिसमें 1 जनवरी, 1995 से लेकर 1 जनवरी, 2005 के मध्य में देश के भीतर लगभग नौ हजार एप्लीकेशंस आई हैं और जिन्होंने विदेश में पेटेन्ट लिया है, उसके आधार पर यहां एक्सक्लूसिव मार्केटिंग राइट्स मांगे हैं। इन नौ हजार आवेदनों में से लगभग पांच हजार आवेदन ड्रग्स के पेटेन्ट से संबंधित हैं और उनमें से लगभग चार हजार विदेशी कंपनियों के आवेदन हैं। इसलिए इस बात से इनकार नहीं किया जा सकता कि विदेशी कंपनियां यहां पेटेन्ट का आवेदन कर रही हैं। लेकिन जिनके पास ऑलरेडी पेटेन्ट हैं और यहां मेल बॉक्स में उनके आवेदन हैं, क्योंकि इनका हमें ई.एम.आर. देना है और अगर हम ई.एम.आर. देते हैं, तो जैसे कुल मिलाकर पब्लिक हैल्थ में दस से बीस गुणा और चालीस गुणा तक कीमतों में वृद्धि का प्रश्न है, उस संभावना से इनकार नहीं किया जा सकता। इसलिए इसमें हम जो व्यवस्था कर सकते हैं, उसमें एक एक्सपार्टी फैक्टरी प्राइस, उसके शेा टर्न ओवर पर चार लगभग से पांच प्रतिशत जबकि अनेक देशों में दो प्रतिशत से दस प्रतिशत के बीच में उन्होंने रॉयल्टी की दर तय की है, लेकिन हमारे यहां अभी भी इसे निगोशिएशंस पर रखा गया है और इस पर पुनर्विचार किया जा सकता है, क्योंकि इसके लिए डब्ल्यू.टी.ओ. या ट्रिप्स एग्रीमैन्ट में कोई विपरीत ऐसा प्रावधान नहीं है और आज जहां ट्रिप्स पर इसे लेकर आ रहे हैं, वहीं इस बात को देखा जाना आवश्यक होगा।

अध्यक्ष महोदय, इसमें एक और खतरा दिखाई देता है कि जो उद्योग हैं, इन उद्योगों में पूंजी ज्यादा लगनी है[R30][R29]। लेकिन जहां मल्टीनेशनल्स की पेटेन्टेड दवाएँ आएंगी, उनकी कीमतों में वृद्धि होने के बाद, न केवल आम जनता उससे प्रभावित होगी बल्कि लाखों लोग, जो खुदरा मैडिकल स्टोर लेकर बैठे हैं, उनको, होलसेलर्स और प्रोड्यूसर्स को अपने बिजनेस के लिए हैवी कॉस्ट पे करनी होगी। इसलिए उनके हित संरक्षण का प्रावधान भी इसमें किया जाना चाहिए।

मैं यहां उल्लेख करना चाहता हूं कि न केवल 2003 का विधेयक, जिसकी चर्चा यहां पर की गई है, जिसे हमने स्टैंडिंग कमेटी को भेजे जाने का अनुरोध किया, और उसे भेजा भी गया, इसके पहले भी 1999 में जो विधेयक राज्य सभा में पेश हुआ था, उसके लिए श्री टी.एन.चतुर्वेदी की अध्यक्षता में एक संयुक्त संसदीय समिति का गठन हुआ और 39 बैठकें उस समिति की हुईं। उसमें विस्तार से चर्चा की गई और हर पहलू पर विचार विमर्श किया गया। तब भी एनडीए की नीयत साफ थी कि विचार हेतु विधेयक जाना चाहिए, अध्ययन होना चाहिए और बातचीत होनी चाहिए। उसके बाद जो रिपोर्ट आई और बिल की चर्चा के दौरान जो संशोधन आए, उसके बाद ड्राफ्ट बिल फिर लौटाया गया था परन्तु उसे जैसा लौटाया गया था, वैसा ही स्वीकार किया गया। मैं पुनः आग्रह करना चाहता हूं कि पहले भी हमारी मंशा साफ रही है और 2003 के विधेयक पर भी हमारी मंशा साफ रही है, लेकिन सत्ता पक्ष की मंशा साफ नहीं है। अगर उनकी मंशा साफ होती तो 18 तारीख को जब यहां विधेयक पेश हुआ है और 21 और 22 को हम इसके अंतिम चरण में हैं, अब इसमें जो संशोधन आ रहे हैं, वे केवल भुलावे के लिए हैं और बनावटी प्रकार के हैं, उन पर गहराई से चर्चा होगी, ऐसा कुछ नहीं कहा जा सकता।

यह पब्लिक डोमेन का विाय है। जहां कंपलसरी लाइसेंस के लिए आप इसे लेकर आ रहे हैं, इसमें कुछ कमी रह गई है, जिसे माननीय मंत्री जी अभी भी दूर कर सकते हैं। कंपलसरी लाइसेंस और इसके अलावा जो प्री ग्रांट की रिप्रैजेंटेशन का प्रोविजन है, उसे पुनः देखे जाने की आवश्यकता है क्योंकि हम पेटेन्ट दिये जाने से पहले रिप्रैजेंटेशन रख रहे हैं और पेटेन्ट स्वीकार हो जाने के बाद, उसके अपोजीशन का प्रावधान रख रहे हैं। यह कहीं भी, ट्रिप्स या किसी एग्रीमेंट के भीतर परिभाषित नहीं है कि आपको क्या करना है। अगर हम चाहते हैं कि देश में पेटेन्ट और फ्रिविलस (Frivolous) एप्लीकेशंस की बाढ़ न आए तो हमें प्री ग्रांट अपोजीशन का अधिकार देना चाहिए। ... (व्यवधान) माननीय अध्यक्ष जी, दो-चार मिनट और दे दें। बाकी जो रहेगा, फिर रिप्लाई में आप अवसर देंगे। उसमें नया विाय आ जाएगा।

अध्यक्ष महोदय : ज़रूर देंगे। आप बोलिये।

श्री बची सिंह रावत 'बचदा' : घंटी से ज़रा डर लगता है।

अध्यक्ष महोदय : डरने की ज़रूरत नहीं है। आप बहुत अच्छा बोल रहे हैं। I appreciate.

श्री बची सिंह रावत 'बचदा' : धन्यवाद अध्यक्ष जी।

मैं कह रहा था कि प्री ग्रांट अपोजीशन का अधिकार अगर दिया है, पेटेन्ट के लिए जो आवेदन आयेंगे, उनकी छंटनी करने के लिए जो कंट्रोलर बैठेगा या पेटेन्ट का ऑफिस होगा, उसे भी मदद मिलेगी। इसका प्रावधान करने में कोई दिक्कत नहीं आती है और इसके लिए माननीय मंत्री जी अवश्य व्यवस्था करें।

इसके क्या-क्या खतरे हैं, अब मैं उसके संबंध में कुछ कहना चाहूंगा। हमारे सामने जो पेटेन्ट विधेयक आया है, उससे जो भारतीय उत्पादक पेटेन्ट दवाओं का उत्पादन कर रहे हैं, वे इस अवधि में, अगर आपका संशोधन होता है, उसके बाद की बात मैं नहीं कहता, इस अवधि में यदि आपका संशोधन आएगा तो वे वैध होंगे। अगर उनको रिट्रोस्पैक्टिव इफ़ेक्ट से लेकर नहीं आते तो भी एक लैक्यूना रहेगा और वे सारे के सारे अवैध होंगे and they will be prosecuted.

दूसरा यह कि उत्पादक को पेटेन्ट धारक से अनुमति लेने की अवधि की जब हमने व्यवस्था नहीं की है तो उसे मनमानी कीमत और शर्तों पर अनुमति लेनी होगी। उसके लिए कोई अवधि निर्धारित नहीं है। वह अवधि निर्धारित होनी चाहिए, और उसकी रॉयल्टी तय होनी चाहिए।

तीसरा खतरा यह है कि भारत में, देश के भीतर जो दवा उद्योग के क्षेत्र में कम्पनियां हैं, उनके रिसर्च एंड डेवलपमेंट पर इसका प्रतिकूल असर पड़ेगा, क्योंकि आपने 20 वीं पेटेंट की जो अवधि रख दी है, वह इतनी लंबी अवधि है कि उस समय तक हमारे देश के भीतर इस विया को लेकर जो शोध कार्य होता होगा, वह प्रभावित होगा। इतना ही नहीं, आप इस संबंध में जो पेटेंट में कंपलसरी लाइसेंस की व्यवस्था ला रहे हैं, आपने कह दिया है कि उसका शॉर्टर पीरियड होगा, जबकि उसे को-टर्मिनस होना चाहिए। अगर 20 साल का पेटेंट होगा तो उसके कंपलसरी लाइसेंस की अवधि भी उतनी होनी चाहिए और ऐसा प्रावधान होना चाहिए[h31]।

बीस वीं पेटेंट को स्कोप फॉर पेटेंटेविलिटी में रखा है। इसे पुनः देखते हुए आयात की अनुमति के प्रावधान को हटाए जाने की आवश्यकता है क्योंकि इससे भारत की स्थिति दवा निर्माता के बजाए सिर्फ एक मार्केट के रूप में स्थापित होगी। डब्ल्यूएचओ का हवाला दे कर मैं अपनी बात को विराम दूंगा। डब्ल्यूएचओ ने अंतरराष्ट्रीय स्तर पर बहुत चिंता व्यक्त की है। डब्ल्यूएचओ के 17 दिसम्बर, 2004 का पत्र है और उसके बाद भी कुछ पत्र आए हैं क्योंकि उन्होंने हेल्थ मिनिस्ट्री को पत्र लिखे हैं इसलिए आपके पास नहीं आए होंगे, सरकार के पास आए हैं। उसमें लिखा है -

“We would like to bring to your attention that several of our Member States have expressed their concern that in the future, generic antiretroviral drugs from India may no longer be available to them. Among other places, these concerns were expressed by the delegations of Ghana, Lesotho, Malawi, and Namibia at our recent Procurement & Supply Management (PSM) Workshop in Nairobi, Kenya, and by Bangladesh, Cambodia, China, Indonesia, Korea, Laos, Thailand, Papua New Guinea and Vietnam at the Asian Regional Workshop on the WTO / TRIPS Agreement and Access to Medicines held in Kuala Lumpur, Malaysia (28-30 November 2004)

As India is the leader in the global supply of affordable antiretroviral drugs and other essential medicines, we hope that the Indian Government will take the necessary steps to continue to account for the needs of the poorest nations that urgently need access to antiretrovirals, without adapting unnecessary restrictions that are not required under the TRIPS Agreement and that would impede access to medicines.”

माननीय अध्यक्ष महोदय, इतना ज्यादा उल्लेख होता है और हमारे पूर्व मंत्री श्री मुरासली मारन जी ने दोहा में नेतृत्व किया था और अपने नेतृत्व की क्षमता को प्रदर्शित किया था। यह जो आशंकाएं व्यक्त की जा रही हैं हमारे मंत्री जी अपने उत्तर में इनका समाधान कर के निश्चित रूप में इनको दूर करेंगे। मैं एक पंक्ति जो कि हमारे संसद भवन के गलियारे में लिखी है, हमेशा उसका स्मरण करता हूँ, क्योंकि कभी भी हम भटकाव की तरफ जाते हैं या हम कभी यह सोचते हैं कि मेरी दृष्टि में यह सही है, लेकिन सारे सदन की दृष्टि से ठीक हो सके, ऐसे कार्य हमें करने चाहिए। पूरे देश के लिए और दुनिया के कमजोर देशों के लिए भी, जिन्होंने हम पर विश्वास व्यक्त किया है उनको भी यह संदेश जाना चाहिए। इसके लिए मैं कहता हूँ, उसे आचरण में लाएं - “जहां सुमति तहां सम्पत्ति नाना, जहां कुमति तहाँ विपत्ति निदाना” अर्थात् जहां सुमति है वहां सम्पत्ति आपने आप होगी। देखा जाए तो सुमति 18 तारीख के बाद आई है। कल और आज में आई है। यह सुमति आए और आर्टिकल 85 का इस्तेमाल करते हुए हाउस को प्रोरोग करें, माननीय नेताओं से चर्चा करें। एक हाउस को प्रोरोग कर लें और उसके बाद आराम से रिपोमलगेट कर सकते हैं और पुनः स्टैंडिंग कमेटी की रिपोर्ट ले कर करें। हमारा संविधान उसकी इजाजत देता है। यही एक रास्ता है, ऐसा नहीं कह सकते हैं कि रास्ता नहीं है।

इन शब्दों के साथ मैं अपने सुझावों पर बल देते हुए अपना वक्तव्य समाप्त करता हूँ।

वाणिज्य और उद्योग मंत्री (श्री कमल नाथ) : अध्यक्ष महोदय, माननीय सदस्य ने बहुत से मुद्दे उठाए हैं। मैं प्रयास करूंगा कि अंत में सबकी बातें सुन कर जो शक या शंकाएं उठाई गई हैं, उनका जबाब दूंगा। आज अमेंडमेंट बिल पर यह सदन चर्चा कर रहा है। इससे संबंधित शक-शंकाएं दूर करने का मैं प्रयास करूंगा। इन्होंने नीयत की बात कही है। नीयत की बात इस बिल से या आर्डिनेंस से अलग है। मुझे बड़ा ताज्जुब होता है जब यह नीयत की बात करते हैं क्योंकि कल जब इस पर ऐतराज व्यक्त किया था और मैंने स्वीकार किया था, हमारे सदन के नेता श्री प्रणव मुखर्जी ने भी स्वीकार किया था और कहा था कि आप इस पर चर्चा करें [i32]।

महोदय, उस समय भी मैंने यह बात कही थी कि जिस विधायक पर आज चर्चा हो रही है, यह जो प्रॉसेस है, यह वर्ष 1999 में चालू हुआ और मैं इस प्रॉसेस को आगे चला रहा हूँ। पहला अमेंडमेंट वर्ष 1999 में हुआ था। यहां अभी नोवार्टिस और दोहा का जिक्र किया गया। इस पर भी मुझे बड़ा ताज्जुब हुआ। क्योंकि यह बिल तो पिछली सरकार ने वर्ष 2003 में पेश किया था। मैं तो यही मानता हूँ कि पिछली सरकार ने बहुत सोच-समझ कर और विचार करने के बाद इस बिल को प्रस्तुत किया था।

महोदय, पिछली सरकार ने जब यह बिल सदन में पेश किया था, तो बड़े विश्वास के साथ पेश किया था। आप जिस दोहा की बात कर रहे हैं, यह उस समय भी थी। आज आप जिस नोवार्टिस की बात कर रहे हैं, यह उस समय भी थी। जितने पहलुओं पर आपने चर्चा की, वे थर्ड अमेंडमेंट के विधायक नहीं थे। वे पहले और दूसरे अमेंडमेंट के विधायक थे। इस पर दो साल तक जे.पी.सी. ने चर्चा की और आप कहते हैं कि इस पर और चर्चा करें। मेरा आपसे यह निवेदन है कि यह एक ऐसा बिल है जिसमें मैं मानता हूँ कि मतभेद होते हैं और होने चाहिए, लेकिन देश की अन्तर्राष्ट्रीय स्थिति को देखते हुए, इसे पास करना चाहिए।

महोदय, कल श्री प्रणव मुखर्जी साहब ने श्री लाल कृष्ण आडवाणी जी को जवाब देते हुए कहा कि जब वे पिछली सरकार में बिल लाए थे, तब दो अमेंडमेंट लाए थे और तब कांग्रेस पार्टी ने जो देश और अन्तर्राष्ट्रीय मजबूरी थी, उसको समझते हुए, उसकी पूर्ति के लिए बिला का समर्थन किया था। आप कहते हैं कि इस पर चर्चा नहीं हुई। मैं कहता हूँ कि आठ दिन में इस पर चर्चा हो जाएगी। आप कहते हैं कि देश-विदेश में इस पर बहस होनी चाहिए, मैं कहता हूँ कि देश-विदेश में इस पर आठ दिन में बहस हो जाएगी। आप कहते हैं कि यह स्टैंडिंग कमेटी को भेज दिया जाए, मैं कहता हूँ कि इस पर आठ दिन में स्टैंडिंग कमेटी में भी चर्चा हो जाएगी। यह सब हो जाएगा, लेकिन जे.पी.सी. ने जिसके लिए दो साल लगाए, 40 सिटिंग की, उसमें इन सब बातों पर विस्तार से चर्चा की गई थी। जितने भी मुद्दे आपने प्रस्तुत किए हैं, उन

सभी पर जे.पी.सी. में चर्चा हो चुकी है। जिस पेटेंट एबिलिटी की बात आपने कही, मैं आज जिस पेटेंट एबिलिटी में संशोधन ला रहा हूँ, इस पर तो जे.पी.सी. ने दो साल पहले बहस कर ली। ये फर्स्ट एंड सैकिंड अमेंडमेंट के मुद्दे थे, जिन पर जे.पी.सी. बैठी। इस सदन में चर्चा हुई और वह बिल पास हुआ।

महोदय, आज जो संशोधन, पेटेंट एक्ट, 1970 में आ रहा है, वह सीमित है। जो मुद्दे बच गए थे, यह उस विधायक पर सीमित है। जो बहुत सारे मुद्दे आप उठा रहे हैं, जैसे आपने प्रॉसेस का मुद्दा उठाया, कम्पलसरी लाइसेंसिंग का मुद्दा उठाया, ये विधायक तो सैकिंड अमेंडमेंट के थे। इन पर जे.पी.सी. ने बहस की और जे.पी.सी. की रिपोर्ट सदन में पेश हुई और आप कहते हैं कि चर्चा की जाए। आप कहते हैं कि राज्य सभा या लोक सभा को प्रेरणित कर दिया जाए जिससे अमेंडमेंट लैप्स हो जाए और फिर दूसरा अमेंडमेंट लाया जाए। मैं समझता हूँ कि हमें इस डिवाइस का उपयोग करना चाहिए, दुरुपयोग नहीं। यदि हम इस डिवाइस का दुरुपयोग करेंगे, तो यह हमारी संसदीय परम्पराओं के खिलाफ होगा। यह तो एक डिवाइस है। यह हमारे संसदीय नियमों में एक प्रावधान है, लेकिन हमें इसका सदुपयोग करना चाहिए। इसलिए ऐसा करना सम्भव नहीं है।

महोदय, चर्चा हुई, हमने भी सोचा कि यदि इसका कोई दूसरा उपाय हो, तो वह किया जाए, लेकिन बहस के बाद और इतने साल के बाद अब इस प्रकार की बात करना मुनासिब नहीं है। वर्ष 2002 में सैकिंड अमेंडमेंट आया था और उस पर डेढ़-दो साल बहुत सोच-विचार कर के,

पिछली सरकार ने सब तरह से चर्चाएं कर के, तीसरा अमेंडमेंट लाई, और अब कहते हैं किसी ने चर्चा नहीं की। उस समय तो यह सब ठीक था और आज कहते हैं कि हमारी नीयत खराब है। आज वही बिल, जब आप यहां थे, तो ठीक था, लेकिन आपके यहां से वहां चले जाने पर, बेकार हो गया। मेरा तो आप सबसे निवेदन है कि मेरा यह प्रयास रहेगा कि एक-एक पहलू और एक-एक मुद्दे पर आपके सारे शक और शंकाओं को दूर करने का प्रयास मैं करूं।

माननीय सदस्य ने भी यह कहा है कि जो अमेंडमेंट मैं ला रहा हूं, वह पास हो जाए। आपने यह सुझाव दिया है और मैं उम्मीद करता हूं यह पास हो जाए। मैं चाहूंगा कि जैसा आपने सुझाव दिया और जो अमेंडमेंट मैं इस बिल के पास होने से पहले लाऊंगा, आप सभी उसका समर्थन करें।

MR. SPEAKER: Motions moved:

“That this House disapproves of the Patents (Amendment) Ordinance, 2004 (No.7 of 2004) promulgated by the President on 26 December, 2004.”

“ That the Bill further to amend the Patents Act, 1970 be taken into consideration.”

Now, Shri Uday Singh. Is it your seat?

SHRI UDAY SINGH (PURNEA): Sir, I have requested for permission to speak from here. I have given it to you in writing not today, it has been given to you about seven days ago.

MR. SPEAKER: For this Bill?

SHRI UDAY SINGH : I have requested for permission to speak not from my seat but from here.

MR. SPEAKER: On every matter?

SHRI UDAY SINGH : No, Sir, on this matter.

MR. SPEAKER: Very well. But in future, that general notice will not apply. I am allowing it now. Because it is an important Bill, I am not disturbing your thoughts. But, please cooperate with the Chair.

SHRI UDAY SINGH : Thank you, Sir.

Mr. Speaker, Sir, I would first like to thank the leader of the House Shri Pranab Mukherjee for having agreed yesterday to the suggestion made by Shri L.K. Advani to defer this matter by a day and take it up today instead of yesterday because certain amendments to this important Bill were not available to us till the time the

discussion had started. I am surprised to find that more amendments have reached us today giving us no time at all even to look at them and understand what they mean.

We all accept the fact that this Bill is perhaps one of the most important pieces of legislation that this Parliament is considering. I say this because it directly concerns the lives of billions of people and the livelihood of millions of people not only in India but in the lesser developed countries which are dependant on India for medical treatment from where medicines go. To give you an example, 70 per cent of the medicines used for AIDS treatment in the lesser developed countries are medicines made in India. They go from here only for the reason that they are available at prices which are affordable. Therefore, rushing through with a Bill of this importance is something that we should not do because we will be letting down our country and more importantly, or as importantly, we will be letting down countries that are dependant on us, that look up to India as a leader and look up to India as a country from where treatment is available to them at affordable costs. It is for this reason that we want the Bill to go to the Standing Committee where every nuance of the Bill can be vetted and modified if necessary.

माननीय वाणिज्य मंत्री जी ने बार-बार इस तरफ इशारा किया कि एनडीए की सरकार यह बिल लेकर आई थी और वही बिल सदन में पेश हुआ है। मैं माननीय मंत्री जी से बहुत आदर के साथ कहना चाहूंगा कि एनडीए की सरकार यह बिल तब लाई थी, जब इस बिल को पारित होने में हमारे पास एक र्वा से ज्यादा वक्त था। That deadline was not there. My computer was not ticking hours and minutes. The reason for bringing this Bill then was that the Bill could have gone to the Standing Committee, would have been vetted. We can all appreciate that this House would not have the time and perhaps would miss some of the expertise available to the Standing Committee to go into the merits and the details of the Bill as required, and this Bill is exceedingly important.

India must be TRIPS compliant and our party is perfectly in agreement with that. We do not want a controversy on this Bill. It is unnecessarily being created. But it should be TRIPS compliant to the extent necessary. Therefore, our legislation must necessarily take advantage of the flexibility allowed in the TRIPS Agreement so that we do not go beyond what is required. Our fear is that we are going much beyond what the TRIPS Agreement actually wants from us. Therefore, erring on the other side is not something that is in anybody's interest. I do not think that we really should be rushing with this. I do not know why the hon. Minister is not taking the assurance of the Chairman of the Standing Committee on Commerce who has given him a personal assurance that within ten days he will return the Bill duly vetted with the recommendations or modifications if necessary. This House is meeting after a brief period on around the 18th of April, as I understand [\[KMR33\]](#).

Our legislation can provide for the effect from a retrospective date. So, even this hiatus that may be created - I am sorry to say of the Government's own doing - is not going to impact on India's credibility abroad. Your argument yesterday of linking this with the Multi-fibre Agreement, I do not think, is a very acceptable argument because this hiatus that is going to be created is going to be fulfilled by the fact that we can give retrospective effect to the Bill. So, I do not know why this rush. I am not doubting the intention of the Government. I am not saying that the Government is trying to do something which it should not be doing. The

entire House is in agreement that India has to live globally and must honour its global commitment. But why this hurry? Why can it not wait for a couple of weeks and be done?

My party colleague has already pointed out to you that one incorrect decision on an exclusive marketing right actually shot up the prices of medicine for the treatment of Leukaemia from Rs.10,000 a month to Rs.1,20,000 a month. When it did this, it did not only do it for India, it did the same for all other countries- as I say repeatedly, I again repeat for all other countries - dependant on India. So, what are our safeguards there. In reply to the interjection that I made yesterday Mr. Minister, you were kind enough to say that you are quite sure that drug prices are not going to go up. I do not know what you are basing your confidence on? Because one experience has told us that it is going to happen.

Actually, patenting a medicine is like patenting a disease. If there is only one chemical known to treat a particular disease, and you patent that product, then you are actually giving patent to that disease. That means, whoever gets the disease has to turn to that company making the medicine, or the other option for him is to die. I mean, that is not a very happy situation.

The other thing is: Who is to decide what is patentable and what is not? Objection to grant of patents must be an integral part of any patent regime. As I understand it, it is not part of the amendments that have come to us, almost bombarded at us. I have not even seen them. As I understand it, the right to objection is restricted to somebody writing a letter stating his objections. He is not made a party to the patents proceedings. He is not told why his objections are not being.... .. (*Interruptions*) I stand corrected. It has been amended.

But we do not have the time, Mr. Minister, to actually go into it. If this has been amended, there could be other things there which need a more careful study. Our own argument to this is, therefore, why can you not allow the Standing Committee to have a look at it? Let the hiatus that is being created be taken care of by the Bill given of retrospective effect. It is probably just a coincidence. But it seems that the Government is getting unduly influenced by the multinationals and the large Indian companies because by some sheer chance, the hon. Finance Minister has decided to take away the concessional rate of duty on generic medicine to put it on par with branded medicine. Now, what is going to happen to the thriving generic drug industry in India on which not only we are dependant, I again repeat, many other countries are dependant? Who in his right mind would buy a generic medicine if it costs the same as branded medicine? Therefore, it seems to us that there is a purpose. The intent, in doing this is, trying to kill the generic drug industry in India, and probably under the influence of multinationals. In this, it would not be out of place to quote from now a widely available and circulated editorial in the *New York Times*. It says, the Bill bears the heavy footprint of multinationals in Indian pharmaceutical companies that are eager to sell high priced drugs to India's middle-class which is larger than the population of the United States.

Now, if this House does not take note of this, where else can we take our grievance to? The other option for us is, to organise demonstration and *dharna* outside, which I do not think is very becoming, because we are

sitting in this House, we assemble in this House, only to discuss these concerns, which are of great concern to the people. Therefore, I think, that our request for this matter going to the Standing Committee must get its due consideration[R34].

15.00 hrs.

[Shrimati Sumitra Mahajan *in the Chair*]

I think, with a senior and experienced person like Shri Pranab Babu who is the Leader of the House, the Government may perhaps reconsider quickly if it would like to take this matter there.

Having said this, one last point is about compulsory licensing. I am a Member of the Standing Committee on Health. I asked the Ministry officials about this. They said that in case of a national emergency, the compulsory licensing thing would kick in and all that. All that I wanted to know from them was in case of a national emergency which Indian drug company would be in a position to quickly manufacture a patented medicine and distribute the way it is required. Is the Government thinking of compulsory licenses for its own ailing IDPL which could then be kept ready so that in case of a national emergency, they could perhaps come and fill in the gap as is required.

Enough has been said on medicines. Last thing I would like to say is that pesticides, insecticides which also form a part of this patent regime, are also equally important. The hon. Agriculture Minister is not here but I am sure he knows the damage that happens, the losses that our farmers have to suffer on account of spurious and low quality pesticides and insecticides. And it is also a given fact that the moment you have an expensive, branded pesticide and insecticide medicine or whatever, spurious manufacturers kick in. Therefore, if pesticides and insecticides also were going to be allowed to be patented in an indiscriminate manne -- it is indiscriminate the way it is provided for in the Bill -- then you can well understand what is going to happen to our farmers who are already reeling with sub-standard seeds, sub-standard pesticides and sub-standard insecticides. We can address to all these concerns, and address them very quickly and very efficiently without creating any controversy of any kind. My request, therefore, on behalf of my party and on my own behalf and probably on behalf of other Members here, would be to send it for a quick vetting by the Standing Committee and to take up this matter when the House re-assembles on the 18th of April, 2005. Thank you very much.

SHRI PAWAN KUMAR BANSAL (CHANDIGARH): Madam Deputy Chairperson, at the very outset, I would like to refer to one impression that I formed when I heard my friend from the Opposition taking umbrage to the introduction of this Bill. Perhaps they consider the word 'patent' itself to be a dirty word. Let me say that this is not a new subject that has come up all of a sudden out of the blue. We had a patent law as back as in 1911. That was replaced by the Act of 1970. Things change with the passage of time in a dynamic moving society. With the

change in circumstances the world over as it was very emphatically pointed out by the Leader of the Opposition yesterday, there was an obligation cast on us when we chose to become the members of the WTO. We negotiated there as relating to the obligations arising out of the TRIPS agreement after we became members of the WTO.

As we all are aware, the two amendments earlier to the Act of 1970 were moved and given effect to when the NDA was in Government. Realising the importance, our responsibility to this important subject, we had extended full support thereto. This Bill minus certain clauses which have been improved upon and included now in the Bill was brought by the NDA and that Bill was introduced in the Lok Sabha on 23rd December, 2003. No effort was made to take it to the Standing Committee then. The House did not dissolve immediately after the Bill was introduced here. The House was dissolved somewhere in February after a new session was convened. During this period, it is not that nothing has been done as I submitted yesterday. The efforts of this Government to bring about many other matters before the House were stalled, were stymied because of the situation then prevailing in the House

[p35]

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I would not like to refer much to that. But during this period, it is not that the Government sat idle about it. There were extensive discussions carried out, and as the hon. Minister pointed out yesterday, such discussions were carried out

even with the leaders of the BJP. And, till this moment, not a single amendment has been moved or introduced by the BJP Members! I can understand, some amendments have come from our friends on the Left. They have a particular viewpoint on the matter. They had it in the past; they had it now; and I think, that has been resolved after talking to them. That is the essence of democracy -- you negotiate, you talk about the matters, and then you come to a solution. But not a single amendment has been introduced by the BJP.

Madam, I was trying to go into the different matters, and if at all there is any difference between the Bill introduced by the NDA and the one presented to us in the form of the Ordinance and now the Bill, it is that there are two improvements thereon. There are two improvements thereon as compared to the Bill introduced by the NDA. Permit me to refer to those very briefly, Madam Chairperson. First is to ensure that protection based on the patents granted to mailbox applications -- that is being taken care of -- would be effective only prospectively from the date of grant of patent and not retrospectively from the date of application. An amendment has now been incorporated in Section 11A. A new proviso has been added.

There was also a talk of an old provision on the life of patents being 20 years, which of course, was incorporated by the second amendment. But what has really been taken care of is that the amendment which has now been incorporated in the present Amendment Bill -- an improvement over the NDA Bill -- is that 'it ensures that though the protection would be available prospectively, the life of patents, that is, 20 years would be computed from the date of application and not from the date of grant of patent.' It is thus reducing the life of patent to almost 10 years. We know the salutary effect that a medicine going off patent would have is to enable the others to manufacture the same freely.

The second point, Madam, which has now been incorporated in the present Bill and as also in the Ordinance, is an amendment to Section 107A(b), providing for parallel import. Here, this amendment says: “On import of patented commodity from anywhere in the world, the Government reserves the right.” Despite the fact that a particular medicine may be patented here by any other company, we have the right to import that patented commodity from anywhere in the world, where it is cheaper, even though it is patented here. Earlier however, this required that the foreign exporter was duly authorised by the patentee. That was the condition earlier. I may remind my hon. friends on the other side that it has been taken off. Now, the law would be, as it has been included here in the Bill before us now, that ‘no longer do we only need to stick to that condition that the foreign exporter was duly authorised by the patentee to sell and distribute the products.’ The position now would be that ‘the foreign exporter be authorised under the law, thus making the parallel imports easier.’ This mechanism, as you know, would help in price control[[k36](#)].

Madam, a reference was made, and rightly so, to Para 6 of Doha Declaration. But, we ought to really know whether – as our hon. Colleague on the other side, Shri Uday Singh, was referring to and casting this sweeping allegation - the Government is going much beyond what its obligations are under the TRIPS. For that, I - without referring to the provisions of Para 6 of the Doha Declaration, which recognises the right of the WTO Members, with insufficient or no manufacturing capacity in pharmaceutical sector – would like to draw attention to the amendments, which are now being incorporated in Section 92A in the Bill, as it is before us. Thereafter, we will have discussions with our friends for further improvements thereon. Section 92A talks of the LDCs. We have the concern of the LDCs (Least-Developed Countries) in our mind. The Government is taking care of that. If you permit me to read, Section 92A, which is now being inserted by this Bill states that:

“...compulsory license shall be available for manufacture and export of patented pharmaceutical products to any country having insufficient or no manufacturing capacity in the pharmaceutical sector for the concerned product to address public health problems, provided compulsory license has been granted by such country.”

And what has now further been sought to be added by the hon. Minister is:

“...or such country has, by notification or otherwise, allowed the importation of the patented pharmaceutical products from India.”

So where is the difficulty about it? What are we really talking about – that this would harm the interests of a large number of countries, who are looking at us? Yesterday, the figure was given as 200. I do not know whether India has recognised 200 countries in the world. I did not know that, Madam. From the other side, it was said yesterday: “वे देश आपकी तरफ देख रहे हैं, उनका भविय आप पर मुनस्सर है कि उनके साथ क्या होगा”। I would say that care has been taken of that. मैं उस चीज में बहुत ज्यादा नहीं जाना चाहता कि पहले उसमें क्या था, क्यों ऐसा हो रहा है। बेशक वह एक महत्वपूर्ण विषय है। यह बिल एनडीए सरकार ने लोक सभा में पेश किया था, राज्य सभा में नहीं। राज्य सभा में पेश हुआ होता तो हमें जरूरत नहीं पड़ती दूसरी बार नया बिल लाने की। यह नया बिल लाने की जरूरत इसलिए पड़ी कि यह बिल लोक सभा में था और इसलिए कोई काम

नहीं हुआ। यह हमारी अंतर्राष्ट्रीय जिम्मेदारी थी, जो हमने डब्ल्यू.टी.ओ. की सदस्यता लेने के साथ-साथ कबूल की थी। उसके बाद हमारा बाहर रुतबा कितना रहता है - बाहर वाले मानते हैं कि हिन्दुस्तान से बात करने में माना जाएगा कि एक जिम्मेदार सरकार से बात कर रहे हैं - या बस ऐसे ही। यहां एक सरकार आई, पहली पार्टी की सरकार थी। उसने बहुत बड़ी बातें कीं लेकिन जब वह विपक्ष में चली गई, तो वे सब भूल गए - इसमें कोई कंटीन्यूटी आपस में नहीं है। There must be a strand of continuity in the policies, when they relate to the international works. That is what we have to prove to the outside world. That is what this Government is doing.

I know that there was a lot of hue and cry when there was a talk of our becoming a member of the WTO. But, as I said yesterday, the Standing Committee on Commerce was then chaired by Shri I. K. Gujaral. Members raised their different viewpoints. But, ultimately, we came out with a unanimous Report that it was in the national interest of India that India must join the WTO. Now, once you join, there are certain things, which would benefit you; there are certain things, which you may have to do but may not be to your liking. You would have wanted those things differently. But, that is our package. We cannot have both the worlds our way. As it was said by the hon. Minister also, there are certain things, which are a cause of concern. We are not saying that those are not really a matter of concern to us. But, then, what do we do? How do we tackle those matters? There was a mention about emergency. That again is talked of in the Doha Declaration. But, then, there are provisions here – compulsory licensing by the notification of the Government. I would like to refer to that point only [pkp37].

Measures are contained in the law to safeguard public interest especially the concerns relating to public health and nutrition. It is repeatedly being pointed out, and therefore, I began by saying that ‘patent’ is not a dirty word. What is it? Patent is, in fact, intended to encourage inventions. At the same time, it is to strike a right balance between the financial and economic rights of the patentee and the welfare of the society. This is the endeavour of this Government – that this law strikes a right balance between patent holders’ rights and earnings and consumers’ interests, and economic development to ensure maximum social welfare of the people of the country, who should not be denied access to effective, safe and quality medicines.

When I say this, immediately I want to come to the provisions which take care of the interests of the people and the public health. What are those? The law, as it stands already, provides for conditional grant of licence of the patent which empowers the Government to import, make or use any patent for its own purpose; for drugs, it also empowers import for public health distribution.

Section 66 is already there for many, many years. That is regarding revocation of patent in public interest. The Government reserves those rights and it is not that we are cutting our hands and handing them over to the MNCs, as it is being made out. It is the sovereign Government that will deal with the MNCs.

Now, we have to see whether we want investment in drug industry here. Our industry has come of age; they want such things; they want a very well applied patent regime, which would be conducive for them to go in for research and development activities and which would be conducive in attracting FDI in our country. We are taking care that it is not misused; we are taking care that this would work. If it does not work in India, the

provisions are there, like compulsory licensing. Just after three years, anybody can make an application. I suppose section 84 takes care of that. That was there earlier also. This amendment's scope is not as vast as it was sought to be made out, and painted, as if the Government is doing something which is totally against the interests of the people.

That is what we have to really take care of, and that is where we have to realise our responsibilities in the House. I am happy that the hon. Member said that we do not have to rush out to the streets and sort it out. Yes. It is here that we have to talk of the matters, but we have to talk of that in the right earnest and in the right perspective. What is the scope of the amendment and what are we doing?

I talked about compulsory license. I talked about compulsory license for exports. It is in the case of national emergency or extreme urgency and for non-commercial use of invention for the purpose of the Government, etc.

Section 102 talks of acquisition of invention and patent for public purpose which empowers the Government to acquire a patent to meet national requirements. I have already talked about parallel import. So, the total effect of these provisions is that there are enough safeguards to cover contingencies, to ensure a suitable, effective and timely response to public interest needs, especially those relating to public health and nutrition.

Thereafter, a point was made that the prices would shoot up enormously, and that the medicines will get out of reach of the common man. When I say this, I am aware that even today, medicines are out of reach of common man, and medical health care is out of reach of common man. It is precisely for this purpose, the UPA Government, this year, has decided to launch National Rural Health Mission with a stepped up and accelerated allocation of, I suppose, Rs.10,000 and odd crore. It has been increased substantially.

Let us talk of the effect that these provisions would have on the prices of medicines. We know that at present 99 per cent of the drugs available in the market are pre-1995 inventions, and would remain untouched by the new patent regime[R38].

That should allay our fear that the prices of all the commodities and all the medicines on the shelf would increase. Even for the post-1995 drugs, there are therapeutic equivalents and substitutes available generally. Then, we have our own system. The Drug Price Control Order and the National Pharmaceutical Pricing Authority has the right to ensure availability of drugs at reasonable prices. Almost all the drugs in the National Essential Drug List, *i.e.*, 354 items are out of the patent protection and also would not be affected. There are a number of factors on which depends the price of the medicine; it is not just that it is patented. There were examples given that in Chile, this has happened and there it has happened. There are examples on the other side also where there is a strong patent regime but the prices have stabilized and things have improved. As I said, there are a number of factors like cost of R&D, cost of marketing, volume of the market, presence of alternative substitutes in the market, and patent protection is only one of them.

A reference was made to a point and that point was taken up by the hon. Minister in his brief response to the opposition to the Ordinance. But I would seek your indulgence to refer to that. That was about the number of medicines that would be patented. In this context, I would only like to refer to the Mail Box applications. If

my information is not incorrect, during this period of 10 years, there have been 8926 applications in the Mail Box, out of this, 7953 pharmaceuticals and 973 agro-chemicals. The exclusive marketing rights have been granted – I would urge Shri Bachi Singh Rawatji to kindly see to this point

– only to four entities – two to Indians and two to foreigners. What do we want? Do we want our industry to prosper and develop or not? I could understand if the demand here were to be on the modernisation of the patent offices and the patenting system. That is the need of the hour. I would also urge the hon. Minister to take care of that. I am confident of that when I know of the various strides made in this regard that he is cognizant of all this and steps are being taken to see that ours is one of the most well run and efficiently run patent offices in the world.

There were certain apprehensions expressed by our friends from the Opposition and I am happy to see that almost all of them have been addressed here.

MADAM CHAIRMAN : Please conclude. You have already taken 25 minutes.

SHRI PAWAN KUMAR BANSAL : Madam, I am concluding. I would only like to refer to the amendment which is being incorporated in Clause 3 which talks of the known inventions, the products which are not considered to be inventions and therefore cannot be covered by the patent and patents cannot be sought for them. A good amendment is being introduced to that effect in Clause 3 of the Bill which says:

“the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant[r39].”

The explanation to that should completely allay the fears of our friends on the other side. I hope, they would accept that.

Madam, I must compliment the hon. Minister for one thing and that is about the objections – the pre-patent grant objections. The concept of pre-patent grant objections have been incorporated as a response to the apprehensions, fears and concerns of the hon. Members, which I again say is the legitimate way of expressing one's concern in the matter. The hon. Minister has further included that the Controller shall, if required, by such persons for being heard, hear him and then dispose of the objections. It is not an arbitrary act that a person files an application and then he will not be considered to be a party and the Controller will decide things on his own. If a person wants a hearing to be afforded to him, the objector will have the right to be present there and present his case. A personal hearing would be given to him and this upholds the principles of natural justice. It is only after hearing a person that the matter would be disposed of.

Madam, I am conscious of the fact that I have taken a lot of time as I also see a bit of restlessness on your face, I would conclude only by saying that this Bill is the need of the hour. We are today operating in the comity of nations subjecting ourselves to multilateral treaties and therefore, for the credibility of the country, to ensure that there is no legal vacuum in matters relating to Mail Box Application which has been filed during the last ten years – which have to be dealt with now – and for matters subsequent thereto, it is necessary that all the ambiguities are cleared and that this Bill is brought about.

Madam, I would only like to humbly submit finally that nobody – I cannot really say that for the incorrigible critics who must find fault with even their own drafting when it comes from the other side – in the country need to entertain any fear about any adverse effect thereof. In the long run we ought to have a solid and a valid patent regime which would help develop the Indian industry. It would strengthen the Indian industry and also in the process help create more jobs, help growth and help our economic process. With these words, I support this Bill.

SHRI RUPCHAND PAL (HOOGHLY): Sir, I rise to support this Bill... (*Interruptions*) It is a paradox of history that your child would have to be taken of care by them... (*Interruptions*)

Sir, the Left has always been taking a very consistent stand with regard to both WTO and TRIPS. Still now we consider – as it is considered by many other developing nations of the world – that WTO is unequal and iniquitous although they claim to be rule based. It is discriminatory and always those who are powerful in this unilateral world try to dominate over those who are weak, particularly the developing nations. We still now hold that TRIPS should not have been allowed to be incorporated in the course of negotiations of the Uruguay Round[[snb40](#)] of GATT.

That is the opinion still now of many thinkers, many philosophers, many scientists and many countries of the world. But still, in the given situation, we cannot wish away what has happened. We cannot wish away WTO. We cannot wish away TRIPS. But, our endeavour, struggle and position have all along been to derive as much benefit as possible using the flexibility clauses of the TRIPS. We have been suggesting to them but they were not listening to us. They were busy with their Ram temples, building of temples, *Ram Mandir*, bringing down mosques and all these things. They have been busy with their communal agenda. We have all along been suggesting what should be our position. They are now speaking about sending the price to the Standing Committee. They had their Chairman. They had majority of the Members. This is the Report of the Second JPC. Who is the person, which is the party or who are the parties that submitted a Note of Dissent? Have you cared to look at it? It is Rupchand Pal of CPI (M). Consistently, the same amendment we are pursuing today and this Government has accepted almost all of them. We have not changed our position; they have changed

their position. We have not changed our position. But, paradoxically, you are the people who have brought this Patent Bill. You are now trying to do what -- I do not know. You are totally confused. ... (*Interruptions*)

MADAM CHAIRMAN : Mr. Swain please. Nothing will go on record except Mr. Rupchand Pal's speech.

(Interruptions) ...*

SHRI RUPCHAND PAL : They are wasting my time. ... (*Interruptions*) I am referring to the National Common Minimum Programme. On page 11, it says :

“That they will ensure availability of life-saving drugs at reasonable prices.”

We told them that this is your commitment and this is our amendment. Look at it, judge it and compare it. If our amendment is not conformity with your commitment, we won't press for the amendment. We are happy that they are abiding by their assurance to the people, as made in the Common Minimum Programme. It is not our document; it is their document. We are only supporting the Government from outside on the basis of this document only. At page 51, it says that :

“In the WTO, they will organise the other developing countries and try to protect national interest, particularly of the farmers in all WTO negotiations.... The UPA Government will play a pro-active role in strengthening the emerging solidarity of developing countries in the shape of G-20 in the WTO.”

This is the position we have taken all along. They have committed to the nation. We have told them that this is your commitment and abide by it and do not look at them. It is their child they have acted against national interest. Just correct the situation and present Govt. have corrected it. We welcome it; we support the Bill.

Madam, patent should not be allowed whatever inventions, whatever discovery the scientists have made. They should be only in the service of the mankind[[m41](#)].

* Not Recorded.

Madam Curie could not ever imagine that her discoveries, her husband's discoveries, and all these great inventions should ever be patented. Had all inventions of Scientists been patented, human civilisation would not have proceeded any further. But the time is changing. In this unilateral world, big powers are trying to set up a new empire. The American imperialism and their leadership want to set up a new norm, a new economic order, and one instrument for this is the World Trade Organisation (WTO). ... (*Interruptions*)

SHRI UDAY SINGH : We do not want to provoke you.

SHRI RUPCHAND PAL : I am not provoking you. I am telling you the truth. I am reminding you the truth. Have some introspection. Otherwise, people have already thrown you into the dustbin of history. Do not forget it. Already people have thrown you. Now, the world scenario has changed radically. TRIPS had been allowed as a part of the GATT negotiations. Now, our main concern is as to what will happen to our countrymen, our poor and common people. We have to thank them, not for today but for the Patents Act, 1970. The Patents Act, 1970 is a model Act. It is not only for us but also for all the developing countries. Even yesterday, we have been getting telephone calls from various Quarters, even South Africa. Today, in the morning, when we were discussing things with them, such telephone calls came. South Africa, New Zealand and other developing countries are making telephone calls as to what stand we are going to take. Our Government is accepting our Amendment. It will strengthen the global movement of the developing countries. We are reminding them not only of CMP but also reminding them the stand they had taken on in the Patents Act, 1970.

We have a lot of difference with late Smt. Indira Gandhi. She said in 1981 in the World Health Organisation (WHO), Geneva – Shri Kamal Nathji, you must be knowing it – that “my idea of a better world order is one in which medical discoveries would be free of patent, and there would be no profiteering.” Now,

there is a change. We cannot wish it away. We are supporting the UPA Government from outside. It is not CPI (M)’s viewpoint only, but it is the viewpoint of the Left. We have consulted so many academicians, scientists, lawyers and national level NGOs. We are submitting the amendments only when we are sure that these are all TRIPS compliant. We are responsible and we know about the compulsion. From 1 January, 2005, the transitional period is over. We know about the trade off Rs. 16,000 crore export Pharmaceuticals; our textile export, diamonds, jewellery and all that.

A few days back Madam Condoleeza Rice US Secretary visited our country and spoke things standing in our way of an agreement with Iran for gas importation. America is dictating terms and trying to pull us down. The European Union knows very well that our pharmaceutical industry has grown over the years. They envy us. We know all these things. Still we say that you have consulted ourselves - the Left Parties - academicians, experts and others and [r42] suggested about twelve of them. They are core areas. We said that the first thing with regard to TRIPS is the definition of what is the invention and what is not the invention. We are happy that two of the core definitions, for the first time in India, for the first time in any developing country, have been agreed to. This is with regard to the basic definition, what is “new step”, what is the definition, what is new where TRIPS say what is the new ‘invention.’ You must have noticed the amendment.

Now, about the third one with regard to definition, they had some difficulty. We also had difficulty. We are convinced that with regard to pharmaceutical substance you should make a mention that only “new chemical entity” and or “new medical entity” should be entertained. NCE, NME are expressions used in international parlance; it is the WTO language, it is the TRIPS language. They have a point of view and they said, ‘only we can say new entity.’ Why? Their position is that because TRIPS said, ‘between entity and entity there should not be any discrimination’ and if we describe specifically as a new

chemical entity or new medical entity, we may be taken to the dispute settlement body.

We shall be at a disadvantage. We did not surrender. We did not subscribe to the view. We are happy that they have agreed to set up a technical committee, which will go into the issue immediately and before we sit for the next phase of the Session, they will come out with the result. If necessary, they will bring fresh amendment and you will come to know whether we are true or they are true. It is a very specific advancement.

With regard to compulsory licensing, as you know, compulsory licensing was allowed for natural calamities, that is, extreme situations. We asked, what will happen if the people want such and such medicines and the patent holder is not allowing them to be produced or marketed. We said, after a period of three years, let it be allowed to be produced against some royalty. We have been insisting on nominal royalty, they said, it should be reasonable. All right, according to international parameters, how much the market expenditure is, how much research and all these things are, we can agree to that. They have taken it. We agreed and suggested that in the post-Doha situation, para 6, our Indian companies should be allowed to export to the countries who do not have the infrastructure for the production of these medicines... *(Interruptions)*

SHRI KAMAL NATH: And the law!

SHRI RUPCHAND PAL : Yes, they have agreed to that. Naturally, with regard to compulsory licensing, against royalty production what will happen to the medicines which have come under product patent between 1995 and 2005? They have given the figures that out of 195, it is seven only which will go for product patent. But still we say that seven may be very important.

I have been receiving memoranda from national bodies, who are attending the mentally ill patients, to look into this. We have been receiving telegrams from other foreign countries that this is the medicine we get at a cheaper rate for HIV-AIDS only for India. They have agreed that for this period, it should not be retrospective, it should be prospective. But at the same time, it will be calculated from the day of the admission so that the 20-year period can be reduced.

MD. SALIM (CALCUTTA – NORTH EAST): Their proposal was that it should be retrospective.

SHRI RUPCHAND PAL : Yes, they have been walking in the reverse direction against the national interest... *(Interruptions)* Please do not take my time.

But today, with regard to the transitional period, with regard to compulsory licensing, with regard to export, they have come to subscribe to our view point. I agree that they have come to all these things. That is actually using the flexibility clauses, which are already there in the TRIPS[r43].

We said that the patent of micro organism is a very sensitive one. There are people who know that some of us have been associated with this movement that the micro organism plants, animals and seeds should never be allowed to be patented. This issue came during the JPC discussions also and we had our viewpoint. Some of them were reflected in my note of dissent and also in the note of dissent of others also. We said, 'Let us take a

decision'. We have given our amendment but they came out with a response and till today, we do not subscribe to that view. They said that very many countries of the world have gone for review and in TRIPS, micro organism thing is under review. If we take a position different from the one that we have been continuing, we may be called that it is not TRIPS compliant. We said: "Okay, we do not agree to your position." They said, "Let us set up a technical Committee to find out who is true, whether the Left Parties which have been collecting opinion from different angles and submitting their amendment or the perception of the Government." These are the only two areas. One is regarding new entity, or maybe chemical entity or medical entity, and the other one is about micro organism. They assured us that they would set up a technical committee and within a short period it would come out with the result,

and in the second phase of this Session, if necessary they would come with an amendment.

There was a lot of confusion about pre-grant opposition. In the Ordinance and in the new Bill, they had come with, in our view, some distortions in the situation. We did not agree to them. We said that we are not agreeable to that. We said that the original position as it was in the 1970 Act should be restored. Now, we are happy that they have in some way or the other agreed to that and today, the amendment has also come in some ways and we shall look into it.

Now, about embedded software, their opinion was that software as such is covered by the copyrights. In embedded software, they wanted to have this patenting, product patenting. We did not agree to that because our profession also will not be benefited. The richest person of the world has been Microsoft Chairman consecutively for the last 11 years. Do you know his name? ... *(Interruptions)* Yes, it is Bill Gates, who is good friend of some of yours. He was taken to Andhra Pradesh by the poster boy. The poster boy has gone but the Microsoft Chairman's name is there. ... *(Interruptions)* It will be used by IBM, it will be used by Microsoft and not by our great professionals. So, do not incorporate it we said. We are happy that 3K23K(a) has been deleted and removed in the amendment.

Madam, there are two or three other things about which I must make a mention. ... *(Interruptions)*

SHRI KAMAL NATH: Please leave something to me. ... *(Interruptions)*

SHRI RUPCHAND PAL : The Minister is saying that I should not consume everything. Okay, I am not going into that. I am leaving something for him. He will go beyond what has come out publicly. I think that they have come to think rightly that it will be, in the national interest, to make necessary changes as suggested not only by the Left parties but also by many others. BJP was also asked to make their suggestions. I would like to know from BJP as to what suggestions they have made from November to May? What did your Chairman in the JPC do? ... *(Interruptions)*

SHRI KHARABELA SWAIN (BALASORE): You kindly ask the Minister. He will tell you. ... *(Interruptions)*

SHRI KAMAL NATH: Only one suggestion came from them, if you ask me. When there was a formal meeting which I took, I wrote to the Leader of the Opposition[[lh44](#)].

They sent some of his representatives and they gave one suggestion. That one suggestion is right here.

SHRI KHARABELA SWAIN : We had given one suggestion, but he said we had given nothing....
(*Interruptions*)

SHRI KAMAL NATH : I must tell you that do not get the facts wrong. That one suggestion given by the BJP had been given by them much earlier. ... (*Interruptions*)

MADAM CHAIRMAN : Order please. I am sorry.

SHRI KHARABELA SWAIN : Shri Rupchand Pal was the only person who gave a note of dissent....
(*Interruptions*)

MADAM CHAIRMAN: This is not the way.

SHRI KHARABELA SWAIN : Dr. Biplab Dasgupta had agreed with this. He had agreed with the recommendation of the JPC. He is from his own Party.... (*Interruptions*) Mr. Rupchand Pal is envious of all the successful persons in the world. He is envious of Bill Gates and everybody. ... (*Interruptions*)

MADAM CHAIRMAN: Mr. Kharabela Swain, please address the Chair.

... (*Interruptions*)

MADAM CHAIRMAN: Mr. Minister, I just do not understand this. You are going to reply. At that time you can have your say.

... (*Interruptions*)

SHRI KHARABELA SWAIN : What is that individual letter? That is not the method because another Member of the CPI(M) Party had agreed. ... (*Interruptions*)

SHRI KAMAL NATH : You tell me. Why are you telling him?... (*Interruptions*)

MADAM CHAIRMAN: Mr. Minister, I am sorry. If the Minister is giving reply like this, this is not the way to run the House. You have your own time. You will get enough time. Please do not do like that. I can understand you. You address the Chair. That is all.

... (*Interruptions*)

SHRI KHARABELA SWAIN : Madam, if we do not say, it will be understood as if we have nothing to say. It is not like that. ... (*Interruptions*)

MADAM CHAIRMAN: Shri Rupchand Pal, please conclude.

SHRI RUPCHAND PAL : Madam, I would not take much time. I would only take five minutes and then conclude.

MADAM CHAIRMAN: You please conclude now. Your time is exhausted. That will be better.

SHRI RUPCHAND PAL : My time is being taken away by them. I will be concluding within five minutes.

MADAM CHAIRMAN: No, you take only two minutes.

SHRI RUPCHAND PAL : All right.

MD. SALIM : His speech is very interesting and very educative also.

MADAM CHAIRMAN: I know.

... (*Interruptions*)

MADAM CHAIRMAN: Nobody should guide me.

SHRI RUPCHAND PAL : I am concluding.

The world over the given situation, in a phase of political unilateralism and economic multilateralism, there is a movement as to how to reconcile to the situation.

Look at Venezuela. A few days back, the President of Venezuela had come. After meeting the Prime Minister, our Ministers and others, he spoke out that in this unequal world, the only way out to survive is to take firm step. If we have to have our economic self-reliance protected, we have to go for bilateral and multilateral co-operation, and at the WTO level, at the TRIPS level, together we have to unite persons and representatives of countries of common interest.

I thank the hon. Minister for organising the meeting of the G-20 countries. It is a big success. So, in TRIPS also, we have to take a particular position. This piece of amended legislation will only strengthen his hands for the South-South co-operation and for development of Non-Aligned Movement in the face of onslaught by the new empire, the American imperialism and their multinational corporations. So, I welcome that they have come out with the required amendments. I once again thank them for their acceptance of our amendments and protecting the national interests.

MADAM CHAIRMAN: Thank you very much.

I have a small request. Only three speakers have spoken. They have taken more than an hour. There are 23 speakers who want to speak. There are 23 names. So, please be brief. This is my only request.

SHRI UDAY SINGH : Hon. Member, Shri Rupchand Pal has done the work of the hon. Minister.

MADAM CHAIRMAN: You have your time.

SHRI P.C. THOMAS (MUVATTUPUZHA): We are already bypassing the Standing Committee. So, time may be given.

MADAM CHAIRMAN: Yes, that is why, I am asking all of them to be brief[m45].

श्री रामजीलाल सुमन (फ़िरोज़ाबाद) : सभापति महोदया, विश्व व्यापार संगठन के तहत 1994 में सरकार ने जो हस्ताक्षर किए, उसे पूरा करने के लिए एक समय-सीमा थी - 1 जनवरी, 2005। उस समय कौन सी पार्टी की सरकार थी, उसके बाद किस पार्टी की सरकार बनी, यह बहस का विषय नहीं है, लेकिन यह एक अंतर्राष्ट्रीय करार था। उसके चलते सरकार को यह कहना था, उसे वायदा पूरा करना था। लेकिन देश में काफी शंकाएं पैदा हुई हैं, न सिर्फ हमारे देश में, बल्कि दुनिया में भी पैदा हुई हैं। मैं समझता हूँ कि जब श्री कमल नाथ जी भाग करेंगे, तो तमाम माननीय सदस्यों ने जो सवाल उठाए हैं और मैं जिस शंका की बात कर रहा हूँ, वे शंकाएं सिर्फ भारतीय चारदीवारी तक कैद नहीं थीं, बल्कि दुनिया में भी तमाम शंकाएं पैदा हुई हैं।

सभापति महोदया, यह न्यूयार्क टाइम्स 18 जनवरी, 2005 का है। इस संस्करण के सम्पादकीय में एक लेख प्रकाशित हुआ है, जिसका शीर्षक है - "इंडियाज़ चॉयस।" इसमें लिखा है कि भारत सरकार एवं बहुराष्ट्रीय कम्पनियों बड़े दवा निर्माताओं के हाथ की कठपुतली बन गई हैं और वे अपने पेटेंट को भारत के बाजार में बेचने के लिए उतावली एवं बेताब हैं। माननीय कमल नाथ जी, मैं आपसे निवेदन करना चाहूंगा कि 1994 से सिद्धान्ततः हमने पेटेंट को स्वीकार किया है और पेटेंट को स्वीकार करने का मतलब यह हुआ कि अब शोधन, अन्वेषण पर हम उद्योग को विकसित करने का काम करेंगे। सरकार ने देश के उद्योग को विश्व की स्पर्धा में तो धकेल दिया, लेकिन उस उद्योग को विश्व स्पर्धा में खड़ा होने योग्य नहीं बनाया। शोध और अन्वेषण पर विश्व के अन्य देशों ने अपने सकल घरेलू उत्पाद का तीन से लेकर पांच प्रतिशत खर्च करते हैं जबकि भारत में यह राशि एक प्रतिशत से भी कम है। आपने जब भाग किया था तो यह भी कहा था कि हमें कुछ शंकाएं हैं और उन्हें दूर करने के लिए हमने 13 सेफगाडर्स तय किए हैं।

इस विधेयक में शंकाओं की भरमार है। मैं खास तौर से दो-तीन शंकाओं की तरफ आपका ध्यान ले जाना चाहूंगा। आप कहते हैं कि पेटेंट लागू होने पर दवाईयों के दाम नहीं बढ़ेंगे। सरकार के अनुसार सिर्फ तीन प्रतिशत दवाएं ही पेटेंट के अंदर आएंगी, इसलिए पेटेंट का विपरीत प्रभाव कम होगा। इस पेटेंट के कारण अमेरिका में दवाईयों के दाम बेतहाशा बढ़े हैं। श्री कमल नाथ जी से मैं जानना चाहूंगा कि पेटेंट होने के बाद अमेरिका में दवाईयों के दाम बढ़े हैं तो कैसे भारत उस प्रभाव से अछूता रह जाएगा, यह मेरी समझ में नहीं आता। इसलिए मेरा आपसे विनम्र आग्रह है कि भारत में पेटेंट के बाद दवाईयों के दाम नहीं बढ़ने चाहिए। आप जब उत्तर दें तो इसे स्पष्ट करने की तरफ जरूर ध्यान दें।

सभापति महोदया, सरकार के अनुसार भारत में जो 97 प्रतिशत दवाइयां बिकती हैं, वे जैविक दवाएं हैं और उन्हीं दवाइयों का विशेष रूप से व्यापार होता है। दिनांक 29-12-04 के समाचार-पत्र में छपा है कि जिन कम्पनियों को जैविक दवा बनानी होगी, उन्हें अमेरिका के फूड ड्रग्स आथोरिटी को पहले लिखना होगा, तभी वे उन दवाओं को बना सकते हैं। ऐसा लगता है कि निश्चित रूप से इसके बाद भारत के दवाओं के बाजार पर असर पड़ने की संभावना है। विश्व का जो औसत मेडीसन बाजार है, वह 450 बिलियन डालर का है और इसमें भारत का टोटल दवा बाजार छः बिलियन डालर का है। छः बिलियन डालर में भी 2.5 बिलियन डालर की दवाएं हम लोग निर्यात करते हैं, जो जैविक दवाएं हैं। पेटेंट के द्वारा, जो देश दवाईयों का निर्यात करेंगे, उन्हें निर्यात लाइसेंस लेने होंगे और निर्यात लाइसेंस लेने के बाद, यह आवश्यक होगा कि निर्यात उन्हीं देशों में होगा, जहां दवाइयां नहीं बनती। मेरा कहने का मतलब यह है कि जिस तरह का वातावरण है, उसमें इस संभावना से इनकार नहीं किया जा सकता कि दवाईयों के पेटेंट के बाद, भारत में ये दवाइयां महंगी cÉ&MÉÉÒ[R46]।

16.00 hrs.

मैं एक निवेदन और करना चाहता हूँ कि पेटेंट के लिए अभी 12 हजार लोगों के आवेदन आये हैं जबकि अमेरिका और चीन में ये दरख्वास्तें तीन लाख से ऊपर चली गयी हैं। हमारे देश में ये दरख्वास्तें 12 हजार हैं। लेकिन मैं पूछना चाहता हूँ कि आपके कितने आफिस हैं ? आपके सिर्फ चार आफिस हैं। ये जो मामले विचाराधीन हैं, मैं समझता हूँ कि जो स्थिति आपकी यहां है, उसके चलते बरसों तक इनका निपटारा कैसे होगा, यह मेरी समझ से परे है। आप जो विस्तार करने वाले हैं, क्या वह शहरी सीमा में होगा या बड़े शहरों में होगा? आपके पास पेटेंट के लिए जो 12 हजार दरख्वास्तें आई हैं, उनका निस्तारण आप तत्काल कैसे करेंगे, मेहरबानी करके जब आप अपना जवाब दें, तब इस पर जरूर ध्यान दें। पेटेंट के आने पर बहुराष्ट्रीय कम्पनियों द्वारा भारत के जैविक दवाओं के निर्माताओं को बाजार से बाहर धकेले जाने की संभावना है। मैंने पहले कहा कि इससे चिकित्सा व्यवस्था महंगी होगी।

अभी एक लेटेस्ट अध्ययन हुआ है। उसके अनुसार जैविक दवाओं द्वारा भारत में जहां डेढ़ लाख की दवाओं से काम चल जाता है वहां पेटेंट होने के बाद 15 लाख रुपये में ये दवाएं उपभोक्ताओं को मिलेंगी। वर्तमान पेटेंट कानून के तहत दवा, खाद और रसायन, इन तीन चीजों को आप खासकर पेटेंट के अधीन रखना चाहते हैं। इससे यह संभावना पैदा हो गयी है, अभी बीज अधिनियम भी सरकार ने बनाया है, कि देश में बीज का भी पेटेंट न हो। लघु और सीमांत किसान पारम्परिक तरीके से बीज पैदा करता है, वह भी कहीं पेटेंट के अधीन न किया जाये क्योंकि नीम और हल्दी जैसी चीजों पर बहुराष्ट्रीय कम्पनियों की नजर है।

सभापति महोदया, मेरे कहने का मतलब यह है कि ये जो तमाम आशंकाएं हैं जैसे दवा व्यापार, लघु उद्योग, बीज, हल्दी आदि हैं, कुल मिलाकर हमारे हिन्दुस्तान की आम जनता उससे प्रभावित न हो, यह व्यवस्था सरकार को करनी चाहिए। मैं समाजवादी पार्टी की ओर से सिर्फ इतना कहना चाहूंगा कि इस सरकार के सामने एक अंतर्राष्ट्रीय मजबूरी है। जो सवाल अभी श्री रूपचंद पाल जी ने उठाये, जो संशोधन प्रस्तुत किये, मैं समझता हूँ कि पूरे देश में पेटेंट के कारण जो शंकाएं थीं, उससे काफी शंकाओं का निवारण हो गया है। मंत्री जी, जब आप अपना भाग दें तब मैं निश्चित रूप से चाहूंगा कि देश की जनता को अहसास होना चाहिए कि सरकार आम जनता के हित के प्रतिकूल कोई आचरण नहीं कर रही है। मैं अपनी पार्टी की ओर से इस विधेयक का समर्थन करता हूँ।

श्री आलोक कुमार मेहता (समस्तीपुर) : सभापति महोदया, मैं पेटेंट बिल के तृतीय संशोधन विधेयक पर बोलने के लिए खड़ा हुआ हूँ। आपने मुझे बोलने का समय दिया, उसके लिए बहुत-बहुत धन्यवाद। अभी मैं अपने पूर्ववक्ता साथियों की बातें सुन रहा था। आज जो विधेयक पेश हो रहा है, उसे मैं एनडीए सरकार द्वारा तैयार एवं लोक सभा में पूर्व में पेश किये गये संशोधन विधेयक का पुनर्संशोधन मानता हूँ। इस विधेयक में बहुत सारी खामियां रही हैं जो इस देश की आम जनता, यहां की अर्थव्यवस्था, इंजीनियरिंग इंडस्ट्री, अंतर्राष्ट्रीय प्रतिस्पर्धा में भारत की स्थिति को कुप्रभावित करने वाली जितनी भी बिन्दुएँ हैं, तृतीय संशोधन विधेयक में, जो एनडीए ने तैयार किया था, जस के तस छोड़ दिये गये थे। इस एक दिन के वाद-विवाद में, हम माननीय मंत्री श्री कमलनाथ जी को धन्यवाद देना चाहते हैं कि उन्होंने अपनी संवेदनशीलता दिखलाई।

कुछ हद तक जनहित से जुड़ी हुई समस्याओं के आधार पर उसमें पुनः संशोधन करके सामने रखने का काम किया है। यह बहस कोई नयी बहस नहीं है। 1948 में दूसरे विश्व युद्ध के बाद 'गैट' बना। डंकल प्रस्ताव उस समय का है जब 1970 में पेटेंट अधिनियम भारत में पेश किया गया और 1972 में लागू हुआ। 1994 में उरुग्वे राउंड के बाद 'ट्रिप्स' जब एग्जिसटेंस में आया और डब्ल्यू.टी.ओ. में 1995 में परिवर्तित हुआ तो इस घटनाक्रम में भारत जैसे विकासशील देश और अल्प विकसित देशों के हितों की बात अन्तर्राष्ट्रीय स्तर पर उतनी बारीकी से सोची और समझी नहीं जा रही थी। आज परिवेश बदल गया। जनसंख्या और अर्थव्यवस्था में परिवर्तन आने लगा। आज इस बात की महत्ता अधिक है कि इस देश के राष्ट्र हित और जनहित की बातों के अनुरूप विधेयक पर चर्चा, परिचर्चा हो और उसमें जो बात सामने आती हो, उन पर गंभीरता से विचार किया जाए। आपके सामने जो आज संशोधन के बिन्दु सामने हैं, उन पर मैं कहना चाहूंगा कि इंटरनेट प्रोपर्टी राइट की खामियों के चलते या उसके अंदर जो बनाये गये कानून थे, उसके अंदर बासमती राइस को टैक्समती नाम से पेटेंट कर दिया गया था। इस पर देश में बहुत हल्ला हुआ था। हम लोग पेटेंट लॉ के खिलाफ सड़कों पर उतर आये थे, गिरफ्तारियां भी दी गई थीं और विभिन्न तरह के आंदोलनों की अगुवाई विभिन्न दलों के माध्यम से की गई थी। हमारी पार्टी इस तरह के विरोध में अग्रणी भूमिका अदा करती रही है।

16.08 hrs.**(Shri Devendra Prasad Yadav *in the Chair*)**

राष्ट्रीय जनता दल अपने एग्जिसटेंट्स के समय से ऐसे मूल्य आधारित मुद्दों पर लड़ाई जारी रखे हुए था। जिस दिन इस देश की ओर से 'गैट' समझौता पर हस्ताक्षर हुए, उस दिन हमारी पार्टी ने परिकाठा तक विरोध किया था। हमें दो दिन पूर्व माननीय मंत्री जी ने पेटेंट पर आधारित मेरे एक प्रश्न के जवाब में सदन में जानकारी दी थी कि पेटेंट लॉ कंटीवाइज है और इस देशों की अपनी बाउंड्री के अंदर ही लागू होगा। परन्तु, पूरी दुनिया में इंटेलेक्चुअल प्रोपर्टी राइट्स को एक्रॉस दि बाउंड्री हार्मोनाइज करने की कोशिश हो रही है। पेटेंट संशोधन बिल को देखकर, इसके अन्दर छिपे डिप्लोमैटिक मैनुपुलेटेड क्लॉजेज को देखकर ऐसा लगता है कि परोक्ष रूप से दुनिया के विकसित देशों की लॉबी इस संशोधन को डिप्लोमैटिकली गर्वन कर रही है। अतः हम आपके माध्यम से इस ओर सरकार का ध्यान आकृष्ट कराते हुए उसे सावधान करना चाहेंगे और कहना चाहेंगे कि एनडीए सरकार के हिडन एजेंडा की तरह विकसित देशों के नवसामंतवादी हिडन एजेंडें से हमें सचेत रहना चाहिए। [\[cmc48\]](#)

प्रोडक्ट पेटेन्ट और प्रोसेस पेटेन्ट, जब से ये शब्द चर्चा में आए हैं देश हित, यहाँ का व्यापार हित, यहाँ की जनता का अर्थ हित और विकासशील देशों और अल्प विकसित देशों के हित - ये सारी चीजें इसमें सिमट कर रह गई हैं। इस देश को तथा अन्य अल्प विकसित देशों को कंज्युमर मार्केट बनाने की कोशिश हो रही है। अन्तर्राष्ट्रीय मजबूरी के तहत यदि इस बिल को पेश किया जा रहा है तो मैं यह कहना चाहूँगा कि इसके साथ ही साथ, हमें विकासशील देशों और अल्पविकसित देशों, जो डब्ल्युटीओ के सदस्य देश हैं, को साथ लेकर एक लॉबी बनानी चाहिए जो डब्ल्युटीओ की टॉप गवर्निंग अथॉरिटी पर दबाव बना सके। डब्ल्युटीओ के निर्णयों को प्रभावित करने के लिए ऐसे देशों की एक लॉबी बननी चाहिए ताकि ऐसे बहुसंख्यक देशों के हितों की रक्षा हो सके। प्रोडक्ट पेटेन्ट और प्रोसेस पेटेन्ट, यह एक बहुत ही गंभीरतापूर्वक विचारणीय विषय रहा है। भारत जैसे देशों में जहाँ टेक्नोलॉजी बहुत एडवांस नहीं है और जहाँ पर महंगी टेक्नोलॉजी पर आधारित उद्योग कम लगाए जा रहे हैं और जहाँ कुटीर और छोटे-छोटे उद्योगों का वातावरण है या जहाँ ऐसा नहीं है, वहाँ ऐसा वातावरण बनाए जाने की आवश्यकता है जो गांवों की अर्थव्यवस्था को मजबूत करता है और ऐसे उद्योगों तथा वहाँ के उत्पादों, पदार्थों पर और इसके विपणन पर इसका व्यापक असर पड़ने वाला है। इसके कुरिणामों की ओर मैं सदन का ध्यान आकर्षित करना चाहता हूँ और मैं माननीय मंत्री जी से कहना चाहता हूँ कि संशोधन दर संशोधन के बाद यह तीसरा संशोधन है, लेकिन जनता के हितों की रक्षा के लिए अगर चौथा और पांचवां संशोधन भी करना पड़े तो हमें पीछे हटने की जरूरत नहीं है। इस विधेयक को अधिकाधिक जीवन्त बनाकर देश के हित, अर्थ हितों की रक्षा के लिए, इस देश की आम जनता के हितों की रक्षा के अनुरूप इसे माउल्ड किया जाना चाहिए। ट्रीप्स एग्रीमेंट में मूल्यों और उपलब्धता की असमानता अन्तर्निहित है। इसे संतुलित करने के लिए कम्पलसरी लाइसेंसिंग का जो प्रावधान किया गया है, उसके लिए यह एक सही दिशा में कदम था। लेकिन, मैं आपसे कहना चाहता हूँ कि उसी पेटेन्ट कानून की दीवार में छिद्र हैं। इन छिद्रों से निकलकर बड़ी कंपनियाँ एड्स की दवाओं को अपने उत्पादन मूल्य से तीस से पचास गुने मूल्य पर मार्केट में बेच रही हैं। यह पिल्फरेज, इन छिद्रों को खोजकर बंद करने की जरूरत है। सामान्य जनता के हितों को, उनके कंजम्शन की जो चीजें हैं, जो छोटी-छोटी चीजें हैं और उनके विपणन पर और उससे सम्बन्धित ग्रामीण अर्थव्यवस्था और भारत की सम्पूर्ण अर्थव्यवस्था पर क्या-क्या असर पड़ेंगे और उन्हें सुधारने के लिए क्या-क्या उपाय हो सकते हैं, मैं उनकी ओर आपका ध्यान आकर्षित करना चाहता हूँ और उसमें सुधार की अपेक्षा रखता हूँ।

जीवनरक्षक दवाओं से सम्बंधित बातें यहाँ उठायी गयी हैं। मैं अपने पूर्व वक्ता सीपीएम के वरीय साथी से सहमत हूँ। [\[cmc49\]](#) यह दुर्भाग्यपूर्ण रहा कि द्वितीय संशोधन विधेयक, 2002 के अंतर्गत ट्रीप्स एग्रीमेंट के लचीलेपन का फायदा तत्कालीन सरकार द्वारा नहीं उठाया जा सका। यह आवश्यक है कि तृतीय संशोधन विधेयक, 2005 में ट्रीप्स के मूल एग्रीमेंट को बदल कर विकसित देशों के छिपे हुए हितों को निकाल कर विकासशील और अल्प विकसित देशों के हितों को उसमें समाहित किया जाए। मैं यूपीए सरकार से यह अपील करना चाहता हूँ कि इसे विकासशील और अर्धविकसित देशों के हित में बनाया जाए। यह बात ट्रीप्स के मूल ढांच के अंदर निहित है। लेकिन हम उसे उद्धृत नहीं कर पा रहे हैं। इसलिए ट्रीप्स के समझौते पर गहनतापूर्वक देखा जाए और उसकी खूबियों को इस संशोधन विधेयक में समाहित करके इसे बेहतर बनाने की कोशिश होनी चाहिए।

मैं सुझाव के तौर पर कहना चाहूंगा कि पेटेंटेबल सब्जेक्ट मैटर में जो टर्म 'इन्वेंशन' है, उसका सही ढंग से विश्लेषण करते हुए, उसे इलैबोरेट करके जो इन्वेंशन सचमुच में नया प्रोडक्ट हो, नई सोच हो, नई विधि हो, इनका संगम हो, उसे ही पेटेंटीकरण अधिकार मिलना चाहिए।

हमारे पूर्व वक्ता ने जो कहा कि पेटेंट किए जाने से पहले विरोध का अधिकार है, वह हमें अवश्य मिलना चाहिए। इस संशोधन विधेयक में उसका प्रावधान अवश्य होना चाहिए। यह एक कंट्रोल सिस्टम विकसित करता है। कभी नीम का और हल्दी का पेटेंट हुआ, हमें पता बाद में चला। फिर उसका डीपेटेंट हुआ, यह हमें ठीक से पता ही नहीं चला। डब्ल्यू.टी.ओ. की जो कोर्ट है, वहां सुनवाई के लिए कब गया, कब सुनवाई हुई, पता ही नहीं चला। इसलिए इस देश में भी पेटेंटीकरण से सम्बन्धित एक आफिस होना चाहिए और विजिबिलिटी होनी चाहिए। आम लोगों को, छोटे-बड़े उद्योगपतियों को यह मालूम होना चाहिए कि यह पेटेंट बिल्डिंग है। यहां पर यह प्रोसेस है और उसके तहत पेटेंट होता है। इस दिशा में अवश्य कदम उठाया जाना चाहिए।

अगर यह एक गम्भीर विषय है, तो इसे गम्भीरतापूर्वक डील करने की आवश्यकता है। जानकारी के अभाव में अच्छे-अच्छे आविष्कारक शोध और आविष्कार करने के बाद उसे कैसे पेटेंट कराएं, इसका पता नहीं चलता। मैं मंत्री जी से कहना चाहता हूँ कि हमने जो बातें कही हैं, ये इस देश की जनता के हित से जुड़ी हुई हैं। इस देश की अर्थव्यवस्था से जुड़ी हुई हैं और ग्रामीण अर्थव्यवस्था से जुड़ी हुई हैं।

कृपि हमारे देश में सबसे महत्वपूर्ण क्षेत्र है, जिसे हमेशा ऐसे मुद्दों पर नेग्लेक्ट किया जाता रहा है। इस क्षेत्र में पेटेंटीकरण के मामले में जो संशोधन विधेयक आप लाए हैं, उसमें बहुत सावधानी की आवश्यकता है, ताकि इस देश के किसान जो विभिन्न माध्यमों से ठगे जाते रहे हैं, कहीं ऐसा न हो इस संशोधन विधेयक के माध्यम से, अंतर्राष्ट्रीय समुदाय के दबाव में ठगे जाएं और ग्रामीण वर्ग भी ठगा जाए। इसका पूरा-पूरा ख्याल रखने की आवश्यकता है।

इन्हीं शब्दों के साथ मैं अपनी बात समाप्त करता हूँ।

श्री लालमणि प्रसाद (बस्ती) : माननीय सभापति जी, आपने पेटेंट बिल पर बोलने के लिए मुझे अवसर दिया, इसके लिए मैं आपका आभारी हूँ। इसमें राष्ट्रीय आवश्यकता और सार्वजनिक हित को ध्यान में रखते हुए इस बात पर गम्भीरता पूर्वक विचार किया जाये कि बहुराष्ट्रीय कंपनियां हमारे देश पर हावी न हो जाएं। हमारे तमाम माननीय सदस्यों ने इस बात की आशंका जाहिर की है। नीम, हल्दी, तुलसी और तमाम जीवनोपयोगी औषधियां, वनस्पतियां, जो जनहित के लिए हैं, इनका पेटेंट न हो। किसानों और तमाम जनता के व्यापक हितों को ध्यान में रखते हुए, अन्य अनेक संशोधनों के साथ यह बिल लाया गया है, जनहित में लाया गया है और हमारी पार्टी, बहुजन समाज पार्टी, इसका समर्थन करती है।

SHRI C. KUPPUSAMI (MADRAS NORTH): Mr. Chairman, thank you very much. The hon. Minister Shri Kamal Nath has brought forward this Patents (Amendment) Bill, in pursuance of the WTO commitment made by India in the patents regime. The Patents (Amendment) Ordinance was earlier issued by H. E. the President, and if the Bill is not passed before 8th April, the Ordinance would lapse.

India is a signatory to the TRIPS Agreement, and also a member of WTO. After globalisation and liberalisation, many structural reforms were brought about in the Indian economy, and the consequent benefits have mostly reached the industry, depriving the working class.

An apprehension is created in the minds of the public that once the Amendment Bill is passed, drug prices, especially, life-saving drug prices will go up, and other commodities that are of common use would also

go up. The Government should come forward to allay the apprehension. While carrying forward the reforms further like countries like Britain, France, etc. did, India also should take steps to protect the national interests.

The House may recall that our leader late Thiru Murasoli Maran, the then Union Commerce and Industry Minister, who was an asset to the Central Government, negotiated with the member-developing countries for more than 36 hours, at the Doha Convention, to protect the interest of the developing countries, especially, India. He negotiated very convincingly with the WTO forum for the protection of interests of Indian labour class, and farmers.

The impact of the patent regime should be minimised so that the farmers, workers, common men need not have to pay more price because of patenting of various items either through product patent or process patent.

The Government is bringing an amendment relating to exclusive marketing rights, which should not make the trader exploit our poor people.

The Bill has got the provisions relating to guard against patenting abroad of dual use technologies. We have heard that a lot of common things, which we use traditionally in India, are being patented with some value-added products like Neem, Haldi, Basmati, Texmati, Tulsi, etc. The Government should be vigilant and see that such basic things, which do not undergo any process, should not be patented anywhere.

Adequate safeguards should be provided for protection of public interest, national security, bio-diversity, and traditional knowledge, besides, public health and nutrition, labour interests, and farmers^[ak50]. Indian economy is mainly dependent on agriculture, and more than 70 per cent of the population living in the rural areas are dependent on agriculture. Therefore, agricultural operations should be safeguarded and the prices of inputs, such as quality seeds, fertilisers, farm implements, etc., should be affordable by the small and marginal farmers. Similarly, the interests of small-scale industries should also be protected and adequate safeguards should be provided in the legislation itself, since the informal sector or the unorganised sector is a major source of employment in the country.

We are the largest democracy in the world, and we are capable enough to produce all items, right from needle to satellite.

Sir, I would like to make one more point about marketing rights. The WTO conditionalities should not be such that it interferes with our process or manner of production. They should not impose any restrictions on work culture. As you know, we have cottage industry, we have home industry, domestic industry, where the whole family is involved in handicraft items or making of matches, etc. Therefore, it is better that the product is evaluated in terms of its quality and standard, rather than the process.

With these words, I thank you for giving me an opportunity to participate in the debate.

श्री ब्रज किशोर त्रिपाठी (पुरी) : सभापति महोदय, पेटेंट अमेंडमेंट बिल 1970, जो संशोधन करने के लिए आया है, मैं और मेरा दल उसका विरोध करता हूँ। यह संशोधन बिल देश के लिए बहुत खतरनाक है। ग्रामीण क्षेत्रों में जो लोग रहते हैं, उनके लिए, आम जनता के लिए और कृषि क्षेत्र के लिए यह बहुत खतरनाक संशोधन बिल है। हमारी "वसुधैव कुटुम्बकम्" की सभ्यता और परम्परा रही है। पांच हजार साल पुराने वेद, पुराण देखें। जिन चीजों का इनवेंशन हुआ, मानव सभ्यता और मानव जीवन के विकास के लिए हुआ था। उनका कभी कोई मूल्य लेना नहीं चाहता था।

अभी बताया गया कि पेटेंट एरा आ गया है। 1995 में सरकार ने डबल्यूटीओ में जाकर देश को बेचने का रास्ता खोला। इसके पीछे जो आपका निजी स्वार्थ है, वह कभी चरितार्थ नहीं होगा। सरकार को कैमिकल ऑर्गेनिज्म और माइक्रो ऑर्गेनिज्म की डैफिनेशन पता नहीं है। इसके बारे में क्या करेंगे? इस संशोधन बिल में इसका कोई जिक्र नहीं है। माइक्रो कैमिकल ऑर्गेनिज्म की क्या डैफिनेशन होगी? मेडिसिन और कैमिकल फर्टिलाइजर जिन जगहों में हजारों साल से हो रहे हैं, उनकी हालत इस बिल के आने के बाद क्या होगी? इसकी भी डैफिनेशन अभी मालूम नहीं है। आप टैक्निक्ल कमेटी के माध्यम से इसे फाइनल नहीं कर पाए हैं। तुलसी, नीम और हल्दी में ऑर्गेन हैं। ऐसी मेडिसिन जो हजारों साल से देश में चल रही है, उनकी क्या स्थिति होगी, सरकार को यह बताना पड़ेगा।

कहा गया कि मेडिसिन के प्राइस नहीं बढ़ेंगे। कैसे नहीं बढ़ेंगे? [\[R51\]](#)

हमारे देश में अब यह अनुभव है कि लाइफ सेविंग ड्रग्स का दाम सौ-दो सौ गुना बढ़ गया है। दवाओं के दाम कैसे नहीं बढ़ेंगे? मेडिसिन्स के दाम जरूर बढ़ेंगे और अखबार में आ रहा है कि यह सरकार मल्टी नेशनल के हाथ में कठपुतली बन गई है। ये उनके स्वार्थ के लिए देश के हित का बलिदान कर देना चाहते हैं। इसमें हमारे देश का कोई हित नहीं है। अभी सरकार कह रही है कि आज बिल पास नहीं होने से हैंडलूम बंद हो जाएगा, एक्सपोर्ट बंद हो जाएगा और सॉफ्टवेयर का एक्सपोर्ट कम हो जाएगा। आज इंटरनेशनल मार्केट में हमारा एक्सपोर्ट कितना परसेंटेज है? माननीय मंत्री जी इसे बताएं कि इंटरनेशनल ट्रेड में कितना परसेंटेज है? चाहे हैंडलूम या कोई और चीज हो, उसका टोटल इंटरनेशनल ट्रेड में हमारा परसेंटेज कितना है, कितना हम सफर करेंगे और देश से कितना इम्पोर्ट होगा? इसे देखना चाहिए। अब पेटेंट प्रोसेस को छोड़ कर हम जैसे पेटेंट प्रोडक्ट में जा रहे हैं इस में देश का हित कभी नहीं होगा। इससे हम किस स्थिति में आ जाएंगे और क्या होगा, इसके बारे में माननीय मंत्री जी को बताना पड़ेगा। यह एक्ट हमारे देश के हित के लिए नहीं है इसलिए मैं इसका विरोध करता हूँ और आशा करता हूँ कि यह सरकार देश के हित के लिए इसे जरूर स्टैंडिंग कमेटी में भेजने की कोशिश करेगी जहां इस पर टोटल डिस्कशन हो सकता है।

बीज के बारे में इसमें कुछ भी नहीं है। मेरा पर्सनल एक्सपीरियंस है कि जब हम डबल्यूटीओ के मुताबिक कम्पीटीटिव बन जाएंगे तो यूएसए और दूसरे देश हमारे ऊपर दादागिरी करेंगे। स्टील इंडस्ट्री में मेरा अपना अनुभव है कि जब स्टील इंडस्ट्रीज और स्टील प्रोडक्ट इंटरनेशनल मार्केट में कम्पीटीटिव बन गए तो अमेरीका ने एंटी डंपिंग शुरू कर दिया और एंटी डंपिंग कांऊंटर ड्यूटी चार्जिस लगा दिया। इससे देश की कम्पनियां अफेक्टिड हुईं और देश को डिस्प्यूट सैटलमेंट पैनल में जाना पड़ा। हालांकि उधर हमारी जीत हुई। लेकिन चार-पांच साल में जो हमारा नुकसान हुआ और अपनी इंडस्ट्री को बचाने के लिए यूएसए जैसे देश ने इललीगल ड्यूटी लगाई जो डब्ल्यू. टी. ओ. में रहने से देश को कोई फायदा नहीं हुआ। अगर एंटी डंपिंग दूसरे देश का हमारे उपर ऐसे लागू होगा तो भारत का प्रोडक्ट कम्पीटीटिव बन जाएगा और बाहर के देशों में हम कभी कम्पीटीटिव मार्केट में नहीं पहुंच पाएंगे। इस स्थिति से हमें गुजरना पड़ेगा। इसलिए मैं अपने दल, बीजू जनता दल की तरफ से पेटेंट अमेंडमेंट बिल का विरोध करता हूँ। यह देश के हित के लिए नहीं है, इसलिए मैं इसका विरोध करता हूँ।

सभापति महोदय : इस विधेयक के लिए चार घंटे का समय अलॉट हुआ था। दो घंटे पन्द्रह मिनट हो चुके हैं, एक घंटा पैंतालिस मिनट बाकी है। इस बिल को 6.15 बजे तक पास करना है। इस कार्य को 6.15 तक लिया जा सकता है। मैं सभी माननीय सदस्यों से उम्मीद करता हूँ कि वे समय सीमा का ख्याल रखेंगे।

रेल मंत्री (श्री लालू प्रसाद) : इसे पांच बजे करवा दिया जाए।

संसदीय कार्य मंत्री तथा शहरी विकास मंत्री (श्री गुलाम नबी आज़ाद) : यही समय अलाट किया गया है।

श्री लालू प्रसाद : आप कहते हैं पास करना है तो पास कीजिए ।

सभापति महोदय : माननीय रेल मंत्री जी, बीएसी में अलॉट हुआ है । उसी समय सीमा के अंदर पास करने की कोशिश करेंगे [p52]।

SHRI C.K. CHANDRAPPAN (TRICHUR): Sir, a lot of things have been said for and against the Bill. Certain basic positions have to be re-stated even now. That is, in India, we had a legislation in 1891 on the Patents and Designs. That was a product regime, under which it had been told that in India, in relation to medicines, at that time, 85 per cent of our medicinal requirements was met by import of medicines from abroad. In those days, probably, the transnational corporations were not as big as they are today. But even then, with the product regime that was there upto 1911, the situation in this country was such that we had to depend upon imports for the 85 per cent of our medicinal requirements.

After 1970, when India adopted a new Patents legislation, where we had adopted a process regime, the situation was reversed. This 85 per cent of our country's medicinal requirement was met by our own products. That was a remarkable achievement. Not only that, we started exporting to countries which does not have the facility or infrastructure to produce their own medicines. We supplied medicine to meet their requirements. But will the Minister now assure that we will be able to meet our own requirements at a cheaper rate after adopting this product regime? Can it be assured that we would be able to meet the requirements of medicine of our people? Because that was not our experience in the past. ... (*Interruptions*)

SHRI GURUDAS DASGUPTA (PANSKURA): Hon. Minister should kindly listen to what the hon. Member is saying. ... (*Interruptions*)

SHRI KAMAL NATH: I am listening. ... (*Interruptions*)

प्रो. विजय कुमार मल्होत्रा (दक्षिण दिल्ली) : जब इन्होंने सरकार को सपोर्ट करना ही है तो वह सुनकर क्या करेंगे?

SHRI GURUDAS DASGUPTA : That is exactly my point. But let it not be taken for granted. ... (*Interruptions*)

SHRI C.K. CHANDRAPPAN : It is better for the Minister to listen a little bit more. Probably, the Ministers can have confabulations later. That may be showing a little more respect to this House.

What I am saying is that you are moving towards product patent. Will the Minister be able to assure that the medicinal requirements of the country will be met by our production as was the position earlier? It was not possible before 1970. Today, I think, many hon. Members have told that they get a lot of representations from abroad, especially, from African countries, who are dependent on our medicines to meet the needs of their people. But, now they are worried when we are making legislation to comply with the Intellectual Property Rights regime, the WTO compliance. Their fear is that we will not be able to provide cheaper medicines as we used to in the past. I appreciate the spirit in which the Minister has brought the amendments. Probably, we will support those amendments, but the Minister should give an assurance to this House as to whom the benefit of this Bill would go[R53].

In my opinion, it is not that the people of the country who are going to be benefited at large. That is the fear, that is the apprehension in the minds of our people. Why are we being pressurized by WTO? Why are we being pressurized by the United States? Why are we being pressurized by the multi-national companies? Their intention is very clear. They think that in this new regime that we are going to have, they will have their play, they will be able to create a situation where medicines will become costlier and people will suffer, -- people not only of India but peoples of the developing countries especially of the countries like Africa will suffer. Will the Minister be able to assure this House that he will bring out some understandable facts and figures to say that he will not be taking this country to that kind of a situation? That is a very important thing. At the initial stage, when the Bill was introduced, the objection was raised from that angle. The objection was raised because the life of the people, the life of the larger number of Indian people will be at peril, if the medicines are not available at cheaper rates. I do not want to give you statistics. I think, you may have enough statistics. If the medicines which are today available in India, are available in the United States or in the European countries, the price difference will be one hundred times to three hundred times for life saving drugs. This will be for drugs to save the life from cancer, the drug for treating cholesterol, and drugs for so many other diseases. I would like to know whether we are going to create a situation where our people will get cheaper medicines as they used to get. That is a real apprehension which I think you will clarify when you reply to it. This way, the country will get convinced that he is bringing this legislation for the benefit of the country and for the common people. I have my apprehensions about it.

We should not miss one point. You may say that this is a very old understanding. But after the post-war period when countries became independent and new countries tried to develop economically, there was an attempt made from that time onwards by imperialism to re-colonise the countries. They treated them as their market as was the case in the ancient days. Today, the instruments are different. It is not that they come with their guns, ships and all that. The instruments are multi-national corporations; the instruments are patents. It is not my statement. This is what the United Nations said in its study about Trans-national Corporations. Trans-national Corporations are the modern instruments of neo-colonialism. If we are now making this amendment and opening the gate for trans-national companies to come in and loot our country, will he be able to assure us that

he will prevent the trans-national companies? They are not caring much about the countries like us. There are a number of experiences available in our history about these trans-national corporations. They try to subvert the regime and to try to discipline them. It happened in Chile, it happened in many other countries. Probably, I do not know whether Shrimati Indira Gandhi has become a fossilized memory for you. It was Indira Gandhi's quotation that was quoted by Shri Rupchand Pal when he was speaking. I need not repeat it [p54].

Why had she said so? She said that 'medicines are the life saving device. It should not be patented.' A world in her dream, she said, is a world where medicines will not be patented, and medicines will not be made for profiteering.

But, Mr. Minister, here you are making a legislation, and I have no doubt, it will open the way for profiteering, for which obviously it is patenting medicines. It is obviously going for profiteering at the expense of our people and their life.

MR. CHAIRMAN : Please conclude now.

SHRI C.K. CHANDRAPPAN : I am going to conclude. You need not call the name of the other speaker, before that I would conclude.

So, I will extend support and my party will extend support to this Bill with all these fears in our mind, with all these worries that we have. We will extend support due to political exigencies and not that we are so much convinced of the arguments that you are advancing... (*Interruptions*) It is not that we are so much convinced of the arguments advanced by you. You have brought forward good amendments. To that extent, you were kind enough, or rather these are also political exigencies that you were to get the support of the Left and other parties. To that extent, it is good. But the basic problem remains, whether we are opening ourselves up for the multi-national corporations to penetrate into our economy, to take us for granted and kill our people by not giving them medicines, and kill the people of African countries who are depending on us for life saving drugs.

With these words, I would like to say, Mr. Minister, that you would get our vote, but when you are replying, please explain these issues so that we could go with a little less worries after the consequences.

श्री जार्ज फर्नान्डीज़ (मुजफ्फरपुर) : सभापति जी, मैं इस बिल का घोर विरोध करने के लिए खड़ा हुआ हूँ। बार-बार यह बात बताई गई कि एनडीए की सरकार का तैयार किया हुआ यह कानून है, परंतु आज के दिन इस पर नकारात्मक बात किसी को नहीं कहनी चाहिए। यह बात सही है कि यह कानून एनडीए सरकार ने तैयार किया था। यह तो सब जानते हैं। मैं उसी पर बल दे रहा हूँ कि यह बात सही है। लेकिन यह कानून बनाने के बाद इसे पार्लियामेंट्री स्टैंडिंग कमेटी के पास भेजा गया और वहां से स्टैंडिंग कमेटी ने ऐसा निर्णय लिया था कि आम जनता में से कोई भी व्यक्ति इस पर अपनी राय देने के लिए आ सकता है। अनेक संगठनों को, जिनको इन चीजों में दिलचस्पी रहती थी, उन्हें इसको भेजा गया और उनकी राय भी मांगी गई। यह दुर्भाग्य की बात है कि परिस्थितियां कुछ ऐसी हो गईं कि जो कार्य शुरू किया था, वह समाप्त होना संभव नहीं रहा। मैं यह बात इसलिए यहां पर रख रहा हूँ कि चूंकि कल से यहां जो बात चल पड़ी थी कि इसे जांच के लिए किसी कमेटी के पास भेजा

जाए, वह कोई आज की बात नहीं है [h55]। एनडीए ने यह कानून बनाते समय सारे देश के लोगों के सामने रख कर उनकी राय लेने का निर्णय लिया था और यह सार्वजनिक है। इस बात का दस्तावेज हमारे पास उपलब्ध है, इसलिए इस बात को हम आगे नहीं बढ़ाना चाहते हैं।

महोदय, मैं इसका घोर विरोध करता हूँ। विरोध इसलिए कर रहा हूँ क्योंकि मैंने पिछले कुछ दिनों में इस बिल का अध्ययन किया है। डब्ल्यूएचओ ने हमारे देश के प्रधानमंत्री से, देश के राष्ट्रपति से, हमारे हेल्थ मिनिस्टर से, इस बिल से संबंधित तमाम लोगों को पत्र लिख कर और अगर ऐसा कहूँ कि हाथ जोड़ कर अपने देश के उन तमाम लोगों की तस्वीर को सामने रखा, जिनके लिए यह कानून पारित होने के बाद दवाइयाँ मिलना मुश्किल होगा और जो दवाइयाँ मिलेंगी, उन्हें खरीदना संभव नहीं होगा। एचआईवी यानि एड्स पर हमारी सरकार बहुत बल देती है, इससे संबंधित दवाइयाँ भी खरीदना लोगों के लिए मुश्किल हो जाएगा। संयुक्त राष्ट्र संघ ने हमारे राष्ट्रपति को लिखा, प्रधानमंत्री को लिखा, अन्य ऐसे लोगों के पास भी ये बातें पहुंचा दी गईं कि अगर इस कानून को आप पारित करना चाहते हैं तो पता नहीं देश के लोगों की क्या हालत होगी। आज इस चर्चा को जब यहां शुरू किया गया, तब न्यूयार्क टाइम्स में लिखे हुए दो लेखों का उल्लेख हुआ। उसको यहां पर बहुत हल्के ढंग से सुना गया। न्यूयार्क टाइम्स सामान्य लोगों के पढ़ने वाला अखबार नहीं है और न ही वह भारत को समर्थन देने वाला अखबार है। लेकिन उन लोगों ने, जो यह कानून बनने जा रहे हैं, इसके बारे में जो बातें लिखी हैं, उन्हें नजरअंदाज करना आम आदमी के ऊपर जुल्म करना होगा और जुल्म न केवल अपने देश के लोगों के साथ होगा बल्कि जिन देशों के लिए आज तक हम दवाइयाँ पहुंचाने वाले रहे हैं, आज उनके मन में एक पीड़ा का निर्माण हो गया है कि उन लोगों का क्या होगा। यह कोई काल्पनिक बातें नहीं हैं। ये लिखित बातें हैं, जो भारत सरकार के हाथों में पहुंची हैं। हम चाहते हैं कि अगर भारत की सरकार उनके पास आज तक आए हुए दस्तावेजों को लोगों के सामने रखे, तो उससे पता चलेगा कि सारी दुनिया इस समय इस कानून को ले कर क्या सोच रही है। न्यूयार्क टाइम्स का मैंने यहां पर जिक्र किया है। उसे यहां पर पढ़ने की जरूरत नहीं है [i56]।

महोदय, मैं इतना जरूर कहना चाहता हूँ कि जो वे अपने एडीटोरियल के अन्त में कह रहे हैं, वह यह है कि अगर यह कानून पारित होता है, तो फिर भगवान ही बचाए। वर्ल्ड हेल्थ ऑर्गेनाइजेशन ने अपने संदेश में एक और बात कही है और वह यह है कि-

“The WTO Ministerial Declaration on the TRIPS Agreement and Public Health adopted in Doha, 2001 affirmed that the TRIPS Agreement can and should be interpreted and implemented in a manner supportive of WTO Members’ rights to protect public health and in particular, to promote access to medicines for all.”

यानी, ट्रिप्स जो भी कहता हो, लेकिन जहां लोगों के स्वास्थ्य का प्रश्न है, जहां दवाओं का मामला है, वहां ट्रिप्स को नहीं बल्कि लोगों के स्वास्थ्य को तरजीह देनी चाहिए और आज हम लोग उसे यहां छोड़ रहे हैं। हो सकता है कि ये सब चीजें, सबके सामने नहीं गई हों। इसलिए मैंने कहा कि भारत सरकार इन्हें देश के लोगों के सामने रखे। ये सब सरकार की ओर से मिले तथ्य और जानकारियाँ हैं, जिन्हें मैं बता रहा हूँ, लेकिन अभी तक पूरी जानकारी जनता के सामने नहीं गई है। अगर ये सारी बातें आज भी देश के लोगों के सामने रखी जाएं, तो पता चल जाएगा कि जो हो रहा है, वह सही हो रहा है या गलत।

महोदय, इसलिए मेरी तो इस सदन से प्रार्थना है कि इसे पारित न किया जाए। लोगों ने अपनी-अपनी बातें यहां कहीं, मैंने भी अभी आपसे यह बात कही कि न्यूयार्क टाइम्स क्या कहता है। उसका एक आखिरी वाक्य मैं यहां पढ़कर सुनाना चाहता हूँ।

“If the decree is not changed before the Parliament approves it, it will be very difficult for India to supply life-saving drugs and Indian Parliamentarians must keep in mind that this arcane dispute is actually a crucial battleground for the health of hundreds of millions of people in India and world-wide.”

महोदय, इन सब चीजों को समझने के बाद, सुनने के बाद, इस कानून को समर्थन देना मेरे लिए, तो सम्भव नहीं है और इसीलिए मैंने कहा कि मैं इसका घोर विरोध करता

SHRIMATI MANEKA GANDHI (PILIBHIT): India has benefited from the low cost generic industry to dominate 30 per cent of the low cost drugs in the world. We achieved leadership status by a strong case in the WTO for flexibilities that protect consumers' rights against multinationals. We are about to give up these advantages that we gained for the developing world in this Act. We are also putting at risk, the lives of hundreds of millions of people all over the world, not just in our country[R57].

17.00 hrs.

These are the problems which I express and which have been expressed by many speakers who are equally concerned in every Party. Since the amendments have not been passed, I oppose the Bill in its current form and these are the reasons for that.

We are issuing rules that will effectively end the copycat industry for newer drugs. All this will mean that the supply of affordable medicines is gone and the generic competition which drives down the prices of branded drugs will also go. We have gone far beyond what is asked of us. WTO gives us the right to protect our consumer rights in the name of public health. WTO agreed in November, 2001 that countries can issue compulsory licences to permit the generic production of patented drugs without the patent holder's agreement in order to protect public health. But under this law, getting a compulsory licence will be slow and difficult as it can be held up by challenges from multinational drug firms. The Controller of Patents has to take into account various things such as time elapsed since the issuance of patents, efforts made by the patentee to make full use of the patent and the ability of the applicant to use this for public benefit. These alone will make an average bureaucrat delay matters for years. Moreover, India's law will not allow these medicines to be sold to countries that do not have patents on them – which means most of Africa and a large number of small developing countries. While the Ordinance provides for the issuance of compulsory licences for exports for public health, it gives the Controller of Patents the power to specify any criteria that he deems suitable. The TRIPS General Council specified that such generic drugs could be exported to countries that had little or no manufacturing capacity. But we have not even left that to ourselves. We have added that the country should have patent. What is the need for this additionality? This loophole could be and should be eliminated. This Ordinance has instituted two more strange provisions, namely, it has limited the challengeability of patents before they take effect. All one has to do is to send a letter which may be considered or not but has no legal right. This is merely a formality as the Controller need not give a hearing which, I am told by the hon. Member, is now being changed to anyone opposing the grant of the patent – which makes opposition the same mockery as those who oppose multinational power plants, for instance. This law should allow challenges to patents before they take place. Australia, New Zealand and Pakistan have now granted very strong pre-grant hearings. There are now about 8000 applications for grant. Will they also be granted the patents immediately, monopolizing the whole industry and bringing treatment to the poor to a halt?

17.04 hrs.

[Mr. Deputy-Speaker *in the Chair*]

Secondly, it is vague about the evergreening effect in which companies extend their patent rights by switching from capsules to tablets, for instance. This extends monopolies. Parliament must make sure that it protects the rights of India to make these generic drugs. We should remove the provision that allows this evergreening. We already have examples in front of us which many speakers have given. Pakistan under product patents is already reeling under prices being charged for monopoly drugs that are far higher. Pakistan's consumers have, according to their own reports, to pay more than Rs.100 crore more for just nine drugs that make up 14 per cent of the medicine market. What costs Rs.50 here costs Rs.400 there. What should and what should not be patentable has also been left open to interpretation. Earlier, the new use for a substance could not be patented. Now this has been qualified to allow it by putting "mere new use" instead of "new use".

I quote from *Down to Earth*:

"As TRIPS does not elaborate the definition of what constitutes an invention, countries can innovate and define more clearly, what they believe constitutes an invention. For instance, countries can set their rules to differentiate between a non-patentable discovery and a patentable discovery, particularly with reference to genetic material. Industrialised countries have continuously expanded the meaning of invention to serve the interests of companies involved with gene technology. In contrast, Brazil, Argentina and the Andean Pact nations exclude patents on natural substances and their reproduction, since no invention is involved. Both these approaches conform to TRIPS."

We can go either way. It further says:

"Therefore, other countries have used this opportunity, provided within TRIPS, to their advantage. India can and should do this as well[[r58](#)]."

There is a suspicion here that Members of the ruling coalition have given way to multinational companies. You can say that this is a law which was brought in initially by the BJP and there is little defence to it. It was a bad law. But you have continued that law. I hope it will be amended to make it equitable to keep it on the right side of TRIPS. I have not understood the rationale for this Government to put additional conditionalities on its own that have not been asked of them by the TRIPS.

Yesterday, the hon. Minister contradicted me by saying that I was wrong -- when I said that we should delay it -- by saying that UK did not delay its deadline. I have known the hon. Minister for a long time and in his haste to always have the last word, he perhaps sacrificed exactitude. UK did have WTO deadlines to comply with and they did delay the process until Parliament and their Select Committee had a proper debate before amending their Patents Act. Countries like Brazil, China, etc. have made use of the flexibilities available within TRIPS to the

optimal extent and tightened their Patents laws. The Commerce Minister's statement that India is going to be penalised for not complying with the TRIPS obligations and hence the need to pass the amendment urgently brings me to say that a badly drafted Bill is worse than no Bill at all.

Sir, I am going to limit my speech to six points only. This is what we need:

1. We need to limit the scope of patentability to only new chemical entities.
2. No patents for new usage and dosage of known drugs.
3. Retain pre-grant opposition in its original form.
4. Simple procedures with a time limit for grant of compulsory licences.
5. Immunity for generic drugs which are already available in the market.
6. Introduction of ceiling on royalty to pharmaceutical companies.

Can people pay Rs. 1,20,000 per month instead of Rs. 8,000 per month for an anti-cancer drug? Can people suffering from HIV/AIDS throughout the world pay Rs. 4,50,000 per year for their drugs instead of Rs. 7,000 per year now? Should we lose our rights to oppose beforehand the frivolous patents granted to the companies? Are low cost drugs not an absolute necessity to a country like ours where social and medical insurance is not available to everyone? What is the basis for the repeated statements of the Commerce Minister that the prices of drugs will not be affected? There are 33 million diabetics, 20 million asthmatics, 4.5 million tuberculosis patients, two million people suffer from malaria and 5.1 million HIV/ AIDS patients and the cure for none of these diseases have yet been found, and hence any new drug for these diseases would be product patented and the prices would rise.

Sir, we already have been given the example of the anti-cancer drug given to Novartis. According to an hon. Member, we have the right of revocation. Has this Government used the right of revocation for the patent given to Novartis, even though the Government acknowledged that it was a fault? The official involved has been suspended and the price has risen to Rs. 1,000. Has the Government revoked it? The Government has not done so. Why is the Government not ready to tighten the compulsory licensing mechanism? Why is the Government not ready to retain the pre-grants opposition clauses of the Indian Patents Act, 1970 when TRIPS has no objections to it? I hope, these are the issues the hon. Minister would address right now. What has been the reply of the Health Ministry to the letter from the World Health Organisation? What has been the reply of the hon. Prime Minister to the letter from the Medicines Sans Frontieres to the President of India?

Sir, all over the world, even the rich countries have learnt that they need to rework systems that put the prices of drugs out of the range of consumers. They are working out ways to promote generic drugs to control monopoly prices. We are going in the opposite direction with this Bill. Therefore, I suggest that there should be further consultation and perhaps this Bill could be sent to the Standing Committee. Or, the Government could agree to all the amendments that have been moved by the hon. Members and perhaps to the amendments that would be moved if the Bill was sent to the Standing Committee.

KUNWAR JITIN PRASADA (SHAHJAHANPUR): Sir, I rise to support the Patents (Amendment) Bill, 2005. The product patent Bill seeks to create a conducive environment to encourage innovation and growth in primarily three sectors, namely, pharmaceutical, food and chemical sectors. As everyone is aware, we have availed of the entire ten-year transition period under the trade related Intellectual Property Agreement of 1995. Now, the time has come for India to introduce the Patents Act. I cannot fail to impress upon the Members of this House the international economic repercussions that we will face if this Bill is not passed.

Firstly, India would be inviting retaliatory action under the WTO disputes mechanism. Secondly, a legal vacuum would be created with regard to the mailbox applications because there is no provision for them after the expiry of the Ordinance. Thirdly, erosion of India's credibility will be there in the international field. We have also seen and recognised that the need of the hour over the last decade is to have a patent law in India. Whether our party has been in power or out of power, the Congress has not wavered on its belief that the product patent law will be economically and socially better to India.

In sharp contrast, the BJP or the NDA Government has been wavering in its stand from time to time. When they are in power, they say something and when they are out of power, they say something else. I have senior Ministers on record who have said favouring this Bill. A senior Minister of the NDA Government has said:

“The emergence of knowledge economy has now given the country a comparative advantage in this domain and India could gain by keeping pace with the global community in providing for an efficient legislation and administrative framework for international property rights management.”

There was another Minister who, in his debate on patents, has said on the floor of the House as:

“The Bill is a good example of how we get trapped under slogans without trying to understand the issue. Then we take anticipatory position which hurts rational discourse.”

I would like to point out that the NDA Government or the BJP has kept changing its stand over the same issue. Today also, one of the newspapers has carried an editorial where it is said that the NDA had initiated the Bill but later sabotaged it. The Congress Party, on the other hand, had initiated the debate on the Patents Bill over 12 years back. We have held wide-ranging consultations with NGOs, political parties and industry. There

was a JPC formed for this very purpose which held about 40 sittings on the issue. For how long are we going to debate on this issue? That is my question to the hon. Members who are in the Opposition.

I would like to point out that keeping with the Government's commitment to the common man, the hon. Minister has ensured that reasonable requirements of availability and affordability of drugs will be taken care of and public interest will be safeguarded. Further protection to Indian companies has been given with provisions incorporated which were not in the Ordinance introduced by the NDA Government that mailbox applications will be effective prospectively. So, the Indian companies will be protected from infringement proceedings with retrospective effect.

The other amendment that has been made as an improvement is that the compulsory licence can be got into process within the three-year grace period of a particular company getting a patent.

One more point which the Minister has added is that there will be a No Objection Certificate required by the Government of India if any Indian wants to patent abroad. This helps in controlling dual technologies which will be hazardous to us.

I would also like to say that related to the Intellectual Property Rights is the Copyright Act of 1993 which gave protection to computer engineers, artistes and musicians that has been welcomed by the IT industry, music industry and the film industry[[bru59](#)].

The other protection of the IPR is the geographical indication, according to which particular names cannot be used. For example, Sri Lankan tea growers cannot use the name of Darjeeling Tea. This is also welcomed by everybody. I fail to understand why a similar concept with similar merits is facing so much resistance.

One concern that has been raised is the rise in prices. I would like to inform the House that as far as drugs are concerned, 97 per cent of them are off the patent, hence remain untouched. Out of the other three per cent that remain, two per cent are covered under the National Essential Drugs List which the Government monitors. The other mechanisms of controlling prices are through the Drug Control Price Order and the National Pharmaceutical Pricing Authority, which ensure availability of drugs at reasonable prices. There is also compulsory licensing by the Government, which can be done on the grounds of abusive pricing.

I would also like to point out that in India we have preventable diseases, like malaria, cholera and TB, which still exist. It is not only about pricing, it is also about healthcare and infrastructure of this country, which are at fault. It is not only pricing which is at fault. It is about poor sanitation and clean drinking water, which are the causes for these diseases.

At this point, I would like to point out that India, with its unique synergy, has considerable amount of advantages in the fields of IT, medicine and biotech. With the patent law coming into being, with the amount of

potential that India has with its skilled manpower, it would be able to take advantage in many fields over other countries. So far investors have been hesitating to come to India because of the weak IPR laws in India.

There is also a menace of spurious drugs and spurious pesticides. With patents law coming into being, the patentee also becomes the stakeholder and would ensure and help the State in getting rid of the spurious market in India.

Another field where the patents law will be effective, I believe, is the agriculture sector. During the first Green Revolution we have seen that it was a success primarily because of import of high technology and irrigation. During the Green Revolution we have also seen the pattern of agriculture changing and diversifying. I believe the Indian farmer needs the best available pesticides and fertilizers to help him flourish. It will also give a fillip to our agriculture research universities. They will get incentives to make available their innovations to the farmers of India. ... (*Interruptions*)

MR. DEPUTY-SPEAKER: Mr. Prasada, you have already taken nine minutes.

SHRI SACHIN PILOT (DAUSA): Sir, this is his maiden speech.

KUNWAR JITIN PRASADA : Patent law looks as if it would increase the monopoly. I would like to point out that the impact of new Patents Amendment Bill would enable generic drug manufacturers to sell their products in India as well as abroad. India is one of the major manufacturers of drugs for exports. The estimates of the domestic industry are that it has the potential to capture 1/3rd of the global generic market by 2010.

This is what I have to say on the subject. Having laid the implications of the amendment in black and white before the House, I sincerely hope that all Members will see the urgency in passing the Bill.

In the end, I would like just to say that India has a commitment to keep. It is time for all of us to keep our differences aside and do the needful.

MR. DEPUTY-SPEAKER: I request the hon. Members to be brief. I have a list of 20 hon. Members who are yet to speak. May I request the hon. Members not to take more than five minutes?

SHRI SURESH KURUP (KOTTAYAM): Respected Deputy-Speaker, Sir, ever since this Patents (Amendment) Ordinance was promulgated, widespread apprehensions were expressed by groups concerned in India and also outside the country about the provisions of the Bill. The concern was due to the fact that it will prevent the common man in our country and also of the other developing and least developed countries having access to the life-saving medicines.

Sir, as already mentioned, various international organisations like WHO, UNAIDS wrote to Government of India. All these organisations asked the Government of India to be cautious about this Bill. Sir, the apprehension was due to the fact that the flexibility available in the TRIPS Agreement, and also in the Doha Declaration of 2001, was not made use of in this Bill. Widespread criticism arose on three-four areas. I am happy the Government of India addressed that and proper amendments are circulated. ... (*Interruptions*)

MR. DEPUTY-SPEAKER: Silence please.

SHRI SURESH KURUP : One major area where all of us have raised our criticism was the provision which helps the patent holder multinational companies for evergreening of patents. Sir, a company which obtains a patent by changing their chemicals, before the expiry of the patent, they will again apply for a patent and again get a patent. So, in this way, they will continue to get a patent for the same medicine. For example, the drug called 'Glevic', is used for the treatment of Leukaemia. It is patented by Novartis. This was originally patented in 1993. The cost of the drug for the treatment of this disease comes to about Rs. 1, 20,000 per month in India. At the same time, the generic versions are available in the country which cost only Rs. 8000 to Rs. 10,000.

Sir, this drug need not be given the patent here because it is a pre-1995 molecule and need not be given a patent as per the TRIPS Agreement. But, what happened was that Novartis filed a new patent application for the same drug in 1998 in India claiming a better crystal format of the original drug. Based on the 1998 application, Novartis obtained an exclusive marketing right for 'Glevic' in 2003 in India.

Then, Sir, some generic versions were available in this country. This wrongful decision of the Patent Office now threatens this generic version. Based on the exclusive marketing rights, Novartis obtained an injunction against six generic manufacturers from producing this generic version. Sir, as a result, only one manufacturer is currently producing the generic version of 'Glevic' and Novartis has taken legal action against the said sole producer. The suit is still pending. So, what is happening? This was a major concern expressed by various groups and also by the Left. Now, that proper amendment is being circulated, I think, that is taken care of.

Another area was the 'pre-grant opposition', which was very essential and also a major feature of our Patents Act, 1970. That was also amended and the amendment accepted by the Government takes care of that also.

Sir, Another thing is that there are also thousands of applications pending in the Mail Box. For those medicines, generic versions are available in our country and once they get patent, this generic version will be out of the market. Now, the amendment says that by paying a royalty, they can market that medicine –generic versions. But, my point is that a percentage of the royalty amount should be fixed. Sir, in Canada, it is 4 per cent[m60].

So, if you do not fix the royalty, they can charge any amount of percentage, that is, the patent-holder can charge any amount. My humble request is that the percentage of royalty should be fixed.

Sir, these are the major areas where criticisms are levelled against the Amendment Bill. I am happy that within the limitations, those criticisms are taken care of, and all amendments are going to be moved by the Government. In the end, I support the Bill.

श्री मोहन सिंह (देवरिया) : उपाध्यक्ष महोदय, 1991-92 और 1993 के दौर के बाद जब इस तरह के परिवर्तन केवल हमारे देश में नहीं, दुनिया के सभी देशों के आर्थिक क्षेत्र में हो रहे थे तो हम लोगों ने इसी संसद में उसका जबर्दस्त विरोध किया था लेकिन 1996 के बाद सामने वाले लोग हुकूमत में आए और जिन चीजों का 1994 में विरोध किया था, 1998 तक उसी का अनुपालन किया। 1998 के बाद मित्र लोग जिस में हमारे नेता जार्ज साहब सबसे आगे थे, 1998 के बाद पिछले साल तक ये लोग हुकूमत में रहे। जो सिलसिला 1993 से शुरू हुआ, उसका वहां बैठ कर संभवतः इन लोगों से ज्यादा उन लोगों ने तेजी से अनुगमन किया। यदि इस 13वीं लोक सभा के चुनाव 10 महीने पहले न हुए होते तो संभवतः इस विधेयक को कमलनाथ जी की जगह जार्ज साहब पेश करते और हम लोग यहां से इसका विरोध करते। ऐसी चीजों का जो संसदीय विरोध है, वह महज औपचारिकता है। केवल पॉलिटिकल प्वाइंट्स स्कोर करने के लिए कुछ तजवीज पेश कर दी जाती है। सच्चाई यह है कि हम सभी डबल्यूटीओ का हिस्सा हैं और डबल्यूटीओ में हमारे कमिटमेंट्स हैं, जिन्हें पूरा करने की प्रतिबद्धता उन लोगों की हो जाती है जो सरकार में बैठकर भारत के प्रति ऐसी संस्थाओं और संगठनों में कहते हैं। इसलिए मैं सरकार में बैठे लोगों की विवशता को समझते हुए कुछ चेतावनी देना चाहता हूं।

1970 में जब हमने पेटेंट कानून को पास किया था तो उस समय प्रोसेसिंग की पेटेंटिंग स्वीकार किए जाने की बात थी। हमने तीन चीजों में प्रोडक्ट्स की पेटेंटिंग को नहीं माना था - अनाज उर्वरक और दवाइयां, लेकिन इनका पेटेंटिंग मानने के बाद उसका हमारे समाज पर क्या दुप्रभाव हुआ, इसकी समीक्षा किसी भी सरकार को करानी चाहिए। मैं ऐसा मानता हूं कि इसका हमारे देश के पशुधन और हमारे देश के जीवन पर प्रतिकूल प्रभाव जरूर पड़ा है। इसे निजी अनुभव से देखा जा सकता है। बड़े व्यापक पैमाने पर हमारे देश में पशुधन की कमी हो रही है और इसके पीछे इस तरह की दवाइयों और पैस्टिसाइड्स का जो उत्पादन हो रहा है, उसमें हम जो कीटनाशक दवाइयों और उर्वरक का उपयोग कर रहे हैं, उसका किस सीमा तक प्रभाव पड़ता है, उसकी समीक्षा होनी चाहिए।

दुर्भाग्यपूर्ण स्थिति भविय में दुनिया के सामने 15-16 वॉ में आने वाली है। सबसे अधिक खाने वाले देश, अन्न की खपत करने वाले देश चीन उसमें सबसे बड़ा है और हिन्दुस्तान उससे छोटा है, इन दोनों देशों में कृषि का उत्पादन घट रहा है। यदि हिन्दुस्तान में उसकी समीक्षा तीन वॉ की पढ़े तो देश की कृषि का उत्पादन निरन्तर गिरावट की ओर है। चीन को अपने देश में खाद्यान्न की कमी को बाहर से मंगा कर पूरा करना पड़ रहा है। जिन देशों में खाने वाले कम हैं खास तौर से कनाडा और अमेरिका, वहां अन्न का उत्पादन तेजी से बढ़ रहा है। ऐसा कहा जा रहा है कि आने वाले 10-12 वॉ में जब हिन्दुस्तान एक अरब 25 करोड़ का हो जाएगा तो आज जो खेती की स्थिति है क्या हम उससे देश को खिलाने लायक हो जाएंगे? इसके बारे में सोचना होगा।

अब अखबारों में खबर छप रही है कि देश में ऑरनिथोलॉजिस्ट गिद नाम की प्रजाति जो पक्षियों की है, वह समाप्त हो गई cè[R61]। अब उसके बारे में शोध हुआ है कि गिदों की समाप्ति के पीछे क्या कारण हैं। जो दवाएं पशुओं को खिलाई जा रही हैं, उसमें दवाओं के माध्यम से जो जहर दिया जाता है उसका मांस खाने से गिदों की प्रजाति इस दुनिया से विलुप्त हो गई। इसके बारे में वैज्ञानिकों की दृष्टि अब गई है जब हमने पर्यावरण मंत्री जी और माननीय प्रधानमंत्री जी के वक्तव्यों को अखबार में पढ़ा। उसी तरह से पशुधन का विनाश क्यों हो रहा है? बैल क्यों कम हो रहे हैं? सांड क्यों कम हो रहे हैं? इसके बारे में भारत सरकार को सोचने की आवश्यकता है कि इन दवाओं का कितना प्रभाव है। हम समझते हैं कि बीते वर्ष में हमारे देश में दवाओं का 32000 करोड़ रुपए का उत्पादन हुआ। 11000 करोड़ रुपए के आसपास निर्यात कर दिया, दवाओं को दुनिया में भेजने का काम किया। हमारे देश द्वारा उत्पादित दवाएं किन देशों में जाती हैं, हमारे पड़ोस के देशों में जाती हैं बंगला देश जैसे देश में और खास तौर से नेपाल में जाती हैं। इन दवाओं के निर्यात की आधी हिस्सेदारी की जो फर्जी दवाएं हैं, उनकी है। बहुराष्ट्रीय कंपनियों में दवाओं के उत्पादन में बेईमानी के साथ काम किया जा रहा है। इस सदन के भीतर माननीय रसायन और उर्वरक मंत्री ने इस बात को स्वीकार किया है कि जो दवा डेढ़ रुपए में तैयार होती है या ढाई रुपए में तैयार होती है, वह देश भर में डेढ़ सौ से ढाई सौ रुपए में बिक रही है। आम जनता और गरीब जनजीवन के साथ जितना बड़ा खिलवाड़ दवा उद्योग के जरिए किया जा रहा है इसके बारे में हम इन कानूनों के अंतर्गत किस तरह से इनको नियंत्रित कर सकते हैं, इसके बारे में भारत सरकार को सोचना चाहिए। हम यह जानते हैं कि जो मंत्री डब्ल्यूटीओ में जाते हैं वे भारत के हितों की हिफाजत जरूर करते हैं। यह उनका राष्ट्रीय कर्तव्य है। पूर्व मंत्री श्री मुरासोली मारन जी को हमने देखा है जिनेवा में उनके द्वारा उठाया गया कदम बहुत अच्छा था। अभी जो मौजूदा माननीय वाणिज्य मंत्री जी हैं, उनकी भूमिका की हमारी पार्टी ने सार्वजनिक रूप से तारीफ की है कि उन्होंने भारत के हितों की हिफाजत करने के लिए अगुवाई की है। उनकी व्यक्तिगत तौर पर पीड़ा को उस दौर में समझा जा सकता है कि जो दुनिया के बड़े देश हैं वे छोटे देशों के हितों को प्रभावित करने के लिए किस तरह के हथकंडे अपनाकर उन्हें दबाने और सताने की कोशिश करते हैं। इन दोनों प्रतिनिधियों की पीड़ा को देखकर हम यह कह सकते हैं। इसलिए सरकार को सावधान करने के साथ हम कहना चाहते हैं कि इस तरह के जोखिम भरे संशोधन अपने देश की इज्जत, अपने देश की प्रतिष्ठा के साथ करते हैं तो जोखिम भरे संशोधन से भविय की पीढ़ी को कितना नुकसान

हो सकता है, उससे सेफगार्ड के लिए हमें सावधान रहने की आवश्यकता है। इस सावधानी की ओर माननीय मंत्री जी को इंगित करते हुए हम समझते हैं कि हमारी पार्टी ने समर्थन का ऐलान कर दिया है और विरोध की कोई बात नहीं है। इन्हीं शब्दों के साथ मैं अपनी बात समाप्त करता हूँ और आपको धन्यवाद देना चाहता हूँ कि आपने मुझे बोलने का मौका दिया।

श्री राम कृपाल यादव (पटना) :महोदय, मैं आपके प्रति आभार प्रकट करता हूँ और इस महत्वपूर्ण विधेयक पर चर्चा करने की अनुमति चाहता हूँ। यह विधेयक कल आया था और हमने अपनी पार्टी के नजरिए को बतलाया था। यह बहुत संवेदनशील विधेयक है और लोगों के हितों को ध्यान में रखते हुए आप इस बिल को लाएं, लोगों को सोचने समझने का मौका दें और इसे आप भी समझ लें। मैं समझता हूँ कि आप यह विधेयक लाए हैं और निश्चित तौर पर आपने संशोधन किया है और सदन को और देश के आवाम को जो आशंकाएं थीं, उन आशंकाओं को दूर करने का काम किया है। इसलिए मैं इस बिल का समर्थन करता हूँ और इसी आशा और विश्वास के साथ कि इसमें जो कमियां थीं उसे आपने दूर किया cè [p62]।

खासकर, बिल में जो आशंकायें थीं, उन्हें दूर करने का काम किया है। वैसे हमारी देश के प्रति वचनबद्धता हो गई थी कि जब हमने WTO के मसौदे पर हस्ताक्षर किये थे, उसी समय अपने आपको उस इकरारनामे के साथ जोड़ दिया था। पूरे देश के सामने यह मजबूरी हो गई

थी कि हम इस पेटेंट बिल पर मुहर लगायें।

उपाध्यक्ष जी, हमारे एन.डी.ए के लोगों ने इस बिल का विरोध किया है जबकि यह बिल उनके माध्यम से यहां लाया गया था। वे दो-दो बार संशोधित विधेयक लेकर आये थे। दुर्भाग्य से ये हां के पक्ष में थे, आज 'न' में चले गये हैं। अगर इन लोगों को अवसर मिलता तो इस मसौदे को लेकर फिर आते। आदरणीय जॉर्ज साहब की अगुवाई में हम लोगों ने बहुत आन्दोलन किया है। इनकी मल्टी नेशनल कम्पनियों के खिलाफ आवाज रही है, चाहे वह पैप्सी हो या अन्य किसी विदेशी कम्पनी का प्रोडक्ट हो। हमें सीखने का मौका मिला था लेकिन दुर्भाग्य से उनकी सोच में परिवर्तन आ गया है। जिस लड़ाई को लड़कर वह उसे अंतिम रूप देना चाहते थे, आज स्वयं बदल गये। हमें जॉर्ज साहब से उम्मीद नहीं थी लेकिन आज परिस्थिति आपके सामने है। मैं अब उस पर अपनी कोई टीका-टिप्पणी नहीं करना चाहता। इस देश पर चोट पहुंचाने का जो काम एन.डी.ए. के समय हुआ है, वह मिट नहीं सकता। उन्होंने देश को कहां से कहां पहुंचा दिया। आप सब लोग जानते हैं, इसलिये और कुछ कहने की जरूरत नहीं है।

उपाध्यक्ष जी, इस बात की आशंका को देखते हुये इस पेटेंट बिल के माध्यम से जन-जीवन से जुड़ी हुई दो-तीन बातें हैं। आम जनता का विचार है कि इस बिल से दवा के दाम बढ़ जायेंगे, इसका कृषि पर असर पड़ेगा। जो अन्य महत्वपूर्ण चीजें हैं, उन पर इस बिल के माध्यम से असर पड़ेगा। साफ्टवेयर और साइंस एंड टैक्नोलॉजी पर इसका असर पड़ेगा। यदि हम अमरीका के दबाव में रहे, WTO के दबाव में

रहे, यदि विकसित देशों के दबाव में रहे तो हमारे देश की अर्थ-व्यवस्था बिगड़ जायेगी। हमारे देश के जो लोग गरीब हैं, फटेहाल रहते हैं, वे और अधिक लाचारी और बेबसी में हो जायेंगे। हमारे देश की अर्थ-व्यवस्था उनके इशारे पर खत्म हो जायेगी। हमारे देश के गरीब लोग 75 प्रतिशत खेती पर निर्भर करते हैं। उनकी हालत ठीक नहीं होगी, वे उनकी गिरफ्त में चले जायेंगे। मुझे आशा है कि मंत्री जी पूरे सदन को चाहे इस पक्ष के हों, चाहे उस पक्ष के हों, जिन्हें आज सारा देश देख रहा है, वह उन आशंकाओं को दूर करने का काम करेंगे ताकि आने वाले समय में...(व्यवधान)

उपाध्यक्ष महोदय : अब आप समाप्त कीजिये।

श्री राम कृपाल यादव : मुझे थोड़ा वक्त दीजिये। मैं कम बोलता हूं।

उपाध्यक्ष महोदय : नहीं, आपको कल भी टाइम दिया था।

श्री राम कृपाल यादव : आपकी कृपा बनी रहती है, इसलिये थोड़ा मौका मिल जाता है।

उपाध्यक्ष जी, देश की जनता की चिन्ता को दूर करने का काम मंत्री जी करेंगे। आज दवाओं को गिरफ्त में लाने का काम किया है, आनेवाले समय में कृषि को अपनी गिरफ्त में लेंगे, उस स्थिति में हमारे देश की अर्थ-व्यवस्था का क्या होगा जो पूरे देश की कृषि पर निर्भर करती है। अगर विदेशी कम्पनियां हमारे भोजन पर कंट्रोल करेंगे, उनके इशारे पर गेहूं और चावल के रेट्स फिक्स करेंगे, यह आशंका है।

इसलिए हम लोगों को घबराहट है। आपने इसमें संशोधन किया है। मेरी जानकारी के अनुसार वामपंथी सदस्यों ने रॉयल्टी के बारे में जो आपसे कहा था, आपने उसमें सुधार करने का काम किया है। उन्होंने कहा था कि आप नोमिनल रखिये, परंतु आप नोमिनल शब्द का इस्तेमाल नहीं कर रहे हैं, आप रीजनेबल शब्द का इस्तेमाल कर रहे हैं, जिसके बारे में आशंका है। हमारे देश की वित्तीय स्थिति इतनी अच्छी नहीं है कि इसके लागू होने के बाद दवाओं के जो रेट्स फिक्स किये जायेंगे, जिसके बारे में कई माननीय सदस्यों ने अपनी वेदना तथा भावनाएं यहां रखी है कि एक रुपये की दवाई का दाम सौ रुपये हो जायेगा। हमारी पाकेट इसके लिए हमें अलाऊ नहीं करती है। आप इन सब आशंकाओं को दूर करने का काम करेंगे।...(व्यवधान) विरोध आप कीजिए। आपके दो चेहरे हैं, इधर रहेंगे तो दूसरा चेहरा और उधर रहेंगे तो दूसरा चेहरा। आप अपने चेहरे देखें। आप लोगों ने देश को गर्त में फेंक दिया। यह बच्चा इनका पैदा किया हुआ है, इस बच्चे को हम संभालने का काम कर रहे हैं। यह बच्चा आपका पैदा किया हुआ है।...(व्यवधान)

MR. DEPUTY-SPEAKER: Mr. Ram Kripal Yadav, please address the Chair.

... (Interruptions)

MR. DEPUTY-SPEAKER: Nothing will go on record.

(Interruptions)* ...

श्री राम कृपाल यादव : उपाध्यक्ष महोदय, आम तौर पर जो बड़े देश हैं वे छोटे देशों को अपनी गिरफ्त में लेना चाहते हैं। हम एक विकासशील देश हैं, हम विकसित देशों से अपना मुकाबला नहीं कर सकते हैं। लेकिन इस कानून के तहत हमारी मजबूरी है कि हम उनकी डायरेक्शंस पर काम करें। मेरा अनुरोध है कि माननीय मंत्री जी आप यह काम कदापि न करें। चाहे जो भी मजबूरी हो, देश की अस्मिता को खतरे में रखकर, देश की सौ करोड़ जनता को खतरे में रखकर आप देश को गुलामी की तरफ ले जाने का काम न करें। जो काम एन.डी.ए. के लोगों ने किया है, वह आप न करें। अन्यथा देश हम लोगों को कभी माफ नहीं करेगा। हम गरीबों, मजदूरों और किसानों का प्रतिनिधित्व करते हैं।

महोदय, आपकी घंटी बार-बार बज रही है, जिसके कारण हम अपनी पूरी बात सदन के सामने नहीं रख पा रहे हैं। मैं इस उम्मीद के साथ अपनी बात समाप्त कर रहा हूँ कि माननीय मंत्री जी आप कारगर ढंग से कार्रवाई करने का काम करेंगे और जब आप अपना वक्तव्य दें तो पूरे देश में पेटेन्ट के बारे में जो आशंकाएं बनी हुई हैं, आप उन आशंकाओं को दूर करने का काम करेंगे। आप सदन को एशयोर करेंगे कि आने वाले दिनों में कृषि और तकनीकी के क्षेत्र में इसका कोई असर नहीं पड़ेगा। कैंसर, एड्स तथा दमा जैसी जानलेवा बीमारियों में काम आने वाली जी वन रक्षक दवाओं की कीमतें इतनी अधिक नहीं बढ़ेंगी, जिन्हें आम, गरीब लोग अफोर्ड न कर सकें।

अंत में इस विश्वास के साथ हम इस बिल का समर्थन करते हैं कि मंत्री जी इन सारी आशंकाओं को दूर करने के लिए निश्चित होकर कारगर कदम उठायेंगे।

* Not Recorded.

SHRI KHARABELA SWAIN (BALASORE): Sir, as a Member of the Joint Select Parliamentary Committee on Patents, let me put the record straight. It is true that as a member of that Committee, hon. Member, Shri Rupchand Pal had made a note of dissent. But it is also equally true that from the CPI(M), there was another hon. Member, Dr. Biplab Dasgupta, in that Committee. He did not put up a note of dissent. That means, he agreed with the recommendations made by the Committee. ... (*Interruptions*)

MR. DEPUTY-SPEAKER: Please listen to him.

SHRI KHARABELA SWAIN : He put his signature to the recommendations made by the Committee. Let me put this thing in perspective but to say that the CPI(M) had opposed it is not true. Only Mr. Rupchand Pal had objected to some particular subjects.

My second point is that as a member of that Committee, I very strongly support that India should have a very strong patent regime. It is not to protect the patents of the multinationals, but it is to protect the patents of the Indians and the Indian companies[m63].

Sir, the point is that India requires a very strong patent regime to attract FDI. Without it, we cannot attain sustainable growth of eight per cent over the years. So, we require it. Most of the time we oppose such a Bill with the thought that patent belong to the multinationals, and it has got nothing to do with the Indians. It is not true. It is the Indians who are putting a lot of money in research and development with regard to medicines, bio-technology, rocket-making, etc. These have to be protected. If we do not have a strong patent regime, the moment we invent something new, foreigners will copy that. Do you not want that our scientists should be benefited? Do you not want that their patents should be protected? They should also earn some money out of that. Do you not want that? We wanted that. That is why the NDA Government, very rightly, went for this Bill. Our objection is not with this Bill *per se*. We only wanted that it should have gone to the Standing Committee. Still it could be sent to the Standing Committee. We are not opposing it. We are the people who wanted that India should have a very strong patent regime. India could also be a hub of research and development. It is possible because the cost of research and development is much less in India. If you develop a molecule, a new thing it costs much cheaper in India. Therefore, we can attract foreigners here. They can come and make India a hub. That is why the NDA Government went for that. To say that नीयत खराब है, चेन्ज कर दिया, अपोज़ कर दिया, is not true. I am saying this because I was a Member of the Committee, which worked on it. I worked hard for two years in that Committee. Shri T.N. Chaturvedi, who is presently the Governor of Karnataka, was the Chairman of that Committee. He was from our Party.

I will be very brief on two points. I will not make a long speech. The very first thing is incremental innovations. Most of the time we say that patents will become evergreen. It is because probably somebody who has got a patent on some molecule, may go for some new usage. The hon. Minister has explained in his amendments with regard to those things. I am opposing it. My point here is that the cost of medicines was cheap in India. It was only because of reverse engineering. There was a process patent available in our country. So, if any foreign company produced any medicine, our scientists could find out a different method of producing the same medicine at a much cheaper cost. That is why the medicines are much cheaper here. It was not very easy to do that. This reverse engineering process was not so easy. Had it been so easy, every country

would have adopted this method. It was possible because our scientists were intelligent enough to take to this reverse engineering and made it successful all the time. This incremental innovation is only one or two steps away from that. If we do not allow it and say that we will go only for molecules, how many companies are capable of bringing out new molecules? For bringing out a new molecule, you require Rs. 6,000 crore. How many Indian companies will have this much of money? So, if we allow these incremental innovations, it is not only the multinationals, but also the Indian companies who will benefit out of it[t64].

I [e65]would appeal to the hon. Minister that he should think over this. Let us not get emotional. It is not the outsiders who would benefit; it is only the Indian companies that would benefit out of that. I can dare say that. So, he should give a thought to it. The Indian companies should be allowed to go for incremental innovation. Otherwise, it is only companies like Pfizer which have the muscle, which have the money, and which have the power, would only innovate and invent new molecules. We know how powerful Pfizer is. That company gave an aid package of \$ 25 billion to the Tsunami affected areas initially, which was much more than the aid given by the US Government itself. So, do we want a patent regime which would benefit only the foreign and multinational companies but not our own companies?

With regard to pre-grant opposition, it could be done. Mr. Minister, Sir, you can give it but I would just appeal to you that there should not be frivolous objections at the pre-grant stage. You should fix the time limit. If within that time limit anybody objects to anything in a patent application, it should be settled with that time frame.

Last but not least, I would seek a clarification from the hon. Minister. In the Patents Act, 1970, in Chapter 16, section 84 (a) (iii), there is a provision, “a compulsory licence could also be given for export”. It is export to any country. It is already there. You can go through it. It does not speak about emergency. There is no mention of any emergency. It only says, ‘for export to any country’. Probably, that aspect has to be looked into. It is already there. So, I think the hon. Minister should look into it and when he gives a reply, he should give a clarification. Can a compulsory licence be given just for export to any country but not to the poor countries which do not have the capacity to manufacture on their own?

I do not believe that the cost of drugs would increase just because we have a strong patent law. I believe that it would not increase; it is only that those new patented drugs are having their generic equivalents in India which are cheap and they would have to compete with them and the market would determine the price. We have seen the case of Reebok and Nike. They were initially selling their shoes at Rs. 20,000 and Rs. 25,000 and nobody purchased those shoes. So, they had to bring down the prices to Rs. 2,000 or even Rs. 1,500. Therefore, the prices, even if they go up for a while, would ultimately have to come down.

Finally, there are several things that have to be considered with regard to the Patents (Amendment) Bill. So, the hon. Minister may kindly again send it to the Standing Committee, which could give its Report in seven or eight days.

SHRI ADHIR CHOWDHURY (BERHAMPORE, WEST BENGAL): Sir, I rise to support the Patents (Amendment) Bill.

Actually I did expect a very vibrant and cogent argument from our Opposition benches but I have been disappointed. We are fated to bequeath the burden of the NDA Government. The first and the second amendments to the Patents Act have been made by the NDA Government. Apart from that, during the NDA Government, India was a signatory to the Paris Convention and the Patents Co-operation Treaty, with effect from December, 1998. Therefore, I would urge upon the hon. Members of NDA to do some intellectual exercise, as they seem to be suffering from amnesia[\[e66\]](#).

It is nothing but a sort of hypocrisy which they have been playing with conflicting arguments from their ends. We have been sermonised and have been showered with homilies from other end. We are very much committed to the NCMP because we are aware that we have made pledges and promises to the common people of India. It is our moral obligation to abide by the pledges and promises made by the UPA Government.

Today, in the globalised scenario, everybody is aware that we are undergoing knowledge economy and technology-driven knowledge revolution. Taking advantage of this situation, India has been able to flourish in the IT sector. It is astonishing to note that the Silicon Valley, the Mecca of information technology, is being dominated by our people. India is the fourth largest economy after USA, China and Japan and the largest pool of scientific and technical persons are available in India. So, we are capable enough to exploit, to optimally utilise the situation arising out of the patents regime that we are going to adopt.

Only Section 5 of the Principal Act, 1970 has been deleted which was meant for food, chemicals and drugs. Here, a fear psychosis has been generated deliberately that the prices of medicines will be hiked. Ninety-seven per cent of Indian drugs, which are available in the market, are off-patent. In the case of healthcare expenditure, it has been estimated that only five to ten per cent is meant for medicines. Most of the expenditure in healthcare scenario is meant for diagnostic, for consultation fee and for hospitalisation.

In this Bill, there is enough provision to regulate the price because the National Pharma Pricing Authority is very much in place and the Bill has the provision of compulsory licensing, revocation of patent not working in India, and outright acquisition. So, I cannot understand as to why this kind of fear psychosis has been created. Their only object is to show the people of India that the UPA Government is going to take anti-people measures in the name of patents regime. It is simply a transition from process regime to patents regime and we are very much compelled to abide by the commitment. It is an international commitment, and it is a

global commitment. Furthermore, these people know very well that during their regime, the Congress Party, as a responsible Opposition, had never taken any exception to the Patents Bill. Therefore, what I would like to say in this House and to the hon. Minister especially is that I am very much agreed to the contention of my friend, Shri Kharabela Swain, that is, incremental innovation needs to be incorporated in this Bill.

Secondly, on the traditional practices, the knowledge, the bio-diversity which the nature has bestowed upon us, it is our natural endowment that we have been enjoying for ages. They need to be protected by any kind of *sui generis* protection system. I hope the hon. Minister will take all the corrective measures and we will be pleased by these measures.

18.00 hrs.

MR. DEPUTY-SPEAKER : Hon. Members, if the House agrees we may extend the time by one hour.

SEVERAL HON. MEMBERS : Yes.

MR. DEPUTY-SPEAKER : Thank you. Shri M.P. Veerendra Kumar to speak now, only for five minutes.

SHRI M.P. VEERENDRA KUMAR (CALICUT): Mr. Deputy-Speaker, Sir, when the Patent (Amendment) Bill was introduced, I objected the introduction. My main objection was that there was no emergency to bring such an ordinance and to bypass the Parliament.

The explanation given by the hon. Minister was that had the ordinance not been issued, it would have violated the January 1, 2005 deadline by which time India was expected to change the patent law to comply with TRIPS and incur penalty if it did not. It should be noted that UK delayed by three years, France by one year and Argentina by four years and none of these nations incurred any penalty. There was enough time with the Government now in power and those who were in power to subject these issues of law of patent for wider debate and scrutiny.

We had a law, the British-framed patents law. Hon. Member Shri Chandrapan pointed it out. It was the 1911 law which was a product patent law. What happened under that law? The prices shot very high. At that time India had to pay prices which were the highest in the world. The Ayyangar Committee report came. In the year 1970 we enacted a law of process patenting. That law brought the prices down, the generic medicines grew and the exports grew and boomed. This legislation was hailed as a model all around the world.

The hon. Minister claims that the fear that the prices of medicines will shoot up is unfounded as 97 per cent of all drugs manufactured in India are off-patent and will remain unaffected, but the facts are otherwise.

I would like to point out that it is estimated that over Rs. 3,000 crore worth of drugs will have to be withdrawn from the market. PHARMA, which reports the US pharmaceutical industry, claims that its members are losing 1.8 billion US dollars worth of revenue which comes to 40 per cent at the Indian drug market because India does not have a patent regime. I would like to know from the hon. Minister as to on what basis did he say that only three per cent of the market would be affected.

I do not want to quote extensively, but just to show the concern I want to quote the 18th January editorial in *The New York Times* :

“Heavily influenced by multinational and Indian drug-makers’ eagerness to sell patented medicines to India’s huge middle class, the decree is so tilted towards the pharmaceutical industry that it does not even take advantage of rights countries enjoy under the WTO to protect public health.”

The Patent Bill virtually rules out access and availability of medicines at low cost. I would like to point out that countries like Pakistan, which is under product patent, are already reeling under monopoly prices charged by MNCs. According to reports, Pakistan’s consumers could have saved Rs. 100 crore only on nine medicines in 1995 if the companies had offered Indian prices. These medicines constituted 14 per cent of the retail market in Pakistan. At Indian prices, the expenditure incurred by the people of Pakistan on those medicines would have fallen to a third, resulting in a 66 per cent saving. The saving would have been still more phenomenal at current prices.

I do not want to quote the prices. There is a report here. This is a critique by Shri B.K. Keayala of February, 2005. I do not want to quote the figures. I will just give one or two details. Ten tablets of Cipro flexocine cost Rs. 50 in India and Rs. 400 in Pakistan. Anti-ulcer medicine costs Rs. 74 for a packet in Pakistan against Rs. 5 in India.

The attempt to restrict the range of diseases that developing countries can claim are part of a public health problem introduced into the WTO negotiations by the USA, supported by Japan. Amazingly, it is argued that diseases such as cancer, heart complaints or asthma are not a public health problem in third-world countries[[krr67](#)].

Sir, I have to make one or two points more. USA makes explicitly clear that its own interests will prevail when there is a clash of other interests. US and other EC countries maintain whatever be the international commitments or agreements. If any agreement conflicts with the interest of the American people, the American law will prevail. What about India?

Sir, I am coming to a close. The WTO is not the only treaty that India has to comply with. It is also a signatory to the Universal Declaration of Human Rights, 1948; the Civil and Political and Economic and Social Rights Covenants, 1966 and several others. The right to medical care for the human beings is integral to the

Alma Ata Declaration of 1979 in which India, among 134 nations, pledged urgent action and the resolution of the 38th World Health Assembly gave this promise a practical shape.

Sir, it is very important to remember that industrially advanced countries like US and EU together hold 97 per cent of all patents worldwide, and multinational and transnational companies account for 90 per cent of all product and technology patents, and if they choose to hold the rest of the world to economic ransom, should we unwittingly succumb to it?

My last point is that the amendment is going to have a far-reaching impact in the agriculture sector. The Doha Ministerial Conference of 2001 adopted the Doha Declaration. It was agreed that the TRIPS agreement would be implemented in a manner supportive of the WTO members' right to take measures to protect human, animal, plant life or health or of the environment at all levels it considers appropriate. By the adoption of the new Act, biotechnology products such as seeds, hybrid varieties of plants and animals developed through GM technology can be patented. Patenting of seeds will lead to monopoly of the multinational companies in the agriculture sector. Multinational companies are going to decide the fate of our farming sector. All our ayurvedic wealth, herbal medicines and tribal recipes involve no novelty to an Indian but can be patented elsewhere. We may not be able to challenge the patentisation of these products since we do not have adequate database.

Sir, I am coming to a close.

MR. DEPUTY-SPEAKER: You have taken more than eight minutes.

SHRI M.P. VEERENDRA KUMAR : Sir, I am concluding. Please give me one minute. I have to say the viewpoint of my party.

I am quoting what Shrimati Indira Gandhi said in 1981. Somebody quoted it. She said :

“Idea of a better world is one in which medical discoveries would be free from patent and there will be no profiteering from life and death.”

This was a historical pronouncement. People like me, the old socialists, always criticised Shrimati Gandhi's Government and we had to pay the price also during the emergency in 1975.

Now, standing here in this august House, I laud the pronouncement of Shrimati Gandhi. To those who claim the inheritance of Pandit Jawaharlal Nehru and Shrimati Indira Gandhi, I press that we should commit ourselves.

Sir, the hon. Minister has been gracious enough to bring in some amendments. ... (*Interruptions*) But this will never alter the material situation. The basic issue remains. My party does not want to be a party to this Bill. So, we are disassociating from this Bill with all the concerns expressed by me.

MR. DEPUTY-SPEAKER: Shri Yerrannaidu. You please speak for five minutes. I can only make a request now.

SHRI KINJARAPU YERRANNAIDU (SRIKAKULAM): Mr. Deputy-Speaker, Sir, I rise to oppose the Bill because the official amendments the hon. Minister has circulated in the morning need lot of study, in-depth study. The Communist Parties are supporting the Government. The NDA is not opposing the Bill. Other parties are also supporting the Bill. But that is not the issue. Later, we will support the Bill, but at the moment, we are opposing the Bill because we are discussing about ... *(Interruptions)* This is our obligation. ... *(Interruptions)* This is our country's obligation. As India is a member of the WTO, we have to fulfil the obligation of the TRIPS Agreement. I know that. The NDA Government had amended it twice. When it was to be amended second time, the NDA Government referred the Bill to the Standing Committee. They discussed it extensively. They had taken so many safeguards for our country. Now, that has not happened this time. That is why, I am opposing it. It requires a lot of study. ... *(Interruptions)* I am not supporting it because I want to study it. One hundred crores of people will be affected tomorrow. That is the issue now.

Mr. Deputy-Speaker, Sir, even the WTO is a non-political organisation and represents the whole globe. They have suggested that the heaven will not fall if you take time. Why are you doing it in a haste? You have to take some time[[reporter68](#)].

A lot of under-developed and developing countries have also placed a request before India, as they are dependent on India. Till the end of this month, our exports to other countries are worth Rs. 16,000 crore from the pharmaceutical industry itself. We are exporting to nearly 2,000 countries. This is our strength in this industry.

A lot of people are coming from different countries for their treatment to be done in our country. Why do they prefer to come to India for their treatment? It is because the medicines are cheap; medical expenses are cheap, etc. As a result of this, there is tremendous growth in the number of Corporate Hospitals in our country. Our country is getting a lot of foreign exchange as a result of this, and we are getting tourists also. These are some of the benefits involved with this industry.

What will happen if we pass this, and it is implemented tomorrow? At present, the medicines are cheap in our country. Some political concerns might be supporting it. The Communist Party has also asked for some amendments in it, and you have accepted some of the amendments. These were circulated to us only this

morning, and we are not scientists. We need to carry out an in-depth study on this issue. Hence, we are asking you to refer this Bill to the Standing Committee.

The Congress manifesto says that since the last five years we are providing 2 per cent to 3 per cent money from the GDP, and after this Bill is passed on the floor of both the Houses of Parliament it will get reduced to 0.5 per cent.

The Constitution of India talks about the Right to Life. We have to create a healthy and knowledgeable society. How can we create a healthy society for more than 100 crore people if the medicines become costlier?

There were some newspapers quoting some scientists asking the reasons for passing it in a hasty manner. Shri Swaminathan was also asking about the reasons for this haste, as it directly affects the agriculture sector, the software industry, and also the pharmaceutical industry.

18.12 hrs.

(Mr. Speaker *in the Chair*)

I would like to give some comparative examples. The name of the drug used to treat Cancer is Gleeevel. The present price of this medicine is Rs. 12,000, and after the passage of this Bill, it will rise to Rs. 1,18,000. Similarly, for treating AIDS, the drug used is Anti-Retroviral drug. Its present cost is Rs. 7,000, and after the passage of this Bill, it will rise to Rs. 2,00,000. Another drug used for treating Cancer is Veenat-100 from NATCO. Its present cost is Rs. 10,800, and its price will go up to Rs. 1,10,000.

Nearly, 36 per cent people are living below the poverty line, and 80 per cent of the people are not getting proper medicines, and healthcare. They are dying because of lack of money to buy the medicines. What will happen to the people of this country after the passage of this Bill? We have to realise its consequence.

We have a vision for our country as to what might happen after a period of 10 years or 20 years because the people now also are not getting proper medicine, proper healthcare, etc. The people in the villages are dying for want of proper medicines, and health care. If this Bill is passed, then the medicines for treating HIV, Cancer, heart disease, etc. will become costlier.

How will the people survive in this society? This is my primary worry. We have an obligation to fulfil towards the society. I know that we have to come to an understanding, and we have to come to a consensus as we have to pass this legislation, and there is no other go. Even if the NDA were in power, still we would have to do it. We would have to pass the legislation, but not in a hasty manner. We have to give it due time for its consideration, etc.

What had happened in the year 1999? We amended the Patents Act for the first time with retrospective effect, that is, from 1995 onwards. We amended this Act for the second time in the year 2002, but we notified that it would be effective from the year 2000. What will happen tomorrow, if it is not passed? Heavens will not fall for a delay of one month. The Chairman of the concerned Committee has promised the hon. Minister that if it is referred to the Standing Committee, then the Committee will call all the NGOs, the pharmaceutical

industries, etc., and submit the Report within eight days' time by sitting daily, and deliberating on the issue in detail.

The last two amendments were done with retrospective effect. In the first week itself, that is, after the recess of the House, we can pass the legislation with retrospective effect. There will be nothing wrong about it. A lot of States have done like this before, but they have not paid any penalty for the same. Why are you worrying about it, and why is the country worrying about it? I cannot understand this aspect.

MR. SPEAKER: Okay, you have made your point.

SHRI KINJARAPU YERRANNAIDU : Sir, the multi-national companies are pressurising for this legislation to be passed. Only the multi-national companies will benefit from its passage in this country[\[ak69\]](#).

The Indian pharmaceutical industry will die as a result of that. This is the present scenario. I would humbly request the hon. Minister, through you, not to go for prestige or to do anything in haste. You may refer this Bill to the Standing Committee where it can be discussed in-depth. After that, when it comes before the House, it can be passed unanimously.

KUMARI MAMATA BANERJEE (CALCUTTA SOUTH): Thank you very much for giving me this opportunity to participate in the debate.

Though the Opposition is opposing this Bill and the ruling coalition is supporting it, I feel, everybody is unhappy about this Bill. What they are saying is that due to our international commitments or obligations, they are insisting that we should pass this Bill immediately. I fully endorse the views expressed by Shri K. Yerrannaaidu. We must refer this Bill to the Standing Committee. Let this matter be discussed in-depth with the representatives of the pharmaceutical industry, farmers, and whoever is concerned, be it in the field of Ayurvedic medicine or in other sectors.

Why do we not remember that India led the Non-Aligned Movement? India represents not only its own interests, but also the interests of other developing countries; India represents the poor countries, and India is the champion of the cause of poor people in the world. Instead of pursuing this issue with other countries, what is the necessity to pass this Bill immediately?

I appreciate the point made by Shri K. Yerrannaaidu that heavens are not going to fall, if we do not pass this Bill. If there are international commitments or obligations, they can pass this Bill, but they should get this

Bill passed after due consultations with all the people. If they do not consult the people concerned, the worst sufferers will be the Indians. Why will the Indians be the worst sufferers? With your permission, Sir, may I quote from the speech made by the hon. Finance Minister in Lok Sabha? In his General Budget speech, the hon. Finance Minister has said:

“Pharmaceuticals industry needs a boost urgently. This industry needs to get teeth. Simultaneously, the ayurvedic system of medicine should be encouraged in the country. Several herbal plants are available in our forests. These assets need to be tapped and, at the same time, we should be cautious that the foreign companies do not get patents for our herbal plants. Therefore, more budgetary allocation needs to be given.”

Why am I making this point? We appreciate the fact that the hon. Finance Minister made this comment very seriously. The point is that on the one hand, the Finance Minister is saying something and, on the other hand, we are doing something else. Here, I think, there is a communication gap between what we are saying and what we are doing, is it not?

As I mentioned earlier, India does not represent its interests alone and other countries look up to it. When Indiraji was the Prime Minister, he was the Chairperson of NAM, which represented 103 countries. Even when Rajivji was the Prime Minister, he was the Chairperson of NAM. India led these countries from the front. Now, why are we surrendering? We should not surrender. We must hold our heads high and we should not bow down our heads because other countries will lose their faith in our country. We feel that India's prestige is very important. Of course, we have to fulfil our international commitments, but what about our domestic commitments? Do we not take care of our domestic commitments?

You will appreciate that Dr. Mashelkar's Report mentioned about research and development. Small pharmaceutical industries invested a lot of money in research work. After the passage of this Bill, I do not think there will be any research or any development will take place. You will appreciate the fact that today, if you go to a well-known hospital, not even antacids, like Gelusil, are available there[R70].

The Chairperson of UPA, Shrimati Sonia Gandhi is also sitting here. She will appreciate the fact that after this Bill is passed, the price of medicines for cancer patients will go up from Rs.10,000 to Rs.one lakh. Where will the patients get that money? There is no provision in the Bill to help them buy medicines through the Prime Minister's Relief Fund. There are patients of Thallassaemia, AIDS and so many other diseases. Do we have any monitoring system to ensure that prices of lifesaving drugs are not increased beyond a limit? What is the Government policy? How to save the poor people in the country?

Hunger deaths are being reported from several parts of the country. How do we give food to them? That should be the main question that we should address. We have seen what has happened in the past. India used to supply Basmati rice to Bangladesh for Rs.10 a kilogram. And now, because of the competition in the market, China came forward and started selling it for Rs.3 a kilogram. As a result of this, our farmers are not able to supply Basmati rice to Bangladesh. Chinese goods have started flooding Indian markets. If you go to the market you can see Chinese goods in all fields, whether it is cycles, footwear, electronic goods or toys. Even the

smallest of the smallest things in the market are Chinese nowadays. Even for Rs.60 you can buy some Chinese item from the Indian market. However, a similar item made in India costs about Rs.400 to Rs.500.

Therefore, we have to take care of the interests of our farmers and the domestic industry. We have seen a lot of attractive items in the market. We have seen hybrid vegetables and even hybrid flowers. However, there are some low-breed people living in our country for whom it is not possible to have a square meal a day.

The Bill has 73 clauses in total. Because of paucity of time I am not going into the detail. It is mentioned in the Bill itself that from Rs.20,000, it will go up to Rs.20 lakh. I do not know how the Government is going to provide protection.

Regarding EMR, you will appreciate that there is a clause which provides that anybody can represent but it is not guaranteed that their objection would be sustainable. If the pharmaceutical industry has any objection, it can surely make a representation. However, it is just like having an Associate Member. That representation does not mean anything. There is no guarantee that the Commission would cancel the patent.

Why are we worried about the royalty? We know what is going to happen after the latest decision of 74 per cent foreign investment in banking sector is implemented. The same is going to be the case of telecom sector and civil aviation. If the proposal of disinvestment to the extent of 74 per cent is implemented, ultimately ...
(Interruptions)

MR. SPEAKER: No disturbances please. Hon. Member, please ignore them. You have already taken nine minutes. You take one more minute and conclude.

KUMARI MAMATA BANERJEE : Sir, if foreign investment to the extent of 74 per cent is allowed, the control will automatically go into foreign hands. How can we protect the domestic industry then? That is our worry.

We do know that this is an international commitment. We do not want the country to deviate from its international commitments. But what is more important for us now is to see as to how we protect our farmers and how we ensure that prices of lifesaving drugs do not skyrocket. These things have to be taken care of.

There must be a monitoring system to ensure that anybody who wishes to raise the prices unreasonably is not allowed to do so. We have to take care of the interests of Indians within the jurisdiction and within the limitations.

With these words, I request the hon. Minister to have the Bill sent to the Standing Committee so that it could be studied. I urge upon the Government to give the measure more time so that everybody can be consulted, after which there would be no problem[\[KMR71\]](#).

There is no problem. We are not going to deviate from the national commitment. I think that there should not be any wrong message that we are going to surrender to somebody.

Lastly, I will only quote a line from the poetry of Rabindranath Tagore. - Where the mind is without fear, the head is held high. Let us see that the head is held high. We should not bow down our head before anyone because if we bow down our head, then, they will interfere in all aspects of our business. We shall show that India is the biggest country, India is a democratic country, and India has a prestige all over the world. What India thinks today, the world thinks tomorrow. That is why India has to take a lead for the developing countries, and also for the Non-Aligned Movement. I am grateful to you for giving me the opportunity to speak. ... *(Interruptions)* I do not want to take any lessons from you. ... *(Interruptions)* I will not take any lessons from you on secularism. ... *(Interruptions)*

MR. SPEAKER: Kumari Mamata Banerjee, address the Chair, ignore them.

... *(Interruptions)*

MR. SPEAKER: I have allowed you to speak.

... *(Interruptions)*

KUMARI MAMATA BANERJEE : I want to say that we are Indians. We are proud to be Indians. ... *(Interruptions)* Sir, I have never disturbed them. ... *(Interruptions)*

MR. SPEAKER: Ignore them. Only your statement is recorded. Nothing else will be recorded.

(Interruptions) ...*

KUMARI MAMATA BANERJEE : Shri Adhir Chowdhury, you remember. ... *(Interruptions)* Do not try to test me. ... *(Interruptions)* He has recently joined the party. He does not know what his leader had said. ... *(Interruptions)*

MR. SPEAKER: Kumari Banerjee, ignore them.

KUMARI MAMATA BANERJEE : I am proud to say that I am an Indian. Do not forget that you are first an Indian, then you belong to any political party. You have to do some justice for the people. ... *(Interruptions)* With these words, I thank you very much, Sir.

* Not Recorded.

MR. SPEAKER: Shri Adhir Chowdhary, what are you doing? Everything is deleted. Only the statement of Kumari Banerjee is recorded.

... (Interruptions)

KUMARI MAMATA BANERJEE : What is the matter? We are also Bengali. ... (Interruptions) Sir, do not forget that we are also Bengalis. Though we are Bengalis, we are first Indians. We have to remember that. ... (Interruptions)

MR. SPEAKER: I have deleted their statement.

... (Interruptions)

अध्यक्ष महोदय : आप बंद करिए भई। नहीं-नहीं, बैठिए।

Kumari Banerjee, I am sure, the hon. Minister will respond to the questions you have raised. He should deal with it.

... (Interruptions)

MR. SPEAKER: Kumari Banerjee, please ignore him. I have deleted his observations.

... (Interruptions)

KUMARI MAMATA BANERJEE : आप बंगाली हैं, क्या यह अपराध है? One may born as Bengali, Marathi or born in Bihar, Rajasthan or Uttar Pradesh. ... (Interruptions) I am proud to say that I am an Indian. ... (Interruptions)

MR. SPEAKER: Shri Thomas, no more time is left. I have allowed your distinguished Member for 14 minutes.

Now, Mr. Minister.

... (Interruptions)

SHRI KAMAL NATH: Mr. Speaker, Sir,.. ... (Interruptions)

MR. SPEAKER: Shri Thomas I have allowed you. Generally, I allow you. You are very articulate. But you are also very cooperative.

... (Interruptions)

SHRI P.C. THOMAS : I just make a point in three minutes. ... (Interruptions)

MR. SPEAKER: I am allowing you to speak for just three minutes. Three minutes means just patented three minutes.

... (Interruptions)

अध्यक्ष महोदय : ठीक है, बोलिए। Please make your point.

SHRI P.C. THOMAS (MUVATTUPUZHA): Sir, this is a Bill which could have been brought in the first Session itself. I think, Ordinance has been brought behind the Parliament and behind the people. So, there was not enough opportunity for the people to discuss, and also for the Parliament to discuss. So, my first submission is that it should go to the Standing Committee. There should be a threadbare discussion because this is a matter which concerns the poor people, the pharmaceuticals, agriculture, software and other areas where India has a long way to go.

I would also submit that I am not going into the details because of paucity of time. I would only say that the message of Doha Declaration has already been stated by many of the hon. Members, and also that 97 per cent of the medicines available are not actually patented[R72].

Now that the new Bill will open the floor for almost all these medicines to be patented, the multinationals will take undue advantage. ... (*Interruptions*)

MR. SPEAKER: You have made very valid three points.

SHRI P.C. THOMAS : With regard to software industry, the 'fair use' has been stated in the Copyright Act. We were able to use and banks are using that. This is an area where we find lot of employment opportunities. About TRIPS, please do not restrict it. We are not under obligation to make a provision in this regard. ... (*Interruptions*)

MR. SPEAKER: Nothing will be recorded.

(*Interruptions*)* ...

* Not Recorded.

MR. SPEAKER: Shri Joachim Baxla to speak.

... (*Interruptions*)

MR. SPEAKER: I am very sorry to interrupt you. Kindly appreciate it.

... (*Interruptions*)

MR. SPEAKER: I have always tried to accommodate you. You have made very good points.

SHRI JOACHIM BAXLA (ALIPURDUAR): Sir, we are basically opposed to the TRIPS Agreement. Unfortunately, the Government of India long back has accorded its consent notwithstanding the adverse implications on the common people of the country.

We are very much worried that the paradigm shift from process to product patent will lead to sharp rise in the prices of medicines and agro-chemicals. Would the hon. Minister kindly assure the august House that the Government of India will take adequate measures to render relief to the poor ailing patients by evolving some concrete mechanism for providing subsidy and cater to the needs of the modern essential medicines to the poor? As such, our health care system is quite vulnerable and not at all pro-poor.

MR. SPEAKER: You can lay your speech. It will be recorded.

... (*Interruptions*)

SHRI JOACHIM BAXLA : The suggestions of the Left Parties have been accepted by the Government. Considering that aspect, I have decided that the Bill, which is likely to be amended, qualifies for my favourable consideration. ... (*Interruptions*)

MR. SPEAKER: Your Party has spoken. Please excuse me. Mr. Minister to speak.

THE MINISTER OF COMMERCE & INDUSTRY (SHRI KAMAL NATH): Mr. Speaker, Sir, at the outset, I would like to thank the hon. Members for participating in this debate on a Bill which, I agree, is a serious Bill. I am thankful also to Members for having gone into some of the many finer points. I had, at the onset, at the start of my opening statement, said that I would try and dispel some of the misgivings, which are in the Bill. Some of the misgivings, I presume, have been dispelled. It will be my endeavour to be as brief but at the same time, try and clarify some issues which are causing serious concern to Members.

But, before I do that, one of the things which has consistently been raised is the question of WTO and TRIPS. Some of my friends, even those who supported it and who are supporting it, have expressed certain apprehensions about TRIPS, have certain apprehensions about WTO. Since India acceded to the WTO, which

was not merely essential, in an abstract manner, it involved India's engagement in the multilateral trading order, the World Trading Order. If you look at some figures -- these are facts which, I think, the House must take into consideration that what were our exports in 1995 and what are our exports today -- in a few days from now, at the end of this year, we hope to hit 75 billion dollars of export. In 1994-95, when our Party was there, and I remember, Shri Pranab Mukherjee was the Minister... (*Interruptions*)

SHRI BRAJA KISHORE TRIPATHY (PURI): What is the percentage in the international terms?

SHRI KAMAL NATH: It was said that it was the Congress Party which acceded to the WTO and I am responding to that. If he does not want to hear about the point he has made, I am very happy. It was said that the Congress Party acceded to this. Yes, we did accede. There could have been a difference of opinion

[p73]

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Our exports in 1993-94 were 22 billion dollars, and today they are going to be 75 billion dollars. What were our pharmaceutical exports? The pharmaceutical exports were so minimal. Today, as one of my friends mentioned, we are going to have pharmaceutical exports of Rs. 60,000 crore. This is the changing dynamics of the global trade; we must bear this in mind.

I was happy that one of the Members from that side said that these amendments which are being made to the Patents Bill are not centred or focussed on multinationals. I think, it is a great tribute to our Indian scientists, to our Indian technicians that we are able to provide them not just renting the intellect and the knowledge but being able to create capital out of that intellect and technical knowledge. This was the point made from that side. I am happy that this is understood.

Sir, about the Patents (Amendment) Bill, which is before the House, I would like to emphasise, with everything at my command, that in the changing world, in the changing India, it is not for securing the multinationals. I have here letters from the Indian companies dated as back as four days ago. What do they write? They are bringing to my notice that the United States' American Societies, at the 229th National Meeting, are warning their scientists of the cutting edge technology that is coming out of the Indian Research Institute. In a British think tank, recently a seminar was conducted on "Can India change the paradigm of R&D in the West?" The new reality is beginning to seep in that the Indian scientists are ready to face the challenge of a post-patent era; the Indian companies have, over the past few years, invested heavily in technology and research infrastructure. Are we not to back our own companies? Are we not to back our own scientists? Are we not to back our own technicians?

Sir, currently, India ranked second among the developing countries in patent filing. That is the progress we have made. We must not minimise this. We must not undermine the achievements of our own scientists, the scientists coming back from abroad, coming back to India to join our research laboratories... (*Interruptions*)

SHRI KINJARAPU YERRANNAIDU : We are not undermining the achievements of our scientists and others.

SHRI KAMAL NATH: I am responding to the facts. So, Sir, today, the Indian companies are filing for cancer drugs.

Another broad point I want to make, before I get to the specifics, which are very important, which have been brought out, is that between 1995 and 2005, the drugs which were not allowed to be patented are going to now rise in prices. For the information of the House, I would like to say that 195 drugs were approved by the Drugs Controller for sale in India. So, 195 new drugs came, out of which, 188 are molecules, pre-1995 molecules. They cannot be patented, and the left are only seven.

Another point was made that what will happen to the cancer drugs. Of the 12 main ARV (Anti-Retro Viral) drugs, how many of them are pre-1995? Only one of them is post-1995. So, on this concern also, we must look at the facts.

Sir, every Member from that side has said: "We understand this, we understand the TRIPS commitment. But you should send it to the Standing Committee." I tried to answer this to the best of my ability at the start, and I would make a final attempt. This Bill, which is before this House today, has been in public domain since December of 2003. It is not that last week we pulled it out of some pocket or pulled it out of some corner, and produced this Bill. This Bill has been in public domain since December of 2003[k74].

You say that it is a serious issue. I also say that it is a serious issue. When we came into power in the third week of May, 2004, it was a serious issue. We wanted to look at what you people had produced. I am sure that you people would have done the same thing if you were here. For a Bill which was in public domain since December, 2003, you now say that give us eight days. In eight days, the issues will be answered, all the multinationals will be finished and our interests will be taken care of! I do not understand this logic.

I would like to put forth another point. A large number of points have been raised about compulsory marketing. Sir, this is the third amendment. There had been the first and the second amendments earlier. My friends - like Mr. Swain who was a Member of the JPC also - who understand them would agree with me that most of the issues relate to the second amendment. I appreciate the points he made. He himself has said that it took two years for the JPC to consider them. Now, Mr. Swain, your own Members have got some points and ask for eight days to be given. What took you two years to debate and consider in over 40 hearings, they want to solve it in eight days! This is not a subject matter of my amendment at all. That was the second amendment. Most of the points, that have been raised, are the points concerning the first and the second amendments. I am merely carrying on the process and bringing in the third amendment.

Our friends in the UPA pointed out some valid things in the second amendment also. We have no hesitation in accepting those amendments. I would only say that this amendment is already there; this House has already passed it. But, there was some force in what they said. We were open.

In November, I asked you. I formally wrote to the Leader of the Opposition requesting that we should discuss it as it was a serious matter. From June, I tried to study it myself and engage with other interested groups. I did it. So, it is not that it is being brought casually. It is not that this is being brought callously. It is not that this is a motion that we are going through merely because we have a TRIPS' commitment. I must make it very emphatically clear that whenever we have to meet a commitment and if we can, then we should. If you are not satisfied with it, do you mean to say that when the NDA Government brought the Bill in 2003, they

brought it without considering the various aspects and thinking that they would send it to the Select Committee for consideration? Do you mean to say that there is no application of mind and the mind would be applied only when the Bill goes to the Select Committee? I say that it was a very well considered Bill. I am not criticising the Bill. New ideas, of course, come whenever there is a change in the scenario. Maybe after one or two or three years, we may ourselves consider that we require to do this. There is nothing static in this. That is the way the world is evolving; that is the way the technology is evolving. Our own technology and our own R&D are evolving. We must be conscious, at the end of the day, about this. Does it meet India's interests?

Another point, which was made was this. Does it meet the flexibility available in the TRIPS? Sir, much elasticity was there. I have a difference of opinion with my friends. I say that this does not meet my international obligations. They very readily agree and say that this is their belief. They say: "If that is your belief, we agree." Two issues were raised. One of the issues was what Mr. Swain had raised. What Ms. Maneka Gandhi said was the opposite. Unfortunately, Ms. Maneka Gandhi, day before yesterday, wrote to us. Had she written it this morning, then she would not have made those points. But the points she made were absolutely diametrically opposite. I wonder if she was sitting here or there, as the same point was made by Shri Rupchand Pal - Should it be a new entity or should it be a new chemical entity? We had extensive discussions on this. I say that I am not satisfied. I say that I agree with you (Mr. Swain). I must tell you this. I was disagreeing with Mr. Rupchand Pal and I continue to disagree with him and Ms. Maneka Gandhi[[pkp75](#)].

प्रो. विजय कुमार मल्होत्रा (दक्षिण दिल्ली) : क्या मैनेज कर लिया है?

श्री कमल नाथ: मैनेज कुछ नहीं किया है । So, Sir, there is a very fine line and that fine line was appreciated by Shri Rupchand Pal; that fine line was appreciated by us. So, we said that we would send it to an expert group to give us the opinion. I am saying that now and we shall send it to the expert group. It is only because of the point that you made. I took your argument to him. I said that this is what the Indian companies are feeling. But on the other hand, another hon. Member from your own side said that that was not correct. So, there are different opinions held by the hon. Members sitting on the same bench. What do we do?

MD. SALIM (CALCUTTA – NORTH EAST): They speak in many voices! ... (*Interruptions*)

SHRI UDAY SINGH (PURNEA): We will learn from you how to be with us in the morning and how to be with them in the evening! ... (*Interruptions*)

अध्यक्ष महोदय : थोड़ा टोकिए, ज्यादा नहीं ।

SHRI KAMAL NATH: On the one hand, we are saying that this is a serious Bill and this is a complicated Bill, and on the other hand, we must not do anything to trivialise this.

Amongst the various points made by the hon. Members, I will start responding to Prof. Rawat. I do not know why he goes into *neeyat*. यह नीयत की बात करना शुरू कर देते हैं । नीयत की आवश्यकता नहीं है । यह प्रश्न नीयत का नहीं है यह प्रश्न है कि बिल के कौन से सैक्शन्स हैं, कौन से अंग है । श्री रामविलास पासवान जी, यह सही है कि यह प्रश्न नीयत का नहीं नीति का है । Shri Uday Singh again went rushing through the Bill. He did talk about whether there is any flexibility and

whether we have taken advantage of that or not. I will be happy if somebody tells me that there is one flexibility that we have not taken advantage of.

I am dealing with WTO. We recently had a G-20 Meeting which was referred to here. In the G-20 Meeting, they were reading the papers about the Patents Bill. Who are the G-20 Members? They are: LDCs, the poor African countries. They are looking at us and rightly so. It was mentioned that India was providing leadership. Of course, India is providing leadership and more so, in the last ten months. We had a very successful G-20 Meeting on issues which do not mainly concern India. They concern the developing world and they accepted the leadership of India. They want that we should have a successful Meeting in Delhi. On this issue, those countries are looking at us to find out whether we have got the maximum flexibility. We used the maximum flexibility. I want to assure this House that to the best of my ability, I have used all the elasticity possible. I was

hoping that somebody would tell me that I have not used this elasticity. If you read this with the amendments, I am sure, you will agree with me.

He raised another question.

SHRI UDAY SINGH : Sorry to interrupt you. Where was the time to read the amendments? ... (*Interruptions*)

MR. SPEAKER: No. He has not yielded. Mr. Minister, you may go on and conclude.

SHRI KAMAL NATH: One question was raised about the EMR to Novartis, by Shri Uday Singh. He knows that. I do not want to politicise it. I do not want to get into in whose Government's time this EMR was given. I am not going into that. ... (*Interruptions*)

SHRI UDAY SINGH : You can also mention the action taken on that.

MR. SPEAKER: No running commentary please.

SHRI KAMAL NATH: Let us understand the chronology. If we do not understand the chronology, we may not understand the issues. I have been informed about this. I was very deeply concerned with this. It was only now that we asked for Novartis. We served them a letter. In reply, they have stated that they have supplied – they have sold drugs – the same drugs to the extent of Rs.5.34 crore in the market and supplied freely to the extent of Rs.324 crore. It was the same drug – Novartis – because it refers to us since we took up the matter with them. This letter is dated 23rd February of this year. It was our concern. Nothing has happened before on the same issue of Novartis. I am happy – on a separate occasion – to show you this[R76].

We would seek your advice on this, if you have any. There is no problem because our objectives are clear. The Novartis issue has been raised many times. I thought you must say this than saying that India is being influenced by multinationals. I do not understand this charge. When the first and the second amendments came, nobody was being influenced by the multinationals. But at the time of third amendment, when you are sitting on that side, you are saying that it is

being influenced by the multinationals. When you brought the Bill in 2003, nobody was being influenced by the multinationals. But when you sit there, the multinational phobia starts hitting you. I would only assure you that this is not multinational driven but this is national driven. This Government is always going to act on what is nationally driven. Please be assured on that.

Mr. Rupchand Pal had two serious concerns over the Bill. I thank him for his support. I do recognise that you are seeing the real picture. The real picture being that you are enabling India to have a leadership role in taking on the unilateralism in global trade which is taking place. When you recognise that India is capable of this leadership, then only and with your support can India effectively play that role. So having recognised that, I greatly appreciate your support on the two points which you have made and the two points on which I differ with you. I differ with you but I will refer it to an expert group to see whether there is enough elasticity and also whether it is in the interest of Indian pharmaceutical companies. I will be happy to bring an amendment when the House is reconvened. The two issues are related to the new chemical entity and the question of micro-organism. That was the question which was raised. I will be happy to refer it to the expert group which will also be constituted in consultation with you because, as I said, our intentions are common.

प्रो. विजय कुमार मल्होत्रा : मंत्री जी, आपने यह किस प्रकार किया?

श्री कमल नाथ : आपने बिल बनाने में जिन लोगों की सलाह ली थी, हम भी उन से सलाह लेंगे और आपकी पूरी तसल्ली करेंगे। ...
(Interruptions) I will be happy to use the wisdom of Mr. Swain for giving me some information...
(Interruptions)

Mr. Suman raised some very important points. श्री रामजी लाल सुमन ने कहा कि क्या हमें अमरीका से स्वीकृति लेनी होगी, जब हम यहां फार्मास्युटिकल उद्योग लगायेंगे? मैं उनसे कहना चाहता हूँ कि ऐसा इसमें कोई प्रावधान नहीं है। आज बहुत सी चीजें हो रही हैं। There are 64 FDA approved manufacturing companies in India which are supplying drugs to the United States and the European Union. We are supplying to them, they are not supplying to us. यह तो आज बदले हुये समय की बात है। I am informing you that this is the largest number outside the United States. I think we should really applaud our pharmaceutical industry which not only has a very good manufacturing base but also has a good research base.

There were several references made to *The New York Times* saying that *The New York Times* has said this and that. Sometimes we follow *The New York Times* and sometimes we do not. When it suits us, we quote *The New York Times* and when it does not suit us, we do not. Today, we chose to quote from it. You were saying that *The New York Times* was coming to your rescue. Mr. George Fernandes said that even *The New York Times* says this. I am sure the Indian Parliament should not be influenced by *The New York Times*. We should do which by our conviction is correct and not just because *The New York Times* has said something – maybe because they have not read the Act.

SHRI KINJARAPU YERRANNAIDU : I mentioned WHO.

SHRI KAMAL NATH: WHO has not said this. I will come to that[r77].

Sir, if you were to read what the economists said, then you would know that they said that Indian law is very loose and it is no legislation. I do not want to get into what they have said and by what interest they are driven. I want to do what I think and what our Government believes to be correct. As I said, we are 'national' driven and not 'multinational' driven.

Sir, there was a point in regard to what effect it would have on the drugs. I have said that out of the 13 anti retro viral drugs, 12 cannot be patented. Another point was whether we have taken care of para VI of the Doha Declaration or not. I would like to request the hon. Members to refer to section 92A of the Bill. I do not want to get into the technicalities here. Very briefly, I want to say that in the area of compulsory licensing – if we were to read what compulsory licensing provisions to be made – there were two serious points made, compulsory licensing and evergreening. It is because if Aspirin was first used for headache, now it is

used for blood thinning. The question is whether it would be entitled to be patented.

Sir, I would first like to refer to compulsory licensing. This aspect has been mentioned in section 84. I would like to request the hon. Members to read this section once. It is so tight that if we were to look at what provisions of compulsory licensing be put where there is the question of prices, where there is the question of public interest, all these issues have been adequately taken care of. Then, there is section 66. This House, at the end of the day, is supreme. What does section 66 say? It says that where the Central Government is of the opinion that a patent or the mode in which it is exercised is mischievous to the State or generally prejudicial to the public, it may, after giving the opportunity to be heard, make a declaration to be reflected in the official gazette and there upon the patent shall deem to have been revoked. This is the law. If there was any upsurge in the prices, if there were apprehensions, then the hon. Members, in discharge of their obligations, would they ever let that happen? It is not merely the responsibility of the Government, the hon. Members also would react to this. We are conscious of that.

There are so many provisions here. In regard to evergreening, I just want to read out section 3(d) which says that a mere discovery of a new property or a new use for a known substance or the mere use of a known process in a new product – these are exceptions, these will not be granted any patent – and substances obtained by a mere ad-mixture resulting only in aggregation of properties of the components thereof or, processes of producing such substances will not be given patents. There is no question of evergreening. There is no question that our compulsory licensing is loose; in fact, our compulsory licensing is very tight. With the alertness of our Members who are interacting with the people, in the event of any increase in prices, I think, the Government would have enormous ability to act on that.

There was another question whether our traditional knowledge has got protection or not. Sections 3(b) and 25 take care of that aspect.

Another question was about whether our plants are coming within the purview of patents or not. Shri Ramji Lal Suman mentioned this point. There is a very specific section 3 which says that no plants are coming within patents. Then, there was another question on pre-grants. I would like to say that the Bill that was brought forward in December, 2003 – I am not saying that the NDA Government brought it – did not have on pre-grant opposition. Today, I am being lectured and I am being told not only about including pre-grant opposition but also as to how tight we should make it[snb78][snb79].

19.00 hrs.

In December[bru80], 2003, there was a Bill which had no pre-grant opposition. Today I have been told that it is not true. Please read my amendments. I think we have brought in the pre-grant opposition. It was one of the issues which were made that we should go back to the 1970 position for pre-grant. We have done that. This was again a suggestion and I thought that this was a very valid suggestion. When we had called the BJP for discussion, I was told that. This was one point they missed and I thought that I should bring it in. This was mentioned by our friends. We went by what our friends told. This came from your letter. But we have brought this in. So, I am being told something which was not there and after having brought it in, I am told that it is not tight enough. It is very strange. I would like to reiterate that pre-grant opposition is adequate and all safeguards have been built. We have, today, a product patent regime which has a pre-grant opposition. Somebody was saying that there is a letter. The heading of this Section is 'Pre-grant Opposition'. You said that I have diluted it. I am bringing in an amendment to say that there is compulsory hearing. So, India will be one of the few countries in the world which is going to have a pre-grant and a post-grant opposition. This is how tight we bear it.

I believe that I have tried to explain the apprehensions which the Members had. I believe that some of their fears have been allayed and I seek the support of the House to pass this Bill.

MR. SPEAKER: I have called Prof. Malhotra to speak. I have allowed him to speak.

... (*Interruptions*)

SHRI KAMAL NATH: Is he substituting... (*Interruptions*)

PROF. VIJAY KUMAR MALHOTRA : I am not substituting..... (*Interruptions*)

MR. SPEAKER: Shri Bachi Singh Rawat, shall I take it that you are not exercising your right to reply and in your place, he is speaking?

... (*Interruptions*)

SHRI BACHI SINGH RAWAT 'BACHDA' (ALMORA): Yes.

PROF. VIJAY KUMAR MALHOTRA : Yes, Sir. In his place, I am speaking.

MR. SPEAKER: This is not to be treated as a precedent.

... (Interruptions)

प्रो. विजय कुमार मल्होत्रा : अध्यक्ष जी, हमें मंत्री महोदय के उत्तर से निराशा हुई है। ... (व्यवधान)

MR. SPEAKER: Let us not patent shouting!

... (Interruptions)

प्रो. विजय कुमार मल्होत्रा : अध्यक्ष जी, अभी तक का सारा स्टैन्ड यह था और हमारा विचार है कि हमें इसे पास करना पड़ेगा, हमारी इंटरनैशनल कमिटीमेंट्स हैं और उनके कारण कहीं और सैंक्शन्स न लग जाएं, इसलिए यह बिल पास करना हमारी मजबूरी है। परंतु आज पहली बार इस प्रकार की बात कही जा रही है कि बिल बहुत बढ़िया है और दुनिया में जो कुछ किया जा रहा है, वह हमारे हित में है, हमारे हितों की रक्षा करेगा, नेशनल इंटरैस्ट में है। ... (व्यवधान)

मैं कहना चाहता हूँ कि यहां आगे आकर एक भी मंत्री ने यह नहीं कहा कि इससे दवाओं की कीमतें नहीं बढ़ेंगी, इससे बीजों का नुकसान नहीं होगा और जो भी इसके रिपरकशंस होंगे, हमने कोशिश की कि यह मामला स्टैंडिंग कमेटी में चला जाए, नौ महीने में पूरी बात कहने के बाद भी आप बुलडोज़ करके आर्डिनैन्स के ज़रिये इसको लाए। नौ महीने में आप नौ आर्डिनैन्स लाए हैं। इससे जो नुकसान होंगे, उसके लिए आप और आपके सहयोगी दल जिम्मेदार होंगे। हम इसके विरोध में सदन से वाकआउट करते हैं।

19.04 hrs.

(At this stage Prof. Vijay Kumar Malhotra and some other

Hon. Members left the House)

... (Interruptions)

MR. SPEAKER: Prof. Malhotra's intervention will not be treated as a precedent for the future.

... (Interruptions)

MR. SPEAKER: The question is:

“That this House disapproves of the Patents (Amendment) Ordinance, 2004 (No.7 of 2004) promulgated by the President on 26 December, 2004.”

The motion was negatived.

MR. SPEAKER: The question is:

“That the Bill further to amend the Patents Act, 1970 be taken into consideration.”

The motion was adopted[\[bru81\]](#).

MR.SPEAKER: The House will now take up clause by clause consideration of the Bill.

Clause 2- Amendment of Section 2

MR.SPEAKER: I understand that Shri M.P. Veerendra Kumar and Shri M. Shivanna are not moving their amendments. Shri Kamal Nath.

Amendments made:

Page 2, *after* line 25, *insert--*

(f) for clause (ja), the following clause shall be substituted, namely--

'(ja) "inventive step" means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art;'. (18)

Page 2, line 26, *for* "(f)", *substitute* "(g)" (19)

Page 2, *after* line 26, *insert,--*

'(l) "new invention" means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, that is, the subject matter has not fallen in public domain or that it does not form part of the state of the art;'. (20)

(1)", *substitute* "(1a)"

Page 2, line 27, *for* "
(21)

insert,--

Page 2, *after* line 29,

'(h) after clause (t), the following clause shall be inserted, namely:-

substance" means any new entity involving one or more inventive steps;'

'(ta) "pharmaceutical
(22)

(Shri Kamal Nath)

MR.SPEAKER: The question is:

“That clause 2, as amended, stand part of the Bill. ”

The motion was adopted.

Clause 2, as amended, was added to the Bill.

Clause 3-Amendment of Section-3

MR.SPEAKER: After the Minister's reply, I am sure Shri Ajoy Chakraborty, Shri C.K. Chandrappan, Shri Suravaram Sudhakar Reddy, Shri M.P. Veerendra Kumar and Shri M. Shivanna are not going to move their amendments.

Mr. Minister to move his amendment..

Amendment made:

Amendment

of section 3.

Page 2, for line 30--36, *substitute--*

3. In section 3 of the principal Act, for clause (d), the following shall be substituted, namely:--

"(d) the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant.

Explanation.-- For the purposes of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy;"

(23)

(Shri Kamal Nath)

MR.SPEAKER: The question is:

“That clause 3, as amended, stand part of the Bill. ”

The motion was adopted.

Clause 3, as amended, was added to the Bill.

Clause 4-Omission of Section 5

MR.SPEAKER: Shri Ajoy Chakraborty, Shri C.K. Chandrappan and Shri Suravaram Sudhakar Reddy are not moving their amendments.

The question is:

“That clause 4 stand part of the Bill. ”

The motion was adopted.

Clause 4 was added to the Bill.

Clauses 5 to 7 were added to the Bill.

MR.SPEAKER: There is an amendment No. 14 for adding New Clause 7A. Shri M.P. Veerendra Kumar and Shri M. Shivanna are not moving their amendment.

Clause 8-Amendment of Section 10

MR.SPEAKER: Shri M. Shivanna is not moving his amendment.

The question is:

“That clause 8 stand part of the Bill.”

The motion was adopted.

Clause 8 was added to the Bill.

Clause 9 was added to the Bill.

Clause 10-Amendment of Section 11 A

MR.SPEAKER: Shri Ajoy Chakraborty, Shri C.K. Chandrappan and Shri Suravaram Sudhakar Reddy are not moving their amendments. Mr. Minister.

Amendment made:

Page 5, *after* line 10, *insert*,--

"Provided also that after a patent is granted in respect of applications made under sub-section (2) of section 5, the patent holder shall only be entitled to receive reasonable royalty from such enterprises which have made significant investment and were producing and marketing the concerned product prior to 1st day of January, 2005 and which continue to manufacture the product covered by the patent on the date of grant of the patent and no infringement proceedings shall be instituted against such enterprises." (24)

(Shri Kamal Nath)

MR SPEAKER: The question is:

“That clause 10, as amended, stand part of the Bill. ”

The motion was adopted.

Clause 10, as amended, was added to the Bill.

Clauses 11 to 21 were added to the Bill.

Clause 22- Substitution of heading of Chapter-V

Amendment made: Page 7, line 25, for "REPRESENTATION AND OPPOSITION PROCEEDINGS", substitute "OPPOSITION PROCEEDINGS TO GRANT OF PATENTS" (40)

(Shri Kamal Nath)

MR. SPEAKER: The question is:

“That clause 22, as amended, stand part of the Bill. ”

The motion was adopted.

Clause 22, as amended, was added to the Bill.

Clause 23- Substitution of new Sections for section 25 and 26

Amendments made:

Page 7, line 38,--

for "the Controller shall consider and dispose of", substitute "the Controller shall, if requested by such person for being heard, hear him and dispose of" (25)

Page 7, omit lines 40 to 42 (26)

Page 7, line 43, for "(3)", substitute "(2)" (27)

Page 9, line 1--

- (i) *for "(4)", substitute "(3)"*
- (ii) *for "(3)", substitute "(2)"* (28)

Page 9, line 10, *for "(5)", substitute "(4)"* (29)

Page 9, line 13,--

- (i) *for "(6)", substitute "(5)",*
- (ii) *for "(5)", substitute "(4)"* (30)

Page 9, line 14,--

for "(3)", substitute "(2)" (31)

Page 9, line 16,--

- (i) *for "(7)", substitute "(6)",*
- (ii) *for "(5)", substitute "(4)"* (32)

Page 9, line 23, *for "(3)", substitute "(2)"* (33)

Page 7, *for lines 31 to 37, substitute—*

'Controller against the grant of patent on the ground-

- (a) that the applicant for the patent or the person under or through whom he claims, wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims;
- (b) that the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim-

(i) in any specification filed in pursuance of an application for a patent made in India on or after the 1st day of January, 1912; or

(ii) in India or elsewhere, in any other document:

Provided that the ground specified in sub-clause (ii) shall not be available where such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or sub-section (3) of section 29;

(c) that the invention so far as claimed in any claim of the complete specification is claimed in a claim of a complete specification published on or after the priority date of the applicant's claim and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the applicant's claim;

(d) that the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority date of that claim.

Explanation-- For the purposes of this clause, an invention relating to a process for which a patent is claimed shall be deemed to have been publicly known or publicly used in India before the priority date of the claim if a product made by that process had already been imported into India before that date except where such importation has been for the purpose of reasonable trial or experiment only;

(e) that the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step, having regard to the matter published as mentioned in clause(b) or having regard to what was used in India before the priority date of the applicant's claim;

(f) that the subject of any claim of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act;

(g) that the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed;

(h) that the applicant has failed to disclose to the Controller the information required by section 8 or has furnished the information which in any material particular was false to his knowledge;

(i) that in the case of a convention application, the application was not made within twelve months from the date of the first application for protection for the invention made in a convention country by the applicant or a person from whom he derives title;

(j) that the complete specification does not disclose or wrongly mentions the source or geographical origin of biological material used for the invention;

(k) that the invention so far as claimed in any claim of the complete specification is anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere,

but on no other ground,'

(41)

(Shri Kamal Nath)

MR.SPEAKER: The question is:

“That clause 23, as amended, stand part of the Bill. ”

The motion was adopted.

Clause 23, as amended, was added to the Bill.

Clauses 24 to 41 were added to the Bill.

Clause 42-Amendment of Section 59

MR.SPEAKER: Shri Shivanna is not moving his amendment.

The question is:

“That clause 42 stand part of the Bill. ”

The motion was adopted.

Clause 42 was added to the Bill.

Clauses 43 to 51 were added to the Bill[\[r82\]](#).

Motion Re: Suspension of rule 80(i)

SHRI KAMAL NATH : I beg to move :

“That this House do suspend clause (i) of rule 80 of Rules of Procedure and Conduct of Business in the Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its application to the Government amendment No.34 to the Patents (Amendment) Bill, 2005 and that this amendment may be allowed to be moved. ”

MR. SPEAKER : The question is:

“That this House do suspend clause (i) of rule 80 of Rules of Procedure and Conduct of Business in the Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its application to the Government amendment No.34 to the Patents (Amendment) Bill, 2005 and that this amendment may be allowed to be moved. ”

The motion was adopted.

New Clause 51A - Amendment of Section 84

Amendment made:

Page 14, *after* line 9, *insert*—

Amendment

‘51A. In section 84 of the principal Act,—

of section 84

- (a) in sub-section (1), for the word “sealing”, the word “grant” shall be substituted;
- (b) in sub-section(6), the following *explanation* shall be inserted at the end, namely—

*‘Explanation.—*For the purposes of clause (iv), “reasonable period” shall be construed as a period not ordinarily exceeding a period of six months.’ (34)

(Shri Kamal Nath)

MR. SPEAKER : The question is:

“That new clause 51A be added to the Bill.”

The motion was adopted.

New clause 51A was added to the Bill.

Clause 52 was added to the Bill.

Clause 53 - Amendment of Section 90

MR. SPEAKER : Since Shri Ajoy Chakraborty, Shri C.K. Chandrappan and Shri Suravaram Sudhakar Reddy are not moving their amendment Nos. 6,7 & 8, we go to amendment no. 35 -- Shri Kamal Nath.

Amendment made:

Page 14, for lines 15—24, *substitute—*

“(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 produce, if need be in accordance with the provisions of sub-clause (iii) of clause (a) of sub-section (7) of sections 84;

(viii) that in the case of semi-conductor technology, the licence granted is to work the invention for public non-commercial use;

(ix) that in case the licence is granted to remedy a practice determined after judicial or administrative process to be anti-competitive, the licensee shall be permitted to export the patented product, if need be.” (35)

(Shri Kamal Nath)

MR. SPEAKER : The question is:

“That clause 53, as amended, stand part of the Bill.”

The motion was adopted.

Clause 53, as amended, was added to the Bill.

Clause 54 - Insertion of new Section 92-A

Amendment made:

Page 14, lines 30-31,--

for “provided compulsory licence has been granted by such country”, *substitute* “provided compulsory licence has been granted by such country or such country has, by notification or otherwise, allowed importation of the patented pharmaceutical products from India.” (36)

(Shri Kamal Nath)

MR. SPEAKER : The question is:

“That clause 54, as amended, stand part of the Bill.”

The motion was adopted.

Clause 54, as amended, was added to the Bill.

Clauses 55 to 59 were added to the Bill.

Clause 60 - Amendment of Section 117-A

Amendment made:

Page 15, line 30, for “(5)”, substitute “(4)” (37)

(Shri Kamal Nath)

MR. SPEAKER : Even your ‘Ayes’ have become so feeble, I have to go on shouting.

... *(Interruptions)*

MR. SPEAKER : The question is:

“That clause 60, as amended, stand part of the Bill.”

The motion was adopted.

Clause 60, as amended, was added to the Bill.

Clauses 61 to 78 were added to the Bill.

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

MR. SPEAKER : Thank you. That invigorates me also. This is the vibrancy of our parliamentary democracy.

... *(Interruptions)*

MR. SPEAKER : The Minister may now move that the Bill, as amended, be passed.

SHRI KAMAL NATH: Sir, I beg to move :

“That the Bill, as amended, be passed.”

MR. SPEAKER : The question is:

“That the Bill, as amended, be passed.”

The motion was adopted.

MR. SPEAKER: The House now stands adjourned till 11.00 a.m. tomorrow.

19.14 hrs.

The Lok Sabha then adjourned till Eleven of the Clock

on [\[r83\]](#) Wednesday, March 23, 2005 / Chaitra 2, 1927 (Saka).

[\[c1\]](#) Two pages for original question and answer

[\[c2\]](#) question no. 261 contd.

[\[k3\]](#)(Cd. by c1)

[\[r4\]](#)Fld by d

[\[R5\]](#)E1cd

[\[t6\]](#)Followed by g1

[\[pkp7\]](#) Two pages for main answer.

[\[pkp8\]](#) Fd. By k1.

[\[R9\]](#)cd. by ll.e

[\[m10\]](#) fd. By m1.

[\[reporter11\]](#)Contd by O

[\[ak12\]](#)cd.. by P1

[\[RB13\]](#)Cd. By q

[\[R14\]](#)(fd. by r1)

[\[h15\]](#)Fd by s1

[\[k16\]](#)Fld by ul.e

[\[R17\]](#)Fld W

Contd-y1

[\[bru19\]](#)Fd. By z

[r20] Fd by a2

[R21]ctd by b2

[k22](Fd. By c2)

[R23]cd. by d2

[lh24]Fd. By e2

[m25]PLEASE LEAVE SPACE FOR 377

[R26]cd f2

[p27] cd by g2

[RB28]Cd. By h

[R29](cd. by j2)

[R30]j2)

[h31]cd by k2

[i32]cont.

[KMR33]Cd by n2

[R34]cd by o2

[p35]cd. by p2.e

[k36]ctd by q2.e

[pkp37] Cd. By r2.

[R38]Cd S2

[r39]cd. By t2

[snb40]contd. by u2.e

[m41] Cd. By w2

[r42]Rup ctd

[r43]Ctd by y2

[lh44]Cd. By z2

[m45]Fd. by a3

[R46]B3cd

[r47] cd by c3

[R48]ctd by d3

[\[cmc49\]](#) cd by e3.h

[\[ak50\]](#)Shri Kuppusami cd..

[\[R51\]](#)cd h3

[\[p52\]](#) fd by j3

[\[R53\]](#)Cd by k3

[\[p54\]](#)cd. by l3.e

[\[h55\]](#)Cd by m3

[\[i56\]](#)cont

[\[R57\]](#)cd O3

[\[r58\]](#)cd. By p3

[\[bru59\]](#)Cd. By r3

[\[m60\]](#) Cd. By t3.

[\[R61\]](#)u3 cd

[\[p62\]](#) cd by w3

[\[m63\]](#)Ctd. by y3

[\[t64\]](#)Contd. by z3

[\[e65\]](#)SHRI KHARABELA SWAIN CONTINUED

[\[e66\]](#)CONTINUED BY A4

[\[krr67\]](#)Ctd by c4

[\[reporter68\]](#)contd by D4

[\[ak69\]](#)cd.. by E4

[\[R70\]](#)Cd by f4.e

[\[KMR71\]](#)cd by q4

[\[R72\]](#)cd by h4

[\[p73\]](#)cd. by j4.e

[\[k74\]](#)ctd by k4.e

[\[pkp75\]](#) Ctd. By l4.

[\[R76\]](#)Cd M4

[\[r77\]](#)Cd. By n4

[\[snb78\]](#) contd. by o4.e

[\[snb79\]](#) contd. by o4.e

[\[bru80\]](#) Kamal nath-cd.

[\[bru81\]](#) Cd. By p4

[\[r82\]](#) followed by Q4

[\[r83\]](#) Friday, March 10, 2000/Phalguna 20, 1921 (Saka).