

LOK SABHA

**JOINT COMMITTEE ON THE PROTECTION
OF PLANT VARIETIES AND FARMERS'
RIGHTS BILL, 1999**

EVIDENCE



**LOK SABHA SECRETARIAT
NEW DELHI**

August, 2000/Bhadrapada, 1922 (Saka)

Price : Rs. 35.00

CORRIGENDA
to
**The Evidence of the Joint Committee on the Protection of Plant Varieties
and Farmers' Rights Bill, 1999.**

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CB-II No. 445

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CONTENTS

	PAGE
1. Composition of the Joint Committee	(iii)
2. List of Witnesses	(v)

**THE JOINT COMMITTEE ON THE PROTECTION
OF PLANT VARIETIES AND FARMERS'
RIGHTS BILL, 1999**

COMPOSITION OF THE COMMITTEE

Shri Sahib Singh Verma — Chairman

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Rajya Sabha

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- @22. Dr. M. N. Das
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25. Shri Yadlapati Venkat Rao
26. Prof. M. Sankaralingam
27. Shri Ranjan Prasad Yadav
28. Shri Balwant Singh Ramoowalia
- £29. Dr. Biplab Dasgupta
- %30. Shri N.R. Dasari

*Appointed w.e.f. 8.5.2000 vice Shri Janardhana Poojary retired.

@Appointed w.e.f. 8.5.2000 vice Shri V. Kishore Chandra S. Deo retired.

\$Appointed w.e.f. 8.5.2000 vice Dr. Ranbir Singh retired.

#Appointed w.e.f. 8.5.2000 vice Shri Onkar Singh Lakhawat retired.

£Retired on 2.4.2000 and reappointed w.e.f. 8.5.2000.

%Appointed w.e.f. 8.5.2000 vice Shri Gurudas Das Gupta retired.

SECRETARIAT

- | | | | |
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| 1. | Shri P.D.T. Achary | -- | Joint Secretary |
| 2. | Shri Ram Autar Ram | -- | Director |
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| 2. | Dr. S.D. Singh | - | Deputy Legislative Counsel |

**JOINT COMMITTEE ON THE PROTECTION OF
PLANT VARIETIES AND FARMERS' RIGHTS BILL, 1999
(WITNESSES EXAMINED)**

Sl. No.	Name of Organisations/Associations/ Individuals etc.	Date on which evidence was taken	Page No.
1	2	3	4
1.	Prof. M.S. Swaminathan, M.S. Swaminathan Research Foundation, Chennai.	24.3.2000	3
2.	Sh. K. Rajan, IAS (Retd.), Mumbai.	-do-	13
3.	Dr. S.C. Tiwari, Varanasi.	-do-	18
4.	Monsanto Enterprises Ltd., Mumbai (i) Dr. P.D. Muzumdar, Advisor. (ii) Sh. Rajendra Ketkar, Director-Cotton.	-do-	21
5.	Shri N.K. Shukla, Joint Secretary, All India Kisan Sabha, New Delhi.	-do-	25
6.	Shri Afsar H. Jafri Research Foundation for Technology and Ecology, New Delhi.	-do-	31
7.	National Working Group on Patent Laws, New Delhi. (i) Shri B.K. Keayla, Managing Trustee, Centre for Study of Global Trade System & Development and Convenor, National Working Group on Patent Laws. (ii) Dr. Biswajit Dhar, Co-Convenor, National Working Group of Patent Laws.	-do-	33
8.	Seed Association of India, New Delhi. (i) Shri R.S. Arora, Secretary General, SAI and Managing Director M/s Century Seeds Pvt. Ltd. (ii) Dr. J.S. Sandhu, Director, M/s Proagro Seeds Co. Ltd. (iii) Dr. A.S. Kataria, Director, SAI	-do-	39
9.	Prof. Anil K. Gupta, IIM, Ahmedabad	19.4.2000	43
10.	Citizen's Commission for National Issues, Delhi (i) Shri P.N. Lekhi, Senior Advocate, Supreme Court (ii) Dr. Y.P. Anand, Director, Gandhi Museum (iii) Dr. B.K. Keayla	-do-	53
11.	Public Interest Legal Support and Research Centre (PILSARC), New Delhi (i) Dr. Rajeev Dhavan, Director, PILSARC (ii) Shri Dayan Krishnan, Advocate (iii) Shri Anil Srivastav, Advocate (iv) Shri Amit Gupta, Researcher	-do-	60

(vi)

Sl. No.	Name of Organisations/Associations/ Individuals etc.	Date on which evidence was taken	Page No.
12.	Dr. Vandana Shiva, Director, Navdanya, New Delhi	3.8.2000	67
13.	Shri B.K. Keayla, Managing Trustee, Centre for Study of Global Trade System & Development and Convenor, National Working Group on Patent Laws, New Delhi	-do-	68
14.	Shri K.L. Jadhav, President, All India Kisan Sangh, Gandhi Nagar, Gujarat	-do-	74
15.	Shri P.S. Vatsa, President (Delhi Pradesh) Bhartiya Kisan Sangh, Delhi	3.8.2000	74
16.	Dr. R.S. Paroda, Director General, ICAR, New Delhi	-do-	71
17.	Dr. I.V. Subba Rao, Vice-Chancellor Acharya N.G. Ranga Agricultural University, Hyderabad	9.8.2000	82
18.	Dr. P.K. Singh, Joint Director (Research) Indian Agricultural Research Institute, New Delhi	-do-	84
19.	Dr. P.K. Mishra, Principal Secretary, (Agriculture) Government of Gujarat	-do-	84
20.	Dr. Mehta Vice-Chancellor, Gujarat Agricultural University	-do-	84
21.	Shri Gangani Joint Director (Agriculture) Govt. of Gujarat	-do-	—
22.	Dr. R.D. Muley, Director Agriculture, Pune, Govt. of Maharashtra	-do-	84
23.	Dr. M.P.S. Kohli, CIFE, Mumbai	-do-	—

JOINT COMMITTEE ON THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS
BILL, 1999

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE
PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS BILL, 1999

(Friday, 24 March, 2000 from 1100 to 1330 hrs. and again from 1500 to 1700 hrs. in the Committee Room 'B', Ground Floor, Parliament House Annexe, New Delhi).

PRESENT

Shri Sahib Singh Verma — *Chairman*

MEMBERS

Lok Sabha

2. Shri Ajay Chakraborty
3. Smt. Kailasho Devi
4. Shri G. Putta Swamy Gowda
5. Shri Suresh Ramrao Jadhav
6. Shri Raghuv eer Singh Kaushal
7. Shri Jagannath Mallick
8. Dr. Ranjit Kumar Panja
9. Shri Sharad Pawar
10. Shri Ram Prasad Singh
11. Shri Mahboob Zahedi

Rajya Sabha

12. Shri Onkar Singh Lakhawat
13. Dr. Biplab Dasgupta
14. Shri Gurudas Das Gupta

SECRETARIAT

Shri Ram Autar Ram — *Director*

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AGRICULTURE & COOPERATION-SEEDS DIVISION)

1. Shri Bhaskar Barua — Secretary
2. Dr. R.S. Paroda — Director General, ICAR
3. Shri J.N.L. Srivastva — Special Secretary
4. Shri Govindan Nair — Joint Secretary
5. Dr. P.L. Gautam — Director
6. Dr. Mangala Rai — Deputy Director
7. Dr. R.P. Katiyar — ADG
8. Dr. J.P. Mishra — ADG, IPR
9. Ms. Dolly Chakrabarty — Deputy Secretary
10. Shri R.K. Trivedi — Assistant Commissioner

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS
(LEGISLATIVE DEPARTMENT)

1. Dr. S. D. Singh — Deputy Legislative Counsel

WITNESSES

1. Prof. M.S. Swaminathan,
M.S. Swaminathan Research Foundation
Chennai.
2. Sh. K. Rajan, IAS (Retd.),
Mumbai.
3. Dr. S.C. Tiwari,
Varanasi.
4. Monsanto Enterprises Ltd., Mumbai
(v) Dr. P.D. Muzumdar, Advisor
(vi) Sh. Rajendra Ketkar, Director-Cotton
5. Shri N.K. Shukla, Joint Secretary,
All India Kisan Sabha,
New Delhi.
6. Shri Afsar H. Jafri,
Research Foundation for Technology
and Ecology, New Delhi.
7. National Working Group on Patent Laws, New Delhi.
 - (i) Shri B.K. Keayla, Managing Trustee, Centre
for Study of Global Trade System & Development
Trade System & Development and Convenor,
National Working Group on Patent Laws.
 - (ii) Dr. Biswajit Dhar, Co-Convenor,
National Working Group of Patent Laws.
8. Seed Association of India New Delhi.
 - (i) Shri R.S. Arora, Secretary General,
SAI and Managing Director
M/s Century Seeds Pvt. Ltd.
 - (ii) Dr. J.S. Sandhu, Director,
M/s Proagro Seeds Co. Ltd.
 - (iii) Dr. A.S. Kataria, Director, SAI

Prof. M.S. Swaminathan

The witness was called in and he took his seat.

MR. CHAIRMAN: I welcome you all to this sitting of Joint Parliamentary Committee on Plant Varieties and Farmers Rights Bill. We are very fortunate to have Prof. Swaminathan today with us. We had been to Chennai, to his Institute. We spent a lot of time there. Prof. Swaminathan has come all the way from Madras to give evidence. Prof. Swaminathan, you were instrumental in framing this bill or giving your opinion in framing this Bill. Your evidence will be of great importance. Not only this committee but the whole country needs him.

It is said well begun is half done. We are beginning with a great personality of this country Prof. M.S. Swaminathan.

PROF. M.S. SWAMINATHAN: I would like to express my gratitude to you and to the hon. Members of this Committee for giving me this opportunity to share some of my own thinking on this very important Bill which is so important to this country and the future of our agriculture. I would like to congratulate the Ministry of Agriculture and the Government of India for preparing this Bill which is fairly comprehensive. When it becomes an Act, this would be the first Act in the world which simultaneously considers breeders' and farmers' rights. We would be the first country in the world to protect the interests of the breeders, safeguarding and rewarding at the same time the contributions of the farmers. I would therefore request the hon. Members that we should have this Act on the statute as soon as possible. I also have a written submission. But I would like to go through quickly a few important points. You were kind enough to visit us in Chennai. Several hon. Members were there. I have read several comments in the newspapers and journals about this subject. Whatever I am going to say, it takes into account some of the comments made in the newspapers and journals without saying who said that.

In Chapter I, on definitions, I think, it is important for us to avoid confusion on the word 'breeder'. Breeder means a person who has bred, discovered or developed any variety. This definition is correct. But some comments may be made almost to imply that farmer breeders are not in this category. It does not make a distinction whether it is a scientist or a farmer. But it is matter of consideration whether we should put it in the bracket — could be scientist, could be a farmer, any individual. It is better to define that. In the definition there is need for greater clarity. In page 3 of the Act, farmer means any person who cultivates crops either by cultivating the land himself or through any other person and it includes a person who conserves and preserves severally or jointly any wild species or traditional varieties. This is a very confusing definition. A farmer can be purely a cultivator. Out of over 106 million farming families in our country, I would consider 80 to 90 million will be its cultivators. But those who live in tribal areas, hilly areas or in other areas like Koraput in Orissa, you will find that they are also conserving bio-diversity which we call in situ on farm. People who have conserved it are the ones who are going to get recognition and rewards from the National Gene Fund. When we developed the concept of farmers' rights, I was Chairman of the FIO Council. This confusion has come because at that time the concept was those who are only farmer conservers. Later, on in 1991, it was made necessary also to clarify the rights of cultivators. So, I would request that to avoid any confusion we may put sub-categories to make it very clear that farmers who are cultivators have their rights. Farm families, such as tribal women and rural women who have preserved seeds of important varieties or wild species should be recognised and rewarded for their work. So, the definition should include both breeder and the farmer through it is implied. We should make it clear.

For the farmers to categorise these two kind of privileges, the plant back right, keeping their own seed, enter into a limited exchange and those who should get reward and recognition under the National Gene Fund.

My next comment is in Chapter 2, page 3. This is on the composition of the authority. I think this authority today is largely official authority with some of the Joint Secretaries and others. Except the Chairman others are all officials. I think it is very important area. Therefore, we should have not a bigger committee but some representatives of the environment, NGOs, Seed companies and farmers organisation, one or two farmers' organisations and a National Commission for Women. As I said earlier a lot of conservation is still being done by women in the hills, Himalayas, Western Ghats, Eastern Ghats, etc. So, gender dimension is very important in rewards or recognition. I have given some suggestions in my written submission. I will not take more time but it is important to have a little wider representation. I have recommended that it should be enlarged to 15 members in order to give some representation to the major stake holders, the farmers, the breeders and particularly the gender dimension. Some women or consumers representatives should be there.

Next one which I want to make a suggestion is, in the Authority item under the same Chapter 2, the authority may appoint such committees as may be necessary, I would suggest that one committee should be explicitly in the Act itself. One of the Standing Committees should be on the Farmers' right.

The reason is this is the unexplored part of the Act. Breeders' right is an international experience. Everybody knows, UPOV has been amended four times over a period of 30 years. There is a lot of experience but farmers' right, which is not an individual farmer but community right, that requires a lot of clarity, articulation. Many issues will come. Therefore, I would suggest that one of the Standing committees should be on the farmers' right because then we can involve some more farmers and tribal representatives should be there. In the other Bio-diversity Act, there is a provision for an agro-bio-diversity sub-Committee. The draft is not before you but I have seen it. The new thing in this Act is the farmers' right. It is an uncharted territory. We are the explorers, the pioneers. So, we should do it right and we should have a careful examination.

The next one I would like to suggest in Chapter 3, the question of Registrar General of plant variety. It has not clarified how many registrars and for what purpose. My own feeling is, when we develop these registrars it should be for major group and not for geographical regions one for cereals, oilseeds or pulses because these are all specialised ones. One must have Registrar dealing with some specialisation of the problems of that group of plant; self-pollinated plants, cross-pollinated plants like jawar, bajra, maize where hybrids are there. But, I think one Registrar should be on farmers' right because that person whoever he or she will have to develop a lot of expertise in this area. Although we will not spell it out but I would like to say, "Authority may appoint such number of Registrars as it thinks necessary for registration of plant variety," And then we add one sentence that, "That one Registrar will specially for the farmers' right", so that we make it clear that we give importance to farmers' right.

Next, Sir, is the new variety. The world over four conditions are there, novelty, distinctiveness, uniformity and stability. They are there in all the Acts of the world because they are the ones by which authority will have to be judged. Here, in page 7 at the top, "Notwithstanding anything contained in sub-section(I) no variety should be registered under this Act if such variety contains any gene or gene sequence involving any technology including terminated technology which is injurious to the life and health of human being, animals or plants although terminator has been used in order to ensure that farmers' choice of keeping seed is not gone, I would like to see one small sentence added in the end, "...injurious to the life or health of human beings, animals or plants or restrict the freedom of choice of farmers." Our farmers should have the freedom of choice what variety will go. That is also one of the farmers' right. So, I would like to add that.

Page 8 is a very important chapter, the application of registration. 17(e) contains a complete passport data of the parent lines from which the variety has been derived. This is very important for the purpose of implementing the farmers' breeder or farmers' selectors right. I would like to add here, "...from which the variety has been derived including information relevant to the recognition of the contribution of farmers conservers." Later on I will point out that this Act is rather weak in terms of the farmers conservers' right because it puts the whole onus of reward and recognition to non-governmental organisations. I think the breeder exists for the farmers and the breeders and farmers are not the enemies. They are the friends and allies. They work for each other. Therefore, we should put some responsibility on the part of the breeders to help in implementing the farmers' right. It should not be some NGO alone. We should add this sentence so that the breeder himself says that this is the area from where he has got this important gene. You should reward this community. So long the breeder says it, there is no conflict. Today, later on it has been drafted in such a way, it is almost going to be a conflict between the breeders and the conservers which I think is a wrong attitude. We should not create the impression that they are both working at cross purposes. I think it is important that they are both friends.

The next point which I would like to make is at Page 11, Chapter 6, Registration of Essentially derived variety. Under 22(7) 'The rights of breeder of a variety contained in Section 28 shall apply to a breeder of essentially derived variety provided that the authorisation by the breeder of initial variety to the breeder of essentially derived variety may be subject to such terms and conditions as both parties may mutually agree upon. This is quite correct. This is well worded. The point which I would like to make is, the particular point talks only about breeder to breeder. I am adding here, "If derived from a farmers' variety the prior informed consent and benefit sharing arrangement will have

to be entered into". This is called for in the Bio-diversity Act. Prior informed consent of the farming community and some agreement with them on benefit share is very important so that these two will become mutually compatible. At the moment it talks only about getting one breeder. If I am the breeder and another person takes my variety, we have to mutually agree upon.

If I go to Koraput in Orissa or somewhere else and collect some material, that is my variety which I am going to improve by adding one or two genes, I am saying that we must also take the 'prior informed consent' of the community and have a benefit sharing arrangement with that community. The difference between the breeder and the community is very important. I am sure that the Ministry of Law would be able to suitably draft that portion of the Bill. It is very important for this Act. If the derived variety is from a farmers' local land race—sometimes they are called land race or folk variety—it will be very important for horticulturists also for flowers, fruits and vegetables. Then prior informed consent of the community has to be taken and benefit-sharing arrangements will have to be entered into by that community. This is very important for this Bill. Otherwise, we will have a major problem.

MR. CHAIRMAN: You are saying that prior informed consent of the farmers' community is required. For example, a formula is made and a variety is derived from the community by taking a gene and doing something, in that case, we will have the prior informed consent of the community and we should also have an agreement with those persons for benefit sharing. But, will it be practically possible?

PROF. M.S. SWAMINATHAN: You have raised a very important point. When I am talking of 'essentially derived variety' I have made a small modification here. I have added a few characters. That is why, it is called 'essentially derived variety'. Normally this problem comes only under conditions where a variety is already protected and somebody is using that variety. This problem is going to come in the other Act also. But who is the authority here? Is it the *panchayat* or the local body in the case of North Eastern Region where there is no *panchayat*? This matter has to be worked out by the administrative authorities. Even if we do not use the term 'prior informed consent', in some cases the essentially derived variety may come from a research institution also.

MR. CHAIRMAN: When you bring a new variety, you may have to have prior informed consent. But in the case of the community it will not be easy to do it; whether it is the whole community or the *panchayat*, if we have to make a formula that this much share will go to them, even if there is no term 'prior informed consent', they will have to have some percentage of benefit sharing.

PROF. M.S. SWAMINATHAN: Even if we do not have 'prior informed consent', in this particular case it will come only when the variety is protected. Otherwise, it will not come under 'essentially derived variety'. It will come under the National Gene Fund. Under the title of this Bill, I am saying that in every case where there is farmers' contribution, some method of recognition should be there. We need not use the term 'prior informed consent'. But this is going to be a serious problem. The competent authority has to decide as to who is the authority, whether it is the *panchayat* or the farmers. This is why I suggested a Standing Committee on Farmers' Rights and they have to go into this matter.

श्रीमती कैलाशो देवी: यह जो लिस्ट आफ आर्गेनाइजेशन है, इसमें लगभग सभी सदस्य आई०ए०एस० अधिकारी हैं, कोई भी किसान कम्युनिटी से नहीं है। ये लोग किसानों की समस्या को कैसे दूर करेंगे। इसमें ग्रासरूट लेवल के भी व्यक्ति होने चाहिए।

सभापति महोदय: इस पर बाद में आएंगे।

श्री ओंकार सिंह लखावत: जो आपने सुझाव दिया है, उसको मान लिया जाए या संसद पारित कर दे, तो किसान कितना लिटिगेशन में इन्वाल्व होगा? यदि उसको इधर-उधर इन्वाल्व करने की कोशिश की तो किसान खेती से हटकर दूसरे क्षेत्र में चले जाएंगे, क्योंकि इससे तो वह रोज ही कचहरी और कोर्ट के चक्कर लगाते रहेंगे।

PROF. M.S. SWAMINATHAN: Sir, I think, the hon. Members have raised important questions. As far as litigation is concerned, in this Act, registration of varieties and recognition need

not create any litigation, except in terms of benefit sharing. That is the only area where this problem may arise. The other areas are very clear. This problem may also come in the area of essentially derived variety. Somebody may say that it comes under the copyright Act. Today, even in regard to a famous film, somebody is saying that it is his manuscript. This kind of a problem may come. But I expect very little litigation in this particular Act. I do not think it is like land ownership or agrarian reform. It is a straight forward recognition of varieties whether they are produced by farmers or regular breeders.

I will now come to the area of farmers' rights, that is, the farmers' conservers' rights. If you like I will mention it in a few moments.

On page 12, under Chapter VII, clause 26(3) says:

"On receiving a claim under sub-section(2), the Authority shall send a copy of such claims to the breeder of the variety registered under such certificate and the breeder may, on receipt of such copy, submit his opposition to such claim..."

It is a very negative way of putting it. It should be:

"...submit his agreement..."

Or we assume that he is going to oppose it. That is why even earlier, I wanted to make it clear. In the earlier case also, it is not a question of farmer versus breeder.

They are together. That is why I want to put the onus. The previous one says:

"Any person or group of persons or non-governmental organisation shall submit its claim of benefit sharing of such variety in the prescribed form, in duplicate, within such period."

This is all right. I want in the upfront that the breeder should also indicate his own assessment. This is where I have got. If I am a breeder, I will be in the best position to say that this is where I got the original variety. So, these people should get recognition and reward. That would be much more authentic. The breeder is always going to submit his opposition. It should not be, say: 'submit his agreement or opposition, as the case may be'. Put it in a more positive way than in a negative way as though one is, all the time, going to litigation and going to fight.

Now, the next one is Chapter V. Other pages are procedural ones. They are well drafted.

Then, I come to Chapter X, called 'compulsory licence'. Unfortunately, compulsory licence is already there. It has been given. I would like to see that the compulsory licence can also be by the competent authority. That should really not be the authority — Plant Protection Authority. It has to be the Government. The compulsory licence means, you are depriving the person, with the licence denying to him some benefit. Therefore, it should be done by an authority which takes into consideration the overall national good. Therefore, it can be because I have developed a variety which is going to confer assistance to all pests. That means, it is very important for our food security.

Even the WTO says that you can deny import if it is going to affect your environment or food security. I would like to see that the authority is competent to say that it must be compulsory licence-exclusive licence - it must be one which is different from the Plant Variety Protection Authority and it should also include either health security or food security of the country as one of the considerations. It may be a medicinal plant which is very important for a particular disease. It may be not only because the company is not producing the seed but we may also have to have it. We could not have it separately for all the varieties in the 60's. If every farmer had not become a seed producer, it spread very fast. So, sometimes in the interests of the food security of the country or the health security of the country, it may be necessary to have compulsory licence. But this should be very carefully thought of. I am segregating all authorities. It should be the Ministry of Agriculture or some other authority which is approved for this purpose. But the greatest confusion in this Act is coming because in the whole question of compulsory licence, one should not have included clauses 48 onwards. Clauses 48

onwards deal with farmers' rights—rights of communities. That deserves a title by itself and a chapter by itself because it is a new component of this Act.

Internationally also, there will be a confusion. Even they will get confused if you can view clause 48 onwards which are the rights of communities under compulsory licence. It has nothing to do with compulsory licence. So, it should have a separate title:

“Any person or the group of persons (whether actively engaged in farming or not) or any governmental or non-governmental organisations may on behalf of any village or local community, fall in any centre notified in the Official Gazette by the authority in this behalf with the previous approval of the Central Government, any claim attributable to the contribution of the people of that village or local community in the evolution of any variety for the purpose of staking a claim on behalf of such village or local community.”

Now, I would request that these two or three clauses are carefully considered in the light of what I have stated here. The purpose of this is that we want to recognise the local communities. Here, I have also stated it. Upfront I am putting across that the breeder has also a responsibility alongwith his passport information to indicate where he got the main material from. That breeder's authentic information will also be important for us. So, we do not put the NGO versus the breeder or some other person. They can all help.

What we want is that we want to recognise and reward. The purpose is that we want to encourage the farming communities to continue to preserve diversity. They are maintaining a number of varieties which are becoming important sources of resistance factor genes. It is called *in situ* on farm conservation. We want to revitalise and also invigorate *in situ* on farm conservation by giving explicit recognition and reward to the system of conservation. We have *in situ* conservation by any department — Forest Department — and *ex situ* conservation again by Government Departments like the National Bureau of Genetic Resources, Botanical Gardens. In-between is the community conservation. This is the one which has not been recognised. The National Parks and protected areas are recognised: The Gene Bank of MBPGR is recognised and supported by Government. The one we are not supporting are the people's conservation, the community conservation or the farmer's conservation. So, the conservation is a continuum. It is a continuum *in situ*, *ex situ*. In-between is the community conservation. We are trying in this clause to recognise and reward those contributions. So, my first submission is that it should have a separate chapter, called, “Farmer Conserver's Right, Farmer's Rights” and bring in all these in a proper way again, not putting only breeder's opposition and so on but making it to facilitate.

The hon. Member mentioned rightly. Let us not give too many loopholes for unnecessary litigation. Therefore, it is important. I would like to suggest that this should all consolidate under a title called farmers' rights.

My next submission is about Chapter 12—National Gene Fund.

श्री ओंकार सिंह लखावत: इसमें मेरा एक सवाल है और हम आपसे यह जानना चाहते हैं कि जब यह सैक्शन निकल जाएगा और यह जो एक्ट बनाया गया है, जो ड्राफ्ट हुआ है, यह मेरी व्यक्तिगत सोच, थिंकिंग हो सकती है कि जितने देश हैं, जहां व्यक्तिवादी जीवन है और वहां जितने कानून बने हैं, उनको ध्यान में रखकर इसे किया गया है। लेकिन हिन्दुस्तान सामूहिक जीवन से जीने वाला और दुख-सुख में बराबर की भागीदारी करने वाला सौ करोड़ लोगों का देश है। इसकी एक लम्बी अवधारणा रही है। अगर इस सैक्शन को एज इट इज इंड्रोड्यूस करने की कोशिश की तो हमारे जीवन में, हमारे समाज में इसको लेकर कहीं ऐसा नहीं लगना चाहिए कि हम कम्युनिस्ट बनाने जाएंगे और जो होशियार और चतुर आदमी होगा, वह तो इसका लाभ उठा लेगा लेकिन बाकी जो लोग हैं, वे इससे वंचित हो जाएंगे, वे इससे लाभ नहीं उठा पाएंगे तथा हमें एक नयी समस्या का सामना करना पड़ेगा। इस संबंध में आपका मार्गदर्शन क्या है, यह हम जानना चाहते हैं।

DR. M.S. SWAMINATHAN: I will just finish the Gene Fund and come back to the hon. Member's comments. Regarding Chapter 12, my submission is that the National Gene Fund will not be a very big fund. It will not be in the way in which it is going to be collected now. I will be happy if a few million rupees come in each year and not very much more. It will not be a large Fund.

Therefore, it should be exclusively used for rewarding this community conservation, that is, the farmer conservers' rights.

It should not be used for end 2000.

"The expenditure for supporting conservation and sustainable use of genetic resources including *in-situ* and *ex-situ* collections."

Government is already supporting them. National Bureau of Plant and Genetic Resources requires many crores of rupees every year. This money will not be very large unless the hon. Minister considers my earlier suggestions. Under the Agricultural Produce Act, we have one per cent cess for the National Gene Fund which will only be used to recognise and reward the contributions of local farmers for conservation. They are maintaining a lot of diversities whether it is arid zone or desert area, or whether it is Ladakh or Leh or North-Eastern region. My submission to the hon. Committee is that this National Gene Fund should be entirely used for the purpose of recognising and rewarding the conservation ethics of the local communities. It is because the amount of money will be small, and if it is distributed in the form of a fund, then we will have a very little for community conservation. So, this is important which today is an unrecognised part. That is one thing which has to be now maintained, preserved, and encouraged.

So, my request under the National Gene Fund is that we may think of augmenting this fund and see this cess and additional provision of cess also are necessary or not. After one or two years of experience, we find that the fund is not enough to meet the cost of the administration of the fund itself, namely, salary, etc. Then, we have a very little left for the farmers' rights.

I think I have referred to the farmers' rights. I think it is already there, namely the right to keep plants and seeds, and enter into a limited exchange in the neighbourhood. Farmers of two groups who can keep their own seeds and plants with them and the other is selectors conservers or selectors germplasm. This is to be recognised by the National Gene Fund. In this regard, I have already requested the Standing Committee of the Authority of Farmers' rights and I have also referred to the obligations of breeders to provide information relevant to farmers' rights. It is because farmers and breeders are friends and allies in the conservation movement. May I request the hon. Member—as I started hearing a little later—to kindly to your question?

श्री ओंकार सिंह लखावत: महोदय, मेरा प्रश्न था, भारत में समूह में जीने और ग्रामीण क्षेत्रों में किसान पर आधारित काम करने का तरीका रहा है। इसमें हमने सफलता हासिल की है। कम्युनिटी, गांव और बिल्डर, जहां पर प्रिजर्वेशन राइट्स की बात कही गई है, इस बारे में मेरी मान्यता है कि पश्चिमी देश या वे देश जहां व्यक्तिवादी जीवन जीते हैं और उनके अधिकारों के लिए, सारा समाज के अधिकार को भी क्रश करने के लिए तैयार रहते हैं, उसकी नकल की गई है। ड्राफ्ट को तैयार करते समय एस साइंटिस्ट की सोच क्या है और लीगल शब्दों को प्रयोग किया गया है। अगर हमने इसे ऐसे ही पारित किया, जैसा इसमें आया है, तो सारे का सारा खेती के उत्पादन का जो हमारा लक्ष्य है, वह पूरा नहीं होगा। किसान ईमानदारी से पैदा कर रहा है, वहां इन्सपैक्टर राज लागू नहीं हुआ है। केवल जमीन के अधिकार से काम होने वाला नहीं है। उत्पादन नहीं हुआ, तो जमीन की क्या कीमत है। उत्पादन को लिटिगेशन में फंसाने की कोशिश है। इससे वह खेती छोड़कर दूसरे कामों में न लग जाए। मैं ऐसा मानता हूँ, समाज की जो संरचना है, उसके विपरीत यह प्रावधान है।

PROF. M.S. SWAMINATHAN: Sir, the hon. Member's question was about the communities working together. Harmony within the communities is very important. Supposing a community is eligible for Rs. 1 lakh, then what will happen is that the community will have to decide what kind of community benefit it may have for harvesting, storage and so on. It will be for the benefit of the entire community. I have called this fund as the Community Gene Fund, not National Gene Fund. In Orissa, we have a data base for Intellectual Property Rights. They are now eligible for Rs. 3 lakh from the National Gene Fund. It is up to them what they want to do with this Rs. 3 lakh. The community will have to decide in what way the fund should be utilised. There should not be any conflict. Whatever decision they take, that should be a collective decision. I do not want the Community Gene Fund to be diluted for various purposes. It should be meant for helping the tribal and rural families for conservation which I call unrewarded part of the spectrum. So, I share with you

that nothing should be done to discredit the farmers. We should ensure that the final draft brings out the community. If you want to add a sentence, then you add this, namely "The use of Gene Fund by the community will depend upon the community benefits". It should be left to the community to do whatever they want to do.

SHRI SHARAD PAWAR: I have a question regarding the composition of authority. You have made a suggestion that there should be representatives from the women's organisation and the National Commission for Women. I would like to have some more details on this suggestion. In this Bill, there are many issues which relate to agriculture. What is the special reason for having representatives from women's bodies?

Regarding farmers' definition, Section 31 is not enough. Here is stated:

"Nothing contained in this Act shall affect the right of a farmer to save, use, exchange, share or sell his farm produce of a variety protected under this Act:

Provided that a farmer shall not be entitled for such right in case where the sale is for the purpose of reproduction under a commercial marketing arrangement."

This provision is not enough.

PROF. M.S. SWAMINATHAN: The first question is about National Commission for Women. I thought if the authority had also to be kept then we have to have their representation. I have seen who is dealing especially with agriculture. So, I thought, one member of the National Commission could look after the women's interests. All said and done, much of the conservation work is done by women. If you keep a representative of Department of Bio Technology and other Departments, I think, in order to ensure that the gender dimension is not forgotten, the National Commission should take care of the interest of women since half of the farming families are women. They will have to develop their own methods as to how to include them. The tribal area is very important because much of the diversity, North-Eastern Region, Western and Eastern Ghats are still preserved by tribal people. The essential point is how do you do it.

You talked about 35. I agree with you and I think that point is well drafted, so I have no additional suggestions.

DR. BIPLAB DASGUPTA: I have a number of question. You pointed out about the community rights. This Committee is working under a serious handicap because another Bill on Bio-diversity is in the pipeline by the Ministry of Environment. We just do not know what the Bill will contain. There are many things in this Bill which will have implications for the other Bill. Since, we do not have that Bill, it is difficult to say how much community rights will be protected through this. So, my one of the suggestions is to request the Government to put the other Bill also under the purview of this Committee so that we judge them together. Now, the question is whether we need two Bill or one. My feeling is that one will do and the Ministry of Environment will deal with bio-diversity and all that. I do not know what is your suggestion in this regard. How can we avoid this difficulty? One could be to postpone the final document of this Bill and wait unless we get the other Bill or we could incorporate the common elements in both.

In this Bill, you will see that the period of registration or patent is 15 years for crops and 18 years for trees. Now, given you experience, how long it takes for a breeder to develop a variety and how long it takes for him to reap the benefits? I am saying this because the period should not be more than what is necessary. My feeling is that 15 years and 18 years are too long. It can be 5 years or 8 years. On this point, I would like to have your technical judgement. What is the appropriate time period for the purposes of registration, etc.

The other point relates to the innovations or development made by institutions. It is not always the individuals but universities and research institutions also. In that situation, with your experience you will be able to tell us how one can delineate specific contribution of the individual and how registration can benefit him. If we give patent rights to the institutions then what will happen to the individual's rights. So, one has to work out the community rights with the individual's rights. How can this be done to ensure that the institutions and individuals are not deprived of their own rights and the individuals are not driven away to go to the multinationals because their contributions are not recognised.

How can we make a farmer seed breeder? In this Bill, what we have said is that the farmer has to register his seed with the authority if he can satisfy four criterion—novelty, distinctness, standardisation and uniformity. Given your experience, do you think that the farmers anywhere in India would be able to satisfy these? If not then would not this only benefit the big companies? If we want the small farmers to get the benefits then how can this definition be changed?

Another point is about the issue which came out during our discussions in the Ludhiana University. There the scientists talked about prime varieties. But now in the germplasm do we need a separate kind of a statement about the rights? If that is the case then what should be the definition to demarcate germplasm? What they said is that for economic purposes this definition is applicable but on that basis they wanted to make some distinction between the two.

Lastly, I would dwell on the farmers' rights. At the very beginning of our discussion in the first meeting some of us suggested that there should be a separate chapter on farmer's rights. It was accepted by the Committee. The problem is what is to be put there.

I have seen a Bill which has been devised by some African country and it has been sent to us by somebody. They have a section on farmers' rights in that Bill. My feeling is that it is not adequate. We may add one or two more things in that. But we should draft our own for the benefit of the farmers. We have to do that and then we need much more concrete kind of support from people of your stature. If you can talk to your colleagues and then devise some actual wordings which do not have legal and other implications then the Committee would benefit from this. We have been asking for this chapter on farmers' rights but the question is what should be there to achieve our goal.

On that point, I am not absolutely clear. I will be very much grateful if you could give your reply to my questions.

PROF. M.S. SWAMINATHAN: Sir, the hon. Member has raised several questions. I will go by the same order.

Sir, the first suggestion of the hon. Member is that in the Bio-Diversity Act and in the Plant Variety Act, there should be harmony among them and the same Joint Committee should examine this. It is up to this Committee and Parliament to decide. I fully endorse this suggestion. It is very appropriate so that we can ensure that both are reinforcing and there is no conflict among them. This is my personal view. So, I support your point.

DR. BIPLAB DASGUPTA: Can these two acts be brought together?

PROF. M.S. SWAMINATHAN: No, this Act cannot be one for the simple reason that in the Preamble, it is clearly stated, 'And whereas India, having ratified the said Final Act—That is Uruguay round of multilateral trade negotiations—should, *inter alia*, make provision for giving effect to sub paragraph (b) paragraph 3 of article 27 in part II of the trade related intellectual

property rights.....' So, this has come out of an obligation under TRIPS. That is under CBD. That looks at bio-diversity as a raw material. Here, you are talking about the finished products, varieties which have been developed out of bio-diversity. So, these cannot be made into one act. All that TRIPS has stated is that it should be a satisfactory *sui generis* system. They have not defined as to what is 'satisfactory *sui generis* system' but it is widely understood that it is either UPOV 1978 or 1991. Although in the TRIPS negotiation, there is no word about UPOV but UPOV has been accepted. It is an inter-governmental body. Sir, in my personal view, the developing countries can become the members of UPOV and they can change UPOV. But, today it has been exclusively 'one country, one vote organisation' like UN organisation. Our strategy should be that all the developing countries join it and change the character of UPOV to look after the interests of both the breeders and the farmers.

Your second question is about the duration of protection. You are quite right that in today's world with bio-technology and so on, new varieties are coming at a faster rate. The farmers will always go for the best available variety. I would consider this period of 15 years to be an upper limit. There is no harm in giving the protection. I may hold a patent. I may put it in my bio-data that I have got five patents but nobody might take that patent. Similarly, I may say that I have the right, which is protected. What is important for a breeder is essentially derived variety. For 15 years, he will have the protection. If I use his variety for breeding, then he will be eligible under the essentially protected variety. For example, on information technology if I hold a patent, even within two years, it is going to be out of date. Nobody is going to buy it. So, science is progressing so fast. The farmers will only take the latest variety and will not go for the old variety. It will be important for the breeder for the essentially derived variety protection.

Fruit trees, as has been rightly mentioned, has a longer duration. You can make it 12 years or 15 years. I would not argue too much there because to some extent it is theoretical, and it is only an outer limit of protection. But if you have got a dynamic breeding organisation, they will go on releasing varieties. Here, you have mentioned about Ludhiana or ICAR. If you go and attend the annual All India Co-ordinated Workshops, you will notice that every year they are releasing new varieties. So, new varieties will come. What is important for the farmers is the best available variety.

DR. BIPLAB DASGUPTA: It can be seven years for varieties and 15 years for trees.

PROF. M. SWAMINATHAN: Most of the countries provide 15 years. So, there has to be some kind of conformity with some broad international guidelines. No breeding organisation will wait for that longer. They will release a variety quickly as a replacement variety.

The third question is about the relative contributions of institutions and individuals. I mean, I could have done nothing in my life if PUSA Institute is not there. You have to have the institution which acts as the mother. ICAR provides you the support. It can be a company, which provides the support. The hon. Director General of ICAR may be able to say what are the policies of CSIR. Even if you take a patent, so much goes to the inventor and so much goes to the institution. Say, Punjab Agricultural University develops a patent for its own border and region and gets Rs. 1 lakh as loyalty, then a sum of Rs. 50,000 goes to the breeder and another Rs. 50,000 goes to the institution. This will have to be done under the auspices of the Indian Council of Agricultural Research. They may have to develop a national policy as regards sharing the benefits. Otherwise, it could be very disruptive also. A good variety or a plant becoming successful depends on the breeder, pathologist, entomologist and others. I would leave it to the institution ethics. The institution and the individual have to develop a methodology by which the benefits can be shared between them.

श्री ओंकार सिंह लखावत: किसानों को भी एथिक्स या डिस्कशन के भरोसे छोड़ दिया तो बहुत मुश्किल हो जायेगी।

PROF. M. SWAMINATHAN: That is why, in the case of farmers, I mentioned that if the benefit goes to an individual, you will have the problem, and if it goes to the community, then there is no problem.

SHRI ONKAR SINGH LAKHAWAT: Can this Act be reduced in 12 sections only so that the rules can be framed later to suit the farmers in the country? If we insert only 12 sections, then we can save our scientists, breeders and also our technology.

PROF. M. SWAMINATHAN: That can be under the rules. You are right.

The next question is, how can a farmer become a breeder? Can the farmers satisfy the criteria of novelty, etc.? Now, obviously many farmers are outstanding farmers. We had a whole session in the last Crop Science Congress held in New Delhi. There was a whole session on farmers. This was particularly so in horticultural plants, vegetables, fruits and flowers. Even he may not be a formal breeder but we call they see in eye. You have to have winners spotting the winner. Many people are close to the earth. The farmers are close to the earth. If you look at all the breeds of cattle, whether it is rati or badavari or buffalo, many of them have developed as inputs over a period of time. So, I would not underestimate the capacity of the farmers. That is why, I am suggesting that a special look into the varieties is necessary. Today, in all the Institutes of ICR or the consultative groups, they use the words, 'participatory breeding'. Participatory breeding means that the breeder and the farmer work together to develop a variety. And that is now becoming very important for a sustainable agriculture so that you do not have one variety covering millions of acres. So, participatory breeding is taking place more and more. Most of the institutions are adopting it and the farmers and the breeders are working together. So, I do not see any problem in farmers becoming very good breeders. Many time, they will be better breeders because they live close to the earth, and they can spot the winner very easily.

DR. BIPLAB DASGUPTA: How can they satisfy these four conditions?

PROF. M. SWAMINATHAN: The conditions can be easily satisfied so long as you purify your material—pure variety, novelty, etc. That has to be done. That is not difficult. Participatory breeding of the Universities should help the farmers.

What I am trying to say is that the breeders and the scientists will have to work with the farmers and help them. That is an ethos which is growing now not only in our country but also in the world as a whole. So, with sustainable agriculture, it has become very important that the agricultural scientists and the farmers work together, not only in breeding, agronomy but everywhere. Feeding the plant is as important as breathing. Your next question is, germplasm versus variety. Germplasm will be considered under the Bio-diversity Act. This is only a variety. Variety means novelty, purity, etc. So, this is different from a germplasm which is a pool of material from which a variety is developed. So, I do not see any conflict. Regarding your first point relating to Bio-diversity Act, the Committee may consider both of them. That is very important so that there is harmony.

Coming to your last point on farmers' right, should there be a separate chapter and how to plant them, my suggestion is to avoid ambiguity, within the 12 chapters, we give one because somewhere the farmers' rights are coming under the compulsory licensing which is a wrong place for it to be there. It is coming in some other place. Since it is a unique Act in terms of combining plant variety and protection of farmers' rights, it is better to have a chapter in which you bring all those items to avoid any confusion. I am talking about farmer conserver's right. What are their rights? How to recognise them? Who can ask for it? What is the methodology? Different sections in this Act could be pooled together and put together. If the Chairman permits me, I will be happy to submit a note on this separately.

MR. CHAIRMAN: This is what all the Members today feel about it. I spoke to the Secretary also in the morning. You try to frame a separate chapter. We will bring all the clauses together and also some other important things you just suggested. We will bring it together. Please give that note. Thank you very much.

PROF. M.S. SWAMINATHAN: I am really grateful to you.

(The Witness Then Withdrew)

WITNESS EXAMINED

1. Shri K. Rajan, IAS (Retd.), Mumbai.

MR. CHAIRMAN: Shri Rajan, you are welcome. Shri Rajan is a retired IAS officer. At present, he is in Mumbai. Please start your briefing.

SHRI K. RAJAN: I thank you very much, Mr. Chairman, for inviting me for giving oral evidence. I am also grateful, actually, for my comments being invited. I have sent a small note. *Prima facie*, the first thing that I would like to say is that this Bill is extremely important because it is necessary to be introduced. May be, it could have been introduced earlier. As I mentioned in my note earlier, the concepts of plant breeders' rights have been thought of actually in India even way back in 1968 when the Seed Review Team made its recommendation. Of course, at that time, it was felt that that was not the opportune time and after that, if there would be progress, we should have these plant breeders' rights. India has done a tremendous amount of work actually in the ICAR and through the public research system. Many varieties have come which has ushered in the kind of quantum jumps that actually, we see in productivity. When the world is talking about the TRIPS, I think actually now it is time that the works done within the country are put on a sounder footing and that our varieties need not become available to everybody. The other varieties are not going to come. There is this kind of reciprocity. On this basis, of course, when we are talking of this, it is also included in the article 26 of the TRIPS agreement. We decided to go in for this *Sui generis* legislation which I have already welcomed. I have made a few suggestions on the particular aspects of the Bill. I would like to comment on a few of those things.

In terms of the function of the National Authority, I thought we need to look at it again. We need to look at certain functions which have been spelt out in the Bill like, for example, the compulsory licensing. I was wondering whether the compulsory licensing should not be the function of the State itself, that is, the Government, rather than the Authority. It is because the Authority's primary job is to consider cases for granting breeders' rights, to look at the cataloguing process of varieties and recognition of the work done by the community in natural selection process. But varieties have come as a result of work done by the communities. Therefore, they need to be preserved. They need to recognise the work which have been done by the farmers themselves or a group of farmers. Generally, in terms of recognising the work being done, in terms of evolution of varieties, there is a whole lot of function which will devolve upon the National Authority. I was wondering whether in that kind of a context, this compulsory licensing, especially on two grounds, namely non-availability of seed or seed being highly priced, should really become the function of the Authority or should it be the function of the Central Government. The authority is empowered actually. The Parliament empowers the national authority.

DR. BIPLAB DASGUPTA: What is wrong in it?

SHRI K. RAJAN: I thought it would detract from the Authority's manufacturer because for taking a decision on availability of seeds or pricing, a whole lot of information is required.

DR. BIPLAB DASGUPTA: They will collect the information. Why not?

SHRI K. RAJAN: That will have to be collected through the Government. After all how do they get the information about the availability of the seeds? This has to flow from the field such as, the Directorates of Agriculture in the States and the Commissioner of Agriculture here. Central Government is better suited to take a decision on these points.

SHRI SHARAD PAWAR: We would like to have a little more explanation on this. I can appreciate your loyalty to the Central Government. You are still working in the private sector. Still your loyalty continues to the Government of India. It is a good thing. But we would like to have a little more explanation on this.

SHRI K. RAJAN: I was looking at the question of Authority constituted by the Act, and the rule of Central and State Governments.

MR. CHAIRMAN: It will add to confusion and duplicity. It is better if it remains with the authority itself. Or, if it is not, as Shri Pawar has tried to explain, why it should not be point-wise, one by one? Tell us what are the things against it.

SHRI K. RAJAN: With reference to the primary function of the authority, which is recognition of

new varieties, there is a whole range of issues. They will arise which the authority will have to consider on a day-to-day basis before it takes a final view whether a variety should be registered or not. Actually, there is also an entire system of cataloguing. Therefore, the volume of work which the authority will be required to do while taking a decision to register a new variety will increase. There are many other things. How do you register a new variety?

DR. BIPLAB DASGUPTA: We want the authority actually to develop such skills. They can set up an information system.

They can develop the skill of coming to a judgment. The Authority would be almost an autonomous body. So the judgment to which the Authority will come, would be respected for that reason because it would be a more detached kind of a decision. If you give it to the Government, then there would be allegations of political patronage, etc. All those issues might come. If it is the Authority, it would be more respectable.

SHRI K. RAJAN: I entirely agree with you. As far as registration process is concerned, to take a decision whether a variety should be registered or not; whether it should have gone to the Registrar, it is an extremely important thing. That gives the plant breeders right as to what work the community has done. So, a tremendous amount of information will come.

MR CHAIRMAN: Who makes the administrative decision that it should have been with the Government and not with the Authority?

SHRI K. RAJAN: Not with the Authority because that is the question. You have to collect information कितना सीड बिका, कहाँ बिका? what is the total requirement, demand assessment? Even as it is, actually, having worked in the Government, I know that the assessment of demand for seeds itself is a complex problem and then to look at the availability.

DR. BIPLAB DASGUPTA: The complex thing the Government will do and the simple thing the Authority will do.

SHRI K. RAJAN: Compulsory licensing is a smaller aspect of a much larger system that you are placing in vogue. I will read out clause 12 sub-section (2) about the National Register of Plant Varieties.

“Subject to the superintendence and direction of the Central Government, the register shall be kept under the control and management of the Authority.”

I think, to my mind, this is the most important function. The Central Government has actually made rules under the rule making power. I do not know as to whether the Authority requires any direction from the Government. I think, this clause, perhaps, to my mind, appears not very relevant. Once the Act is passed, the National Authority is empowered actually to Register varieties. We also laid down under what guidance or directions actually the rest of Register will be maintained. For example, the issue of criterion. Then, where is the question of Central Government directing the Authority? I think that will be a day-to-day kind of interference. That is the point which Dr. Dasgupta has mentioned. The Authority should be fully empowered. This is my second point.

MR. CHAIRMAN: It is a good point. Please proceed.

SHRI K. RAJAN: Actually, in terms of functions of the Authority and the role of the Registry, if you look at the process, it looks as though that in some cases, the Registrar can take a final decision. I think, it must be made abundantly clear all decisions whether to register or not to register would lie essentially with the National Authority. It must formally come before the Authority. I think, there are clauses giving different impressions. So, I think, it needs to be worded that all final decisions will be taken by the National Authority only.

MR. CHAIRMAN: So, no discretion should be there with the Registrar.

SHRI K. RAJAN: He functions under the Authority, so where is the question of his taking a decision.

MR. CHAIRMAN: That is right.

SHRI K. RAJAN: The other point was with reference to the variety of registration. Clause 14 says that once a variety has been registered, every three years it can be renewed. But it also says that the total aggregate period for registration, in case of trees and wines, should 18 years, in other cases 15 years and extent varieties 15 years. I do not know whether this is really necessary. Why is this period of three years and periodically being renewed? Authority has power to cancel registration. There are adequate reasons in public interests to cancel the registration. The Authority has the power. हर तीन साल में रीन्युअल किया जाए।

It more or less follows the licensing kind of provisions. Even in the case of cars, there is a provision of 14 to 15 years at one go for registration. Why have this provision actually of renewal after three years?

सभापति महोदय: जब बहुत सारे साल हो जायें तो कहीं बात को अथॉरिटी और सरकारी आफिसर भूल जाते हैं, उनको याद दिलाने के लिये है। तीन साल के बाद फिर याद दिलाया कि इसको भूल रहे हैं, फिर कुछ करें।

MR. CHAIRMAN: I agree as well as most of the Members will agree that the Authority has the power to cancel the registration or reject it. Then, reviewing it after three years will lead to corruption, etc. The best course is once a thing is registered, then if there is any complaint or anything, then that can be cancelled. So, you are right.

SHRI K. RAJAN: Not actually review. Please see the word how it has been worded. It shall be valid for three years and may be renewed or further renewed as the case may be, on payment of fees. I do not know as to whether we should have a system where we will ask renewal after every three years.

MR. CHAIRMAN: They are not paying. They can ask for it.

SHRI K. RAJAN: Further the clause provides for registration for 15 years from the date of notification of that variety under the Seeds Act. Section 5 of the Seeds Act enables the Central Government to notify the varieties of crops. What we should be concerned with the Release of varieties. We have to concepts. One is not recognised under the Seeds Act. We have a system of releasing of varieties and we also have a system of notification of varieties. In fact, unless a variety is notified, it does not come under the provisions of the Seeds Act at all. You cannot do any quality control enforcement, etc. What is more important is the decision that a variety which is new, which is different from other varieties, which is of your criteria that you are mentioning here of distinctiveness, uniformity, stability. These are the decisions which are taken at the time of release of a variety. After a variety has been released and being marketed, and if we feel that the quality control enforcement of that variety is a must to protect the interests of farmers. तब जाकर हम नोटिफाई करते हैं।

But Release proceeds after the notification. If the feeling actually is that since 'Release' not covered under the Seeds Act, therefore, the word 'release' should not be used we need to re-examine this aspect. I am not very sure that this is the correct way of looking at it. उसका रिजल्ट देखकर हम रिलीज करते हैं।

There was State Variety Release Committee and at the Central Government level CVRC, mainly headed by either the Secretaries of State Governments or the DDG, ICS ICAR system. We release all these varieties after seeing the multi-location trials. The variety was not released just because some persons wanted to release the variety.

It was only on the basis of three years testing and consideration by a large group under the CVRC or the SVRC that the varieties were released. Just because a variety has not been notified, not to include that variety and to make it available freely, to my mind, does not appear to be correct. After the Seeds Act, 1968, everything has become official. These committees were brought under the

contact of the Seeds Act. But these SVRCs and CVRC were there even prior to the Seeds Act. The Central Variety Release Committee has now become the Central Sub-Committee on Release of Varieties. That is a statutory thing, though the word 'release' is not mentioned in the Seeds Act. When the concept of release, more or less, has been recognised, why not make use of this provision for enabling 'Released' varieties be treated as extant Varieties. When the release is done, even if the quantities are not very large, or when some State Governments did not want the notification and quality enforcement, still I think the variety may be very useful in certain other context or it can become part of a breeding material for another variety. If it becomes an essentially derived variety, it will be called a new variety, unless it has been registered. So, to my mind, I think we need to look at this question. We should either say variety released or variety which has been notified. I think we may re-examine this issue. If you think that it is possible without difficulty that we recognise the released variety, then let us actually treat them as extant variety. I know of several cases where varieties were released initially but were not notified. So, merely because it may not have been notified, why should we forego that benefit?

The other point is regarding "licensees or breeders other than compulsory licensing". In certain scenarios even without resorting to the compulsory licensing provision, a breeder is likely to appoint an agent or a licensee and give him the right to produce, subject to an agreement. Why should the Authority get involved in that, except for the fact that if he is given such a power, that power should be recognised somewhere? But it appears that the National Authority and the Registrar, all get involved in disputes between them. A breeder actually releases some variety and appoints some agent to multiply the seeds. Why should we get involved if there is a dispute between the two of them? The only thing is that the licensee entering into agreement be required to get this noted by Authorities. There are so many clauses, which look as though somehow the National Authority is going to adjudicate in the dispute between the two parties, which is purely internal to them. Why can't those matters be settled outside the Authority and settled in courts?

MR. CHAIRMAN: Maybe, to reduce the chance of exploitation.

SHRI K. RAJAN: If he (a breeder) thinks that he is going to fear exploitation, he will not give the licence at all. It is not compulsory licensing. Compulsory licensing is different. If he wants to multiply and instead of doing it himself he says that he will give it to Mr. A to produce it for him, and then if there is a dispute between them, why should the National Authority come into the picture?

SHRI BIPLAB DASGUPTA: I think it is only because there is an assumption—it may be right, may be wrong, you can correct me—that a breeder until now has basically been a big company. The agent is a small man. So, if there is a dispute between the breeder and the agent, the breeder being very powerful, can exploit the agent.

MR. CHAIRMAN: As I said, here are chances of exploitation. You are right that we should try to reduce our interference. What do you suggest should be done? Should it be left to the breeder how he enters into the agreement with the agent?

SHRI K. RAJAN: Yes, Sir. But this is not true as far as compulsory licensing is concerned; compulsory licensing is a totally different bargain.

The next point is with reference to the surrender of varieties. If you look at Clause 35, a breeder can surrender the variety which has been released. Then, in sub-clause (3), it says "Any of such agent or licensee may, within the prescribed period after such notification give notice to the Registrar of his opposition". Once we have given the recommendation and thereafter if he surrenders and that surrender is accepted, then the variety becomes free. Then why do we get involved in the dispute between the licensee and the agent? How are we concerned with that? Anybody can produce then and this fellow can also produce. Therefore, I think there is a complete misunderstanding of the relationship between the licensee and the plant breeder, which also comes under Clause 35. The position is quite different *vis-a-vis* the compulsory licensing. According to me, it should be the Central Government. But here it is the National Authority. If I provide for compulsory licensing, then I am

saying that you shall give the right actually for someone else to produce the seed because you are not producing the seed yourself or you are creating shortages. Therefore, the prices are going up. I want the seeds to be multiplied and compulsorily license another person to produce the seeds. That is the correct decision and that must be there. If a breeder wants to surrender, what is the use of hearing the position of the agent or the licensee whom he has appointed. I do not see any merit in even having a clause like this because it is purely a relationship between the two. In fact, once he has surrendered, that means everybody can multiply the seed. When anybody can do it, he can also do. With reference to clause 29, I agree that there are certain varieties which need to be excluded. But if you look at sub-clause (2), it says: "The Central Government shall, by notification in the Official Gazette, specify the genera or species for the purposes of registration of varieties under this Act." The Central Government shall not exclude any genera. The thing which is contemplated is that all genera or species shall be notified right at the beginning and the Central Government shall not exclude any variety from the list, except in public interest, and that public interest is mentioned in sub-clause (1). I am not very sure that it is desirable to notify all genera, all species at one go because the kind of volume of work which will devolve upon the National Authority is going to be huge. I think like in other cases, this may have to be done almost by a gradual kind of phasing. When you cover all groups, you may start with the more important crop which occupies maybe 60-70 per cent of the area.

MR. CHAIRMAN: Time phasing we will have to have.

SHRI K. RAJAN: Therefore, I think sub-clause (2) should really read as: "Species and genera as notified from time to time".

Otherwise the sub-clause 3 does not read properly.

MR. CHAIRMAN: That is correct.

SHRI K. RAJAN: I do not think you can do all at one go. I will start looking at plums and I will also start looking at rice varieties—there is no comparison at all because of the volume of work. Overtime we should do that.

MR. CHAIRMAN: That is correct.

SHRI K. RAJAN: There are some minor points—which I also mentioned—with reference to the power of the Registrar and how you read the power of Registrar and the power of the Authority. I think there is a connection or rectification as to whom can do it. But, here again, I think all decisions rest with the Authority and not with the Registrar General or the Registrar. They are all part and parcel of the National Authority. The Registrar General virtually functions as the Secretary of the National Authority.

SHRI BIPLAB DASGUPTA: There is a clause in the Bill which says that the Registrar is appointed under the Authority.

SHRI K. RAJAN: The Act itself says that the Registrar General is appointed only by the Authority. The Registrar and Registrar General are appointed only by the Authority. The only other provision was with reference to cataloguing. The cataloguing of varieties has become very important not only for the purposes of registration of plant breeders' rights but may also be necessary from the point of view of the community rights.

For a variety to be recognised as a variety, all its characters will have to be detailed. It is a tremendous work for the National Authority. Certain institutions will have to go through that. I think in the choice of an institution which will undertake this cataloguing process, once an Authority has decided all the detailed descriptions and data information which is required about a variety, my feeling would be that the institution which is going to do this cataloguing business should be done only on the recommendations of the Authority. It cannot decide *suo motu*, or outside of the Authority without consultation with the Authority. It must be done clearly in consultation with the Authority or at least on the recommendation of the Authority. The Government might decide not to accept the recommendation or they may discuss and finally come to a conclusion. But here the central role will have to be played by the National Authority.

I have only one other point. It is with reference to tests. We are accepting the fact that the DUS criteria — Distinctness, Uniformity and Stability — and of course novelty should be there, without a variety, being new, compared to something else which has already been registered or which is an extant variety. That is why I am laying stress on the question of release that as long as this is novel, it is distinct, it is uniform and stable, but it also says tests. Now the tests could be only to find out as to whether this criteria is met or not. I think we need to specify clearly that the other kind of considerations will not come in the thing. It should not so happen that we have a set of criteria mentioned under the substantive provisions of the Act which says on what basis a variety will be registered as a variety. There is a clause called 'test' and, therefore, using the test actually we reject a variety on other grounds. I think it could happen. People could take a view for superiority of performance over an existing variety. Why bother registering a variety if it is not superior to the existing variety? That is a decision, I think, ultimately only a farmer is going to make. If he is going to take the seeds, if he finds the seeds good, he would purchase it. It is only then there is some purpose in releasing new varieties. Let the farmer be the ultimate decision-maker in terms of qualitative aspects of variety as to whether it is new, because same kind of seed or some variety should not be sold under a different name with only minor modification.

In the tests I think the only grounds of testing will be only to find out whether the claim pertaining to DUS—Distinctness, Uniformity and Stability—does or does not hold good in the Indian conditions. Secondly, it is a point which has not come but I think is likely to come. It is, perhaps, the point which the National Authority will have to decide.

Varieties could be highly susceptible. It could create problems actually in terms of spread of disease. In such cases the highly susceptible varieties, one has to take a view as to whether it is worthwhile registering such a variety. I think there is a risk involved in that. May be as a part of test if it were to come. The National Authority can decide it and where the National Authority puts down this regulation this could be added. But it should not so happen that just because one farmer takes—because of whatever pressure he comes to, he decides to take a variety he should not create problems for the neighbouring farmers by growing highly susceptible variety, particularly in the case of fungus diseases or viruses. It could happen that it may be transmitted by air, by soil-borne diseases or air-borne diseases. Those things naturally will have to be prevented. I do not think we can allow highly susceptible varieties which can constitute a problem to the Indian agriculture. As far as farmers' rights are concerned, it is clearly taken care of that the farmer has got total freedom to use his own produce as planting material. I think that is a key issue. There is no way I believe that it is possible in the next, may be even in the next 2-3 decades for 100 per cent replacement of seeds of all important crops is going to take place in this country. That is just not possible. I do not think, it is to my mind, to a certain extent even desirable, actually that the farmers replaces for all the 180 million hectares.

MR. CHAIRMAN: That is right. That is not desirable and not possible.

SHRI K. RAJAN: That is not possible. The only thing that we have to safeguard is with reference to spread of diseases which might spread to other farmers. Only subject to that condition which, perhaps, the National Authority itself can take. In this, of course, other terms with reference in some places there does not seem to be consistency between the provisions of the Act and the other part of the clause. Somewhere it says who can be the Chairman etc. I think that can be taken care of. That is a minor point.

Thank you.

MR. CHAIRMAN: Thank you Shri Rajan for your very good suggestions. I request you to kindly stay for lunch with the Committee.

(The witness then withdrew.)

MR. CHAIRMAN: The next person to depose is Dr. S.C. Tiwari from Varanasi. Let us welcome him. Dr. Tiwari, you are welcome to this Committee. Please express your views on this Bill.

DR. S.C. TIWARI: Hon. Chairman and hon. Members of the Joint Committee, I am grateful to you for giving me an opportunity to present my views on this very controversial Bill. In fact the whole idea of TRIPs and GATT Agreement had been so controversial that I had been interested in this subject since 1994. It is very nice of you to have given me an opportunity to be here.

Instead of going into the clauses and the details of the economic benefits and something like that, which is being done by many experts, I will make a few submissions. I am basically a physicist. I am not a representative of any organisation or any lobby or any industry. If you wish, though it may not be a modest thing to claim, I think I do represent the spirit of the country. From that point of view I would request you to listen to what I am trying to say before you.

The first thing which I want to say is that the first question which naturally comes to my mind is why there is so much emphasis on intellectual property rights since 1994. If we see the evolution of the patenting of the concept of plant protection, then, we would find that it was in 1930 that the Plant Variety Protection Act was implemented in America. At that time also, the noteworthy thing is, the plant variety protection was granted only for a sexually reproduced plants and not for general plants. After 40 years, in 1970, it was the American Seeds Trade Association which drafted this Patent Act of 1970 in America and that Act actually enlarged the scope of the plant variety protection to both sexually as well as asexually reproduced plants. Secondly, the most important thing was that instead of plant breeders, the scope was enlarged to the multinational corporations or to any private or public funding organisation which supported the plant breeders. That was a shift in philosophy.

Earlier, the basic philosophy was two-fold. One was public good in mind and second, the scientist who is doing research work should be given some benefit for this work. So, this was the original modification. It was corrupted in 1970 and the essential economic benefits went to the multinational corporations or organisations. After 1970, in 1980, it was again amended. I am talking of American Plant Variety Protection Act. That amendment of 1980 called the scientists there in America to argue against that and three reasons were advanced for that. First, the cost of the seeds in the developing countries will increase manifold. Second, it will lead to erosion of the existing plant variety. Third, it will lead to the monopoly of the research work in the hands of the multinational corporations. Now, we find it true today if we see why so much price rise has taken place and why so much funding is required for the kind of research work we do. Then we can see the truth of this apprehension at that time in 1980. It was at that time that the multinational corporations took full hold of this intellectual property right business.

In 1986, this Dunkel Draft business started. The reason was that even at that time, certain multinational corporations apprehended that most of the germplasm exist in the third world countries and to do transgenic variety work in developed countries will require this germplasm from the developing countries and they may not give it. So, what is the way to do it? The way to do it is through introducing TRIPs agreement in GATT and by making WTO a separate body from UNO. And by not giving importance to WIPO, World Intellectual Property Organisation, and by giving importance to TRIPs Council, essentially, the whole thing has gone in the hands of the multinational corporations. I will give you one or two examples. One example is from the Monsanto seeds Corporation. Actually, Monsanto does business not only in seeds, but they have pesticides business also. So the whole idea of this intellectual property rights in the context of the plant varieties is that plant breeders will be dependent upon some corporations. I have got the official document of the UPOV with me. The UPOV started in 1961. I was talking about the USA. Let us see the European situation also. There also, in the year 1961, the first Convention for the Protection of Plant Varieties was held. After that, it was amended in 1978 and there is a new version of it, UPOV, 1991. Now, this UPOV Convention grants certain freedom to farmers. But what happens is that on the one hand they say that the farmer is not a fool and he has full freedom to use one variety of seed or another, but if he has that wisdom, then why do we need propaganda and advertisements? Essentially, if we promote seed and then we make so much of propaganda and advertisements, the farmer is not free to utilise seeds as he wishes to. Therefore, he comes under the control of these big corporations.

DR. BIPLAB DASGUPTA: Have you studied the relations between a big breeding company like Monsanto and farmers? Can you tell something about this?

DR. S.C. TIWARI: I would tell you one thing particularly about Monsanto and farmers. What Monsanto actually did was that they granted certain rights to the farmers and those rights were in the form of saving seeds for one or two seasons, but the problem with that was that these seeds would become out of date within two years. So, the advantage which is granted to the farmers, that too only to big farmers, is taken away at the same time. Only big farmers could benefit from that. So, the Monsanto Corporation incorporated certain things, but it cannot benefit the poor farmers of the country.

DR. BIPLAB DASGUPTA: There is some punishment also if the farmer does not do certain things as per the agreement.

DR. S.C. TIWARI: Yes. They call it 'ethics'. They say that ethics should be there. Actually, this word is misused by Monsanto. Even if a big corporation is doing this—because a huge funding is required for the research activities—they say that it is serving the society. But when they talk of ethics, they say that only the poor farmers should observe ethics and there is no such obligation on the part of a multinational company like Monsanto. The one example which I was quoting is about 'round up'. This is a pesticide manufactured by Monsanto. It was written in the report published in *The Hindustan Times* dated 29th September, 1997 that 'since the patents for 'round up' will soon expire, Monsanto is trying desperately to create new markets in India.'

सभापति महोदय: आप यह बात कह रहे हैं कि ये सारे खतरे हैं, तो इन खतरों से हम अवगत होना चाहते हैं। आपने भी अवगत कराया है। न्यूज रिपोर्ट्स पर भी पहले डिस्कशन हुआ है। हम सब स्टेप्स में गये हैं और वहां भी इन पर डिस्कशन हुआ है। आप इसके अलावा हमें बताइये। What you are saying is very important and we should take care of it.

DR. S.C. TIWARI: My suggestion is that this kind of a Bill or Act should not be made by India.

सभापति महोदय: बनाना नहीं चाहिए, यह विषय नहीं है। बनाना तो है और बनाने में ऐसी कौन सी अच्छी बातें हो सकती हैं जिनका समावेश करने से हमारे किसानों को, देश को फायदा हो। आप कह रहे हैं कि नहीं बनाना चाहिए। मान लीजिए कि हम नहीं बनाते। हम उससे बाहर हो जायेंगे। कल को हमारी जितनी वैरायटीज हैं। The public sector has done commendable research work in the field of agriculture and we have got so many extant varieties. एक्सचेंज वैरायटीज बहुत ज्यादा हैं। उनका वह यूज करते रहेंगे। उनको रजिस्टर करके फायदा उठाते रहेंगे तो हमारी बाईंडिंग उनके ऊपर क्या होगी? आपका यह कह देना कि नहीं होना चाहिए, तो यह आप जैसे विद्वान व्यक्ति के लिए कहना उचित नहीं है। अब हमें कानून तो बनाना है। इस कानून के बनाने में इन चीजों का हम समावेश करेंगे तो हम सब खतरों से बच सकेंगे और देश के किसानों, वैज्ञानिकों और देश को फायदा पहुंचा सकेंगे, इस बारे में कुछ सुझाव हैं तो वह आप हमें बताइये। आपने अभी जो बताये हैं, उनको हम ध्यान में रखेंगे। अगर आप वाराणसी से आकर यह बात कहेंगे तो हमें क्या फायदा होगा।

डा० एस०सी० तिवारी: मैं खाली यह नहीं कह रहा हूँ कि हम नहीं बनायेंगे। इतना कहकर छोड़ दे रहा हूँ। मेरा कहना यह है कि जो कुछ भी हम अमेंडमेंट करेंगे जैसे एक अमेंडमेंट है जिसको सुपरफिशियल लैवल पर देखा जाये तो अच्छा है। वह यह है कि कुछ एन०जी०ओज० ने यह सजेसन्स दिये कि उसमें डाटा बेस को फार्मर्स की कम्युनिटी मानकर इक्वेट किया जाये और जो उसकी रायल्टी है, उसको दिया जाये।

सभापति महोदय: हम यह करने वाले हैं। यह तो हमें करना ही है।

DR. S.C. TIWARI: What I am saying is that if we accept the basic philosophy of this, then, I am sure, we will not get anything for the country.

सभापति महोदय: देश के लिए कैसे मिलेगा, वह बताएं।

DR. S.C. TIWARI: We can fight for it. This has not happened just in a year or so. As I was saying, it took six decades for these people to come out with this.

सभापति महोदय: पांच साल तो हमने भी इसमें लगा दिए हैं। पांच साल से विचार, मंथन हो रहा है। आपको तकलीफ इसलिए दी है कि देश और किसानों के हित में कुछ हो। कानून जो बना रहे हैं, वह तो बनाएंगे क्योंकि हिन्दुस्तान के ऐग्रीकल्चरल साईंटिस्ट्स ने भी अपनी रिपोर्ट में कहा है। यहां श्री परोडा बैठे हैं। इनका कहना है कि हम चाहते थे कि यह बिल 1989 में बन जाता।

डा० एस०सी० तिवारी: मैं कहना चाहूंगा कि ये चीजें कही जरूर जाती हैं। लेकिन मैं इतने दिनों से देख रहा हूँ कि जब हमारे पास चीजें आती हैं तब बहुत से मुस आ जाते हैं और कहते हैं कि यह होना चाहिए। हो सकता है कि लोगों को लग रहा है कि शार्ट टर्म में फायदा हो जाएगा। लेकिन जो ओरिजनल फ्लौस्फी है, it is not the greed that should motivate the research work or the creation of knowledge. Secondly, we should not do anything that is not in the public good.

DR. BIPLAB DASGUPTA: The main thing that you are saying is that there should be no bid in. I think, most Members will agree with you on this point. Our problem is, what do we do with this Bill.

DR. S.C. TIWARI: We can come out of it, and that is what I am trying to say.

DR. BIPLAB DASGUPTA: How can we come out of it?

DR. S.C. TIWARI: We can either come out or at least dismantle this provision. If we have experts in our country, then we can do that.

DR. BIPLAB DASGUPTA: If it is within the powers of the Committee, then I can tell you that it is what is going to happen. But this Committee is not so powerful, and we cannot influence the TRIPS Agreement. We cannot do it.

MR. CHAIRMAN: Dr. Tiwari, we are really grateful to you. You came all the way from Varanasi and gave us your suggestions. You may please stay back for some time because we would like to have lunch with you. You can sit in my room for just ten or fifteen minutes, and we can talk over lunch.

DR. S.C. TIWARI: I have some papers for you.

MR. CHAIRMAN: You can give those papers. Thank you very much.

DR. S.C. TIWARI: With the permission of the Chair, I want to quote one thing more. Actually, one argument that is being given is that we require many varieties of plants because the population is increasing.

MR. CHAIRMAN: We need that. If we have this Act, then we will be in a position to attract many breeders, who will have new varieties, and we will have lots of seeds. As the Prime Minister has said, we can double our production in the coming ten years.

DR. S.C. TIWARI: I will quote just one thing. Prof. Altieri, University of California, in *Nature* says, "It is misleading to justify transgenic technology by saying that it will relieve hunger. The major advances in transgenics do not have anything to do with helping the developing world to produce more food."

MR. CHAIRMAN: Thank you.

1314 hours

(The witness then withdrew)

WITNESSES EXAMINED

1. Dr. P.D. Muzumdar, Advisor, Monsanto Enterprises Limited, Mumbai.
2. Shri Rajendra Ketkar, Director (Cotton), Monsanto Enterprises Limited, Mumbai.

MR. CHAIRMAN: Dr. Muzumdar, we have your suggestions before us. Whatever you want to say, please explain it briefly.

DR. P.D. MUZUMDAR: Thank you, Mr. Chairman, and hon. Members of the Committee.

We are representing Monsanto here, and we would just like to compliment the Government for introducing this Bill. We feel, it is a very important step in providing the protection for plant varieties as well as for the farmers' rights. We think, it is very important, and we just have a few suggestions. As part of the plant breeders' industry and also as members of that, we would like to submit these few suggestions.

SHRI GURUDAS DAS GUPTA: Are you representing an Indian company?

DR. P.D. MUZUMDAR: We are representing Monsanto Chemicals (India) Limited.

SHRI GURUDAS DAS GUPTA: It is the subsidiary of an international company, and you are speaking as a representative of the Indian subsidiary.

DR. P.D. MUZUMDAR: That is right, Sir.

In Chapter I, clause 2c defines breeder, "As a person who has bred, discovered or developed any variety." When you are looking at seed companies, typically the breeding is done by not only one particular individual, but by the company as well. So, we would like to suggest that a couple of phrases like "corporate body" have to be added to that, and it reads as, "Breeder means, a person or corporate body, who has bred, discovered or developed any variety."

Moving on to Chapter II, clause 3 (v) provides for the constitution of the authority to be appointed by the Central Government. We suggest that in addition to the members already suggested in the Bill, two more representatives be added. One would be a representative of the seed industry and, secondly, a representative of the farmers may also be added to this authority. So, that is another suggestion that we have on that.

SHRI GURUDAS DAS GUPTA: What is the idea?

DR. P.D. MUZUMDAR: To bring a broader viewpoint. Here, the farmers' rights as well as breeders' rights are involved. Therefore, if there are representatives of the farmers as well as the breeders, we feel that would add to the value that authority could bring.

SHRI GURUDAS DAS GUPTA: Mr. Chairman, Sir, I want to seek a clarification on his presentation of views that the representation of corporate sector would make it more wider. Is it your view that if there is a representation of the corporate sector, then this authority would be more augmented?

DR. P.D. MUZUMDAR: Yes, Sir.

Another point would be in terms of the confidentiality of the information. Coming to Chapter III, development of new plant varieties involves substantial investment by the breeder. It is important that confidentiality of the information submitted to register the variety is maintained. So, some mechanism that ensures that would be helpful.

DR. P.D. MUZUMDAR: In Chapter VII Clause 31, about the Farmer's right to sell and exchange seeds in its current form, something more should be done.

MR. CHAIRMAN: Yes, it needs to be elaborated. We agree with you.

DR. P.D. MUZUMDAR: We are only suggesting there that some language be added that will clearly define as to what their rights are in terms of protecting them.

MR. CHAIRMAN: We will do that.

DR. P.D. MUZUMDAR: Thank you.

Sir, in Chapter X, Clause 41, we feel, the provision of compulsory licence needs a little more definition. It should be only resorted to only in case of a national need or a shortage of seed of a particular variety. Some clarification of the intent of this Clause and specific parameters that may be used to determine when a breeder is not supplying market need would be helpful.

Normally, in our estimates, it will take about five to six years of extensive testing in development to make a seed available to public, and generally, in terms of then building of production and building of stock also takes some time. So, if a variety is introduced and it becomes popular very soon, it is not always possible in first one or two years to have enough to supply the demand.

So, what we are suggesting is that there should be an initial period of around six years instead of three years before a compulsory licence can be evoked in that kind of a situation.

In Chapter X, Clause 48 provides for the rights of communities. However, there is no clear framework to determine such rights related to the ownership of varieties. So, we are suggesting that some clear guidelines may be provided to ensure fair treatment for the breeder as well as community in terms of determining the rights of the community and also of the breeders. Clearly both have to work together and that is why we suggest that some more guidelines be made available.

Finally, we were also suggesting that perhaps the NBPGR would be the referee in terms of forming the bases for the registration of varieties. So, that Clause be included whereas the NBPGR becomes a referee lab and their report is considered as a conclusive evidence to the Court. These are the few suggestions we had put forth before you, Sir.

MR. CHAIRMAN: Thank you.

DR. BIPLAB DASGUPTA: Monsanto Enterprises Limited is not only a breeder, it is also a supplier of all the major inputs of agriculture. Let me say very frankly that there is a fear that the benefits will not go to the small farmers, small breeders or the farmers who become breeders. It will rather go to large multinational companies like Monsanto. It is not only the fear of this Committee, it is the fear of the country as a whole.

One of the reasons of the fear is that through the seeds, the company is going to introduce a kind of dependency of the farmers on the company to see that it is compatible with the weedicides, pesticides. The company also supplies fertilisers and many other things. The fear is that on the basis of the seeds, the company is trying to make our agriculture dependent on the multinational companies. In addition to this, there is a fear because the company operates in a number of ways. One of the way is through a contract with small farmers. At various places it has been already working in the country. At some places where the farmer is working with the Monsanto, he is to come into some sort of an agreement and that agreement includes many penal provisions. Could you tell us something more about this agreement between your company and the small farmers? Could you tell us about the general dependency of farmers on you?

DR. P.D. MUZUMDAR: In terms of providing agricultural inputs, Monsanto is engaged only in producing and selling some weedicides in this country at this point and some seeds. We are not involved in selling pesticides or fertilisers at all, and we have no intent of doing that because we are not doing it anywhere in the world either. World wide in Monsanto agriculture, we are only dealing in seeds and herbicides. That is all.. So, those are not necessarily related.

DR. BIPLAB DASGUPTA: Historically speaking, your main activity is weedicides, and seed is your new activity.

DR. P.D. MUZUMDAR: That is right.

DR. BIPLAB DASGUPTA: So, you are selling seeds with the idea that the farmer who is buying the seed will find your weedicides more acceptable than we have the kind of weedicides.

DR. P.D. MUZUMDAR: That is true only in one particular type of seed which is called randapadit. It is a transgenic crop today. It is not available in India. It is only available in other countries. As far as India is concerned, we are only selling some maize seeds and some sunflower seeds at this point.

In terms of dependency, the farmer is free to choose any type of seed or any type of weedicide. Both are available from different suppliers. We certainly do not have any kind of monopoly or control on any type of seed. There are hundreds of seed companies in India that are producing maize, sunflower, cotton etc., We are just one of several hundreds seed companies.

MR. CHAIRMAN: They believe in integration.

DR. P.D. MUZUMDAR: On the agreement side, we do not have any kind of agreement with growers in India. When a customer buys a product — either weedicide or packet of seed — the only agreement is that he is buying it. That is all. It is a pure sale agreement.

DR. BIPLAB DASGUPTA: Do you have your own federation also?

DR. P.D. MUZUMDAR: We have contract growers and those contracts are very standard like all seed companies. They contain an agreement by which the foundation seed will be given by the Monsanto to the farmer just like any other seed company will do, and then the farmers will grow the seed, produce the seed and then the Monsanto will buy from them.

DR. BIPLAB DASGUPTA: Who decides on the prices of the seeds which you sell to the farmers?

DR. P.D. MUZUMDAR: About the foundation seeds, it is the company who decides.

DR. BIPLAB DASGUPTA: The price of inputs is also decided by the company. Is it not? The delivery of output and the acceptance of the inputs are decided by the company. Is it not? What I am saying is that the price the farmer is paying for the inputs is decided by the company. It is not?

DR. P.D. MUZUMDAR: Yes, Sir.

I may add that this is the standard practice in the industry.

DR. BIPLAB DASGUPTA: The prices the farmer gives from the company for delivering the outputs is also decided by the company.

MR. CHAIRMAN: Shri Dasgupta, in the first few years to propagate that variety, they may even give it free.

DR. BIPLAB DASGUPTA: In the agreement, two sets of prices are decided by the Company. That is what I wanted to understand. There is also a provision.

MR. CHAIRMAN: Theirs is a big company and they can do that for some time.

DR. P.D. MUZUMDAR: Actually, it depends on the market forces. There can be some other company that may do more.

DR. BIPLAB DASGUPTA: But not by Monsanto. You have some penal provision regarding re-use.

DR. P.D. MUZUMDAR: No, we do not.

MR. CHAIRMAN: Dr. Dasgupta, as you know, the Authority has the power to see if the seed price is more. They can intervene and see to it that it is reduced considerably.

SHRI GURUDAS DAS GUPTA: Do you believe that if this new Act is passed, you will have a better market condition in India? You must have been dictated by your own business considerations. Therefore, I want to know whether you believe that if this Bill is passed and made a law you would have more opportunities to enter the Indian market.

DR. P.D. MUZUMDAR: I think, the Indian market affords a lot of opportunity to anybody who is in the seed industry. I cannot say whether it would be more or less. This Act, we see, protects both the farmers as well as the breeders.

SHRI GURUDAS DAS GUPTA: I want to know whether it will benefit you because you have taken the trouble of coming all the way from Mumbai and deposing before the Committee seeking certain changes which will make the Act more effective. Since you are a commercial organisation, your coming here must be backed by commercial considerations. So, I want to know how you will be benefited so far as the Indian market is concerned.

DR. P.D. MUZUMDAR: I think, it will benefit our company and any other person who is a breeder.

SHRI GURUDAS DAS GUPTA: You are representing your company.

DR. P.D. MUZUMDAR: This meeting will have an effect.

SHRI GURUDAS DAS GUPTA: Now I come to my second question. You are a multinational company producing seeds for different countries. Agriculture enormously depends on environment, moisture, atmosphere, climatic conditions and all that. So, would you be producing seeds only for India or you would be producing the same type of seeds worldwide without considering the vagaries of weather and climatic conditions. Do you think that your standard seed without taking the characteristic conditions of India into account would be productive in this country?

DR. P.D. MUZUMDAR: We do not believe that there is any standard seed that is or that can be commonly grown across several countries.

SHRI GURUDAS DAS GUPTA: I wanted to know whether you will be producing seeds only for India

DR. P.D. MUZUMDAR: We will be producing seeds for India with Indian seeds. We are not importing any seeds. We are just producing seeds in India. The terminator seed does not exist any more.

SHRI GURUDAS DAS GUPTA: So, you will be producing seeds taking our agricultural characteristics into consideration.

DR. P.D. MUZUMDAR: Yes.

MR. CHAIRMAN: Thank you. We shall now break for lunch.

(The Committee then adjourned)

(भोजनावकाश के पश्चात्)

1. श्री एन० के० शुक्ला, ज्वाइंट सैक्रेट्री

सभापति महोदय : शुक्ला जी, आपके विचारों का काफी महत्व है, इसलिए आप अपने विचारों से हमें अवगत कराएं।

श्री एन० के० शुक्ला : माननीय सभापति महोदय और कमेटी के सभी माननीय सदस्यगण, इसका जो पहला प्रियम्बल है, इसमें हमारा निवेदन है कि उरुवे राउंड ऑफ मल्टीलेटरल ट्रेड नेगोसिएशन को मेशन करने की जरूरत नहीं है। हमें अपने फार्मर्स के राइड्स का ऑन प्लांट वेरयटी प्रोटेक्शन करना है। इसमें मेरा सुझाव है कि इसे प्रियम्बल से हटा दिया जाए। बिल में इसे मेशन करने की आवश्यकता नहीं है। आगे जो चेटर एक है।

सभापति महोदय : अगर आपके पास इसकी एक कापी हो तो हमें दे दें।

श्री एन० के० शुक्ला : हम एक ही कापी लाए हैं।

सभापति महोदय : ठीक है आप जाते समय यह हमें दे दें।

श्री एन० के० शुक्ला : हम जाते समय आपको दे देंगे। चेटर एक में जो आर्टिकल टू सी है, उसमें ब्रिडर्स की चर्चा है, इसके साथ-साथ कम्युनिटी ऑफ ब्रिडर्स भी होना चाहिए। क्योंकि किसी सीड या प्लांट के विकास में एक ब्रिडर के, किसान के अलावा कम्युनिटी का भी योगदान होता है।

सभापति महोदय : यह कैसे होता है, इसका उदाहरण दे दीजिए।

श्री एन० के० शुक्ला : हम लोग देहात में देखते हैं कि अगर किसी किसान ने कोई पौधा लगाया, उसने उसके लिए बगल वाले से सहयोग लिया। उनसे डिसकस किया। कई लोग मिल कर भी अपने तजुबों का इस्तेमाल करते हैं।

इससे वह विकसित होता है, तो यह अगर हम बिल में उचित संशोधन नहीं करेंगे तो किसानों के नाम पर बड़ी-बड़ी सीड कंपनियां या इस टाइप के लोगों को फायदा हो सकता है।

सभापति महोदय : इसमें आप यह भी कह सकते हैं कि जो वैराइटीज इस समय हमारे पास हैं और बहुत सारी जो हमें पता नहीं हैं वे कब से शुरू हुईं। But a particular community or a particular area is responsible for that variety. So, when we start registering all these varieties, we will have to register such varieties in the name of that community. If we keep only the breeder and do not write this community, then that will be misunderstood. So, from that angle also it is important.

सभापति महोदय : मेरे परिवार में 10 एकड़ जमीन है लेकिन मेरे पिताजी बूढ़े हो गये हैं और हम शहर में रहते हैं

SHRI N.K. SHUKLA: Then, in this very Chapter, clause 5 says: "Farming means any person who cultivates crop either by cultivating himself or through any person, and includes a person who conserves and preserves". That is already there. But the words "through any other person", are not required.

MR. CHAIRMAN: My father cannot cultivate though he is a small farmer. He will have to take the help of other persons. He will have to employ some persons for cultivating that land. But he can himself supervise. If we eliminate this thing, then my father cannot be a cultivator or cannot be a farmer. We cannot call him a farmer then.

श्री एन०के० शुक्ला : नहीं, उसमें ऐसा है कि परिवार का कोई सदस्य तो खेती में फिजीकली लगता होगा, तभी उसे फार्मर कहेंगे/मेरा कहना यह है कि लिंकेज ऐसा होना चाहिए कि बाहर की सीड कंपनियां या अबसेटी लैंड लॉर्ड टाइप के लोगों को ही फायदा नहीं होना चाहिये। परिवार का कोई न कोई सदस्य तो सशरीर सुपरवाइज करता ही है। तभी वह किसान परिवार होगा।

MR. CHAIRMAN: Farming means, any person who cultivates crops either by cultivating the land himself or through any other person. We can say "either by cultivating the land himself or supervising the cultivation himself". Will that be all right?

श्री एन०के० शुक्ला : ऐसा करने से काम चल सकता है।

सभापति महोदय : आपके बंगाल वाला जो डैफिनेशन है वह लगा देंगे।

SHRI AJAY CHAKRABORTY: We can say "who cultivates himself or any other member of his family".

श्री एन०के० शुक्ला : फिजीकली सुपरवाइज भी करता है। फिजीकली सुपरवाइज न करके वह एबसेटी लैंडलॉर्ड ही नहीं होगा बल्कि बड़ी-बड़ी सीड कंपनियां किसानों के नाम पर सारी सुविधाओं को हड़प कर लेंगी।

सभापति महोदय : मान लो कि कोई किसान स्थाई रूप से विकलांग हो गया, तो वह सुपरवाइज तो कर लेगा लेकिन वह स्वयं खेती नहीं कर सकता है। इस केस में यह भी कवर हो जायेगा।

श्री एन०के० शुक्ला : चैर दो में जो 5 (बी) है, जिसमें अथॉरिटी बनाने की बात है, इसमें कौन-कौन मੈम्बर शामिल होंगे। इसमें हमारी प्रार्थना है कि इसमें कुछ प्रखर वैज्ञानिकों को जिनको इस विषय की जानकारी हो, कुछ किसान संगठनों के प्रतिनिधियों को और कुछ ऐसे एन०जी०ओज० को शामिल करें जो प्लान्ट वैराइटीज की रक्षा का सक्रिय कार्य कर रहे हों।

सभापति महोदय : किसान और किसान संगठन कहें तो ठीक रहेगा।

SHRI N.K. SHUKLA: Then, on page 5 in clause 6, it is mentioned "No act or proceeding of the Authority shall be invalid merely by reason of any vacancy in or defect in the constitution". This requires to be clarified. Any vacancy does not specify the number. At least the majority should be there. At least 50 per cent of the members should be there.

MR. CHAIRMAN: The word used here is "any vacancy". Any vacancy means only one vacancy, it does not mean many vacancies.

श्री एन०के० शुक्ला : इसको आप रिव्यू कर लें। यह लीगल समस्या है Any defect in the appointment of a person acting as the Chairperson is a legal term.

सभापति महोदय : मान लो कि आपने टैक्नीकल बात को लेकर कहा कि इसके तो चेयरमैन को ठीक से अपाइंट नहीं किया गया है, इसलिए इस काम को बंद कर दो—तो यह बात नहीं चलेगी।

SHRI N.K. SHUKLA: Then further, in the same chapter, in clause 8(2)(b), I want an addition to be made. My request is that the words "including indigenous traditional varieties, variants and mutants thereof" should be added. This is given in my note and I shall leave this copy here.

श्री एन०के० शुक्ला : चैर 4 का नम्बर 14 में सैकिड जो वाक्य है उसमें वैरायटी के बाद ऐंड फार्मर्स वैरायटी जोड़ दिया जाए। इससे वह क्लीयर हो जाएगा।

सभापति महोदय : एक्सटैंड वैरायटी तो फार्मर्स की है।

श्री एन०के० शुक्ला : इससे थोड़ा और क्लीयर हो जाएगा।

श्री राम प्रसाद सिंह : जितने प्रकार के जीन्स बढ़ाए जाएंगे वे फार्मर्स के लिए होंगे।

सभापति महोदय : पुरानी जितनी एक्सटैंड वैरायटी हैं, वह किसी और की नहीं हैं। वह देश और फार्मर्स की है।

श्री राम प्रसाद सिंह : उसमें सब लोग इनक्लूड हो जाते हैं।

श्री एन०के० शुक्ला : पेज 7 पर चैप्टर 14 का नम्बर 3 है। इसमें टाइम दिया गया है। क्या अलग-अलग टाइम देना जरूरी है? मेरे ख्याल में सभी के लिए एक साल रख सकते हैं।

SHRI GOVINDAN NAIR: This is to establish the integrity. It should be considered new only if it has not been accepted for one year. In India it takes four years. In any other country this is for quality or novelty or newness.

सभापति महोदय : वह तो पहले से है।

श्री राम प्रसाद सिंह : यह भारतवर्ष में एक वर्ष के लिए है। अमेरिका या रूस में जाने के लिए 6 या 4 वर्ष का समय रखा गया है।

SHRI R.K. TRIVEDI: It is true of distance. Whatever it becomes known in the public, if it is known in market for four years, it has the same effect that it is known in public before six months or one year. It is due to distance.

श्री राम प्रसाद सिंह : बाहर जाने में समय लगेगा। इसमें समय बिल्कुल ठीक रखा गया है।

सभापति महोदय : इसमें ट्री और वाइन्स का अलग-अलग है।

DR. S.D. SINGH: Sir, my submission is that if this variety is developed for India, novelty will be considered. It should be one year from here. It will take time to spread in other countries. Then we can establish it. It takes three times more time for propagation. In case of fruits it takes 3-4 years. So, we kept it for longer period.

श्री एन०के० शुक्ला : चैप्टर 15 में एप्लीकेशन फॉर रजिस्ट्रेशन है। इसमें कोई ऐसी मशीनरी होनी चाहिये जिस में आम किसान अगर रजिस्ट्रेशन कराना चाहता है तो उसकी मदद हो सके। अभी कोई ऐसी मशीनरी नहीं है जो उनकी सहायता कर सके।

सभापति महोदय : उनके लिए ऑल इंडिया किसान सभा है। आप उनकी मदद करेंगे।

श्री एन०के० शुक्ला : कहीं जिम्मेदारी डालनी चाहिए। वरना आम किसानों को पता नहीं लगेगा कि कहाँ एप्लाइ करना है, कहाँ रजिस्ट्रेशन करना है?

सभापति महोदय : डिफरेंट पॉलिटिकल पार्टीज के जितने किसान सैल हैं, वे इस काम को कर सकते हैं। सरकार चाहे जितना इनके लिए कर ले लेकिन किसानों में अवेयरनेस जरूर होना चाहिये। सरकार को इनके धू सब काम करना पड़ेगा। मुझे ऐसा लगता है कि इन लोगों को अधिक काम करना पड़ेगा।

श्री एन०के० शुक्ला : इस बारे में रीजनल और डिस्ट्रिक्ट लैवल पर कुछ सरकारी मशीनरी होनी चाहिए वरना काम किसान करेगा और दूसरे लोग इसका इस्तेमाल करेंगे।

सभापति महोदय : सरकार की कोई ऐसी संस्था होनी चाहिए। The Government should give some financial assistance to the NGOs who will like to devote themselves in such a work. There are so many technicalities involved in the registration and for the purpose of filing of the application form that it is a very difficult thing. There are so many very very technical things which will be known, of course, to private researchers and research organisations but not to the farmers. Therefore, for the help of the farmers that facility should be available, Agricultural institutions and agricultural departments of the universities should help the farmers for filing the applications.

सरकार इनफ्रास्ट्रक्चर क्रिएट करें और छोटी-मोटी मदद करे। सरकार एन०जी०ओज० के माध्यम से इसे करवा सकती है। इनकी मदद जरूर करनी चाहिये।

श्री एन० के० शुक्ला : थोड़ा प्रोसेस करने के लिए और एप्लीकेशन को आगे बढ़ाने के लिए कुछ इन्तजाम करना चाहिए।

सभापति महोदय : यह एक अच्छा सुझाव है।

श्री एन०के० शुक्ला : चैप्टर 18 का थर्ड प्वाइंट देखें। "सेफ कीपिंग के लिए और मेंटेनिंग दी सीड्स फॉर फर्दर रिप्रोडक्टिविटी" की किसी सरकारी मशीनरी के ऊपर जिम्मेदारी डालनी चाहिए।

सभापति महोदय : जीन फंड और बैंक बन रहा है। वह यही काम कर रहा है।

इन सारी चीजों से कोई बाहर न हो और जीन्स को मेंटेन करेंगे।

श्री एन०के० शुक्ला : एक स्पेशल जिम्मेदारी होनी चाहिये।

DR. GAUTAM: The National Bureau of Plant Genetic Resources will maintain one sample of all the registered varieties of germplasm. So, that is the repository which will be the referral point for any purpose. That can also facilitate further retrieval of the material.

श्री एन०के० शुक्ला : एक्ट में इसकी गुंजाइश कहां है क्योंकि यह प्लांट वैरायटी एक्ट फार्मर्स राइट्स है। इस एक्ट के साथ किसी की जिम्मेदारी तो होनी चाहिये।

सभापति महोदय : फार्मर्स राइट्स के अलग चैप्टर में देंगे। उसमें यह पाइंट दे सकते हो। जो वैरायटी डेवलेप होगी, उसके प्रोटेक्ट, मेंटेन करने का all possible steps will be taken. आप ला रहे हैं तो लिख लेने से ठीक रहेगा।

श्री एन० के० शुक्ला : इसका मतलब यह है कि एक मैकेनिज्म निकाले जायेंगे। अब क्लॉज 26(7) देखें।

MR. CHAIRMAN: Clause 26(7) says:

"The amount of benefit sharing determined under this section shall, on a reference made by the Authority in the prescribed manner, be recoverable as an arrear of land revenue by the District Magistrate within whose local limits of jurisdiction the breeder liable for such benefit sharing resides."

श्री एन०के० शुक्ला : यदि डी०एम० को किसी से वसूलना है as arrears of land revenue इसकी कोई जरूरत नहीं है।

सभापति महोदय : इसकी जरूरत नहीं है, यह कैसे लेगा? वैसे आपका कहना ठीक है कि यदि किसी ने कोई चीज देनी हो, देश में सारे कानून हैं, उसमें प्रोवीजन है। इस एक्ट में नहीं दें। अभी फर्क नहीं पड़ता है। नहीं दें तो अच्छा है। आप बताइये।

श्री गौतम : ब्रीडर से बेनेफिट शेयरिंग लिया जायेगा, किसान से नहीं।

सभापति महोदय : वैसे भी अगर कोई किसी की चीज ड्यू हो तो नहीं देते हैं। उसका बाकायदा एग््रीमेंट होता है, नहीं देगा। लिखने की बात नहीं है। There are so many ways through which money can be recovered. इसकी लिखने की क्या जरूरत है। इसको लिखने से कोई फायदा नहीं हो रहा है। किसान के ऊपर कैसे सख्ती की गई।

श्री एन०के० शुक्ला : इससे किसानों के साथ थोड़ा अपमान होगा, क्योंकि प्राकृतिक ब्रीडर तो किसान नहीं हैं।

सभापति महोदय : आपका सुझाव है, इस पर सरकार विचार करेगी।

श्री एन०के० शुक्ला : अगर कोई वसूल करना है तो कोई दूसरा रास्ता निकालिए।

श्री एन०के० शुक्ला : आपसे शुरू में रिव्वैस्ट किया था कि उरूग्वे राऊंड को यहां नोट करने की जरूरत नहीं है। We are not for them. We are for our peasants, our plants and our varieties.

Then, on page 15, in clause 31, there should be added, 'seeds and varieties' after farm produce.

Then, there is a proviso to clause 31 which says:

"Provided that a farmer shall not be entitled for such right in case where the sale is for the purpose of reproduction under a commercial marketing arrangement."

What is this?

सभापति महोदय : इसको थोड़ा एक्सप्लेन करना पड़ेगा। इसका अर्थ यह है कि किसान जो रिप्रोड्यूस करेगा, फिर पैकिंग करके कम्पनी का नाम लिखकर कि कौन और कहां किसान के सीडमेंस हैं, उसमें नहीं बेच सकता है या किसान आपस में सेल कर सकता है। He can sell it in that form. He can exchange and sell also. But you are right that we have to give some detailed explanation to it so that it may not be exploited and the farmer may not be harassed. This is what you want.

श्री एन०के० शुक्ला : मेरी रिव्यू है कि इस वाक्य की कोई जरूरत नहीं है, अगर कंपनी का कोई इंटेस्ट प्रोटेक्शन करना है तो क्लीयर होना चाहिये कि एक कम्पनी का प्रोडक्शन हो और उस पर दूसरे दावा नहीं करे लेकिन उस प्रोवीजन का इस्तेमाल करके किसी भी किसान के खिलाफ कुछ दावा कर दें, इस पर रोक लगाना है।

सभापति महोदय : इस प्रोवीजन को लेकर मान लीजिये कि किसी को एक विंटल बेचना है, वह कोर्ट में ले जा सकता है तो इसका डिटेल्स देना पड़ेगा। उस कम्पनी के नाम के प्रचार के साथ उसकी पैकिंग के साथ नहीं बेच सकता है वह खुला बेचना चाहे तो बेच सकता है। यह क्लोज मेन में लिखा है।

श्री एन०के० शुक्ला: वे पैकिंग नहीं करेंगे लेकिन उसने जो अनाज, बीज या पौधा पैदा किया है, उसको सेल करने का राइट क्या किसान को नहीं होगा?

सभापति महोदय: अच्छा, अब तक तो छोटे की बात थी, अब मान लीजिये कि कोई बड़ा किसान जिसके पास 500 एकड़ या 200 एकड़ जमीन है वह अपना सीड पैदा करता है, वह उठकर बेचता है। इस प्रकार जिसने वैरयटी निकाली उसका काम खत्म हो गया। उसमें क्वांटिटी के बारे में या कोई और चीज के बारे में डिटेल्स देनी पड़ेगी।

He can sell it in that form. He can exchange and sell also. But you are right that we have to give some detailed explanation to it so that it may not be exploited and the farmer may not be harassed. This is what you want.

श्री एन०के० शुक्ला: इस पर सोचना है और इसे डिलीट करना चाहिये और आप दूसरी तरह से कुछ किसानों के अधिकारों को स्पष्ट करें।

सभापति महोदय: जब किसानों के राइट्स का चैटर बनाने वाले हैं और जब वह आयेगा तो आप सब एक्सप्लेनेशन दे दीजियेगा।

SHRI N.K. SHUKLA: Clause 34 says:

“Save as otherwise provided in this Act, no person shall—

(a) produce or cause to be produced.....”

What is the need of it?

अभी हम डिसकस कर रहे थे, लगभग उसी पर एक्सप्लेनेशन फर्दर और निगेटिव लाइन में है।

सभापति महोदय: किसी वैरयटी के लिये आपको करना ही पड़ेगा। किसान इतना कर सकता है वह जो रिप्रोड्यूस करते हैं इसको एक्सचेंज कर सकता है, शेयर कर सकता है सेल कर सकता है, लेकिन कामर्शियल ऐरेंजमेंट में नहीं, उसमें किसान वाले में केवल दे दें लेकिन संख्या 34 में जो कुछ किया गया है प्लांट वैरयटी में उसको क्या मिलेगा फिर रिप्रोड्यूस होता रहेगा, बिकता रहेगा।

You will have to do this because this is the basis of protection of a variety. It is not contradictory. For a farmer, that will be an exemption in a way. The details of what sort of exemption it will be, will be given in the chapter on farmer.

श्री एन०के० शुक्ला: यह क्लैरिफिकेशन कीजिये कि यह किसान के लिये है या सीड्स कम्पनी के लिये है?

SHRI N.K. SHUKLA: It is too general. एक किसान एक एकड़ से दस एकड़ तक का मालिक होगा अन्यथा वह अबसेटी लैंड लोर्ड या बड़ी कंपनी होगी। इस क्लौज का फायदा बड़ी कंपनी उठाएगी।

सभापति महोदय: समिति इस बारे में चिन्तित है। We will do something about it.

श्री एन०के० शुक्ला: पेज 19 में जो क्लौज 48 है इसका भी डिलीशन या प्रापर एक्सप्लेनेशन होना चाहिए।

सभापति महोदय: इसमें बताइए क्या चीज़ ठीक नहीं है? इसमें आपको जो कनफ्यूजन है वह बताएं।

श्री एन०के० शुक्ला: इसमें कनफ्यूजन यह है कि कोई मैकेनिज्म तो हमने किया नहीं है। अगर हम नीचे मैकेनिज्म नहीं करते हैं तो किसान के नाम पर जो कंपनीज़ हैं, उन्हीं का रजिस्ट्रेशन होगा और उनको प्रोटेक्शन मिलेगा।

सभापति महोदय: 48 में राइट्स आफ कम्युनिटीज के बारे में है।

श्री एन०के० शुक्ला: इसमें फर्दर एक्सप्लेनेशन और किसानों के हितों की रक्षा की जरूरत है।

MR. CHAIRMAN: There should be tribunals for this.

श्री एन०के० शुक्ला: इसमें किसी सिविल कोर्ट को राइट नहीं है, यह ठीक नहीं है। हमारा प्रस्ताव है कि some type of judicial authority should be there.

सभापति महोदय: अभी लोगों की राय आई है कि सिविल कोर्टों में इस केस को डालेंगे तो सिविल कोर्टों के पास इतने केसेज़ हैं कि दस साल में नंबर नहीं आता है। वहां झगड़े में रहेगा। जो प्रोविजन किया है कि सिविल कोर्ट के बजाय हाई कोर्ट का, लोगों का कहना है कि वह भी गलत है। हाई कोर्ट में दस साल नंबर ही नहीं आता है और डिस्ट्रिक्ट कोर्ट में और भी बुरा हाल है।

श्री एन०के० शुक्ला: फिर भी किसी ज्यूडिशियरी कोर्ट को अपील का अधिकार देना चाहिए।

सभापति महोदय: ट्रिब्यूनल बन जाए तो कैसा रहेगा?

श्री एन०के० शुक्ला: वह ठीक है, लेकिन चैक एंड बैलेंस के लिए कंप्लीटली कोर्ट के दायरे से अलग करना ठीक नहीं है।

सभापति महोदय: इसके लिए एक ट्रिब्यूनल हो, ऐसा कर सकते हैं।

SHRI AJOY CHAKRABORTY: There should be a special court with summary power.

सभापति महोदय: यह जो अथारिटी हम बना रहे हैं, रजिस्ट्रार को पावर है। वैसे कोर्ट में जाने की संभावना होगी तो गड़बड़ होगी।

श्री एन०के० शुक्ला: रजिस्ट्रार और अथारिटी बहुत पावरफुल कर दिया गया है।

MR. CHAIRMAN: Whatever is within the jurisdiction or the authority of the registrar should not go to the civil court. It will create problems and it will not help farmers. नहीं तो डबल ज्यूरिस्ट्रिक्शन हो जाएगा तो और समस्या होगी।

श्री एन०के० शुक्ला: हाई कोर्ट या सुप्रीम कोर्ट दीजिए। किसी कोर्ट को तो इंटरवीन करने का मौका दीजिए।

सभापति महोदय: इससे जो पावर होगी उससे समस्या होगी। हाई कोर्ट की ज्यूरिस्ट्रिक्शन दे रखी है लेकिन जब हम स्टेट्स में गए तो लोगों को ऐतराज रहा कि हाई कोर्ट में बड़ा डीले होता है। Tribunal is meant only for dealing with such cases and for looking after other things. It should go to the tribunal. They can decide the cases early. Whatever is within the jurisdiction or the authority of the Registrar should not go to the civil court.

जैसे सर्विस ट्रिब्यूनल है, दूसरे ट्रिब्यूनल है, उसमें लोगों का कहना था कि हाई कोर्ट के बजाय ट्रिब्यूनल में जाएं।

SHRI N.K. SHUKLA: Some judiciary should be there.

SHRI AJOY CHAKRABORTY: Criminal courts are a lengthy process. Special Courts with summary power would be a better idea.

श्री राम प्रसाद सिंह: ऐसा करने से बड़ा लंबा प्रोसेस हो जाएगा और किसान पर बोझ पड़ेगा।

श्री एन०के० शुक्ला: कोई ट्रिब्यूनल हो लेकिन उसके फैसले के खिलाफ अपील सुनने के लिए कोई न कोई ज्यूडिशियरी कोर्ट तो होनी चाहिए।

सभापति महोदय: इस बारे में एक सुझाव भिजवा देंगे। Thank you very much. We are grateful for your very valuable suggestions.

(The Witness Then Withdrew)

1556 hours

WITNESS EXAMINED:

1. Shri Afsar H. Jafri, Research Foundation for Technology and Ecology, New Delhi.

सभापति महोदय: आप इस बिल के बारे में अपने सुझाव और राय बताइए।

SHRI AFSAR H. JAFRI: Sir, I would like to first thank the Committee for inviting the Research Foundation to give the presentation. We are very grateful to you. I would like to do my submission in three parts. The first part will focus on basically the TRIPS review and whether we should have this particular Act in the coming days or it can wait.

As you know, TRIPS itself is under review, and there are many countries who are demanding for the extension of implementation of TRIPS by five years.

The African countries and the Central American countries are the prominent ones who have submitted their proposals to the TRIPS Council for delaying the implementation of the TRIPS agreement. After the failure of the Seattle talks, the demand for extension of TRIPS has become more focussed and there has been more pressure. It has been accepted by the Director General of the WTO that there is a demand for the extension of the TRIPS agreement. They are demanding an extension for five years. The deadline was for 1st January, 2000. They are demanding it to be 1st January, 2005.

The second important thing is the relation of the PVP Act with other laws, like the Bio-diversity Act, the Plant Patent Act etc. Recently, the Government has directed the Bio-diversity Act under the obligation of the Convention on biological diversity and under that there is an exception recently introduced that this particular bio-diversity Act will not apply to the PVP Act and the recognition of the farmers' rights and community rights will not be provided for in that particular bio-diversity Act.

MR. CHAIRMAN: Your suggestions are with us. This, of course, will add to whatever you say here.

SHRI AFSAR H. JAFRI: Sir, coming to the Bill, I would like to stress on two to three points. The very first thing is that the Uruguay Round should be deleted from the Bill because the particular article under which this Act is being made, that is article 27(b), is under review. This is the first point.

The second point is that clause 2(c) which provides for the definition of a breeder, says that a breeder is a person who can breed, develop or discover. This is for the first time that the word 'discover' is used and provided for in the TRIPS. We demand that this word 'discover' should be deleted. It is because it would lead to licence to pirate indigenous varieties.

The other important point about which I would like to stress is related to clause 2(j).

MR. CHAIRMAN: Shri Jafri, we know what is there is clause (2j). You want to refer to 'few other persons' that is, either he cultivates himself or he supervises cultivation. But he can only supervise. He will not cultivate.

SHRI AFSAR H. JAFRI: He will only cultivate. He cannot be a breeder.

MR. CHAIRMAN: A farmer can be a breeder also, In any case, even if he is a farmer he would have to take the help of others. He cannot do everything himself. We would have to add this clause. Otherwise, what would a farmer do?

SHRI AFSAR H. JAFRI: We should introduce the definition of farmers' authorities. In this particular clause, clause (2), which deals with the definition, it refers to the traditional crop variety that which are the products of farmers' breed. In clause 3(b), we should also include eminent

scientists of proven track record and NGOs who are engaged in the task of agriculture as well as representatives of the farmers.

MR. CHAIRMAN: You are right. We are thinking about it.

SHRI AFSAR H. JAFRI: Sir, the most important thing that I would like to say is about article 26(2). It deals with benefit sharing. In this particular Act, for the first time, the farmers innovation for breeding is being rewarded through arrears of land revenues. It is a very long process. We would suggest that instead of having this arrears land revenue, the commercial use of farmers' communities and knowledge and biological resources should be rewarded that certain percentage accruing from it. It should be generated through local communities.

Another important point that I would like to make is related to farmers' rights, Under this particular clause 31, it says that the farmer has only been conservers and cultivators. It has not been recognised as a breeder. Now, 80 per cent of our population belongs to the farming community.

MR. CHAIRMAN: What we are thinking of is that we should add a separate chapter for farmers' rights and whatever is included has also to be included in clause 31. We have a feeling that not much has been said about the rights of the farmers in this Bill. You are very right about clause 31. We are going to give more authority and rights to the farmers.

SHRI BIPLAB DASGUPTA: You could give your recommendations to the hon. Chairman of the Committee and we would look into those recommendations.

SHRI AFSAR H. JAFRI: Now, instead of farm products, the Act should say about seeds and propagative material. The words 'farm produce' should be replaced.

MR. CHAIRMAN: You are right. It is not sufficient.

SHRI AFSAR H. JAFRI: We think, clause 48 should be deleted completely. It is because it is an abuse on the farmers. It erodes the rights of the farmers instead of protecting our agro-bio-diversity. We want this to be deleted.

We have a sort of a grower agreement instrument under which the growers in USA are not supposed to save or exchange seeds. This agreement is the Mon Santo Round Up Ready Soyabeen.

Sir, these are the few things that I wanted to submit before the Committee.

SHRI BIPLAB DASGUPTA: Is this a copy of the agreement?

SHRI AFSAR H. JAFRI: Yes, Sir.

MR. CHAIRMAN: He has worked very well.

In the new draft, you have not given a separate chapter on farmers' rights.

SHRI N.K. SHUKLA: We will work on it, Sir.

DR. BIPLAB DASGUPTA: A copy of the agreement between Monsanto and some farmers, about which Shri Shukla has mentioned in his presentation, be circulated to the members of the Committee.

MR. CHAIRMAN: We are taking a copy of it and we will include it.

(The witness then withdrew)

1612 hours

WITNESSES EXAMINED:

1. Shri B.K. Keayla, Managing Trustee, Centre for Study of Global Trade Systems and Development; and Convenor, National Working Group on Patent Laws.
2. Dr. Biswajit Dhar, Co-Convenor, National Working Group of Patent Laws.

सभापति महोदय: श्री बी०के० कैला एवं डा० विश्वजीत धर इस समिति में आपका स्वागत है। आपके विचार तो हमें लिखित रूप में प्राप्त हो चुके हैं, लेकिन फिर भी जो खास-खास बातें हैं उन्हें आप हमें बता दीजिए।

SHRI B.K. KEAYLA: Hon. Chairman and members of the Joint Committee, we are grateful to you for giving us this opportunity to place our views on Protection of Plant Varieties and Farmers' Rights Bill, 1999 before the Committee.

My colleague Dr. Biswajit Dhar is a senior economist. Both of us are associated with a number of well-known organisations. We have been analysing GATT and WTO issues for the last over 12 years. During this period, we have had tremendous opportunity of interaction on these issues with knowledgeable people in India and abroad. We have also made presentations in large number of national and international seminars, conferences on implications of TRIPS agreement and protection of plant varieties. Dr. Biswajit Dhar recently visited a number of places in Europe interacting with farmers' associations and other knowledgeable people on the subject. He will be giving the feel of European people on the subject.

We plead for a pragmatic approach to these issues to safeguard our national interest. TRIPS agreement does provide possibilities of safeguards. The same should be extensively applied in the national legislation under consideration. There are technical issues to provide a legal system for protection of plant varieties and also there are wider public interest aspects that are quite important which both of us would try to present before you.

Coming to the transitional period, article 27(3)(b) of the TRIPS agreement provides for evolving *sui generis* a patenting system to protect plant varieties. If we try to interpret Article 65 of the TRIPS agreement sub-articles 2 and 4 when we do not have any system for protection of plant varieties today, then the transitional period as such should be ten years and not five years on the basis of which the Government has proposed this Bill. Further this article, 27(3)(b) is being reviewed because it was provided in the same article that after four years of WTO coming into being this sub-article would be reviewed. That review is on and we should have waited for the review's outcome. The third point is that a number of developing countries have approached WTO for extension of the transitional period. This matter is under consideration and a report has been made by the DG, WTO to the General Council. The General Council in February meeting considered this aspect and finally, probably they will be considering it in the next meeting in the month of May. There may be extension of period. So, from these three points of view, we submit that there should be no haste in the enactment of this law so that we are able to carry other countries with us.

Another important aspect is, 'Are we ready to implement such a law?' There are thousand and lakhs of varieties which are involved. If we do not have the codification at existing varieties, how are we going to examine the claims? The claims are supposed to be for novelty. Is it possible for us to judge today that a particular claim is new or this one is old? If it is old, it is in public domain and for that reason a claim cannot be registered and a new claim cannot be created. So, from that point of view, we are not yet ready. When we have five years' time, we should try to avail of that time. In the meantime we should try to build the codification.

Some African countries led by Kenya submitted a memorandum on a number of aspects of this issue of plant varieties to the WTO. That matter is also under consideration. In fact, we should also be party to such kind of views and we should be pressing the issues for review of TRIPS and creating a model which should help countries like ours whose economy is based on agriculture. So,

we should see whether it would be a system which would be relevant for us? That is the kind of situation we should be creating.

Now, Sir, coming to UPOV convention, we made an attempt to become a member of UPOV convention of 1978. If we become a member of UPOV convention, we will have to implement provisions of that convention and some of them are not relevant to us and not in our public interest. There is one important aspect about the UPOV convention. This is a convention that has been framed by breeders in advanced countries. It is to protect their interests that they have gone in for this convention. Basically it is a few major companies who are involved in this kind of framework. There was UPOV convention 61, then 78, and then 91. They will go on creating newer and newer conventions so that they are able to get more and higher safeguards for themselves.

Before I come to the actual clauses of the Act, I would request my friend Dr. Biswajit to give you a feel as to how people in Europe are feeling about this.

DR. BISWAJIT DHAR: Sir, thank you for giving me an opportunity to express our views. I had interacted with a number of farmers' organisations in Europe. They are all concerned about the problems that arise out of the plant breeders right system which is there now. Most of the European countries have accepted UPOV, 1991. There the farmers have less scope for manoeuvrability. They are fighting for their very survival as farming communities. They are facing major problems. That is why the European Union tends to take a stronger position regarding agreement on agriculture in WTO. Problems arising out of this whole technological push coming from the companies is another dimension of the problem that the farmers are facing. Shri Keayla stated some reasons as to why this Bill should not be rushed through. I would like to mention another reason. In why it should not be rushed through. You all know that the convention of biological diversity allows sovereign States to exercise their rights over their biological resources. Under that legislation we are in the process of enacting bio-diversity legislation now. We gather that that Bill is in some stage of development. Now, our view is that we should protect out bio-diversity. That should be the first step. If we are not able to protect our bio-diversity, then it would be difficult for us to establish our rights over our resources. The CBD allows us to get into the process of benefit sharing. We have to establish our sovereign rights over our resources and then only should we go ahead and give the rights to the breeders. That, I think, the Committee should consider.

MR. CHAIRMAN: Could you say very briefly about the views of the farmers of the European Union?

DR. BISWAJIT DHAR: The farmers there are quite agitated about the system that is existing there. For instance, in some countries the farmers have to enter into a contract with the companies that they would not violate the rights of the seed companies in any way. As I said, in Europe they have a stronger system of plant varieties protection, so the rights of the breeders are stronger there. They feel that this process should be reversed. That is why there is a lot of support for the farmers' organisations from other countries like India who are taking up this issue upfront. That is the reason they want to support us in the WTO convention in Geneva because they want the developing countries like India to try and see that this process is reversed.

DR. BIPLAB DASGUPTA: I think we will experience these problems after ten or fifteen years. At present it is not a problem for us. But for them it is a problem. I would like to ask about genetical engineering. So far it is not a problem here. But in America and Europe it is already an issue. One of the questions that is agitating the farmers in Europe is the genetically modified seeds coming from other countries. You tell us more about the genetical engineering. How it should have a bearing in the law that we are drafting because after ten or fifteen years it would become an issue?

DR. BISWAJIT DHAR: Farmers there realise that they have got into a slippery slope. The companies have got a kind of stranglehold on them. As a part of this whole process all the companies try to capture the markets and manoeuvre the whole production process. Consumers are also very worried. The interests of the consumers and the farmers have come together at some point of time. That is why one finds a stronger articulation of these concerns in Europe as compared to United

States. In United States they do not have farmers. But in France and in Germany though their percentage in the working population is small, in some pockets they are quite influential.

DR. BIPLAB DASGUPTA: The consumers there are more conscious with the environmental issues. They do not like genetically modified foods. They want the shops to declare that these are the foods which are genetically modified and which are not.

Another issue is the food industry. Its relation with agriculture is undergoing a change. Earlier, food was the product and agriculture with the main input. Now, it is changing. No longer the farmers produce food for the consumers. The farmer himself has become one of the many inputs, like hydro-carbon, bio-mass etc. They have all become inputs to the food industry. Now, the food industry determines how much protein should it contain, how much calories should it contain etc., and then produce artificial food. So, the nature of relationship between the farmer and the consumer is undergoing a change. If this trend continues, then what would that mean to our agriculture and consumer?

MR. CHAIRMAN: Shri Dhar, you have talked about very important issues. You would like to say many more things. We would listen to them. Shri Keayla stated that it should not be rushed through. If it is extended for another five years, the situation might change. We will see if anything can be done in that direction. We will think about that.

That is also to be reviewed. There are so many things. So, we will think about that also. But, now in brief, could you throw some light on what is to be done with regard to the clauses which are, at present, in the Bill?

SHRI B.K. KEAYLA: Sir, I would first like to deal with the section which deals with the scope of protection of plant varieties. Section 13 says:

“Any person specified in Section 15 may make an application to the Registrar for registration of any variety of such genera or species as specified under sub-section (2) of Section 29.”

It has been indicated that it covers all varieties. Now, whether we should include all varieties, is a matter which has to be thought of. Even the international conventions have indicated that we may start it with 15 varieties or so. Even they recognise this aspect that to start with, no one should include all the varieties. We have provided in the law to cover all the varieties. Any person can apply for any variety. It would be very dangerous because we are not at all equipped to handle this kind of work.

MR. CHAIRMAN: This issue has come up earlier also. The Committee will consider this.

SHRI B.K. KEAYLA: Sir, I would like to quote one case of USA. There an application was made on biotech which runs into four lakh pages and the earlier record was in 82,000 pages. Are we equipped to examine this kind of application? Does such a machinery available with us? So, make it for limited number of varieties so that we are able to cope up with it. To start with, we could include such varieties, like flowers, ornamental plants, etc. These kinds of varieties could be taken at the first instance.

The article 29 says that Government will notify but in public interest. Now public interest aspect notification is different than proper exclusion or starting with a limited number of varieties. This aspect must be considered, if at all we have to go ahead with this kind of legislation at this stage.

MR. CHAIRMAN: We will do that.

DR. BISWAJIT DHAR: Sir, I want to say something in this regard. Some problems could arise in the area of environment and bio-diversity when we have breeders' rights by way of legislation. The companies will go into the market and they are going to make some impact on diversity. So, we should actually give some time to test the law. We should start with limited varieties.

Another aspect is that what kind of impact it will have on the price of seeds. The studies in the United States have shown that the prices of seeds have actually gone up after the breeders rights have been introduced.

MR. CHAIRMAN: The matter regarding price fixation would be kept in mind. I think, we will not permit any company or any breeder or any person to charge whatever he wants. That is not possible. We will look into that.

SHRI B.K. KEAYLA: Sir, section 28 deals with exclusive rights which will be available to breeder. Now, in those rights, right of export has also been included. If we look at the intellectual property right laws, exclusive right of export has not been included. In our patent system and plant Act, 1970 or the amendment which has been proposed in the TRIPS also, there is no provision of exclusive right on export. This aspect of export has to be deleted. The other rights are inconsonance but this right of export is something which is beyond the normal scope. Some nations do provide for this. Normally, in IPR system, they do not provide for exclusive right on export. This aspect should be kept in mind.

Sir, section 31 deals with the farmers rights. Now farmers have been enjoying privileges from time immemorial. Now, we are binding them in rights and legal rights which they can enjoy and which they cannot enjoy. If we do that, there will be all kinds of problems. The farmers who have been enjoying all these privileges up till now, why should we bind them?

MR. CHAIRMAN: The Committee is of the view that since not much has been said about farmers' rights in this Bill, let us have a separate chapter exclusively for farmers.

SHRI B.K. KEAYLA: Sir, I would request you to kindly exclude the farmers from IPR system.

MR. CHAIRMAN: Why do you want this?

SHRI B.K. KEAYLA: Sir, the breeder has the right only till the product is with him. After he has sold the product, his right gets exhausted. Why the farmers should be brought into this domain? We have brought Indian farmers in this domain they run into lakhs. Generally, they are small farmers. The farmers in USA are very big. They can cope up with this kind of situation. They can handle the rights given to them and they can also handle the legal proceedings.

MR. CHAIRMAN: What to do then?

SHRI B.K. KEAYLA: We should totally exclude the farmers.

MR. CHAIRMAN: But, its title includes the word 'Farmers'.

SHRI B.K. KEAYLA: Sir, the title also will have to be changed.

MR. CHAIRMAN: What benefit would it accrue to the farmer?

SHRI B.K. KEAYLA: Sir, he will be totally free. He can use the seed; he can sell the seed; and he can exchange the seed.

MR. CHAIRMAN: If he is free to re-produce certain variety and sell it under commercial arrangement will that be proper? How to protect that variety?

SHRI B.K. KEAYLA: Sir, we are prepared to give all rights to the farmers. But why bring them under the right system?

MR. CHAIRMAN: Then the farmers could be exploited by anybody.

SHRI B.K. KEAYLA: Today, there is no system to protect them.

MR. CHAIRMAN: Should we not protect our scientists? Some varieties have been developed.

SHRI B.K. KEAYLA: We should protect new varieties. But so far as the farmers are concerned, we should leave them out.

MR. CHAIRMAN: How can you protect them if you allow re-production of seed varieties?

SHRI B.K. KEAYLA: Sir, there are different parties like breeder, universities, seed companies which are involved in it. Then there are farmers also. My submission is that you include others but not farmers.

MR. CHAIRMAN: So, you want that we should not put any restriction on the farmers here.

DR. BIPLAB DASGUPTA: There is a mistake in the assumption. You are saying that if we exclude the farmers, the farmers will continue to enjoy all the rights that they had traditionally. But, that will not be the case. The courts in India will interpret the law entirely differently. They will only ensure further protection of the right of the breeder and the farmer would be completely excluded.

SHRI B.K. KEAYLA: If you have a chapter on the farmers' right, it will be interpreted against them. We are using medicines. There is no right against us for using the medicine. The right ends after the patent holder sells his product. Similarly, here also, the variety is sold by the breeder right holder and after that his rights are exhausted. Why should his rights continue even right up to the farmer activity? Why bring in the activity of the farmer under purview? This is my submission. It is for you to consider whether this is possible or not.

MR. CHAIRMAN: This is a novel idea. You are the only person who has given it. We will certainly consider it.

DR. BISWAJIT DHAR: I want to submit on the farmers' rights the way they have been defined in the Bill. It is very dangerous.

DR. BIPLAB DASGUPTA: The Chairman is suggesting that there is a separate chapter. Supposing we keep the chapter on the farmers' rights, what should be there and what should not be there?

सभापति महोदय: ये तो कहते हैं कि आप इसका जिक्र ही मत करें। जो सदियों से किसान करता आया है, उसको करने दो। Do not talk of the farmer. Let him make use of all sorts of varieties available in the market. Let him produce them, sell them, exchange, share or do whatever he wants. They will have to tell us as to how to protect the new variety and how to protect the breeders who will come in the field and do not get any benefit out of it.

SHRI B.K. KEAYLA: He gets the compensation when he sells the variety in the market. That is my angle. Again and again a farmer has to go in for hybrid variety. But, there should be varieties like this which should be available to the farmers to exploit. It should be left to the choice of the farmers to go back to the original variety or original seed. It will be his choice.

सभापति महोदय: उसी में वन टाइम बात हो जाये तो वह होता जायेगा। आपके साथ हमें एकाध बार बैठना पड़ेगा, इन्फार्मली भी आपसे हमें डिस्कस करना पड़ेगा।

DR. BIPLAB DASGUPTA: In case we do not accept it, what will happen?

MR. CHAIRMAN: We will have to discuss things in detail with them because they have some novel ideas which deserve deep consideration and more interaction with them.

DR. BISWAJIT DHAR: There is an international process which is on by the FAO. There is an international undertaking on plant genetic resource where the farmers' rights have been defined. Farmers need to be rewarded for whatever they have contributed. I think that the farmers' rights definition here actually violates the process which India has been actively pushing. The farmers' rights actually mean that they have contributed something. What is defined here as farmers' rights is actually farmers' privileges which were available in 1978 also.

DR. BIPLAB DASGUPTA: Supposing you are given the task of drafting a chapters on the farmers' rights. Can you suggest something concretely and give it to us? Presently, we do not agree with whatever is there. It is actually misleading. But what we want is, suppose we go in for a farmers' rights chapter, then what should be there.

SHRI B.K. KEAYLA: Firstly you kindly tell us that this aspect of excluding them is rejected. We will certainly give you something. We want that the small farmers of this country who are running into lakhs should be excluded from the purview of this law. You want to bring them into some kind

of regulation. The only thing which can help them is to exclude them. Otherwise they would be brought into legal rigmarole.

DR. BIPLAB DASGUPTA: My impression is that basically this Committee is a pro-farmers committee, whatever may be the other political differences. The Chairman is a great fighter for the farmers' rights. If what you are suggesting is going to help the farmers, the entire committee will support it. We need to be fully convinced of that. We are not yet fully convinced about it.

सभापति महोदय: ये कह रहे हैं कि फार्मर्स के नाम पर तो ज्यादातर मੈम्बर यहां बने हुए हैं। अगर फार्मर ही चला जायेगा तो क्या होगा?

SHRI B.K. KEAYLA: If you think that farmers' rights would give them something, it is not going to be so. You are in fact taking away something from them by including them.

सभापति महोदय: यह बिल्कुल सही है। इनको एक बात कहनी है कि फार्मर का इस बिल में नाम लेने से फार्मर पर रैस्ट्रिक्शन आती है, उसको अधिकारों से वंचित किया जा रहा है, सीमित किया जा रहा है, उनको बांधा जा रहा है। इनका कहना है कि उसको इससे बाहर निकाल दो तो वे स्वतंत्र हैं, स्वच्छन्द हैं, उसको काम करने दो।

SHRI B.K. KEAYLA: I come to the important aspect about public interest, that is, compulsory licensing system. Here it is stated in Section 41. Before I come to that, I would like to read the objectives of the TRIPS in Article 7 there of which include even the *sui generis* system. The idea is to continue the promotion of technological innovation, transfer and dissemination of technology. IPR should be conducive to socio-economic welfare and balancing of rights and obligations. This is the objective of the TRIPS which has to be translated in the national legislation. Have we really achieved what is stated here? I would say that the formulation of the chapter on compulsory licensing is weak in so far as we are concerned. The first thing is, we are saying here that compulsory licence will be for a limited period determined by the authority. Compulsory licence is given to be co-terminated with the term of the right. If you create a right for twenty years, after a few years you give a compulsory licence, then it should be co-terminated with the term of the right which is with the right holder. It is not that you say that you have compulsory licence only for five or six years. That formulation is a wrong formulation and should not be there.

The other aspect is that you are providing for a very high powered committee. On that I will come later. When you are providing for a high powered committee, and that committee is going into all aspects and giving a compulsory licence, you have created a provision there that an appeal can lie with the High Court on this. The experience worldwide about the compulsory licensing system is that if you have a system where the possibility of court intervention is there, then it remains only on paper. The litigation can go on for any length of time. There should be no provision for the appeal against the licence.

Firstly, there should be no limitation on the period of compulsory licence. Secondly, there should be no provision for appeal. The third aspect is that the spirit of Article 31 in the TRIPS agreement, though it relates to industrial patents, should also be reflected in this. For that I have suggested in the memorandum that there should be an additional Section 41(A). I have given the formulation of Section 41(A). If you want, I can read it out.

Under compulsory licensing, the royalty has to be given to the breeder. If compensation is not specified in the law, as under the Patents Act of 1970, there is a provision of royalty of 4 per cent, there will be all kinds of contentions. But ceiling on royalty should be provided.

MR. CHAIRMAN: We are thinking on that and we are serious about it.

SHRI B.K. KEAYLA: Coming to appeals, we have created a chapter here where the appeals would lie with the High Court. Under other IPR laws, we have provided for tribunals.

MR. CHAIRMAN: We are very serious about that. In the High Court, there is so much of delay and nothing will come out of it. We are thinking that there should be tribunals which will deal only with cases arising out of farmers rights.

SHRI B.K. KEAYLA: Even as in the case of TRIPS Agreement, we should have a higher administrative authority.

MR. CHAIRMAN: We could agree to that.

SHRI B.K. KEAYLA: Coming to Section 8, the authority is being created to regulate the law also for developmental purposes. Why should the authority be entrusted with the developmental aspect?

MR. CHAIRMAN: This point has been raised earlier also. The rights of the authority should be limited only to those registered ones. Otherwise, there will be no end to it. If all administrative things are also to be given to the authority, then there will be too much of work. In fact, the work should be reduced. So, we are thinking on that aspect.

SHRI B.K. KEAYLA: The first suggestion which I made was that we should go with limited number of varieties. For that purpose, there is no need of a big authority like this. We could have a controller-general.

The last point is about the preamble. No legislation is drafted saying that it has been provided as we are under obligation of TRIPS. It is said so in the preamble. That kind of formation should not be there.

MR. CHAIRMAN: We agree with it. We should not show that we are working out of helplessness.

SHRI B.K. KEAYLA: We should straightaway say that it is for developmental reasons that we are going to have a law.

MR. CHAIRMAN: That is very important. That sort of drafting should not be there.

SHRI B.K. KEAYLA: Even the patents law does not say so. I again repeat about the transitional period. We should not act in haste.

MR. CHAIRMAN: You have worked hard. We will also get your help if we need it. We may discuss with you in detail, if needed.

(The witnesses then withdrew.)

WITNESSES EXAMINED:

1. Shri R.S. Arora, Secretary-General, SAI, Managing Director, M/s Century Seeds Private Limited.

2. Dr. J.S. Sandhu, Director, M/s Proagro Seeds Company Limited.

MR. CHAIRMAN: Mr. Arora, have you given your written submission to us?

SHRI R.S. ARORA: I am submitting just now. But we are not sure of the Hindi version of it.

MR. CHAIRMAN: That will do.

SHRI R.S. ARORA: We have given some suggestions. We have told the existing laws and what we want to propose.

MR. CHAIRMAN: We are already thinking that the authority should consist of persons from the Seed Association, seed growers as also the farmers and breeders.

SHRI R.S. ARORA: Thank you very much. The second point is, instead of 'uniform', we could use 'homogenous'. The third point is about the system of testing these materials because the law is not very clear on testing of the materials and does not provide for ample funds for testing through an independent system. We have requested that an independent system may be created and accordingly, fund allocation should be made.

MR. CHAIRMAN: That is a good suggestion.

SHRI R.S. ARORA: Fourthly, we have mentioned that the deposition of parental lines which have to be given at the time of testing should be done away because it is the most secret material of any organisation.

MR. CHAIRMAN: If we do not give it, then how will the benefit go to the persons from whose variety you have derived the genes?

SHRI R.S. ARORA: These parental materials have been developed over the years using different combinations. They are not used as such but they are actually basic secret materials of any organisation.

DR. J.S. SANDHU: It is at the time of registering of the variety that the parental material is also required to be given to the gene bank. We are trying to say that under the clause of compulsory licensing, the authority has got the right to ask the breeder to give the parental lines of the required quantity so that somebody may be given the licence to produce it. At the time of registering, this should be done. There is already a provision for this under compulsory licensing.

MR. CHAIRMAN: But when the benefits are to be shared, you develop a variety the parents of which are a property of someone. So, the benefit should also be shared by that person. We should know from where you have taken all that.

DR. J.S. SANDHU: We totally agree with you. We are simply saying that we are protecting a variety. So, the seed of that variety is being protected and not the parents. However, under compulsory licensing, there is a provision for calling for the seed of the parents.

MR. CHAIRMAN: So, that will not remain a secret, if it comes under compulsory licensing.

DR. J.S. SANDHU: It will remain a secret and the breeders will get the benefit out of it.

SHRI R.S. ARORA: About the extant variety, this provision of extant variety has never come under any Act. Most of the Acts do not provide for that. The extant varieties have been developed mostly by the public sector system and the Act is proposing to give them a kind of protection with retrospective effect. This is discrimination because it does not give the same protection to the varieties developed by the private sector over these years.

MR. CHAIRMAN: There is nothing as private as such in our country.

SHRI R.S. ARORA: Sir, you are welcome to come and see. We can show you how much investment we are making in plant varieties. Extant varieties do not qualify in the world over because the whole Act is about the development of new varieties. Novelty is the main criteria.

MR. CHAIRMAN: Then others will make use of it. If you do not register, then you cannot prove that this is ours.

SHRI BIPLAB DASGUPTA: This is the biggest success of our country in the field of agriculture. Production has gone up thrice in 30 years based on these varieties due to the green revolution.

सभापति महोदय: इसका रिकार्ड हम रखें, जीस बैंक में रखें। So far as registration is concerned, we may not include that in registration we include only the new varieties.

SHRI R.S. ARORA: That is what we are looking for. Next, although we would like to have an effective Act and reasonable provisions for implementing them, we have just said that since this is an economic act, for the time being we could do away with it.

MR. CHAIRMAN: We will consider the extant varieties.

SHRI R.S. ARORA: The imprisonment provisions need to be deleted or, if possible, to be reduced. It can be done whatever way the Committee feels right.

सभापति महोदय: जो बड़े लोग हैं, उनको सजा और जेल से डर लगता है।

श्री आर०एस० अरोड़ा: बड़ी-बड़ी कंपनियां जेल से डरती हैं। सर, बड़े लोगों को कोई डर नहीं होता, छोटे लोगों को डर लगता है।

MR. CHAIRMAN: We will consider this aspect.

SHRI R.S. ARORA: Very kind of you. Thank you very much.

MR. CHAIRMAN: Thank you. We now adjourn.

(The Committee then adjourned)

JOINT COMMITTEE ON THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS
BILL, 1999

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE
PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS BILL, 1999

(Wednesday, 19 April, 2000 from 1500 to 1800 hrs. in Committee Room 'D' Ground Floor, Parliament
House Annexe, New Delhi)

PRESENT

Shri Sahib Singh Verma—*Chairman*

MEMBERS

Lok Sabha

2. Shri Ajay Chakraborty
3. Dr. Ramakrishna Kusmaria
4. Shri Nawal Kishore Rai
5. Shri Chandra Bhushan Singh
6. Shri Ummareddy Venkateswarlu
7. Shri Mahboob Zahedi

SECRETARIAT

Shri P.D.T. Achary — *Joint Secretary*
Shri Ram Autar Ram — *Director*
Shri P.D. Malvalia — *Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF AGRICULTURE
(DEPARTMENT OF AGRICULTURE & COOPERATION—SEEDS DIVISION)

1. Shri R.C.A. Jain — *Additional Secretary*
2. Shri Govindan Nair — *Joint Secretary*
3. Dr. P.L. Gautam — *Director, NBPGR*
4. Dr. R.P. Katiyar — *ADG (Seeds), ICAR*
5. M^s. Dolly Chakrabarty — *Deputy Secretary*
6. Dr. Sudhir Kochar — *Sr. Scientist*

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS
(LEGISLATIVE DEPARTMENT)

1. Shri N.K. Nampoothiry — *Deputy Legislative Counsel*

WITNESSES EXAMINED

1. Prof. Anil K. Gupta, IIM, Ahmedabad
2. Citizen's Commission for National Issues, Delhi
 - (i) Shri P.N. Lekhi, Senior Advocate, Supreme Court
 - (ii) Dr. Y.P. Anand Director, Gandhi Museum
 - (iii) Shri B.K. Keayla

3. Public Interest Legal Support and Research Centre (PILSARC), New Delhi

- (i) Dr. Rajeev Dhavan, Director, PILSARC
- (ii) Shri Dayan Krishnan, Advocate
- (iii) Shri Anil Srivastav, Advocate
- (iv) Shri Amit Gupta, Researcher

Prof. Anil K. Gupta

(The witness was called in and he took his seat)

MR. CHAIRMAN: I welcome you to this sitting of the Joint Committee on Protection of Plant Varieties and Farmers' Rights Bill, 1999.

As you are aware, the Protection of Plant Varieties and Farmers' Rights Bill, 1999 was introduced in the Lok Sabha on the 14th December, 1999. It stands referred to the Joint Committee of both the Houses of Parliament.

To achieve the desired objective the Protection of Plant Varieties and Farmers' Rights Bill, 1999 seeks to provide for the establishment of an authority with necessary powers to give an effective system for protection of the rights of the plant breeders and farmers and to encourage the plant breeders by way of providing incentives, etc. to develop new varieties of plants and to give effect to certain articles of the agreement on Trade-Related Aspects of Intellectual Property Rights and to provide for matters connected therewith and incidental thereto. In this connection, the Committee would like to hear your views on the various provisions of the proposed Bill to enable them to prepare and present the Report to the Houses.

Before you start your evidence, I would like to make it clear that your evidence shall be treated as public and is liable to be published unless you specifically desire that all or any part of the evidence given by you is to be treated as confidential. However, I may also make it clear to you that even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament. I may, however, add that the proceedings of the Committee are confidential and are not to be made public till the Report of the Committee is presented to Parliament.

We have gone to many States and we have had discussion with scientists and other people on this Bill. Now, we would like to have some view from Shri Gupta on law aspects. Shri Gupta, you may now start expressing your views.

PROF. ANIL K. GUPTA: Thank you very much for the opportunity given. Apart from being a Professor of IIM, Ahmedabad, I also work with the voluntary organisations, Sristi and Honeybee Network.

I would like to submit my suggestion point by point on different articles of the draft Bill that is before the Parliament. I would be very happy to clarify important issues.

The first is about the definition of variety. There are three issues here. One is the universal criterion that has been used for a variety to be qualified as a variety, that is, plant or population should have distinctiveness, uniformity and stability. Research has shown that many populations in the rain-fed regions are buffering in nature. They are not uniform and they show stability over a longer period of time. So, we might like to include in the rules of business or definition that distinctiveness, uniformity and stability may be appraised in the case of varieties particularly for the rain-fed regions in the longer life cycle; in other words, instead of three years, we might test their statistics over nine years or six years as the case may be.

The second is in some of the countries, particularly in France and China, the definition includes improvements made in or about wild discovered plants. In view of the large population of the medicinal plants in our country, many of which show uniformity, distinctiveness and stability in their behaviour, it might be useful to broaden the scope of registration of the plant varieties by including the wild discovered plants.

The third issue is this. When it comes to what are the plant varieties, which would be registered, the term 'terminator' has been used, which is the populist term. The scientific term for that is GURT. We should restrict ourselves only to the scientific term rather than the populist term. It should be subject to review after a few years of research and experience on the subject. In other words, we should not close our doors completely on this technology because it helps us, in some sense. In other words, it is a safety against genetic pollution. GURT is a safety against genetic pollution. From that point of view, we should not close our doors on this technology. We should say that it would be reviewed after three years or so. In case we want that this technology must be developed within the country, we should be feeling free to develop this technology.

So far as farmers' varieties are concerned, I have four submissions to make. One is that we should make an exception in terms of novelty criteria which requires that a variety should not have been sold within the previous one year. My suggestion would be that we should provide exception for the farmers' variety that it should not have been sold as a branded seed within the last one year.

Even if it has been sold otherwise, that should not disqualify the farmers variety to be considered for protection.

MR. CHAIRMAN: That is in the Act already.

PROF. ANIL K. GUPTA: No. The provision would be that if a farmers has sold it locally, that would not disqualify that seed to be considered as protection for the farmers variety. Novelty should not be lost if the seed has been sold locally and without a brand name. It should be considered to be lost only when this has been sold in a commercial manner with a brand name. Otherwise, a lot of farmers varieties will cease to qualify for the protection because farmers might have exchanged them within the few villages. There is a need for making a provision.

If the farmer has developed a variety and wants protection as a plant variety then one of the clauses which will make the variety ineligible for protection is that the variety should not have been sold within last one year. It is true for the commercial varieties and varieties developed by the seed companies. But when it comes to the varieties developed by the farmers, we should provide that it should not have been sold as a branded seed in the last one year, though it may have been sold within the neighbourhood within the last few years. That would mean that the varieties which have been developed in the last four or five years might well qualify to be protected as farmers' variety. It is because the farmers are not aware that they should not be selling it.

SHRI AJOY CHAKRABORTY: You are referring to the sale in the local area.

PROF. ANIL K. GUPTA: It is because most of the farmers who have developed a variety might have sold it in the local area. Now, on that ground the new variety which they have selected or bred would not qualify to be called as plant variety. Now, that should not happen. It is because the law does not discriminate at the moment between sale as a branded goods and sale as otherwise. The exception which I am pleading for is only for the farmers' variety, not for companies and not for other applicants.

SHRI AJOY CHAKRABORTY: Not for breeders too?

PROF. ANIL K. GUPTA: It is only for the farmer breeders. Other breeders must be aware that they cannot claim protection on things which have been sold otherwise, because then it becomes a public property. According to the law of novelty, the grace period is only one year. But in the case of farmers, the grace period should be longer.

SHRI AJOY CHAKRABORTY: Why are you pleading for them? What is the reason for that?

PROF. ANIL K. GUPTA: I am requesting that they may be permitted to get the benefit of plant variety protection even if they have sold it without identification of it as a branded product. The other requirement is that they should bring the complete data of parent lines from which the variety is derived. This may not be possible for a farmer to develop or provide who has made the selection. The authority should undertake to meet the cost of generating such data that may be required for

registration of the variety generated by the farmers. But farmers need not bear the cost because the small farmers who has developed the variety has done his or her job. We cannot expect the farmer to collect all the data and to provide it in the form the authority will consider it appropriate and acceptable. I am not saying that data is not required. I am only saying that authority could pay the cost of generating this data on the variety which the farmer has developed.

In some countries the provision is that if a variety is developed based on a discovered plant, for example in Australia, then both who has discovered it and who improved upon it, are supposed to be the breeders. In our case we have not defined the eligibility of those who has discovered the new plant *vis-a-vis* who improved it. Therefore, it might be useful to include those who discovered the new plants as co-breeders along with those who improved them or select them. This will go in favour of individual as well as community which have discovered the new plants. They may not be able to stabilise them as varieties which a small seed company might be able to do easily.

Every applicant who presents his claim for a new variety should be required to state that the material or knowledge used in developing the claimed intellectual property has been obtained lawfully and rightfully. The lawful means if an applicant is submitting a variety for protection before the authority and it is based on the selection from the farmers' land within the country or from some other country then it is required to be disclosed that it is selection from such and such land race and such and such community. Secondly, the rightful means whether the person concerned has taken the informed consent of that community or that locality from where the plant which has been improved upon in the claimed variety was obtained.

As per the Convention of Biological Diversity provisions, this invariably should happen in every country. However, till those laws come into being and become enforceable the plant variety Act should provide for the same. India has been pleading for this provision to be made in international laws. Our country has been saying that the US Government should require its applicant before its patent office to disclose that they have obtained the material on which they are seeking patent lawfully and rightfully. When we are asking US Government to include that provision in their law, we should include a similar provision in our law so that every applicant in our country makes the declaration and any violation of that declaration will be a cognizable offence and the person concerned can be held responsible for making a false declaration. Therefore, it will be a legal validity and should be obligatory before every applicant. So, if a seed company comes forward with a submission and this company has made a selection in let us say wild pea land race in Andhra Pradesh or other area, it must be obliged to disclose so that it has done so.

Another provision is about the invitation of objection under section 25. It is a case where within the period that the variety is shared, the information about registration is shared with the people, the objection should be invited and if there are not received by then, these are not sustainable. Since large number of communities, societies or NGOs at large may not have access to the register that the authority may maintain, arrangement should be made that this should be widely shared and should be available in local languages on public domain website so that communities which want to access it or NGOs which are working with them can access this information in the local language as easily as possible because the country is planning to have information kiosks very widely in the country.

There is also a provision when the variety in question is subjected to some dispute or has to be examined, it is the responsibility of the applicant to provide the seed that is requested by the authority at his cost to the authority. In the case of farmers' variety such an exception will have to be made that the authority will collect such seed at its own cost and not at the farmers' cost. So, if the farmer in Rajasthan or Bihar has developed some variety then he is not required to bring the seed and deposit it to the authority but the authority will undertake to collect the seed from the farmers' doorstep and meet the cost of collecting the same.

On the issue of benefit sharing, there are three or four issues here. One is that it has been mentioned that the benefits will be shared by the accruals from different sources including from the breeders.

First of all the total and seed that will be sold by the breeder is a very small share as against the total quantity of grain which is produced on the basis of improved varieties which is very large. So instead of restricting the revenue in the gene fund only from the income from breeder, we should have a small cess, may be 50 paise per quintal or one rupee a tonne or whatever amount we may consider appropriate—should be collected from the market yards where improved variety products come for the trading. That will be must larger volume and the amounts gained by the Authority will be substantial. Therefore, the benefits for the community which have contributed to the development of variety will also be substantial.

MR. CHAIRMAN: Do you want to impose some fees or something like that?

PROF. ANIL K. GUPTA: Sir for example, in sugarcane you have a development levy of 10 paise per quintal which is used for making roads and for other developments in the sugarcane region. Similarly, if you put even 5 paise or 10 paise per quintal levy on the products of the varieties which are improved, then we will have much larger share of revenue to come to the fund rather than putting a cess on the seed. We do not want seeds to become costlier. My point is while breeders may be allowed to share but if the fund has to become operational and substantial then the amount of income which will come from the breeders in the initial year will be very small. It is because we do not want to increase the cost of seed. The replacement ratio of the seed is very low in our country. In mustard which has the highest replacement ratio it is 30 per cent. In other crops it ranges from five to seven per cent. Now whatever cost we impose will ultimately be passed on to the customer. Ultimately the farmer is going to pay the cost of the seed. Therefore, rather than insisting on the entire share of the benefit to be made from the obligatory contribution from the breeder what I am requesting is that we should put a levy on the consumer who buy the grains in the market yard and they will pay a small cess on the transactions that place in the market yard and this will come to the fund as a statutory contribution. It will be much larger fund then ever would we be able to collect from the sale of seeds. The National Gene Fund should also provide for certain other kind of compensation to the community which are conserving land races even if these have not been used for developing the improved varieties.

MR. CHAIRMAN: We do not have a Gene Fund.

PROF. ANIL K. GUPTA: Sir, it says that it will provide compensation to farmers whose varieties or land races have been used for developing improved variety. I am saying that even if communities which are conserving land races have not yet contributed to an improved variety they should have incentive to conserve it because we might need them in future. So, Gene Fund should provide incentives for conservation *in situ* of those land races which may not have yet been used for improved varieties. So, the scope of benefit should be widened and therefore the Government should make special contribution to this. Today for *in situ* conservation we have no policy or fund in the country at all. There is not even one rupee which is allocated in the Central budget for conservation of biodiversity *in situ* by the farmers. It is assumed that because they are poor people, they have no choices, and they have no irrigation so they will in any way conserve the land races. So, why compensate them and why provide them any incentive. The result is that whenever irrigation comes whenever some development takes place the first casualty is a land race. For example if Narmada Canal comes in Gujarat which I hope it will, then a lot of land races will disappear from the command area of the Narmada project immediately unless there are incentives to farmers in those region to conserve the land races there is no reason why they will grow them. They will grow the improved varieties. So, I am suggesting that the National Gene Fund should provide incentives also for those land which have not been used in developing the improved varieties.

There is a very interesting provision in the Plant Variety Act of Russian Federation. It says that the income from the breeding is tax free for two years. This I think is a very important provision because we should provide incentives for breeding to take place in our country rather than only allowing large multinational corporations to dominate the seed industry. So, if we want indigenous seed industry to come up, then we must provide tax exemption. In Russia they have it for two years. We can decide whether it should be two years or three years.

For example, in infotech and many other industries, we are giving tax concessions. Many States are giving even other concessions. Likewise, in seed industry, we wanted to provide a cess restriction but tax concessions should be provided for. At least, in the Russian Federation Law, it is provided in the Plant Varieties Act itself. In some countries, there is also a provision that in the public sector institutions, the breeders would receive a minimum of 15 per cent of the total royalty from the sale of the intellectual property i.e. protected Variety Seeds. We have not provision as such in our Bill but if we want to retain good scientists in our public sector research institutions which is, in fact, the backbone of our country, We should do it. The scientists in the public sector institutions should get a minimum of 15 per cent. There is such a provision in other countries and they provide that the breeder would receive at least 15 per cent of the total income which the institution receives from licensing. I think it would be useful to provide similar incentives in our country also.

MR. CHAIRMAN: We already have it and the scientists will get one portion of the royalty. There is a provision like that.

PROF. ANIL K. GUPTA: But that provision is applicable in any company and for any breeder. What I am suggesting is that the public sector institutions which at the moment contribute 80-90 per cent of the total breeding in the country or may be much more than that do not as yet provide specific incentives. First of all, they do not protect the varieties, they do not protect the trade names. We should insist that the public sector institutions should be protecting their trade marks and whichever University, be it in Andhra Pradesh or Tamil Nadu, should protect their trade mark names and only with their licence can the companies or the traders can use their trade mark and income accruing from the licensing of the trade marks and varieties should be shared with all those who have contributed to the development of those varieties. It could be either scientists or technicians or both. The ICAR has evolved some norms of income sharing only in the case of consultancies but not from the income from licensing and other things. Therefore, this is only to help the public sector undertakings to retain some brilliant scientists who otherwise will be lost from those organisations. It is not bad also but after all, public sector also has to be sustained in terms of productivity and fraternity.

In some countries, there is a provision for what is called innocent infringement. When we define what is infringement, we exclude what is called innocent infringement. In other words, if some farmers not knowing the provisions of the law have sold it, then we should try to protect such farmers because the loss to the company will be only marginal. We can say that upto one tonne or 50 quintals or whatever size it be, if somebody has sold their seeds, we should consider that as innocent infringement and also if the authority is satisfied that it is not a deliberate intention of the farmer to break the law. If we have the provision, we can exclude farmer infringers. If we do not have the provision, then the law will find it hands bound and tied in this regard.

MR. CHAIRMAN: Do you want this if it has been done due to ignorance also? Should any punishment be given then?

PROF. ANIL K. GUPTA: If it is done innocently, then we do not punish such a person. If a law is new, then it will take time to sink in our society. So, we should not penalise people right away.

MR. CHAIRMAN: The question is, if there is a provision like that, then everybody can say that he does not know the law or the system and all that.

PROF. ANIL K. GUPTA: Ignorance of the law is not an excuse and that is true also. That is a well established legal view. But I am suggesting that where the violation is of such a nature that it does not appear to be intentional, then the authority may take a view on whether it is innocent infringement. It is upto the authority to decide. These are the points which I want to submit.

श्री चन्द्र भूषण सिंह: गैट के ऊपर हिंदी में हमें केवल एक ही पुस्तक लाइब्रेरी में देवेन्द्र शर्मा जी की मिल पाई। यह अगर सारी भाषाओं में पब्लिश हो तो अच्छा रहेगा। अभी जो साहित्य गैट पर आ रहा है वह सब अंग्रेजी में आ रहा है। जब हमें गैट के बारे में जानकारी ही नहीं होगी तो हम क्या पूछेंगे। जितने भी किताबें हमने पढ़ीं उनमें से केवल एक ही किताब इस विषय में हिंदी में है। इतना बड़ा निर्णय यह देश इस विषय में करना जा रहा है और हिंदी में इस विषय पर किताब उपलब्ध नहीं है। इस विषय पर हिंदी में पब्लिकेशन होना चाहिये था। ऐसा होना चाहिए था जिससे आम आदमी भी इस विषय को समझ सकता, तो यह बहुत अच्छा होता। ठीक है हमारे सांसद

अंग्रेजी जानते हैं और आप डिस्कशन के नाम पर साइंटिस्ट को, एक्सपर्ट को बुला लेते हैं लेकिन जिन काशतकारों पर विपत्ति आने वाली है क्या उनको गैट के बारे में कोई जानकारी है। क्या इस सरकार ने उन 75 प्रतिशत लोगों को इसके बारे में जानकारी देने की आवश्यकता समझी है।

जब गैट लागू हुआ तो विकसित देशों ने तो इससे बचने का रास्ता निकाल लिया जिससे उनके आयात और निर्यात में कोई कठिनाई नहीं आयेगी लेकिन सवाल यह है कि भारत में तो गेहूँ हमारे लिए पूरा पैदा होता है लेकिन विकसित देशों जैसे कनाडा, अमरीका, आस्ट्रेलिया में ज्यादा होगा तो वे निर्यात करेंगे। भारत में खेती का जितना विकास होना चाहिए था वह नहीं हुआ है बल्कि उसमें गिरावट की ओर हम जा रहे हैं, दूसरी तरफ हमारी आबादी लगातार बढ़ती जा रही है। हमें इस विषय में विचार करना चाहिए। जैसे जापान है, चाइना है, इन्होंने गैट से निकलने का रास्ता खोज लिया है। विकसित देशों को हिंदुस्तान ऐसा बाजार नजर आता है जिसको दबाया जा सकता है। सभी को पता है कि हमारे यहां चीनी दुगुनी कीमत पर मंगाने पर बहुत हल्ला मचा था लेकिन उसकी तरह से गेहूँ भी बाहर से मंगाया गया। जब देश में ही पूरा था। तो बाहर से मंगाने की क्या आवश्यकता थी। उससे कम दाम में तो देश में ही उपलब्ध था। क्यों गरीब किसानों को सुविधा उपलब्ध नहीं कराई गयी।

जब गेहूँ बाहर से आ जायेगा तो जो छोटे-छोटे किसान हैं उनका क्या होगा? जब चीज देश में ही उपलब्ध है तो बाहर से क्यों लिया जा रहा है। इस स्थिति में किसान गेहूँ की खेती क्यों करेगा?

वह गेहूँ और गन्ने की खेती नहीं करेगा तो क्या करेगा? एक बार अमेरिका ने अपना सारा मक्का मेक्सिको में पटक दिया। इससे मेक्सिको का किसान भूखों मर गया। उसे मक्का की कीमत नहीं मिली। खाली खेत में भी सबसिडी दी जाती है। यदि वह गेहूँ और जौ का उत्पादन नहीं करेगा तो क्या करेगा। इससे वह खेती की तरफ से हट जाएगा। जब उत्पादन कम हो जाएगा तो आप उन देशों की तरफ मुखातिब हो जाएंगे जहां से लेने के लिए बाध्यता है। यह सही है कि गैट लागू हो गया और उससे हम बच नहीं सकते। हम विचार कर रहे हैं कि वह कैसे लागू हो? छोटे-छोटे काशतकार जिन की संख्या 75 फीसदी है और पर-कैपिटा होल्डिंग 35 हैक्टेयर है उनके लिए क्या सोचा है? बड़े-बड़े काशतकारों के लिए बहुत प्रावीजन है।

श्री अनिल के० गुप्ता: इन प्रश्नों को दो तरीके से देखा जा सकता है। जो प्लांट वैराइटी और फार्मर्स राइट का बिल है वह बौद्धिक सम्पदा के अधिकार से संबंधित है। क्या इससे छोटे और सीमान्त किसानों को कोई लाभ मिल सकता है या नहीं? बाकी किसानों जिन को इसका लाभ मिलेगा वह किस रूप में मिलेगा? बौद्धिक सम्पदा के अधिकार देने से क्या हम दूसरे देशों पर आश्रित होंगे अथवा स्वावलम्बी बनेंगे ये दो प्रश्न हैं। सबसे ज्यादा जैविक विविधता छोटे और सीमान्त किसानों के खेतों में है। या तो उनके पास सिंचाई के साधन नहीं हैं या छोटी जमीन है और वे बड़ी बीज खरीद नहीं सकते। मैंने 35 देशों के कानूनों का अध्ययन किया। केवल भारतीय कानून में यह प्रावधान किया जा रहा है कि एक राष्ट्रीय जीन फंड बने, जो अलग-अलग किस्मों की जातियां हैं उनका संरक्षण किया जाए। बहुत से छोटे किसानों ने नई किस्में उनमें से चुनी। मैं ऐसे लोगों की पिछले 10-15 वर्षों से तलाश कर रहा हूँ जिन्होंने कुछ नया किया है। मैं माननीय सदस्य की भावना से सहमत हूँ। 10000 (दस हजार) के करीब हमारे पास ऐसे अनुभव हैं जिस में लोगों ने अपनी सूझबूझ से कुछ नया किया है। इसमें नई किस्में भी शामिल हैं। सीकर गांव के शुण्डा राम जी हैं। उन्होंने मिर्च की एक किस्म बनाई। इसका इस्तेमाल रंग और कड़वाहट के लिए भी होता है। वह देश की विकसित किस्म से ज्यादा अच्छी है। अभी किसानों ने उसमें और संशोधन किया है। ऐसे ही उन्होंने जिरि और धनिए में प्रजातियां ढूंढ कर रखी हैं। किसान जिस की बौद्धिक सम्पदा है, उसने जो शोध किया है, उसका कोई लाभ मिलना है तो ऐसे कानून की आवश्यकता है। ऐसे ही ठाकर जी० भाई हैं। जो जूनागढ़ जिले के हैं। 1987 में जब अकाल पड़ा था उन्होंने अपने क्षेत्र में एक पौधा चुना जो दूसरे पौधों से अलग था। उसमें कोई बीमारी नहीं लगी थी। उन्होंने उसका बीज अलग से इकट्ठा किया, अगले साल फिर उगाया। 4-5 साल में उसमें नई किस्म बनी। ग्राउंडनेट का नेशनल रिसर्च सेंटर जूनागढ़ में है जो आई०सी०ए०आर० का इंस्टीट्यूशन है। 50 वर्ष में पहली बार किसान की यह वैराइटी आल इंडिया ट्रायल्स के लिए ली गई। किसान भी अपने देश में शोध कर सकते हैं। वे कर रहे हैं और करेंगे। यदि उनके शोध का लाभ उठाना और देश को उनकी शोध के आधार पर आगे बढ़ाना है तो हमें कानून बनाना चाहिए।

आपके आने से पहले मैंने कई सुझाव दिये थे। यदि कोई किसान एक वैराइटी लेकर आता है तो आप उससे मत कहिये कि वह और डाटा रिसर्च के लिए दें, बल्कि यह अथॉरिटी की जिम्मेदारी है कि उसके लिए रिसर्च का खर्चा करे। वह सब संशोधन मैंने आपके आने से पहले दिये हैं। उनको अगर मान लिया जायेगा कि जिन किसानों के पास बौद्धिक सम्पदा है उनके अधिकारों की सुरक्षा की जायेगी तो विश्व स्तरीय किस्में हम पैदा कर सकेंगे जिससे और देशों को भी तकनीकी लाभ हम दे सकेंगे। एक आर्टिजन ने एक गाड़ी बनाई है और उसका पेटेंट अभी अप्लाई किया है, जिसका पेटेंट उसे अभी मिला नहीं है। उसने पांच जिलों में बौद्धिक सम्पदा का लाइसेंस तीन उद्यमियों को गाड़ी बनाने के लिए दिया है। उसे 80 हजार रुपये 6 महीने में लाइसेंसिंग फीस के मिले हैं। परिवार गांव के अंदर, जूनागढ़ जिले में अमृतभाई ने बैलगाड़ी बनाई है। अभी तक तकनीकी का लाइसेंसिंग जिलों के आधार पर नहीं हुआ था, यह पहली बार हुआ है। मेरे कहने का मतलब यह है कि बौद्धिक सम्पदा का लाभ बड़े उद्यमियों को ही नहीं होगा बल्कि इससे छोटे किसानों, आर्टिजनों को भी लाभ मिलेगा। इस देश में बहुत से लोग हैं। हमारे डाटा बेस में ऐसे 10 हजार लोग हैं जिन्होंने कुछ नया किया है, उन्हें उनका अधिकार मिलना चाहिए।

SHRI AJOY CHAKRABORTY: Are you in favour of the entry of foreign multinationals in this field?

PROF. ANIL K. GUPTA: The point is not whether I am in favour of it or not. The point is whether I can compete with them. My preference does not matter. What matters is my determination and my capacity to compete with them. I personally feel that we are absolutely competent. There is a National Sorghum Research Programme based in Hyderabad. ICRISAT is an international research centre, but our varieties have been out-yielding the ICRISAT varieties for the last several years. The incentives for our Sorghum Research Programme are much lesser and yet they have been able to out-perform the ICRISAT varieties.

DR. BIPLAB DASGUPTA: ICRISAT is not a multinational organisation. It is not like a private commercial firm. It is an international organisation, not a multinational organisation, in the sense in which he is saying. It is not a big company; almost all their staff are Indians and only a few Germans and others are there. But the majority of the staff are Indians and they are located at Hyderabad. So, the comparison with ICRISAT is not a valid one.

But, let us see the amount of money that the MNCs spend on research. How can our organisations go anywhere near their spending? Take the example of the Information Technology industry. We talk so much of the IT industry. Now, there is a big crash. The income has increased in the IT industry. But individually, the Indian companies, with their own brands, are out-beating the Western companies.

PROF. ANIL K. GUPTA: If you look at the capability of Indian research and the output that it has delivered in terms of the yield gains, in terms of the varieties that they have produced, in terms of their stability and in terms of their overall performance and make a balance-sheet of this output, it is much higher than anybody else in the world. But I do realise that the last 10 years have been years of stagnation and I also realise that the Indian systems have got a flat and can become more efficient. Despite that, I am a great believer in our capacity. I think, this capacity, given a chance to perform in a competitive environment, with the protection of intellectual property rights can outsmart any competition.

DR. BIPLAB DASGUPTA: I taught in English Universities for 15 years and I know about our boys. If they are taught in Calcutta and if they work here, they do not perform that well. But when they go to Western countries, they perform very well because the environment is different. Our people have the potential and their potential is confirmed by what they are doing when they go outside. We are not talking about the potential. But what is their realisation over the last 10 to 15 years as compared with multinationals? I agree, the potential is there, but the environment is not there. It is very expensive to create the environment. We can talk big, but the actual realisation is very little.

PROF. ANIL K. GUPTA: I give you only two examples. The first is that this law of proposed Bill is one step in the direction that you are seeing to make the environment in this country available to the producers of research of this country so that they can produce intellectual property of the same kind here rather than in America. You have argued already that they perform so well there because their intellectual property is protected there. They are not able to perform so well here because the intellectual property is not protected here. We would like the intellectual property of indigenous innovator to be protected with the same degree of seriousness and freedom as it is available abroad. The intellectual capital will not flow out of this country if the protection to that capital is available in the country. If the intellectual property is not protected in the country, there is only one way out which is flow out of the intellectual capital from the country.

You are very senior economist. I have read your books and met you earlier. Your village studies have been an essential reading for all of us. You would agree that when the intellectual property is not respected in any society and it is not protected, it finds its own niche wherever it is respected. That is how America has attracted the best brains all over the world. We may have exported 10,000 to 20,000 such people. There are 20 million people more qualified than those who have gone there from this country. The only thing is that they are waiting for an opportunity.

DR. BIPLAB DASGUPTA: I agree. But I will give an example. About 30 years ago, since 1966 or around that time, the phenomenon of Green Revolution started. This technology led to tripling of Indian food production in three decades. That has been the biggest technological achievement as far as India is concerned. What was the technology involved and what were the intellectual property

rights involved? Prof. Swaminathan went to CYMMIT in Mexico and brought a few kilograms of foundation seeds. He went to IRRI and brought some foundation seeds. That was all purchased. The rest was done by the Punjab Agricultural University. They twisted the obvious things with our own realities. They purchased their own seeds. Then, they distributed the seeds to the farmers. The farmers multiplied it. So, the Green Revolution technology excepting for a few kilograms purchased from Mexico and from Manila in 1966 had been completely indigenous. It did not involve and intellectual property rights as such. Even the IRRI also is not run as an MNC nor the CYMMIT is run as an MNC. No MNC was involved. Still the biggest achievement in India so far is in terms of its impact on the largest number of people. That has been achieved. Virtually, it did not have anything to do with the intellectual property rights.

PROF. ANIL K. GUPTA: To be fair to the scientists, the research was not just by importing those seeds. There was much more research. The consequence of not protecting the intellectual property right is that the scientists of these institutions have to beg—pardon me saying this—before the bureaucrats in the ministry for every penny that they need for their research. If we want the institutions of this country to be autonomous and as modernised and as buoyant with vitality as any other international institution is, we will have to give them freedom. We have to liberate them from the shackles of bureaucracy. If they are liberated from the shackles of bureaucracy, they will be able to raise their own revenue. You take the case of Mahyco which is the top company of this country in the private sector. How did Mahyco begin? It began with the seeds of Pusa. It multiplied and sold those seeds. That was the beginning of this company.

Today, it is one of the major seed companies of the third world. Pusa did not get any penny of this brand. If you do not provide any protection of the trade marks, the Pusa Institute scientists will remain dependent. Then the legislators will decide whether there is a cut or not because scientists have least political power in the system.

DR. BIPLAB DASGUPTA: We had a meeting with the scientists in Ludhiana. One of the things suggested was that there should be collective patenting or institutional patenting. Then the fruits of that income can be shared by working on some kind of a formula between the scientists individually and the institution as such depending on the contribution which has been made by different scientists and also by the institutions. Can we get any help from you on that?

PROF. ANIL K. GUPTA: I mentioned this before you came. There are two issues. One is inventor and the other is assignee. Individual means it could be 25 breeders and scientists who become as inventor. The variety will be assigned in the name of the institution, in this case university. It will decide how much share of the licence fee or other things will be shared with the team and retained with the institute for other incentives for other breeders because there may be breeders who are dealing with different material developing new varieties.

MR. CHAIRMAN: Do you wish to add any other points?

PROF. ANIL K. GUPTA: I would only like to add that with all the causes that the learned Member has suggested, the protection would help the recognition of the grass-root inventories, the smaller companies and public sector research. If we want our research to become financially self-reliant, we want to stop the exodus of scientists then we will have to provide them a level playing field.

Thank you very much.

प्रो० रामकृष्ण कुसमारिया: बीडर के विषय में चर्चा हुई है, मैं कृषकों के विषय में चर्चा करना चाहता हूँ। वह जब दूसरे से बीज लेकर उत्पादन करते हैं और उस उत्पादन को लेकर बेचते हैं तो इस कानून के बनने के बाद उसकी क्या स्थिति होगी, यह मैं जानना चाहता हूँ?

प्रो० अनिल के० गुप्ता: कानून में बड़ा स्पष्ट प्रावधान है कि किसान न केवल उसको बचा सकता है बल्कि बेच भी सकता है, बांट भी सकता है, कुछ भी उसका कर सकता है क्योंकि वह उसका प्रोडक्ट है। प्रोडक्ट का मतलब है कि आपने बीज बोया, फसल आई, तो वह उसका प्रोडक्ट हो गया। उसका आप कुछ भी कर सकते हैं। हाँ, अगर किसी कंपनी ने आपको बीज दिया है तब तो आप स्वतंत्र नहीं है, बाकी हालात में आप स्वतंत्र हैं।

डा० रामकृष्ण कुसमारिया: इसमें लिखा है कि "परन्तु कृषक ऐसे अधिकार का हकदार नहीं होगा यदि विक्रय किसी वाणिज्यिक विपणन और ठहराव के अधीन पुनरुत्पादन के प्रोजनार्थ हो"। उसके पास जो वैरायटी है वह सर्टिफाइड तो हो नहीं जाती है, इसलिए उसका कमर्शियल ट्रांजेक्शन होगा।

प्रो० अनिल के० गुप्ता: यह प्रावधान जो अभी आपने पढ़ा, उसमें यह है कि किसी कंपनी ने आपसे करार किया कि हमारे पास जमीन नहीं है जिससे वे सीड उगा सकें, आप उगाओ और उन्हें वापस बेच दो, जिससे वे और लोगों को बेच सकें। ऐसी परिस्थिति में आप बेचने के लिए स्वतंत्र नहीं हैं क्योंकि आपने कंपनी से करार किया है।

इसके अलावा हर स्थिति में आप स्वतंत्र हैं। जो उगाया और जो फसल आएगी उसे कहीं भी बेचें, किसी को भी दें अपने पास रखें या मुफ्त बांटे।

डा० रामकृष्ण कुसमारिया: इसका वयावहारिक रूप में क्या होगा? जिसे जो भी पैदा करता है यदि उसे उसका रेट नहीं मिलता है तो वह चार महीने रख लेता है और प्रिजर्व करता है। सोईंग पीरियड उसे निकालता है, बोता है और पड़ोस के आदमी को बोने देता है। यह कानून लागू होगा, वह कंपनी का सीड हो या नहीं उसकी एफ० आई० आर० जरूर लॉज होगी। किसान को कोर्ट में खड़ा होना पड़ेगा। उसे कोई बचा नहीं जाएगा। इसका प्रबन्ध होना आवश्यक है।

श्री अनिल के० गुप्ता: इस कानून के मातहत किसी व्यक्ति के खिलाफ कोई चार्ज नहीं लग सकता है यदि उसने बीज से उगा कर फसल ली है, उसे बेचा, रखा।

डा० रामकृष्ण कुसमारिया: यदि वह सोईंग पीरियड में देगा एक्सचेंज करेगा तो वह कमर्शियली हो जाएगा।

श्री अनिल के० गुप्ता: यदि कॉन्ट्रैक्टुअल परपज से उगाने के लिए कहा गया है तो केवल उसके लिए रिस्ट्रिक्शन है। किसी कंपनी से बीज खरीदा तो वह कमर्शियली सेल नहीं मानी जाएगी।

डा० रामकृष्ण कुसमारिया: जो कठिनाई आने वाली है मैं वह बताना चाहता हूँ।

DR. BIBLAB DASGUPTA: If you look at some of the agreements entered into with some of the multi-national companies, it specifically says that the seeds cannot be used and all that. Have you seen some of these agreements?

श्री अनिल के० शर्मा: It says, 'Provided that a farmer shall not be entitled for such a right in case the sale is for reproduction under commercial marketing arrangements.'

डा० रामकृष्ण कुसमारिया: आप कंपनी की तरफ से बात कर रहे हैं। मैं किसान की तरफ से बात कर रहा हूँ। किसान बीज कहीं से भी लेता है, उसका किसी कंपनी से कॉन्ट्रैक्ट नहीं है। सोईंग पीरियड में एक्सचेंज करता है तो बेचता है। ऐसे में बेचना कमर्शियल में आएगा।

श्री अनिल के० गुप्ता: नहीं आएगा।

डा० रामकृष्ण कुसमारिया: इसमें लिखा है इसलिए नहीं आएगा लेकिन कंपनी के जो एजेंट होंगे वे किसानों के पीछे पड़ेंगे और परेशान करेंगे। आप उसका क्या उपाय करेंगे?

सभापति महोदय: आप सैक्शन 31 में देखें। उसमें साफ लिखा है।

डा० रामकृष्ण कुसमारिया: उनको सभी जगह का अनुभव है।

श्री अनिल के० गुप्ता: थोड़ी देर पहले इनोसैंट इन्फ्रिजमेंट का जिक्र किया था। यदि बिना किसी दुर्भावना से बांटा या बेचा तो उसके खिलाफ कोई चार्ज नहीं होना चाहिए। ऐसा प्रावधान रख सकते हैं।

डा० रामकृष्ण कुसमारिया: यह बहुत आवश्यक है।

किसान सीधा-सादा है, पढ़ा-लिखा नहीं है, वह तो रोज फंसेगा, तो उसको कौन बचायेगा?

सभापति महोदय: यह पाइंट पहले भी आया है, इन्होंने पहले बताया है।

DR. BIPLAB DASGUPTA: You have one joint multinational body on one side and on the other side is the small farmer.

MR. CHAIRMAN: The question of ignorance will come and if through ignorance it has been done, then there must be some softness about it.

प्रो० अनिल के० गुप्ता: इसीलिए इनोसैंट इन्फ्रिजमेंट का कंसेप्ट रखा है कि बिना किसी दुर्भावना के अगर किसी किसान ने कुछ बेच दिया है, या बांट दिया है तो उस पर कोई कार्रवाई नहीं होगी। हम अपने बिल में उसे इस तरह की सुरक्षा प्रदान कर सकते हैं कि बेचने और

बांदने पर कोई पाबंदी नहीं है। अगर किसी पैकिंग का सीड उसने एक-दो पैकेट दे दिया तो कुछ नहीं होगा क्योंकि उसे देना होगा तो हजार पैक वह बेचेगा। अब चूंकि उसकी नीयत लाभ कमाने की नहीं थी तो उसके खिलाफ कोई केस नहीं बन पायेगा।

डा. रामकृष्ण कुसमारिया: पुलिस तो झूठे केस बना देती है तो किसान को कैसे छोड़ेगी।

प्रो० अनिल के० गुप्ता: आप ही तो संविधान बनाते हैं, आप इसमें ऐसा रख सकते हैं।

DR. BIPLAB DASGUPTA: Have you seen some of the agreements between Monsanto and their contract farmers?

SHRI ANIL KUMAR GUPTA: There are two issues. One is, if a company has contracted seed production to a farmer, it specifies whether it will buy back the entire production or it will buy 40 per cent or 50 per cent, the best part of it. It also allows the farmer to retain it without using the company's seed name or brand name. Sometimes, they also keep some isolation. For example, they will say that we will exclude the four lines on all the sides of the farm because there may be some genetic pollution, i.e., pollution may have come from other neighbouring farms. So, they will not take the seed of the border line for the purpose of seed collection because they want pure seeds. They will only take from the middle. The farmer has grown the entire field. Then, farmers should have been compensated. So, under the contract, they will provide for the price which farmer will find reasonable. It is a contract which farmer is free to accept or not to accept.

DR. BIPLAB DASGUPTA: What about reuse? In a number of contracts, they do not permit reuse.

SHRI ANIL KUMAR GUPTA: That is only available under UPOV, 91 and in our country we have not accepted UPOV, 91.

DR. BIPLAB DASGUPTA: Monsanto is already having some contracts where you do not allow reuse of seeds.

SHRI ANIL KUMAR GUPTA: So far in our country, there is no contract under which a farmer can be disallowed from using a particular seed. Of course, hybrid seeds we purchase every year, even if it is a public sector company or a private sector company. But in the case of seed sold by the companies, there is no clause which I have come across as yet and I would like to be educated in this country where the farmers have been prevented from getting the seeds for its reuse. This has arisen only in the European countries. That provision is not included in our Bill.

DR. BIPLAB DASGUPTA: Monsanto is now becoming quite important, say in Maharashtra, in a number of things. Have you seen the contracts between Monsanto with the contract farmers? I have not seen those contracts, but I have seen extracts of those contracts and that does not allow reuse.

SHRI ANIL KUMAR GUPTA: If it is a seed production contract, then it is the property of the company because it has paid for it. It wants to buy. So, when you sign the contract, you accept it or you do not accept it. If you think that it is not reasonable, then you should not accept it. It is a law of contract where if I enter into a relationship with known conditions, then I am bound by those conditions. If I do not want to accept those conditions, I should not enter into a contract. If farmers

decide collectively that they will not enter into any contract with Monsanto, then Monsanto will not be able to grow a single seed in this country.

MR. CHAIRMAN: Thank you very much for your valuable advice, Prof. Anil Kumar Gupta. We will try to consider your suggestions at a later stage. You may leave now.

(Prof. Anil Kumar Gupta then withdrew)

WITNESSES EXAMINED

1. Shri P.N. Lekhi, Citizens' Commission for National Issues
2. Dr. Y.P. Anand, Citizens' Commission for National Issues
3. Shri B.K. Keayla, Citizens' Commission for National Issues

MR. CHAIRMAN: Thank you, Mr. Lekhi and your colleagues. We have been waiting to have your opinion on this Bill. As you are aware, this Committee is examining the Protection of Plant Varieties and Farmers' Rights Bill, 1999. Before we start the discussion, we would like you to introduce yourself and your colleagues to the members of the Committee.

(INTRODUCTION OF WITNESSES)

MR. CHAIRMAN: As Shri P.N. Lekhi is a senior advocate, I would request him to initiate the discussion by giving his valuable views to the Committee on this Bill.

SHRI P.N. LEKHI: Thank you, Sir. May I draw the attention of the august Committee to what is annexed to the Bill as the Statement of Objects and Reasons. I am reading from paragraph 4, clause (ii):

"India has developed commendable strength in agricultural research. Indian breeders working mainly in the public research system have developed a large number of new varieties. In the absence of plant breeders' rights, these varieties would be freely available to others for exploitation. New varieties developed on the basis of these varieties could get protected in other countries without any benefit accruing to Indian institutions/organisations, whereas, the availability of varieties developed in countries which provide for plant breeders' rights would be restricted in India."

Sir, I continue to quote:

"Therefore, putting a system of plant breeders' rights in action through law in India would provide protection to the public research system varieties developed by them. In future researchers' access to foreign germplasm may get linked to the provision of plant breeders' rights."

Sir, the next one 4(iii), in my view, is very important and dangerous. I quote:

"(iii) in the absence of plant breeders' rights, foreign companies would be hesitant to organise buy-back production of seeds in India for export to their countries for fear of unauthorised use of their genetic material;

(iv) a system of plant breeders' rights is also a useful adjunct to a legislative framework

which is being formulated by the Ministry of Environment and Forests in accordance with the provisions of the Convention on Biological Diversity.

5. Keeping in view the above position, the Protection of Plant Varieties and Farmers' Rights Bill, 1999 proposes to achieve the following objectives:—

- (i) to stimulative investments for research and development both in the public and the private sectors for the development of new plant varieties by ensuring appropriate returns on such investments;
- (ii) to facilitate the growth of the seed industry in the country through domestic and foreign investment which will ensure the availability of high quality seeds and planting material to Indian farmers."

What I find hidden in the entire Bill is a lot of composition on the compliments that have been paid to the research by foreign investment is an element which is coming for the first time in this country. How did it come? It needs, in the context, to be understood so that we can appreciate the text of this Bill. May I submit that there is a lot of debate whether there should or should not be the right of patenting.

We have known the entire structure of this particular Bill is on the same lines as the Copyright, Patent and Trade Mark Acts. But for the last one century whenever intellectual property has been a part of legal profession, nobody had touched agriculture. This is for the first time that what nature will help us, not factories, is soil. It is the soil which no human being has produced. It is given by nature. For the first time we are entering into an uncharted field — a field totally uncharted.

I have just now heard my predecessor saying what is the meaning of product. We have taken the word product from the viewpoint of something which is manufactured in a factory. Seed may be loosely called a product; but in the context in which I am going to make my presentation, seed is not at all product like a product produced in a factory. It is there that the danger lies.

I take you back to 1947. That was the year in which this GATT agreement first came into being. The Preamble of GATT stated:

"Trade and economic endeavours should be conducted with a view to raising standard of living ensuring full employment and the large and steadily growing volume of real income."

Thus, the basic objectives were reinforced in the Marrakesh agreement which established the W.T.O. Historically GATT enforced, failed in tariff reduction worldwide until the Uruguay Round which ended in 1994. The trade negotiations focussed on non-agricultural growth mainly because the U.S. wanted to protect its farm sector.

Over the years as the corporate interests of developed countries have expanded, these countries have also lobbied for more issues to be incorporated in GATT and WTO.

Its agenda now include 'agriculture'. When I have referred to the last part of foreign investment, obviously I am taking you back to the history that for the first time, because of the compulsions now of the farmer lobby in the US, this particular pressure world-wide is being built to introduce the concept of patents, trade-marks and probably copyright also slowly and slowly in the farm sector also. Will it be consistent with the aim with which the entire exercise is being done? Would such a liberalised approach in the agriculture sector be in some way an endeavour conducted with a view to raising the standard of living, ensuring full employment and a large and steady growth?

In Today's *The Times of India*, on the first page is a very interesting news items. It says:

"*Garibi Hatao*—may have just been a catchy slogan for Indira Gandhi but in the heydays of the licence-permit raj in the '70s and '80s—when rationing, price controls and nationalisation were the order of the day — poverty did fall by two per cent every year. By contrast, there was hardly any reduction in poverty between 1991 and 1997, a period marked by free market economic reforms.

What the data show is that reforms have produced unprecedented economic growth but have not worked for the poor. The NSS round conducted in 1997 estimated that every third person in India — that is 34.4 per cent of the population — lived in conditions of absolute poverty, the same percentage that obtained in 1990.”

Here, when considering this Bill, one has to consider not whether it is a good draft but whether it serves the purpose for which ostensibly it is being presented. It is with that view that I am going back to the recent history. Today, it is a lobby from a highly developed country, and that is the farm lobby, which is trying the lesser developed countries to follow a regime which will not at all be to the benefit of the lesser developed countries but will serve the purpose of that highly developed economic structure. Do, we by our own legislation, seek to perpetuate it? That is the question which I am asking myself and I am posing before this august gathering.

Now, these rounds were like kitty parties. WTO has 132 members at present. Out of these, 98 are countries like ours. The rest of 24 comprises of very developed countries like the US, the European Union, Canada and Japan. The dictation in WTO and the regime that is sought to be developed is dictated not democratically but under great economic pressure like a barter agreement where they say ‘you give this concession, we will give you this return’. Now, we are legislating this Bill ostensibly thinking that the Seeds Act of 1966 is no longer useful. Do we need a change? Whenever a law is changed, in the court of law, there are four rules by which any change of law is adjudged as to whether it would be efficacious or not. The rule was laid in 1584 and is still being followed. We call it Hayden’s rule although it came out of a murder case.

But the rule is, what was the mischief, what was the law for awarding punishment for the mischief, what mischief it had not provided for, what method we are providing for the mischief and the reason for adopting that particular method. Let us test this particular aspect. I am deviating a little from the presentation I have prepared.

Just now, a very respected Member raised the question of a small farmer. Please have a look at Clause 65 of this particular Act. According to that, he will be punished, and he cannot escape. That is the difficulty if you read it with Clause 61. So, the question today is, how many farmers you are going to throw to test and try their cases. As far as these cases are concerned, it might be a paradise for the lawyers, but ruin for the nation. That is the question, which I am posing before you today.

Continuing with my presentation, if I may refer to a very interesting case which came out recently, that was the case of *basmati*? The case of *basmati* rice is also before us. The special variety of rice is known for its fragrance. It is grown in the foothills of the Himalayan mountains. The issue became contentious when it was found that a US company had identified the molecule that gives fragrance to the rice. This *basmati* rice was grown in the US greenhouses, and the particular seed developed by biotechnology was patented in US. If the US Government had not, just for the purpose of, I will say, public relations, supported the Indian Government in its effort to get that particular patent annulled, today no Indian farmer would be able to sell the *basmati* rice, which is the produce of this country. For matters like this, there is not only no provision, it is, in fact, as I see historically, a new form of economic imperialism that is coming. We provide our police force, we provide our law courts and we provide our laws. Now, they need not send their army, they need not send their police force and they need not send their laws because our laws will punish our own people.

DR. BIPLAB DASGUPTA: This question had been raised again and again in this Committee. Clause 31 of the Bill says:

“Nothing contained in this Act shall affect the right of a farmer to save, use, exchange, share or sell his farm produce of a variety protected under this act.”

Now, the problem is, whenever we ask for a clarification, what is being said is that if the farmer is not using it for commercial purposes with his brand-name and all that, he can use the

seeds purchased from the company in any way. But what you are saying is completely different. You are saying that Clause 61 read with Clause 65, read together, actually negate this particular Clause. Is that the legal opinion?

SHRI P.N. LEKHI: I was coming to Clause 31, but in the context, this was only an introductory before I analyse the Bill to the extent I can within the short time that was available.

Till I studied this very deeply, I could not understand the danger that really stared in the face. I was completely taken aback. Therefore, as a citizen, I think it is my duty to at least, at this stage, voice my concern for the sake of my own countrymen.

Now, continuing further, one of the very newly used yardsticks, ever since WTO regime came, is that exports have increased by 25 per cent in the last four years.

This 25 per cent increase is not due to increase among countries like ours. Countries like ours contribute only 0.03 per cent in the total figure of world trade. Where does this 25 per cent get lost? It gets lost when you allow foreign investors to come here with their developed techniques.

There has been no reasearch laboratory in the country where treatment to the seed has been done. Such laboratories are there in developed countries. We are afraid and rightly so. What happens is, bio-diversity in the soil will be totally lost. The land will become totally dependent on chemical manure. Slowly and slowly, over a period of time, say ten to fifteen years, the earth will become totally barren, like talcum powder. That is the effect of injecting more and more chemical manure for the purpose of higher production. Without that particular assistance, the seed which will be produced will not at all yield any product. Then those seeds will become one crop seeds, not multi-crop seeds. There will be a total loss of diversity.

MR. CHAIRMAN: Do you want to say that they will become the terminator seeds?

SHRI P.N. LEKHI: Ultimately they will become terminators. It is like a cancer. Cancer is a human cell eating another human cell. It is not like Malaria or some other disease. By bringing this law into force, you will be introducing into the farming sector a cancer which will destroy all that we have sustained historically over the year. This is a very serious thing. I will give four reasons why this particular Bill is not at all good for the country. Those who drafted the Bill have not done their home work well. Have we got any list of the plants and the seeds which we have developed, put down in any register? No, we do not have such a list. How are we to comply with the Objects and Reasons mentioned in the Bill. In the Statement of Objects and Reasons it is mentioned, 'A system of plant breeders rights is also a useful adjunct to a legislative framework which is being formulated by the Ministry of Environment and Forests in accordance with the provisions of the convention on biological diversity. Where are the supporting documents before us in order to comment upon this? I do not think these documents were ever placed before Parliament. I do not think those who drafted this particular Act looked into the supporting material to know whether this Bill will be in fulfilment of this particular object or not. There should be some reason to back this staement. We are framing a law in an area into which nobody has ventured so far in the country. This is an entirely new field of legislation. There is no private laboratory here—of course, I only come to know about things from papers or some printed material—which has been producing seeds, except CSIR and other Government-owned organisations. But there are private companies in the developed countries where this particular exercise is being done.

That particular aspect has to be looked into. When this Statement of Objects and Reasons was presented, whether it was read as a necessary adjunct to a legislation or that this really conveys why a particular legislation has to be made, to be examined in-depth.

MR. CHAIRMAN: Shri Lekhi, this Committee will be very much grateful to you if you could kindly give us your suggestions over the sections of the Bill. It may be either in regard to drafting or may be in regard to outlook of the drafting. These will be very useful for this Committee.

SHRI P.N. LEKHI: After I give you the reasons, after I cover the point on which I am speaking, I will surely come to this aspect. I am proposing to do that.

DR. BIPLAB DASGUPTA: Let me apologise as I have to go within five minutes from now to attend to some other meeting. But I am very grateful to you that you have given your free and frank views. On this point, could you please explain a bit. Section 31 says about the Farmer's right that 'Nothing contained in this Act shall affect the right of a farmer to save, use, exchange, share or sell his farm produce of a variety protected under this Act: provided that a farmer shall not be entitled for such right in case where the sale is for the purpose of reproduction under a commercial marketing arrangement.' the impression one gets here, is that the farmer's rights are protected. But you are saying that sections 61 to 65 taken together may be favourable. What is the argument in favour of that?

SHRI P.N. LEKHI: It is a bad drafting. Law needs to be understood by both the legal man as well as common man. Law is not like a *mantra* which is for only highly educated persons and legal persons. It is for everybody. We are addressing our law to a farmer and that farmer must know it in a very simple and unambiguous language. It should not be such that he has to go to a lawyer to understand it. So, this is a bad drafting.

DR. BIPLAB DASGUPTA: The title of the Bill is "The Protection of Plant Varieties and Farmer's Rights Bill." But there is nothing of farmers' Rights Bill there. That is what we feel.

SHRI P.N. LEKHI: I will come to the title and consequences of farmers' rights. As a matter of fact, it is taking away every right from the farmers.

DR. BIPLAB DASGUPTA: This is the opinion of the Committee, in general that there should be a separate chapter on farmers' rights. Now, there are two opinions. Some feel that putting the right itself would be against the right. Some will enjoy customary rights. While some others feel that there should be a separate chapter about farmers' rights.

If this is the case, certainly, the Committee would like to know what should be done, what should be incorporated in the sections? *

SHRI P.N. LEKHI: There is no need of legislating anything for their rights and property. This is the right about utilising a particular seed, particular plant, and variety. The title is misleading. It is "The Protection of Plant Varieties And Farmers' Rights Bill" The farmers should be taken out if you are creating rights for the farmers in this Bill. The farmer already has got his right and that right is to cultivate.

What will a new Chapter on farmers' rights give to the farmers whether it is Land Reforms Act or any Act? This Bill has nothing to do with the farmers' rights. It is totally a misnomer. It is a Bill for the protection of plant varieties. I do not know if plants have got any rights. It is for the protection of those who are creating some new varieties of plants. So, if it is breeders, it might be more logical. I read the whole Bill over and over again. Where are the rights of the farmers mentioned? The farmer has got privileges. There is no definition of rights at all. There is certainly indication of taking away what he has been enjoying all these years.

SHRI BIPLAB DASGUPTA: We want farmer's rights. Then what should be there?

SHRI ANIL GUPTA: As a lawyer, I have to do some home work.

MR. CHAIRMAN: You can give it in black and white.

The farmers should be our main concern, not the multi-national companies. But how to put it in the form of a law? How can it be incorporated? We need advice on that.

SHRI ANIL GUPTA: I will put it in black and white. But I must make one caution. In 1992 when Mr. Bill Clinton started his election campaign, he was one of the biggest propagandists of WTO. He said "wherever commercial interests are involved, I will do my best to farmers." Today, this Bill appears to be the fulfilment of the election promise. Kindly look into it and avoid it. We are not filling the manifesto of a foreigner.

MR. CHAIRMAN: It will at least do something.

SHRI ANIL GUPTA: It will take two or three days to pen down. I will do it. My reading will take a lot of time, particularly on biotechnology of seeds.

डा० वाई०पी० आनंद: इस बिल का जो उद्देश्य दिया गया है उससे बहुत कुछ साफ हो जाता है कि यह बिल किसके लिए है? यह बिल ट्रिप्स एग्रीमेंट को पूरा करने के लिए है तथा साथ ही इसमें यहां दो चीजें कही गयी हैं। एक तो जो प्लान्ट्स ब्रीडर्स हैं उनको प्रोत्साहित करना है और जोकि बड़ी कंपनियां हैं। छोटी कंपनियां ऐसे क्षेत्रों में चल नहीं पाती हैं क्योंकि उनके पास पैसे और साधनों की कमी होती है, इसलिए वे सर्वाइव नहीं कर पाती हैं। जितना उसके लिए इंटरनेशनल पहुंच की आवश्यकता होती है वह उनके पास नहीं होती है। इसलिए ब्रीडर्स बड़ी ट्रांजीशनल कंपनियां ही हो सकती हैं, चाहे मोसेटो हो या भारतीय कंपनियां हों। यह एक दुविधा है। इस देश में ऑक्टों के हिसाब से 10 करोड़ से ऊपर किसान हैं। क्लिंटन साहब ने जब अपना पहला चुनाव लड़ा था तो उन्होंने किसानों के बारे में कहा था जबकि उनसे पहले किसी भी प्रेसीडेंट ने अपने चुनाव भाषण में ऐसी कोई बात नहीं कही क्योंकि वहां किसानों की संख्या 3 प्रतिशत से भी कम है। अमेरिका में खेती बहुत बड़ी इंडस्ट्री है। तीन प्रतिशत से भी कम लोग पूरे अमेरिका के लिए अनाज पैदा करते हैं और दूसरे देशों को निर्यात भी करते हैं, जबकि हमारे यहां किसान 10 करोड़ से ऊपर हैं। हमारे यहां छोटे किसान का खेत एक एकड़ या डेढ़ एकड़ से कम है—वह क्या कर सकता है। वह तो सरकारी एजेंसियों के हाथ में खिलौना है चाहे उसे लाभ हो या न हो या उसका शोषण हो। क्या सरकारी संस्थाओं के खिलाफ कुछ कार्रवाई हो सकती है यह एक मूल मुद्दा इस बिल का है। इसलिए मेरी प्रार्थना आपसे होगी कि आप इस बात को इसमें अवश्य रखें।

गांधी जी ने कहा था कि जो सबसे छोटा व्यक्ति है अगर उसको किसी काम से लाभ होता है तो वह चीज करने योग्य है, उसको लाभ नहीं पहुंचता है तो सरकारी स्तर पर करने योग्य नहीं है। हमारी संस्था को भी लगता है कि किसान के जो इस समय अधिकार हैं जो वह अपनी काशतकारी करता है, उसमें कमी आयेगी, उसमें बढ़ोतरी नहीं होगी और उसकी गुलामी बढ़ेगी—जैसा पहले लेखी साहब ने कहा था।

यहां पर अंत नहीं है कि 50 हजार प्लान्ट्स की वैराइटीज है या पांच लाख की वैराइटीज है। हमारे एक्सपर्ट श्री देवेन्द्र शर्मा जी बाहर गए हैं। हमने उनसे पूछा था। उन्होंने कहा कि आजादी के बाद केवल चावल की सैकड़ों वैराइटीज बन गई हैं। जब तक यह पता न हो कि कितनी वैराइटीज है तो कैसे पता लगेगा? बिल का ऑपरेशन उस समय शुरू होना चाहिए जब रजिस्टर तैयार हो जाए। उसे बनाने में सरकार की पूरी ताकत लग जाए तो 15-20 साल से कम नहीं लगेगे। आज एक प्रतिशत भी ताकत नहीं लगी है। कई व्यक्ति अपनी नई वैराइटीज की अर्जी देंगे। पैसे वाले के पास साधन हैं। अर्जी तो 6 साल बाद मंजूर होगी और उसे बिल के अनुसार छपा जाएगा लेकिन उसे कौन पढ़ेगा? क्या सभी उसे पढ़ पाएंगे? उनके बिहाफ पर किसी की जिम्मेदारी होगी? उनकी बात कहने के लिए कोई संस्था होनी चाहिए। छपने पर वह अखबार में आ जाएगा और वह भी अंग्रेजी में आएगा। यह तो नहीं लिखा कि वह सारी भाषाओं में छपा जाएगा। छपने के बाद किसी को पता नहीं लगेगा। अभी केला साहब ने बताया कि एक पेटेंट की अर्जी यू०एस०ए० में दायर हुई। उसके चार लाख पत्रे थे। इतने साइज की एप्लिकेशंस आ रही हैं। कौन सी फार्मर्स की ऐसी संस्था है जो इन हजारों और लाखों पत्रों को पढ़ सकती है। अगर तीन महीने बाद भी कोई अर्जी नहीं आई तो उन्हें वह मिल जाएगा। जितनी हजारों लाखों वैराइटीज हैं, वे सारी बाहर के देशों के लोग या पूंजीपति लोग बना लेंगे, रजिस्टर में दाखिल कर लेंगे और मालिक बन जाएंगे। जो हमारी संपदा है, वह सारी उधर चली जाएगी। आप एक-एक क्लोन पर जा सकते हैं और उसे कर सकते हैं। यह फोरम उसके लिए नहीं है। हमें कमिटमेंट पर शक है। ट्रिप्स एग्रीमेंट 1999 तक रिव्यू होना था।

सभापति महोदय: गैट पर हमने साइन कर दिए हैं।

श्री चन्द्र भूषण सिंह: उसे रिव्यू करने के लिए हम यहां बैठे हैं।

डा० वाई०पी० आनंद: इसका जो रिव्यू था वह 1999 तक था जिसे हमें सन् 2000 तक करना है। रिव्यू हो जाये तो फिर हम इसे कर सकते हैं। अगर ऐसे किसी बिल को बनाना है तो किसान के जो अभी मौजूदा अधिकार हैं उनको बहुत अच्छे तरीके से सुरक्षित रखते हुए इस बिल को बनाना चाहिए। सबसे पहले हमारी जो लाखों किसान की वैराइटीज है उनकी सूची तैयार होनी चाहिए तथा बिल का ऑपरेशन ऐसा होना चाहिए जिससे आम किसान के बिहाफ पर सरकारी संस्थाएं इस बिल में रखें हों कि किसान के बिहाफ पर कोई एप्लीकेशन आती है उसको वह जांचें और उनके हित का संरक्षण करें।

श्री चन्द्र भूषण सिंह: देवेन्द्र शर्मा जी को विटनेस के लिए जरूर बुलाया जाये।

डा० वाई०पी० आनंद: वह आना चाहते थे, लेकिन उन्हें विदेश जाना पड़ गया।

श्री बी०के० केयला: सभापति जी, सबसे पहली बात ट्रांजेशनल पीरियड की बात है। हमें पांच साल इस बिल को लागू और पास कराने के लिए मिले हैं आर्टिकल 65(4) को पढ़ा जाये और उसकी इन प्लान्ट्स वैराइटी से तुलना की जाये तो हमारे पास 10 साल हैं। इसका मतलब यह नहीं है कि बिल बनाने की प्रक्रिया में हमें 10 साल चाहिए लेकिन कोडिफिकेशन के लिए हमें समय चाहिए, क्योंकि

कोडिफिकेशन बहुत महत्वपूर्ण है। कोई भी क्लेम आयोग तो यह देखना पड़ेगा कि क्या यह नयी वैरायटी है या नहीं है। अगर हम ऐसा नहीं करते हैं तो हम पुरानी वैरायटी को नयी वैरायटी मानकर क्लेम कर जायेंगे। यह विडम्बना हमारे सामने है। इसलिए इसके ऊपर जोर-शोर से काम होना चाहिए। आर्टिकल 27 के 3 (बी) में लिखा हुआ है जिसके अन्तर्गत हम यह सिस्टम बना रहे हैं। उसका रिव्यू डब्ल्यू टी ओ की स्थापना के चार साल में होना था। लेकिन लास्ट ईअर रिव्यू शुरू हुआ और वह अभी पूरा नहीं हुआ है। उसका क्या लेख-जोखा हमारे सामने आता है, क्या मॉडल बनता है, क्या इंडस्ट्रियल पेटेंट के लिए मॉडल बनें और क्या प्लांट वैरायटी के लिए भी कोई मॉडल बनकर आयेगा? गैट के डिप्टी डायरेक्टर जनरल से मेरी मुलाकात के दौरान चर्चा में गिर आया कि रिव्यू का मतलब क्या है? उन्होंने बताया कि एक मॉडल बनेगा। एक मानक मॉडल हम दे दें कि प्लांट वैरायटी को बचाने के लिए हम तैयार हैं। जब नया मॉडल आयेगा तो उसको भी हमें अपना पड़ेगा। आज जिस इंडस्ट्रियल पेटेंट की बात है उसमें कई समस्याएँ हैं लेकिन उसे आज हमें इम्प्लीमेंट करना पड़ रहा है। इसलिए वह मॉडल किस प्रकार का होगा, उसे हमें देखना चाहिए। इम्प्लीमेंटेशन की समस्या का इश्यू डब्ल्यू टी ओ में बहुत सारे विकसित देशों ने उठाया कि इसमें इम्प्लीमेंटेशन की समस्या है।

अगर हम बनाएंगे तो लाखों किसानों पर कैसे लागू होगा। यू.एस.ए. में लागू करने में कोई मुश्किल नहीं है क्योंकि वहाँ सैकड़ों की तादाद में फार्मर्स हैं, बिग होल्डर्स हैं। उनके पास साधन हैं। वहाँ कैसा भी लॉ हो, वे उसे इंटरप्रेट कर सकते हैं, सोच सकते हैं। यहाँ किसानों पर कोई अंकुश नहीं है। अगर करेंगे तो कह दिया जाएगा कि वह कहीं इन्फ्रिजमेंट तो नहीं कर रहे हैं। पैन्ल्टी में 10 लाख तक फाइन हो सकता है, कैद हो सकती है। लॉ को इम्प्लीमेंट करने में क्या प्रबलम है उसे देखना चाहिए, विचार करना चाहिए। एक बिल बनना चाहिए और प्लांट वैरायटी की प्रोटेक्शन करनी चाहिए। हमारे पास क्या समस्याएँ आयेगी, उनके बारे में आपने क्या सोचा है? आप ग्राउंड रिएल्टी को समझने की कोशिश करें।

बिल में सभी वैरायटीज को कवर करने का प्रावधान किया गया है। उसमें लिखा है कि जो वैरायटी निकालनी होगी, उसे पब्लिक इंटरस्ट में निकाला जाएगा और सरकार उसे नोटिफाई करेगी। UPOV कन्वेंशन 78 या 91 देखें। UPOV कन्वेंशन 78 कहता है कि कोई भी नया मैम्बर पांच वैरायटी से अपना शुरू कर सकता है। UPOV कन्वेंशन 91 कहता है कि प्रोडक्शन 15 से ही शुरू कर सकते हैं। इन सभी वैरायटीज को करने का प्रावधान किया जा रहा है। इसके बारे में सोचना चाहिए। अगर लॉ लाना है तो लिमिटेड स्कोप के लिए लाएँ। उनको फ्लॉवर्स तक सीमित रख कर देखा जा सकता है कि उसका क्या प्रभाव पड़ेगा। होल सेल वैरायटी को कवर करने का प्रावधान किया गया है जो ठीक नहीं है। यहाँ के किसानों को रेगुलेटरी सिस्टम में बांधने की कोशिश की जा रही है। आज वे स्वतंत्र हैं। सिर्फ उनसे लगान लेना है उसे सबसिडी डायरेक्टली और इन्डायरेक्टली कैसे मिलती है, यह ऐंगल है।

फसल से ग्रेन और सीड बनता है। ग्रेन को सीड करके यून करने पर किसानों पर क्या असर पड़ेगा? रिप्रोडक्शन पर अंकुश है। अगर उसने फसल को बेच दिया, सीड करके यून कर लिया तो उसका क्या असर होगा? इस पर जोर नहीं है। एजोर्शन ऑफ राइट करने का प्रावधान है। ब्रीडर ने प्रोपेटिंग मैटिरियल बेच दिया, मुआवजा ले लिया, उसके बाद राइट नहीं होना चाहिए। यहाँ राइट अपट्रू फार्मर्स तक जाता है। सीड कम्पनियाँ हैं, यूनिवर्सिटीज हैं, रिसर्च सेंटर्स हैं, ब्रीडर हैं, उन तक ठीक है। इसमें किसानों को बीच में लाने की क्या जरूरत है? जब एजोर्शन ऑफ राइट समाप्त होता है तो उसे समाप्त करके किसानों तक मत लाएँ। किसानों को टोटली एक्सक्लूड कर दिया जाएगा तो वे जो राइट्स आज ले रहे हैं, नया सीड यहाँ आकर बिकता भी है, किसान उसे इस्तेमाल भी करता है, जब लॉ बन जायेगा तो पेटेंटिड सीड को वह खरीदेगा। ऐसे में कुछ न कुछ अंकुश उसके ऊपर लगेगा।

यह जो अंकुश है और जैसा अभी माननीय सदस्य कह रहे थे कि किसान क्या करेगा? क्या उसके ऊपर कुछ अंकुश आयेगा—हां, आयेगा। हमें किसान को इस कानून से बाहर रखना चाहिए। उसके पास जो भी राइट है, वह ठीक है। इसमें उन्हें डालने की कोई आवश्यकता नहीं है। ब्रीडर को प्रोटेक्शन देना है तो प्रोटेक्शन को वहाँ तक ही रखिये।

इसमें कम्प्लेसरी लाइसेंसिंग की जो व्यवस्था है वह पब्लिक इंस्ट्रुट का नजरिया है। ब्रीडर का राइट एक्सक्लूसिव राइट है, वह मार्किट को एक्सक्लूड कर रहा है जिसके लिए कम्प्लेसरी लाइसेंसिंग सिस्टम है। भारत में यह सिस्टम बहुत कमजोर है। इसमें यह कहा गया है कि अथॉरिटी डिसाइड करेगी कि कम्प्लेसरी लाइसेंसिंग का पीरियड क्या होगा—पांच साल का होगा या छः साल का होगा। ब्रीडर के सामने 15 साल बाकी बचे हुए हैं। ब्रीडर के राइट जहाँ समाप्त होंगे वहाँ तक कम्प्लेसरी लाइसेंसिंग समाप्त होना चाहिए। इसमें कुछ कारण दिये गये हैं जिन पर कम्प्लेसरी लाइसेंसिंग दी जा सकती है। इस पर हार्ड पावर अथॉरिटी विचार करेगी। कम्प्लेसरी लाइसेंसिंग दे दिया लेकिन साथ ही आपने यह प्रावधान कर दिया कि अपील भी हो सकती है। इसलिए पूरे संसार में यह अपरेट नहीं हो पाया। कोर्ट में जाने पर भी अपील हार्ड-कोर्ट में पड़ी रहेगी। दूसरे जितने आईपीआर कानून हैं उसमें आपने ट्रिब्यूनल का प्रावधान रखा है। हार्डकोर्ट में 25-25 साल तक के मुकदमें पड़े हुए हैं जो समाप्त नहीं हो रहे हैं। यहाँ यह अवधि 18 साल में समाप्त हो जायेगी और केस चलता रहेगा। इसलिए कम्प्लेसरी लाइसेंसिंग पर अपील का प्रावधान नहीं होना चाहिए। यहाँ अपील के लिए हार्डकोर्ट बनाया है, उसे ट्रिब्यूनल में रखिये जिससे अगर इन्फ्रिजमेंट का केस आये तो उसका फैसला ठीक से हो सके।

जो पैन्लटीज रखी गयी है वह बहुत ज्यादा है। इसके बारे में राजीव धवन जी बताएंगे। इन मोटी-मोटी बातों को ध्यान में

रखिये, जल्दबाजी न कीजिये। हमारे पास समय है। दूसरे देश भी ट्रांजेशनल पीरियड को बढ़ाने के लिए कह रहे हैं। लेकिन यह पीरियड अगर 15 साल भी रहे तो भी थोड़ा ही रहेगा। पूरी तैयारी करने के बाद ही हमें इस विधेयक को लाने की कोशिश करनी चाहिए। धन्यवाद।

सभापति महोदय: अपनी एडवाइज को अगर आप लिखकर दे दें तो अच्छा रहेगा।

श्री बी० के० केयला: मैं दूसरी संस्था की तरफ से पहले ही किसी को दे चुका हूँ। लेकिन इस संस्था के साथ मैं भी मेरा लगाव है। यहां आने की इजाजत के लिए धन्यवाद।

श्री चन्द्रभूषण सिंह: आप दूर-दूर से वित्नेस के लिए एक्स्पर्ट्स को बुला लेते हैं लेकिन उन्हें टी०ए०डी०ए० नहीं मिलता है। वह उन्हें मिलना चाहिए। अभी अहमदाबाद से अनिल गुप्ता आए लेकिन इन्हें कोई टी०ए०डी०ए० नहीं मिला।

(Witness then Withdrew)

WITNESSES EXAMINED:

1. Dr. Rajeev Dhavan, Director, PILSARC.
2. Shri Dayan Krishnan, Advocate.
3. Shri Anil Srivastav, Advocate.
4. Shri Amit Gupta, Researcher.

MR. CHAIRMAN: You may briefly tell the Committee about your views on the Bill.

DR. RAJEEV DHAVAN: Let me say that whatever detailed views we have on the Bill, we would give them in the form of a note.

MR. CHAIRMAN: Have you not given the note already?

DR. RAJEEV DHAVAN: We have given a preliminary note. I would briefly talk about various aspects of the Bill. My colleagues also may add to it later, if they want.

Firstly, I come to your Statement of Objects and Reasons. I want to make this statement and reiterate what Shri Keayla has said earlier. There was a bit of mal-advice in stating that this Bill was necessary at this point in time. I will put a legal proposition to you that article 27(3)(b) has to be read subject to article 65. The important part of article 65 says:

“As far as a developing country is concerned, it may delay the obligation of the provisions of product patents of Section 5 to such areas of technology to which it does not cover for an additional period of five years.”

Therefore, one view is that some *sui generis* protection has to be provided now. The other view is, article 65 in fact overrides article 27(3)(b). I will give the list of WTO countries that have not complied with it. It is our view that most of the countries of the world read this configuration as article 65 giving us an extra five years. I think this must be understood. This is quite apart from the argument that has been made by Shri Keayla and others that let the review process be over. Are we obliged to do so? According to the Statement of Objects and Reasons we are legally obliged to do so. But, in our submission this is not the case.

I think one should bear this in mind both in terms of what the legal obligation is and in terms of the various exigencies. We do not have the gene pool and we do not have a register as to what varieties would be applied to. One view that would be open to and one interpretation that is given to Clause 29 of the Bill is that it should not apply to some varieties in public interest. That is a very heavy requirement. Please remember that under UPOV-I, it applies to only 24 genera and the whole argument of article 27 is that should it extend across the board to UPOV-II or not. Our request to you would be not to apply to UPOV-II and to apply it across the board. We are concerned with food security and we are concerned with farmers. You could very well say that at this point of time, we will apply it to those varieties which Parliament specifically lists and anything that is connected with food security should not fall within the domain of this Bill. It is because if we are to provide some

effective *suo generis* protection, and if we follow UPOV-I when they do not supply all the genera, then we should be in a position to pick and choose. Please bear this in mind because once this goes through, then the structure of this Bill is such that it will have drastic consequences worse than some of the questions that you very kindly had put to the previous team as to what are the implications of Section 65.

Now what is this Bill about? This is about the breeder. It is not about the farmer and I will come to that part in a moment. Let us see how a breeder is defined. The breeder is defined as a person who has bred and 'discovered' or develops any variety. Therefore, any person who comes and says that he has discovered any variety would be entitled to a breeder right. That right is an exclusive right to what he has discovered. Now, where does the farmer come into picture? If we say that a farmer is an

exception, then we are only concerned with the sale saying that here is the breeder's right, here is the product and if the farmer uses or sells it, he would not come under this provision. But ultimately, we are also concerned about something else, not just the farmers transaction from season to season but also the farmer's knowledge. One of the questions that the Committee has put to earlier teams— we were fortunately sitting at the back — is this. if you enlarge this into a chapter on farmers, what would it contain? You are really saying that you want to protect the farmers' right apart from commercial use, and then you are saying that the breeder has the right. But it is the transactional right of the farmer who is protecting. The country's entire genetic resources agree that it depends not just on the farmer selling or using from season to season but it is the farmers' knowledge. Ultimately, there is a huge amount of knowledge lying there which can then be commoditised. A breeder means a persons who has bred, discovered or develops any variety. If somebody goes to some area of Assam and says that he has discovered a particular variety of banana, how will it hold good? When I had been to the Banarsi Sewashram, I found that huge varieties of bananas have been collected by my friend. He told that he collected it from all over the country. Supposing, he said that he had discovered it, then what will happen? That discovery can then be commoditised. Our concern is, we should protect our farmer who has discovered saying that यह मेरा है मैं इसका इस्तेमाल करूँ या न करूँ। मैं इसे बेच सकता हूँ या बांट सकता हूँ। कमर्शियल है या नहीं है, यह बात अलग है। ये बातें तब आती हैं जब आप इन्हें रिकोगनाइज करते हैं। ब्रीडर ने कहा है कि यह डिस्कवरी मैंने की थी। किसान के पास केवल दो राइट्स रह जाते हैं।

कोई इसका कमर्शियल इस्तेमाल नहीं कर सकता है। दूसरा राइट यह है कि अगर उसने डिस्कवरी में भाग लिया हो या पहले इस्तेमाल किया हो तो वह पहला बैनिफिट शेयर बन जाता है।

Now, this is the big irony in the Bill. The man who has been using it, the man who has discovered it is suddenly reduced to the status of a beneficiary. This is something which you must bear in mind. This Bill contains one provision about farmers and no other, and that provision is clause 31. जब फार्मर्स का राइट बन जाता है तो वे दो बुनियादी चीजें इस्तेमाल कर सकते हैं या नहीं, अपने दोस्त को दे सकते हैं या नहीं, मार्किट में नॉन कमर्शियल सेल कर सकते हैं या नहीं—ये बातें आती हैं।

Therefore, in my view, if the term "breeder" is defined in the manner in which it is being defined, then we are not talking about protecting the farmer. We are simply talking of protecting some transactions of the farmer. इस कमेटी में सुना होगा कि जब बड़ी मल्टी नेशनल कम्पनी आती है तो वह इलाके में जाकर पत्ती तोड़ कर उसकी कैमिकल प्रॉपर्टी तो नहीं देखती है। वे पूछते हैं कि किस के साथ इसका इस्तेमाल किया? आप जब डिस्कवर वर्ड इस्तेमाल कर रहे हैं तो इसका मतलब है कि — You are poaching on somebody else's knowledge. What is the effect of the poaching on somebody's knowledge? The effect is that he becomes a benefit sharer. उसको कोई राइट नहीं मिलेगा। उनको राइट है कि अथॉरिटी उसे डिसकस करेगी और कहेगी कि इनका प्रॉफिट एक करोड़ था। इसमें 1-2 लाख दे देते हैं।

This is a total reversal of the environment of farming and agriculture which we have to protect. I say this because as lawyers, we prepared a petition under the WTO. Only one survives now and that is in respect of the State of Tamil Nadu *versus* the Union of India in which we have questioned it. Please remember that agriculture is a State subject. I am not saying that under Article 253 you cannot go on to a State subject because the treaty is there. We have signed the treaty. We can certainly transgress. India is not governed by the treaty. हमारी चाहत थी कि Let there be a proper consultation with the States. आपको पता है कि डब्ल्यू.टी.ओ. के जमाने में एक अर्जुन सिंह कमेटी बैठी थी।

That Report is confidential. In fact, it was never revealed to anybody. The fact that we have copies is another matter. That is an Official Secret issue. But let us leave that aside for a moment. So, what we are really concerned with is one aspect. This Bill is meant for whom? Who do we want to protect? Even if we include a chapter on the farmer, will the farmer's right, his knowledge, his across-the-board use be protected? The answer is the use of the word "discover" in Clause 2 ©. It is actually a massive exercise in the poaching of the knowledge of the Indian farmer of the last five millennia. I do not think you can run away from that. I could understand this if they had raised it. Here, breeder means a person who has bred and developed any variety after taking an innovative step and who does it for commercial reasons. It is well understood. There is something apart from this. There is the Patent Law. It is not a question of novelty because novelty means "new" in this context. It does not say that this person has taken an innovative step.

वे गए और उन्होंने कुछ बैराइटीज डिसकवर की।

Therefore, I could understand it if two further qualifications are added saying that you want to protect the breeder. I am not saying that you should do it. If you take the five seed companies, India has no brief to protect them. I can understand your saying that you want to protect some of our agricultural and scientific institutes. If scientific institutes are available, their knowledge should also be available to everybody, and certainly to the farmer. But if you are protecting the breeder, then there are only two contexts in which this protection would arise. The first is if they have taken innovative steps which amount to an invention, and the second is that you protect only certain aspects of their commercial activities.

To that extent what Shri Keayla said is absolutely correct. Once I have sold my property to you, my right is exhausted. Therefore, a very pertinent question that was put to an earlier team is about the contract.

आप देखिये कि क्या होता है, एमएनसी आती है और कंट्रैक्ट में कहती है कि यह बीज आपका नहीं है लेकिन हम आपको दे रहे हैं, जो बच जायेगा उसे वापस हमें दे दीजिएगा।

In other words, it is possible even to curtail by contract the farmer further. Section 31 will not help him. If he has entered into an agreement, Section 31 will not help him. Contractual option is open. Please bear this in mind.

In another Chapter protecting the farmer without protecting his knowledge the word 'discover' is going to have disastrous effect. हाँ, ब्रीडर की रक्षा आप करना चाहते हैं तो मैं समझ सकता हूँ। But to say you protect the discovering breeder is to protect the marauder who goes to every part of India, picks up the knowledge of everyone and say इसमें बहुत कुछ पैसा आपको भी मिल जायेगा। This cannot be the protection of the farmer nor is Section 31 complete enough because of the question of use. Yes, of course, farmer use. When we met farmers and when we met people from Argentine who came in the earlier days, they said that India has a wonderful advantage. If some wretched company wants to sue us, well let them sue 400 million farmers. That is not the problem. What is my right?

Now, I come to the criminal provisions, if you do not mind. I am going to be brief. देखिए, अगर बिल रखना है तथा कमर्शियल ब्रीडर के लिए आपको थोड़ा बहुत प्रोटेक्शन देना है तो It can be done by a kind of trademark regime. कि यह आपका ट्रेड-मार्क है इसको कोई इस्तेमाल नहीं कर सकता। अगर किसी और तरीके से बनता है तो अलग बात है, If he makes, it is up to him. So, we protect your trademark market but to protect you across the board when you yourself are a poacher, that does not make sense.

Take Chapter 14 which deals with infringement and Chapter 15 which deals with offences. I want to make one general statement, if you do not mind because we have been studying this for a long time. कोई भी लेजिस्लेशन होती है तो हम उसे क्रिमिनलाइज कर देते हैं। I am not saying Dowry Act is justified or the Untouchability Act is justified. आपने गलती की तो यह प्रोविजन आप पर लागू हो जायेंगे।

I do not think it is necessary. It really is not necessary. To criminalise everything is not a necessary addenda to this at all. Of course, I will give the rest in written submission. These provisions are draconian. आपने झूठ बोला तो यह लागू हो जायेंगे।

Look at the width of Clause 65:

“Whoever makes any representation in respect to the denomination of a variety....”

This is a very dangerous provision because it is no comfort to somebody to say later on that I can prove that I did it innocently. In all this you have a vast experience, far greater than any of us will ever have now. आप जानते हैं कि हालात लोगों को जेल में कैसे ले जाते हैं, पुलिस वाले कैसे पकड़ते हैं। एक बड़ी फैमस किताब है— About criminal procedure, which is headed — “process is the punishment”, the punishment is not the punishment. Therefore, the question that we have to ask here as far as this criminal chapter is concerned is that what Chapter 15 procedure will it unleash? कंपनी वाला आदमी कहता है कि तुमको जेल में बंद करवा देंगे। आप तो जेल में चले गये और उसके बाद कार्रवाई गांव के इलाके में शुरू हो गयी। जब तक उस केस की कार्यवाही पूरी नहीं होगी तब तक तो वह फौजदारी के जाल में फंसा रहेगा।

I do not mind my saying so. I am firmly of the view that in all these legislations are of a regulatory nature, apart from some areas of social work where we cannot compromise—untouchability cannot be compromised.

The question of SC/ST offences cannot be compromised. अगर आपने थोड़ी मिस्टेक कर दी तो आपको जेल में डाल देंगे।

This is certainly not on and let me say that all these offences, apart from the innocence clause, are strict liability offences. In the case of TADA, it was said that it was written unknowingly. But the Supreme Court had said that it is written unknowingly, but we would read it into TADA. All these provisions have no element of *mens rea* in them, but only a defence of innocence. They are offences of strict liability across the board.

Then, it is stated in Clause 62 that a particular person shall be deemed to falsely apply to the denomination if he applies for such a denomination in a particular way. मैंने दरखास्त की और एक जुर्म बन गया।

So, I would say that certainly this whole criminal area has to be completely removed from this Bill. It has no place in a statute of this nature. It is nothing more than a weapon in the hands of a plant breeder. He will go and file a complaint and nothing can stop him. If it is an offence, it does not say whether it is cognisable or not, but let us see what the result will work out to be. He will go and file a FIR and a friendly policeman will do the rest.

श्री चन्द्र भूषण सिंह: यह एस०सी०एस०टी० से मिलता जुलता होगा जिस में दरखास्त लगा कर वह केस हो जाएगा।

डा० राजीव धवन: उससे भी ज्यादा होता। यह एक फार्मूला चला आ रहा है।

In all our development statutes from the year 1950— एक डैवलपमेंट स्टैट्यूट है। अगर उसमें सोशल रिफार्म हैं तो उसमें उसके खिलाफ क्रिमिनल एलिमेंट डाल दीजिए। अगर रेगुलेटरी स्टैट्यूट है चाहे एडवैन्स स्टैट्यूट हो, असैशल क्मोडिटीज हों, उसमें यह रखना बिल्कुल जरूरी है।

So, this kind of a formula where the whole purpose of the statute is to benefit the breeder and to hand over the area of criminal procedure to the breeder is not at all good. It is high time we grew out of it. I have seen many cases, but such a heavy criminal procedure does not exist even in heavy intellectual property regimes. यदि आपको रैमेडी लेनी है तो लीजिए। आपके डैमेजेस मिलेंगे।

Then, I am also a little worried about the infringement part. You hardly ever get an injunction in it. बहुत सी चीजें होती हैं जैसे डिफेमेशन ला। जो डैमेजेस मिलने हैं, मिल जाएंगे।

This Bill says that you can also get injunctive relief. Now, let us read Clause 31. What happens to the farmer who is supposed to be the ring leader in a particular area?

मान लीजिए 100 फार्मर्स इकट्ठे होते हैं। वे कहते हैं कि हम कुछ चीजें सेल करेंगे। इससे हमारी भी उन्नति होगी। लोकल कोर्ट में कम्पनी पहुंच जाती है।

It asks them to stop using a particular kind of seed half way through the sowing season. ये कहते हैं कि आपको सोइंग सीजन अभी आ रहा है। आप इसे स्टाप करें।

I can understand this injunctive relief for further commercial use, but this broad power of injunction is likely to be horrifyingly misused. यह रिलीफ और परपज पर बात हो गई।

When we talk of benefit sharing, this Bill tries to do too many things in one clause. The issue of biodiversity and the issue of the rights of farmers are too complex issues and what this Bill does in the various provisions on benefit sharing, which are contained in Clauses 26, 48 and 51, is to relegate the person, who has been using this for centuries, to just get a little bit of money at the end of a long-winded process.

Therefore, I do not believe that this Bill protects the community rights satisfactorily.

Lastly, I think, the institutions that have been created certainly need to be re-examined because a development function has been given to the authority plus ultimately adjudicative function. This can turn out to be a very problematic thing. I do not think the developmental function which has lots of financial and problematic implications can be worked out that way. I entirely endorse this system of Bills.

अभी देखिये, वकील स्ट्राइक पर गये तो चर्चा हुई कि केस डिले हो रहे हैं। अगर आपने यह अपील हाईकोर्ट को दे दी तो यह इंजंक्शन आर्डर है, 10-20 साल के लिए आप वहां बैठे रहेंगे।

Therefore, our submission is that there is no compulsion. There is a misreading of the TRIPS Treaty when it comes to article 65 if it is being applied to another area for which it does not exist. You have five years.

Number two, the definition of 'breeder' in terms of 'discoverer' is an invitation to poaching on the traditional rights of the farmer. The farmer's rights are protected in terms of sale. The total knowledge of the farmer which will be poached is not protected and an extra chapter is not going to do it.

Then, the injunctive provisions that you have are much too wide. If any rights is to be given, let him get his right to damages. The show must go on. Season after season, the farmer will have to do what he likes. Let the persons prove what is wrong. I tell you that when the patents thing went to America, they took us to the WTO. I was privileged to see America's complaint against us in which they said that they owed us several billion. You know, that case would have been dismissed in India. They did not itemise what was the damage and in which area the damage was. Unfortunately, we capitulated at the hearing. Therefore, that Ordinance had to be passed.

My concern is that certainly any right for the farmer on an ongoing basis, his knowledge, his use, even the threat of civil proceedings — as far as it is used — cannot be permitted. Even the coercive sale simply cannot be permitted. The criminal provisions are out of place. The institutional arrangements sprawl all over. This is a standard form of statute. That must be looked at. We are

expanding. We have over-written the provisions by a formula and all this is for the benefit of five major actors in the world. We are going to arm them with the right to cheat, the right to take over knowledge, the right to criminal intimidation in a legal network and the right to stop the farmer going about his business.

MR. CHAIRMAN: Thank you very much.

डा० रामकृष्ण कुसमरिया: आज हमारे चेयरमैन भी नहीं है और बहुत से मैम्बर्स भी नहीं है, हम केवल दो लोग हैं। आप हमें इसके नोट्स बनाकर दे देंगे तो जो मैम्बर्स नहीं हैं उनके पास भी पहुंच जायेंगे।

MR. CHAIRMAN: We shall be very grateful if you give in detail what has been discussed here, that is, point-by-point.

DR. RAJEEV DHAVAN: You please give us a week. हम एक हफ्ते में दे देंगे।

The Committee then adjourned.

**JOINT COMMITTEE ON THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS
BILL, 1999**

**RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE
PROTECTION OF PLANT VARIETIES AND FARMERS/RIGHTS BILL, 1999**

*(Thursday, 3 August, 2000 from 1500 to 1730 hrs. in the Committee Room 'D', Ground Floor,
Parliament House Annexe, New Delhi).*

PRESENT

Shri Sahib Singh Verma — *Chairman*

MEMBERS

Lok Sabha

2. Shri Ajay Chakraborty
3. Shri G. Putta Swamy Gowda
4. Shri Suresh Ramrao Jadhav
5. Shri Raghuv eer Singh Kaushal
6. Dr. Ranjit Kumar Panja
7. Shri Sharad Pawar
8. Shri Shanker Sinh Vaghela
9. Shri Ummareddy Venkateswarlu
10. Shri Mahboob Zahedi

Rajya Sabha

11. Dr. A. R. Kidwai
12. Shri Lalithbhai Mehta
13. Shri Ranjan Prasad Yadav
14. Dr. Biplab Dasgupta
15. Shri N. R. Dasari

SECRETARIAT

1. P.D.T. Achary — *Joint Secretary*
2. Shri Ram Autar Ram — *Director*
3. Shri P.D. Malvalia — *Under Secretary*

**REPRESENTATIVES OF THE MINISTRY OF AGRICULTURE
(DEPARTMENT OF AGRICULTURE & COOPERATION — SEEDS DIVISION)**

1. Shri Bhaskar Barua — *Secretary*
2. Shri R.C.A. Jain — *Additional Secretary*
3. Shri Govindan Nair — *Joint Secretary*
4. Dr. G.D. Sharma — *Acting Director, NBPGR*
5. Ms. Dolly Chakrabarty — *Deputy Secretary*
6. Dr. R.P. Kattiyar — *ADG, ICAR*
7. Shri R.K. Trivedi — *Assistant Commissioner*
8. Shri D.P. Singh — *Joint Manager, Seeds*
9. Dr. S. Kochhar — *Senior Scientist*

**REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS
(LEGISLATIVE DEPARTMENT)**

1. Shri S.D. Singh — *Deputy Legislative Counsel*

WITNESSES EXAMINED

1. Dr. Vandana Shiva, Director,
Navdanya, New Delhi.
2. Shri B.K. Keayla, Managing Trustee,
Centre for Study of Global Trade System & Development and Convenor, National Working
Group on Patent Laws, New Delhi.
3. Shri K.L. Jadhav, President, All India
Kisan Sangh, Gandhi Nagar, Gujarat.
4. Shri P.S. Vasta, President
(Delhi Pradesh). Bhartiya Kisan Sangh,
Delhi
5. Dr. R.S. Paroda, Director General, ICAR,
New Delhi.

(The witnesses were called in and they took their seats)

सभापति महोदय: मुझे बहुत खुशी होती है, समिति के माननीय सदस्यों ने इस विषय में काफी रुचि दिखाई है। देश के प्रति चिन्ता व्यक्त की है। अच्छे-अच्छे सुझाव दिए हैं। मुझे यह कहते हुए गर्व होता है, इस विधेयक के सुधार में सभी का अधिक सहयोग रहा है। जो सुझाव आए हैं। उनको हम विधेयक में शामिल कर पायेंगे, लेकिन कुछ चीजें हैं, जिनको मोडिफाई करना होगा।

आप सभी को मालूम है कि हमने आप सभी माननीय सदस्यों को इसकी कॉपी भेजी है, आपने उसे देख लिया होगा। आपको इस संबंध में जो भी राय देनी है, आप अपनी राय एक-एक करके दे दें। इसके बारे में आपको जो कुछ कहना है, वह बता दें। उसके बाद डा० पड़ोदा बताएंगे।

डा० वंदना शिवा: सभापति महोदय, धन्यवाद। हम यहां एक-दो चीजों के बारे में बोलना चाहेंगे, जो हमारे संरक्षण के काम से जुड़ी हुई हैं, जिससे छोटे किसानों के हक पर असर पड़ता है। मुझे इस बात की चिन्ता है कि यह जो नया अमेंडमेंट है उसमें वही क्राइटेरिया एंलाई किया जा रहा है, जो ब्रीडर्स की रजिस्ट्रेशन के लिए किया जाता है। मेरा एक सुझाव होगा कि जहां-जहां किसानी वैरयटी का रेफरेंस आए, उसके लिए क्राइटेरिया निश्चित किया जाए। दूसरा यह है कि इसमें जो सैक्शन 44 में दिया हुआ है उसे देखने से पता चलता है कि पहले से थोड़ा बदलाव आया है और वह अच्छा है, क्योंकि पहले जो था, उससे तो ऐसा लगता था कि फार्मर्स को खत्म करने की बात थी।

MR. CHAIRMAN: The explanation is there in section 44. It says:

“For the purposes of clause (iv), branded seed means any seed put in a package or any other container and labelled in a manner indicating that such seed is of a variety protected under this Act.”

What more do you want?

DR. VANDANA SHIVA: Branded seed will mean the brand of our trade market that a company uses. लेबलिंग तो किसानी वैरयटी का भी करके उसे ब्रांडेड माना जा रहा है, लेकिन वह ब्रांडेड नहीं है। अब इस एक्ट से किसानी वैरयटी को भी प्रोटेक्ट कर रहे हैं। हम कह रहे हैं। Labelling should be deleted. Branded with a trade name of corporation the trade mark of that corporation. अगर मेरे पास बासमती है तो बासमती का मुझे लेबलिंग करना ही पड़ेगा।

अध्यक्ष महोदय: गेहूं होगा तो गेहूं लिखेंगे और अगर चावल होगा तो चावल लिखेंगे।

डा० वंदना शिवा: इसमें जो पहला वाक्य आ रहा है, आप उसे पढ़िए। किसान बीज बेच सकता है, परन्तु वह नहीं बेच सकता जो ब्रांडेड होगा।

MR. CHAIRMAN: He can simply write it.

DR. VANDANA SHIVA: He cannot use the brand name of the corporation.

MR. CHAIRMAN: He can make a different labelling.

डा० वंदना शिवा: देहरादून से जो बासमती आता है, उस पर बासमती लेबल लगाना ही पड़ेगा।

सभापति महोदय: गेहूँ या चावल तो लिखना ही चाहिए। It says:

“ For the purpose of Clause (iv), branded seed means any seed put in a package or any other container and labelled in a manner indicating that such seed is of a variety protected under this Act.”

श्री बी०के० केयला: जो किसान सरप्लस बीज पैदा करेगा, उसको तो बाजार में जाकर बेचना ही पड़ेगा। उसको कंटेनर में डालेगा, लेबल लगाएगा, ब्रांड नेम नहीं लिखेगा, परन्तु डिनोमिनेशन लिखेगा। किसान को सीड को आइडेंटिफाई करना ही होगा।

सभापति महोदय: मान लीजिए, मकई का दाना है, वैराइटी गंगा-2 है, तो क्या लिखेगा?

श्री बी०के० केयला: ब्रांड नेम नहीं लिखेगा। सीड का डिनोमिनेशन लिखेगा।

SHRI SHARAD PAWAR: But how will the problem be solved? See the last sentence. It is written as “in a manner indicating that such seed is of a variety protected under this Act.” How will you be able to give protection?

SHRI B.K. KEAYLA: The seed has been saved by a farmer and he wants to dispose of that seed as he has surplus with him. He will not put the brand name but he will put its denomination. Every variety is given a denomination and it will be identified by the denomination.

SHRI SHARAD PAWAR: Suppose I have a variety of *mucca* and I utilised about two bags. About one-and-a-half bags is surplus with me. Suppose, I want to sell it in the market, then is it allowed?

SHRI B.K. KEAYLA: We can put the denomination, to sell it.

SHRI SHARAD PAWAR: But I can sell in the open market.

SHRI B.K. KEAYLA: It can be disposed of without brand name but by giving denomination. The breeder gives the brand name and it is the requirement of law that every seed has to be given a denomination.

MR. CHAIRMAN: What is your view, Dr. Paroda?

DR. R.S. PARODA: It is not necessary that in every case there should be a denomination or a brand name.

Sometimes, it could be only one produce like the Ganga-II which you have mentioned. There is no number given like H-347 or something like that—whether it is Ganga-II or whatever it is. The question that is being raised is so simple that if we permit farmers today, they will develop it. Others will also be using the protected varieties. What is said is that whosoever is going to sell the seed, he should not be allowed to use the brand name. Whatever is proposed here is quite right. According to my understanding, this provides a complete protection.

SHRI SHARAD PAWAR: Dr. Paroda, you just referred to Ganga-II and all that. What guarantee do I get about the quality of the seed? Anybody can cheat me.

DR. BIPLAB DASGUPTA: Let us stick to it.

सभापति महोदय: अगर यह होगा कि कंटेनर बैग में किसी में डाले, ब्रांड का नाम न लिखें और बेचें, It will help the farmers. Also, the variety will be protected. That is what he feels. But Shri Sharad Pawar says it cannot be.

SHRI B.K. KEAYLA: We must provide here that the farmers will not sell it as a branded seed. He will sell it by giving the denomination.

सभापति महोदय: इन्होंने बताया है कि डिनोमिनेशन करेंगे, ब्रांड का नाम नहीं लिखेंगे। What could be that identification? One can simply put it in a bag. How will one identify it? Without disturbing the breeder's right, how can we do it?

DR. S.D. SINGH: As per this Act, for registration of a plant variety, the breeder shall submit before the Registrar a denomination of the breed. Suppose he says K-68 is his breed; he has produced

and developed it and it should be registered with his name. If a farmer is producing it, he will not be writing his name but he could write that it is produced by him in his farm whether it is K-68 or something like that. But he will not write his name.

सभापति महोदय: इनका कहना है कि उसे आइडेंटिफिकेशन तो करना ही पड़ेगा।

SHRI B.K. KEAYLA: इसमें दिया है, Every variety has to be given a denomination. It is also written. The denomination cannot be registered as the trade mark. It is only the brand name and not the denomination which is prohibited here.

सभापति महोदय: डिनोमिनेशन तो रजिस्टर नहीं होता। यह एक अच्छा प्वाइंट है, इसमें हम देखते हैं। डिनोमिनेशन देने से उसकी प्रोटेक्शन खत्म नहीं होती तो हम कोशिश करेंगे कि इसमें कुछ चेंज करें।

डा. वंदना शिवा: महोदय, जो पहला ड्राफ्ट है, उसमें किसानों की वैरायटी का प्रोटेक्शन नहीं था, नये ड्राफ्ट में आया है। इस क्लॉज़ में किसानों की बीज का लेनदेन भी कवर हो रहा है। किसान ब्रांडेड बीज नहीं बेच सकता।

बासमती का जो पुराना बीज है, उसकी कीमत है। दुगुने दामों में बिकता है।

MR. CHAIRMAN: We will see how this language will be improved. This point is well taken.

SHRI B.K. KEAYLA: We can take up Chapter VI—Farmers' right. In the first place, my request is that we are creating a number of varieties. There is a new variety to be protected under the TRIPPs agreement. We are supposed to protect only the new variety. There are various varieties which we are unnecessarily covering under this law. The law that is required to be framed is for giving protection to new varieties. Here, you are saying that farmers will enjoy Farmer variety. मेरा निवेदन है कि इसमें आप सभी वैरायटी मत रखिए। एक ही वैरायटी प्रोटेक्शन के लिये रखिए।

MR. CHAIRMAN: It is for a new variety. If you do not protect the breeders' right, who will breed.

SHRI B.K. KEAYLA: Under the Act, all varieties are being protected including farmers' variety. But so far as the new varieties are concerned, you have made a provision, the Government will identify, protect and notify. National treatment under WTO is also an angle—which includes a variety, which has not been developed so far, which has not come into the market, which has not been sold, and not documented in the past that should only be protected.

MR. CHAIRMAN: But farmers' variety and other varieties are to be protected. If a company comes and makes use of all these varieties for developing a new variety, what will be protected?

SHRI B.K. KEAYLA: Breeder will take permission.. for derived variety in linked to his protected variety. Same protections will be available till the end of that term as far farmers' right, the rights and privilege farmer enjoy, hitherto he should continue to enjoy. आपने बैनिफिट शेयरिंग का भी प्रोवीजन किया है। ये दोनों बातें ठीक हैं। तीन-चार वैरायटी बनाकर आप प्रोटेक्शन देना चाहते हैं। एडिशनल वैरायटी नहीं आ सकती है। आपने ब्रीडर को प्रोटेक्शन दिया है। वह नई वैरायटी के लिये ही होना चाहिये।

दूसरे, किसानों के राइट्स प्रोटेक्ट करने की बात है। आपने कहा है कि किसान पहले जो राइट्स एन्जाय करता था, वही करेगा। इतना करना ही ठीक है।

सभापति महोदय: ऐसा है जो चीजें स्पेसिफिक हैं वे न होकर जनरल हों।

श्री बी.के. केयला: इसमें लीगली बहुत सी कठिनाइयां आ सकती हैं। दूसरा, जो बेचने का सवाल है, जैसे मैंने निवेदन किया कि वह ब्रांड का नाम तो नहीं दे सकता। Licensing of Right is a legal right to exploit new varieties. उसमें सिर्फ कम्पनसेशन का सवाल है, डिसाइड करने की बात है। आप अगर फार्मर्स की मदद करना चाहते हैं, आप अगर चाहते हैं कि एग्रीकल्चर यूनिवर्सिटी भी पनपे तो वे लाइसेंसिंग आफ राइट का सिस्टम एडोप्ट करने की कोशिश करें। हमने यहां नेशनल जीन फंड को क्रिएट किया और नेशनल बायो डायवर्सिटी बिल भी ऐसा फंड क्रियेट किया है। ये जो दो फंड हैं, लाइन कहां ड्रा होगी, इसका जो यहां उद्देश्य है, वही उसका भी है। मेरा निवेदन है कि एक ही फंड को रखा जाए।

सभापति महोदय: इस पर हमारा कहना यह है कि सब लोग इकट्ठे बैठ जाएं और सब की सहमति हो जाए।

श्री बी.के. केयला: अब मैं उस बात पर आता हूँ जो चैप्टर चार में सेक्शन 28(1) में दिया हुआ है कि रजिस्ट्रेशन सर्टिफिकेट इश्यू होने से ब्रीडर या उसके एजेंट को उत्पादन करने का, बेचने का, डिस्ट्रीब्यूट करने का, इम्पोर्ट और एक्सपोर्ट करने का एक्सक्लूसिव राइट मिल जाएगा। इसमें मेरा निवेदन है कि जो एक्सक्लूसिव राइट दिए हैं, उसमें इम्पोर्ट और एक्सपोर्ट का राइट न दिया जाए। आप सूई जैनेरस सिस्टम बना रहे हैं तो इसमें मेरा कहना यह है कि इम्पोर्ट और एक्सपोर्ट का राइट न दिया जाए। इसमें जो सेक्शन 28(3) दिया हुआ है कि हरेक अथोरिजेशन उस रूप में होनी चाहिए, जैसा कि रेगुलेशंस में दिया हुआ है। आप उस पर विचार कर लीजिए। इम्पोर्ट और एक्सपोर्ट का राइट देने का क्या मतलब है, किसी एक को एक्सक्लूसिव राइट देकर या होगा। जैसे फार्मर्स को लाइसेंसिंग ऑफ राइट दे दिया है और ये भी कह रहे हैं कि ब्रीडर को ही एक्सपोर्ट का राइट होगा। डाक्ट्रेज आफ Exhaustion के आधार पर जब राइट होल्डर अपना सीड बेच लेता है तो उसके बाद राइट खत्म होना चाहिए। Then, it should be possible to bring in parallel imports. पेटेंट ला में ऐसा प्रावधान किया गया है और यहां भी होना चाहिए।

Now On page 18, Article 28(9) reads as follows:

“(9) Without prejudice to the registration under sub-section (4), the terms of registration—

(a) may be varied by the Registrar as regards the variety in respect of which, or any condition or restrictions subject to which, it has effect...”

कंडीशन वेरी करना मुसीबत की बात है। यह संभव नहीं होगा। This also has to be looked into. National treatment के आधार पर भी ऐसा करना ठीक नहीं होगा।

सभापति महोदय: यह बदल दिया है।

डा. वन्दना शिवा: वैरायटीज को नोटिफाई कैसे करेगा। The initial laws should be identified in the Bill. You can start with five varieties. You can start with 15 varieties. We can choose five or ten varieties and those initial laws and varieties could be identified.

सभापति महोदय: जो पहले था, सरकार ने छोड़ दिया। Instead of specifying the number of varieties, the best thing is that we leave it to the Government. If we feel that there is something wrong in registering more varieties, then, the Government can immediately say that it could be only up to this.

SHRI B.K. KEAYLA: The Central Government shall, by notification in the Official Gazette, specify the genera or species.

सभापति महोदय: जो प्रोवीजन पहले नहीं था, प्रोवीजन अभी किया है। सरकार स्पेसिफाई करेगी।

SHRI BIPLAB DASGUPTA: You wanted these to be substituted only by plain varieties. What difference does it make?

SHRI B.K. KEAYLA:... The UPOV convention says that you can start that with limited numbers. This is one angle. The other angle is that we are not yet ready with codification. Codification is a massive job. If we say that we identify 20 varieties, where is the codified material with us for these 20 varieties to judge the claims?

MR. CHAIRMAN: ...About a particular branch, it is limited to five, eight or ten varieties.

SHRI BIPLAB DASGUPTA: If you join a convention, there will be something binding on the basis of that convention.

SHRI B.K. KEAYLA: Let me complete.

Now, I come to Chapter III.

DR. BIPLAB DASGUPTA: You are going backwards.

MR. CHAIRMAN: They are giving preference to farmers.

श्री बी.के. केयला: इसमें दोबारा वही बात है। I will read section 3(a), it says:

“Novel, if at the date of filing the application for registration for protection, the propagating or harvest material of such variety has not been sold or otherwise disposed of....”

इसमें एक शब्द एड करना होगा। डाकुमेंटेशन हो जाता है तो वह वेरयटी नावल नहीं रहती।

MR. CHAIRMAN: Shri Singh, is this all right?

SHRI S.D. SINGH: Documentation is required only in the field of research. Here I do not think documentation is required.

DR. R.S. PARODA: Documentation has to be defined in that case. It has to be public documentation and not documented in some laboratories, etc.

MR. CHAIRMAN: You are saying that instead of 'documentation', it has to be 'public documentation'.

SHRI R.C.A. JAIN: The criteria for novelty is required only for a new variety. If something has been documented and not been sold, in that case it should not be debarred from being registered. The criteria of documentation is not required to be added. It is not in regard a farmer variety and it is only for a new variety.

DR. VANDANA SHIVA: The response that has come from Shri Jain is absolutely readymade. पहले बिका नहीं था, परन्तु डाकुमेंटेशन हो गया था, किसानी वेरयटी है, पहली बार वह कम्पनी बीज की तरह बेच रही है तो किसानों की वेरयटी लेकर बेचेगे। Documentation is absolutely important.

SHRI R.C.A. JAIN: In case of any variety, the breeder will have to clear the passport. If it is a farmer's variety, it will come on record and a new variety has to be introduced. So, it is not necessary that the same thing has been documented. It should be prevented from being registered. The only legitimate thing is to ask for a share in the benefit.

DR. VANDANA SHIVA: The result of the proposal basically is that a seed variety that is available today for farmers is there. Mostly for farmers, now it is a protected variety. The company makes five million dollars out of the sales.

But in the meantime, the farmers are generating that market of five million. That burden of new cost is going on to the farmers and farmers do not end up becoming a monopoly property of the corporations. That is precisely why we need all these definitions for recognition. What he is suggesting is a practical mechanism.

SHRI BHASKAR BARUAH: That would depend on the merits of each case.

SHRI B.K. KEAYLA: We have fought the cases abroad on the basis of documentation.

DR. BIPLAB DASGUPTA: We are not discussing the beneficiary. We are discussing the definition of novelty. What is novelty? We can define it further.

SHRI LALITHBHAI MEHTA: What is the legal terminology used? Suppose the word 'documentation' is used, it means it is the public documentation.

DR. R.S. PARODA: Public knowledge is always required and it must be put as a condition for any documentation. In that context, we can put appropriately that kind of requirement.

SHRI LALITHBHAI MEHTA: Then, you use the words "publicly documented".

SHRI B.K. KEAYLA: Then, Sir, explanation under clause 'b' says that "...varieties in any convention country". It can be 'any other country'. It is on page 10.

DR. BIPLAB DASGUPTA: Patent has certain limitation. If we have to work to the definition, why do you bring in all these things? What is the hurdle in it? Is novelty on commercial basis?

SHRI B.K. KEAYLA: These are relevant for plant variety but these are not relevant for industrial product. It is relevant for agricultural product.

DR. BIPLAB DASGUPTA: Can any farmer ensure uniformity?

SHRI BHASKAR BARUAH: Uniformity is not necessarily to the point of decimal. As far as uniformity is concerned, the criteria is only for new variety and not for extant variety. We are within the power to devise a strategy which will take into account the variations.

MR. CHAIRMAN: You should take it into consideration.

श्री के.एल. जाधव: महोदय, मैं एक ही बात कहना चाहता हूँ, आपने किसानों को बुलाया है, इसलिए पहले मैं आपको धन्यवाद देना चाहता हूँ। इस बिल का जो प्रोविजन है, वह तो दो हजार पांच में है। मैंने आपको लिखित में दिया है, उसमें लिखा हुआ है, We can expect certain amount of precision in those things.

MR. CHAIRMAN: But he says about only extinct variety; some uniformity should be there. आप एक बात बताएं कि जो ड्राफ्ट पहले हमारे पास था और जो री-ड्राफ्ट हुआ है, उसमें किसानों का ख्याल रखा गया है या नहीं रखा गया है?

श्री के.एल. जाधव: मैं तो कहता हूँ कि जो लीगल कॉम्प्लीकेशंस हैं उनमें से बाहर रखा जाए।

DR. R.S. PARODA: For any registration or for notification of a variety, it must be very well distinct. It should be uniform. In the context of living society and extinct varieties about which we are talking, some relaxation of procedures can be evolved for anything new, whether it comes from a farmer or from a breeder and it must have a distinct form. It must be uniform and it must also be suitable.

सभापति महोदय: किसान पहले जिन चीजों का फायदा लेते थे, उनका अब भी लेते रहेंगे।

DR. VANDANA SHIVA: You can extend it to the other farmer varieties also. It may be done so that farmers will not be put to any difficulties marginally. I am talking from the point of view of the farmers.

श्री के. एल. जाधव: इसमें फार्मर्स राइट नहीं होना चाहिए।

MR. CHAIRMAN: अगर फार्मर्स को राइट नहीं होंगे तो लोग कहेंगे कि आपका राइट है ही नहीं। Then they will put me behind the bars. That is what I mentioned earlier also. But what I feel is that nowhere in the other bills it is there. We have studied about 35 Bills of the other countries. They have made no mention of the farmers' rights. If you do not mind the farmers' rights then the farmers will be in a bad position. He will get a share. He will be free from registration. So many things are there in this Bill.

श्री के.एल. जाधव : जैसा कि किसानों के अधिकारों की बात है और आपने कहा भी है कि किसानों के अधिकारों की रक्षा की जाएगी, तो यह बात इस बिल में होनी चाहिए।

सभापति महोदय: ऐसा हमने पहले ही कर दिया है।

SHRI B.K. KEAYLA: Please see article 15(3)(b). It should not be restricted to convention country और आर्टिकल 17 में हर वैरायटी की डिनोमिनेशन देनी जरूरी है। मल्टीनेशनल सीड company तो ब्रांड नेम भी देते हैं। आर्टिकल 18(1)(a) में 'न्यु' वैरायटी को स्पैसिफाई करना जरूरी है।

MR. CHAIRMAN: This is a form of application for all sorts of registration. We are mentioning new varieties. It means other varieties which are registered.

SHRI B.K. KEAYLA: Please see article 19. I quote:

"Every applicant shall, along with the application for registration made under this Act, make available to the Registrar such quantities of seeds of a variety for registration of which such application is made of, for the purpose of conducting tests to evaluate whether such variety along with parental material conform to the standards as may be specified by regulations."

So, for test purposes they have to give relevant technical data also.

SHRI BHASKAR BARUA: We can repeat it. If it is there, we will provide.

SHRI B.K. KEAYLA: If you do not do it, he can take shelter of this not being there.

SHRI B.K. KEAYLA: Sir, I now come to the next Chapter. My submission is that we are going to protect the limited varieties. We are going to create an authority with many more members. The Bill is not for a much larger domain than industrial patents. We have the Controller General of Patents, Design and Trade Marks. Here also, my submission is that there is no need of any authority. There is only the need of a Registrar General. They the *ex-officio* members have no direct responsibility as such. If at all we have to create an authority, you create it with two or three members. They should be permanent members with specific angle of work and responsibility. They will be accountable.

सभापति महोदय: आपका कहने का मतलब है कि आथोरिटी की जरूरत नहीं है और अगर रखनी है तो छोटी रखनी है।

श्री बी०के० केयला: जी हां।

सभापति महोदय: ऐसा है ये पहले छोटी थीं। पूरे देश भर में किसानों की एसोसिएशंस और स्टेट गवर्नमेंट की राय थी कि आथोरिटी होनी चाहिए तथा इसमें और आदमी होने चाहिए। इसमें परमानेंट एक-दो-तीन व्यक्ति हैं, ज्यादा नहीं हैं।

SHRI B.K. KEAYLA: Sir, the seed industry is a concerned party. So, a member of seed industry should not be there on it. They are the interested party.

सभापति महोदय: आपका कहने का मतलब है कि सीड इंडस्ट्री का मेम्बर नहीं होना चाहिए, क्या कारण है?

श्री बी०के० केयला: आप इसकी जगह पर रिसर्च सेंटर से लीजिए, जो प्राइवेट रिसर्च सेंटर हैं उन्हें बढ़ावा दीजिए।

सभापति महोदय: आपने जो सुझाव दिया है, वह अच्छा है। उनका भी कोई रिप्रजेंटेटिव हो तो हमें कोई ऐतराज नहीं है। हम इसे देख लेंगे।

SHRI B.K. KEAYLA: I will now come to the Chapter VII on compulsory licence system. Sir this system becomes weak when we provide for an appeal. Any compulsory licence taken by any party, which is compulsory licence all over the world, has remained operative because there has been a provision for appeal. In our law we have a provision for compulsory licence and also a licensing of right system. Licence of right is a legal right. The only thing to be decided is the compensation payable to the right-holder. That provision should also remain here and this compulsory licence, if it is appealable, every decision will go in for appeal. The appeal will lie with the Tribunal and then to the High Court. It is not that the High Court was unnecessary. I checked up with the Law Commission and they said that the High Court has to be there because the Supreme Court has decided that any decision by a Tribunal can go in for appeal to the High Court.

Earlier there was a provision for going to the Supreme Court. So, if we have a provision for appeal against compulsory licence, it will remain only on paper. So, we should provide for licensing of right. At least for farmers and universities it should be there.

Then, in article 51, you have said that the Authority shall determine the duration of the compulsory licence. In this regard, I would submit that the duration of a compulsory licence is always *co-terminus* with the term of the right of the right-holder. That is the provision for compulsory licence and licensing of systems right. If there are 10 or 15 years left and the compulsory licence is given for two years, it will have no meaning. The situation worldwide is that compulsory licence is given which is *co-terminus* with the term of the right given to the right-holder to avoid repetition of earlier situation.

MR. CHAIRMAN: It is already there.

SHRI B.K. KEAYLA: Then, article 52 talks of reasonable remuneration. इसमें रायल्टी का प्रावधान करिए। पेटेंट कानून में चार परसेंट है, इसमें हम 5 से 8 परसेंट तक रख सकते हैं। Otherwise, reasonableness is always debatable.

MR. CHAIRMAN: Do you want us to mention it? We are leaving it to the Authority.

SHRI B.K. KEAYLA: Then, I would submit that section 57-c should be deleted.

धारा 57 (c) में ट्रिब्यूनल में अपील नहीं होनी चाहिए। That is all I have to say. Thank you.

MR. CHAIRMAN: Thank you.

श्री के० एल० जाधव: पेटेंट होने के बाद कम्पनी किस रेट से सीड बेचेगी? अगर कहीं लगता है कि मंहगा बेच रही है, तो अथोरिटी को इन्टरवीन करना चाहिए।

MR. CHAIRMAN: The Authority will see that he sells it at a reasonable price.

SHRI K.L. JADHAV: Will there be any control of the Authority?

MR. CHAIRMAN: Yes. We have made a provision.

श्री बी० के० केयला: जिस तरह से मैडिसन में प्राइस फिक्स होती है। क्या उसी तरह से इसमें भी प्रावधान हो सकता है? प्रोटेक्टेड सीड में प्राइस फिक्स होनी चाहिए।

श्री के० एल० जाधव: आप फार्मर्स को बचाना चाहते हैं।

सभापति महोदय: यहां जितने भी लोग बैठे हैं उन सब का ध्यान फार्मर्स की तरफ है। वे चाहते हैं कि किसी तरह से देश के किसानों का गला न घोट दें। उनको आजादी रहे। मैंने जिस-जिस से बात की है, उन्होंने कहा है, Everybody is strongly feeling about it. They are worried that the farmers would be hit hard. They have a sympathetic attitude towards the farmers.

SHRI PIRTHI SINGH VATS: Chapter X deals with infringement. If you see clause 68, there is an exception. it says:

“68 (1) No suit—

- (a) for the infringement of a variety registered under this Act; or
- (b) relating to any right in a variety registered under this Act,

shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.

(2) For the purpose of clause (a) and (b) of sub-section (1), “District Court having jurisdiction” shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 or any other law for the time being in force, includes a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or proceeding, the person instituting the suit or other proceeding, or, where there are more than one such person any of them actually and voluntarily resides or carries on business or personally works for gain.”

Here, it is an exception. Normally, the Code of Civil Procedure provides that the suit shall be filed at the place where the defendant resides or where the cause of action has arisen. This exception will complicate the matters because the persons concerned can file their claims in their respective places against those who are residing somewhere else. Therefore, this right should not be given to a person who is alleging that his rights have been infringed. The suit should be filed at that place where the cause of action has arisen or where a person is alleging that his right has been infringed.

DR. S.D. SINGH: It is very difficult to decide where the cause of action has arisen. It is only to decide the jurisdiction that this provision has been made. This provision allows us to decide the jurisdiction on the basis of ‘residence’.

MR. CHAIRMAN: But in the Code of Civil Procedure, usually, the jurisdiction is decided on the basis of ‘cause of action’.

DR. S.D. SINGH: Similar provisions exist elsewhere also, like in the provisions dealing with intellectual property rights etc.

SHRI PIRTHI SINGH VATS: This provision can be misused by a person who wants to implicate a farmer who is residing somewhere else. Suppose, a farmer is staying at a place which is one thousand kilometres away, and a person, who wants to misuse this provision will file his suit at a place of his choice. How will you avoid that?

सभापति महोदय: आप ठीक बात कह रहे हैं।

SHRI PIRTHI SINGH VATS: If it is CPC, what is wrong in it?

I think, we should follow the CPC. There should not be any exception to that.

DR. VANDANA SHIVA: Sir, here we are talking about subjects that would very often go against the farmers. That is why, the consideration of the farmers' interests should be of absolute importance. I think, retaining rights of the defendant, as under the CPC, should really be there.

MR. CHAIRMAN: That would be ideal. It is a good point. I agree on that point.

SHRI PIRTHI SINGH VATS: Sir, now I would invite your attention to clause 69(2) (c). It says, "restraining the defendant from disposing of or dealing with his assets in a manner which may adversely affect plaintiffs ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff".

It means that if somebody has some assets and for certain reasons wants to dispose it and if some persons file a suit saying that it is an infringement to the extent of Rs. 20 lakhs then this would be an unnecessary incumbrance. The Court may direct that he may not sell his property or may not even mortgage it. Such like, it should be left to the ordinary courts of law. As is usual, in such like cases, it should not be a restraint order not to sell the property.

DR. S.D. SINGH: Sir, in that case, when the Court would award a decree, how is it possible to recover the property of same extent? For that purpose, the Court would pass an injunction order. There could be attachment of the property before judgement. When already the law exists, why should there be a restraint order? Why is this restraint order in the case of the court without any criteria as to what should be the guidelines?

SHRI BHASKAR BARUA: There is already a provision for it in the ordinary law. Let it prevail. Why should there be a special provision in that? If there is a provision for attachment before judgement as per normal CPC, then that should be adequate.

SHRI PIRTHI SINGH VATS: The poor farmer may be victimised.

सभापति महोदय: आप जो बता रहे हैं, यह ठीक बात है।

SHRI PIRTHI SINGH VATS: Why not a civil actionable claim? Why should it not be restricted to penalty and offences? It is an ordinary farmer.

सभापति महोदय: आपके दोनों प्वाइंट मान लिए गए हैं, ऐसा कोई प्वाइंट न दें, जो माना न जाए।

SHRI PIRTHI SINGH VATS: I have a last point. Since the provisions of penalty and offences can be misused for criminal prosecution, let it be compensated by civil action, by damages. Civil suit is already there. Restraint order is already there. I feel that somewhere down the line the innocent farmer will fall prey to this provision of criminal prosecution as a result of which he may have to leave his land and go over to jungles.

MR. CHAIRMAN: What do you think is needed here?

SHRI PIRTHI SINGH VATS: This penalty clause requires to be removed.

MR. CHAIRMAN: Already there is a provision that if a farmer does something unknowingly, he will not be brought to book.

SHRI PIRTHI SINGH VATS: It does not work that way. Section 77 says:

“The provision of this Act relating to offences shall be subject to the right created as recognised by this Act and no act or omission shall be deemed to be an offence under the provisions of this Act if such act or omission is permissible under this Act.”

This is very uncertain. This makes no sense.

सभापति महोदय: आप बताइए, यह जनरल बात कह रहे हैं, इससे पता नहीं चलेगा।

श्री एस०डी० सिंह: मैंने पहले आपको इस बारे में सब कुछ बता दिया है। उन्हीं चीजों को रिपीट करना होगा।

MR. CHAIRMAN: Why should this be retained when the actionable suit is there to the extent of any amount?

श्री शरद पवार: इसमें लिखा हुआ है—

“(i) a right established under this Act shall not be deemed to be infringed by a farmer who at the time of such infringement was not aware of the existence of such right;

(ii) a relief which a court may grant in any suit for infringement referred to in section 68 shall not be granted by such court against a farmer who proves, before such court, that at the time of the infringement he was not aware of the existence of the right so infringed.”

In the light of this, section 77 can be deleted.

SHRI R.C.A. JAIN: Yes, Sir. In the light of 43, 77 can be deleted.

SHRI PIRTHI SINGH VATS: Yes. Section 43 can be modified.

SHRI R.C.A. JAIN: There are too many redundant laws in here and 77 is one such. Farmer is protected by section 43.

SHRI R.K. TRIVEDI: We may delete 77.

SHRI PIRTHI SINGH VATS: Even otherwise, this only saves the farmers from civil action and not from the criminal offences. It never deals or protect him from the criminal prosecution and penalty for offence.

When the matter is before the Court, many interpretation will take place. It simply speaks of the civil offence only.

MR. CHAIRMAN: How do you improve this?

SHRI PIRTHI SINGH VATS: There is rights to infringe. So, it will also apply in case of offences and penalties for criminal prosecutions. It will be so applicable as well in case of prosecution for fine and penalties.

SHRI R.C.A. JAIN: This can be added in section 43.

SHRI PIRTHI SINGH VATS: Criminal proceedings are very hard as compared to civil proceedings.

MR. CHAIRMAN: All right. It is also done.

SHRI PIRTHI SINGH VATS: He is also to be saved in the light of section 43 by adding that it will also apply to the *bona fide*, it must be applicable in cases of criminal offences.

MR. CHAIRMAN: Is there any harm if we do so?

SHRI BHASKAR BARUA: No, Sir.

MR. CHAIRMAN: The Secretary says that there is no harm. So we can do it.

DR. S.D. SINGH: I am referring to section 77. It is an overriding provision. It has an overriding effect. So, while interpreting, the court will read every section. This section 77 will be given priority.

MR. CHAIRMAN: All right. We will review it.

SHRI PIRTHI SINGH VATS: Now, the only point is to save him from the criminal proceedings. The last words of section 80 says:

'Explanation—For the purpose of this section—

“(a) company” means any body corporate and includes a firm or other association of individuals; and

(b) “director” in relation to a firm, means a partner in the firm.’

Here, it must be a person having active partner. Usually, in our course of businesses, there are sleeping partners. They are not attached with any activities. He must be a managing partner. He must be some what in a managerial capacity.

MR. CHAIRMAN: It is right.

SHRI R.C.A. JAIN: Then, there is no need to give extra protection to the sleeping partner.

SHRI PIRTHI SINGH VATS: ‘A person with a *bona fide* of intent.’ We are analysing a case. A *bona fide* person is intended to be a sleeping partner. It does not mean that the liability should be extended in cases of criminal liability when he has nothing to do with it. On the basis of a recent case, I say that it is a matter of interpretation.

MR. CHAIRMAN: Now, Shrimati Vandana Shiva may make her submission.

DR. VANDANA SHIVA: I want to make three very quick and brief points.

I think, there should be a differentiation of what action should be directed towards competing companies and business and what is to be directed at farmers. Already, the farmers are selling off their kidneys to repay debts. They are already committing suicide. The exemption under clause 43 is only when he did not know of the rights. Suppose he knew of the rights, even there, there should be a distinction because the economic status of a small farmer and a competing manufacturer are very different. I think, you should qualify what would be the quantum. I believe that the farmers should be totally exempted from any criminal action. जो बायो डायवर्सिटी बिल आया है, उससे सारी प्लांट वेरिटी एग्जम्प्ट हो गई।

Under the Bio-diversity Bill, the benefit-sharing mechanism would be over. So, unless you address the distortions in the Bio-diversity Bill, this Bill would be futile.

All over the country, we are finding increasing levels of spurious seeds. I think, there should be some clause on the liability of the seed companies. So, a liability clause should be added.

SHRI B.K. KEAYLA: In the definition, we have provided for a ‘convention country’. A ‘convention country’, it says on page 2, ‘means a country which has acceded to an international convention for protection of plant varieties.’ It is an international convention for plant varieties to which India has not to accede. India has not yet acceded to it. I think, by this kind of provision, we are trying to take some kind of an approval since there would be a possibility for the Government of India to become a member of the UPOV convention. It is a dangerous convention in the sense that whatever is provided there on the convention will have to be implemented.

SHRI R.K. TRIVEDI: ‘Any other country with which India has a bilateral arrangement for protection of plant varieties’—here, we are keeping all options open. We may join or we may not join.

SHRI K.L. JADHAV: India has already acceded.

SHRI B.K. KEAYLA: You have defined ‘convention country’ in article 31. That should be repeated here.

श्री के० एल० जाधव: इससे आप फार्मर्स का प्रोटेक्शन कुछ नहीं कर सकेंगे। आपकी इच्छा है, मैं जानता हूँ।

SHRI B. K. KEAYLA: My last submission is that internationally many developing countries have taken up with the WTO about extension of transitional period and also about the problems of implementation. This issue is pending before the General Council. Here, what we are doing is that we are implementing it. We can also ask for extension and we can state the difficulties. If we are going to implement them as it is, then there will be nothing to state. But why is there this haste when we have a ten-year period to go in for this kind of legislation, under article 65 (4) of TRIPS? We are only in the sixth year and we are now trying to push this law. We should see whether it is going to benefit us or it is going to create problems for us.

Then, article 27(3)(b) is also under review. It is about the obligation to make this law. It is yet to be reviewed, that is, the review is on. Why should we make this law now?

MR. CHAIRMAN: Actually, it was discussed. Dr. Paroda was present in a meeting and it was felt that the earlier we do it, type better it is for us. It was further said that it would help our country in a big way. They have given their views as to why did they say so. If you want to hear something straight from Dr. Paroda, we can request him to say a few points on that.

SHRI BHASKAR BARUA: If you permit, I would like to make only one point and then I would leave, since I have to go urgently.

We feel that this law is for our benefit; this law should be considered. This law should be there, for the benefit of the Indian scientists, regardless of any international considerations.

This is the one single point that I would like to make, before I leave. DR. Paroda would explain to you as to why it is so and other things.

DR. R. S. PARODA: With your permission, I would cover a few other areas.

First of all, we have been thoroughly involved. We agree to most of the amendments proposed here. In that context, I do not have much to contribute except for a few further improvements and refinements. That is with regard to Chapter-I, at page 2. We are mentioning Chairman of the authority. I think that it would be appropriate if we mention here as Chairperson because it has to be gender neutral. It could be any gender and thus, it should not be gender specific.

SHRI LALITBHAI MEHTA: In the legal terminology, 'man' includes 'women'. So, I feel that it is not necessary. Legal persons are present here and if we take the legal opinion, we would be clear. Otherwise, whenever we speak of 'man', it includes 'women'. This issue has come up already and it was decided like this.

DR. KOCHAR: There were two things. One is the Chairman and the other is the Chairperson. Chairman is for the Tribunal and 'Chairperson is for the Authority. So, there should not be any mention about these two, in the same set of definitions. It should not be there and both could be avoided. There can be a reference to the Chairperson of the Authority or the Chairman of the Tribunal. There were public objections to such usage and it was advised that there should not be any gender bias.

SHRI LALITBHAI MEHTA: When we were discussing the Information Technology Bill, this point was raised by some hon. Members; and the Secretary of the Law Department who happens to be a legal luminary opined that 'man' includes 'women'. So he said that wherever the word 'man' appears, it should be kept as it is.

DR. R.S. PARODA: I do not dispute that point. When we are saying technical member we are defining it later at 29(3) as a scientist.

DR. S. D. SINGH: This is for distinguishing between the technical member and judicial member.

MR. CHAIRMAN: Scientist is already there.

DR. R. S. PARODA: It is indicated that the Chairperson to be appointed shall be a person of outstanding calibre and eminence with long practical experience of at least fifteen years. Why should we define it by saying fifteen years. Long experience is sufficient. There is no need for fifteen years.

MR. CHAIRMAN: Yes, we can remove fifteen.

DR. R.S. PARODA: This Authority would require expertise in plant varieties. This is a Plant Variety Act. Why should we say related development? We should leave it there by saying 'plant variety research'. Otherwise, tomorrow anybody will come and do it. Even a seed producer will do it. Whereas one need specialisation in that field.

MR. CHAIRMAN: Yes, we will see to it.

DR. R. S. PARODA: The other point is that at page 27 it is mentioned, "The Authority may by order direct any breeder to deposit such quantity of seeds or propagating material including parental line seeds as may be specified in the regulations for reproduction purposes at the breeder's expense within such time as may be specified in that order." Now, we are not defining it very clearly. We have to define it clearly.

MR. CHAIRMAN: We can go further.

DR. R.S. PARODA: Further, it is said, "Subject to the other provisions of this Act a certificate of registration for a variety issued under this Act shall confer an exclusive right on the breeder or his successor, his agent or licensee, to produce, sell, market, distribute, import or export the variety".

In this context, I would like to say that we cannot allow a person to go on importing. There can be a small quantity of import but not of large quantities.

MR. CHAIRMAN: It is in the interest of our farmers.

DR. R.S. PARODA: Then, he will say that he would import these things rather than producing them. Then he will say that he will bring it from abroad.

SHRI LALITBHAI MEHTA: Both should be deleted.

SHRI B.K. KEAYLA: Trips does not allow the exclusive right on export. We can delete both.

DR. R.S. PARODA: Please refer to page 21, 36(1)

Why can we not have one-time fee? Why can we not fix the fee? किसान देते परेशान हो जाएगा।

सभापति महोदय: इसको और बढ़ा दें।

DR. R.S. PARODA: You are giving him the right for 15 to 18 years. You can fix up some amount.

SHRI R.K. TRIVEDI: It is difficult to get the fee for the entire 18 years.

MR. CHAIRMAN: It can be once in three or five years.

DR. R.S. PARODA: A provision should be there that they have to go for renewal in five years.

सभापति महोदय: फीस हम एक बार कर देते हैं। रिन्युअल पर दोबारा ले लेंगे।

SHRI B. K. KEAYLA: It is written here as, 'fee by way of royalty'. It should be only "fee"

SHRI LALITBHAI MEHTA: Royalty goes with production. If you do not have any production, there will not be any royalty.

DR. R.S. PARODA: Please refer to Page 28. When you give compulsory licence, we say: 'the authority will decide reasonable royalty and other remuneration... and expenditure incurred in approaching the authority'. So, he will give all the exaggerated figures for approaching the authority.

SHRI B. KEAYLA: It should not be left 'reasonable'. There should be some ceiling.

DR. R.S. PARODA: We must not incorporate here that we will be compensating him for the expenses incurred in approaching the authority.

MR. CHAIRMAN: What about the compensation?

DR. R.S. PARODA: The authority can decide that.

MR. CHAIRMAN: We should eliminate this. We will decide the reasonable compensation.

SHRI B.K. KEAYLA: Sir, the reasonableness will always be contested.

MR. CHAIRMAN: Then what should we do?

DR. R.S. PARODA: Sir, now I come to Gene Fund. In this context, we must try to look into the possibilities by which this Gene Fund can be reasonably built.

MR. CHAIRMAN: I may tell you the suggestion sent by Prof. M.S. Swaminathan in this regard. He has said that the funds available under the National Gene Fund will be very limited. The regular *insitu and exsitu* conservation activities of the Central and State Governments should be met from the budget of the concerned Departments of Government. The funds available under the National Gene Fund should be used to recognise, reward and revitalise the *insitu onfarm* conservation traditions of rural and tribal women and men.

DR. R.S. PARODA: Sir, on the lines of cess, something should be earmarked for the Gene Fund.

MR. CHAIRMAN: What could be that?

DR. R.S. PARODA: Sir, it could be one per cent of the total sale.

SHRI R.K. TRIVEDI: Sir, it would be difficult to collect as the States are also involved in it.

MR. CHAIRMAN: Yes. I have discussed it with you earlier also.

SHRI R.K. TRIVEDI: Sir, we would require manpower for collecting it from all over the country.

MR. CHAIRMAN: Let us see how we can incorporate this suggestion.

DR. R.S. PARODA: Sir, definitely it would be desirable to harmonise it with the Bio-diversity Act. I would like to submit that the suggestion there should also be a fund on the Bio-Diversity side and we need not get ourselves linked with that fund. This fund has to be on the basis of our own resource. It must be separate. It must not be linked with that.

The last point is the response to the question as to why we cannot wait for another five years.

SHRI SHARAD PAWAR: This issue was also discussed.

DR. R.S. PARODA: Even for the farmers varieties we want to protect them. Otherwise we will have no instrument by which we can fight for them in international fora.

SHRI B.K. KEAYLA: If you are going to have an authority, then the Registrar General should not be appointed by the authority. He should be appointed by the Government. He is going to hold a high powered position. If you leave his appointment to the authority, it would not be a wise decision.

सभापति महोदय: तारीख 9, को स्टेट रिप्रजेंटेटिव्स और वाइस चान्सलर के साथ मीटिंग रखी है। उनको चिट्ठी लिखी है। समिति की अगली मीटिंग, जैसा कि निर्णय किया गया है, 16.8.2000 को होगी।

मैं खास तौर से आप लोगों का आभारी हूँ। आप वोलन्टियर कर्पैसिटी में समिति की मदद कर रहे हैं। हम आपको धन्यवाद देते हैं। संसद में भी इसको अवश्य कहेंगे कि आपके सहयोग से इस काम को कर पाए।

(The meeting then adjourned)

**JOINT COMMITTEE ON THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS
BILL, 1999**

**RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE
PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS BILL, 1999**

*(Wednesday, 9 August, 2000 from 1600 to 1645 hrs. in the Committee Room 'D', Ground Floor,
Parliament House Annexe New Delhi).*

PRESENT

Lok Sabha

Shri Sahib Singh Verma—*Chairman*

Members

2. Shri Ajay Chakraborty
3. Shri G. Putta Swamy Gowda
4. Shri Raghuv eer Singh Kaushal
5. Dr. Ramkrishna Kusmaria
6. Dr. Ranjit Kumar Panja
7. Shri Anna Saheb M.K. Patil
8. Shri Nawal Kishore Rai
9. Shri Chandra Bhushan Singh
10. Shri Ram Prasad Singh
11. Shri Mahboob Zahedi

Rajya Sabha

12. Shri Lalitbhai Mehta
13. Prof. M. Sankaralingam
14. Shri N.R. Dasari

SECRETARIAT

Shri Ram Autar Ram — *Director*
Shri P.D. Malvalia — *Under Secretary*

**REPRESENTATIVES OF THE MINISTRY OF AGRICULTURE
(DEPARTMENT OF AGRICULTURE & COOPERATION — SEEDS DIVISION)**

1. Shri Bhaskar Barua — *Secretary*
2. Shri R.C.A. Jain — *Additional Secretary*
3. Dr.R.S. Paroda — *Director General, ICAR*
4. Dr. Mangala Rai — *Deputy Director*
5. Dr. G.D. Sharma — *Acting Director NBPGR*
6. Ms. Dolly Chakrabarty — *Deputy Secretary*
7. Dr. R.P. Katiyar — *ADG, ICAR*
8. Shri R.K. Trivedi — *Assistant Commissioner (Seeds)*

**REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE & COMPANY
AFFAIRS (LEGISLATIVE DEPARTMENT)**

1. Shri S.D. Singh — *Deputy Legislative Counsel*

WITNESSES EXAMINED

1. Dr. I.V. Subba Rao, Vice-Chancellor
Acharya N.G. Ranga Agricultural University, Hyderabad
2. Dr. P.K. Singh, Joint Director (Research)
Indian Agricultural Research Institute, New Delhi
3. Dr. P.K. Mishra,
Principal Secretary, (Agriculture)
Government of Gujarat
4. Dr. Mehta
Vice-Chancellor, Gujarat Agricultural University
5. Shri Gangani
Joint Director (Agriculture)
Govt. of Gujarat
6. Dr. R.D. Muley, Director
Agriculture, Pune,
Govt. of Maharashtra
7. Dr. M.P.S. Kohli,
CIFE, Mumbai

(The witnesses were called in and they took their seats)

सभापति महोदय: मैं सभी सदस्यों का अधिकारियों का और जो बाहर से माननीय सदस्य यहां आमंत्रित हैं, स्वागत करता हूं। इससे पहले की हम मीटिंग की कार्यवाही शुरू करें मैं आपको इसकी थोड़ी सी डिटेल बता देना चाहूंगा। हमने 30 राज्यों के हैड आफ दी स्टेट को पत्र लिखा है। 35 पत्र यूनीवर्सिटीज, रिसर्च इंस्टीट्यूट आदि को लिखे थे। 65 लोगों को मैंने व्यक्तिगत रूप से चिट्ठियां भेजी है और 40 लोगों से टेलीफोन पर बात हुई है। इनमें से केवल सात लोगों का जवाब आया है जिन्होंने कुछ रिपॉस दिया है और आने के लिए कहा है। 65 लोगों में से केवल एक ने रिप्रेट किया है। चेन्नई की तरफ से कुछ लिखकर भेजा गया है जो मैं आपको सर्कुलेट कर रहा हूं। बाकी किसी की तरफ से कोई रिप्लेशन नहीं आया है। अभी तो रिपोर्ट फाइनल नहीं हुई है लेकिन इनको हुम्म हुआ होगा कि फाइनल होने से पहले आप लिखकर दे दें। हमने कहा कि हम पहले इस पर चर्चा करेंगे। इसमें आपने जो भी इम्प्रूवमेंट करवाना है, वह करवा दें। All the suggestions are welcome. If you have any sort of improvement which are in the interests of the country and its farmers, we have no problems in accepting them.

The hon. Member Shri N.R. Desari has written a letter to me submitting a note of dissent. He had desired that a copy each of this letter may be submitted to its Members. We are going to circulate it to you just now. Everybody is welcome to give suggestions. इसको फाइनल करने से पहले हम क्लाज बाय क्लाज डिस्कशन करेंगे फिर उसकी एप्रूवल होगी। आपको इस संबंध में जो भी इम्प्रूवमेंट कराना है या जो भी अमेंडमेंट देने हैं, वह दे दें। आज हमारे बीच श्री आई०वी० सुब्बाराव, डा० पी०के० सिंह, डा० पी०के० मिश्रा, डा० मेहता, श्री गंगानी, डा० आर० डी० मूले आए हुए हैं।

जिनके नाम मैंने बोले हैं, उनके अतिरिक्त यदि कोई और आए हों, तो वे कृपया अपना परिचय दें। आप सभी ने देखा होगा कि समिति इस बिल पर काफी गंभीरता से विचार कर रही है। आज खासतौर से जिन लोगों को आमंत्रित किया है, उनकी राय जानने के लिए हमने समिति की इस बैठक को आहूत किया है। यदि आप कुछ सुझाव दें और इसमें कुछ और इम्प्रूवमेंट किया जा सके, तो बहुत अच्छा रहेगा। मैं आप सभी से प्रार्थना करता हूं कि आप अपने-अपने सुझाव दें। सबसे पहले मैं डा० आई०वी० सुब्बा राव से प्रार्थना करूंगा कि वे इस बारे में जो कुछ कहना चाहते हैं, वह कहें।

DR. I. V. SUBBA RAO: Thank you, Sir.

I got the communication only yesterday and so, I could not send a note earlier. Today, I brought a hand-written draft, a copy of which has been given to you.

At the outset, I thank the Chairman for having given me this opportunity to interact with the Members here. I remember, we have given a note earlier in the month of March; subsequently, we had an interaction with the Chairman and the Members of the Committee. The Committee also

visited Hyderabad. There again, we have given some more suggestions. After going through the draft, I thought, we must bring to the notice of the Committee, a few more points.

First of all, I thank the Committee for including Chapter VI "Farmers' Rights and the Reconstitution of the Authority" which included a number of representatives from various organisations unlike the original draft. Now, farmers' representatives are there, representatives from the universities are there.

I would like to bring to the notice of the Committee, a few more points. In Chapter I, section 2, sub-section (q), the definition may be broad-based to include hybrids, which are popular, but not released and their parents, clones, composites and synthetics also.

In Chapter II, section (a), we feel that there is a need to have a State Authority, similar to the Central Authority, since the State Variety Release Committee releases a number of varieties developed and released at the State level. For example, in my own university, we have already released 270 varieties, in addition to the ones that we have already.

Then, in section 3, sub-section (5) (ix), we feel that instead of one representative of the farmer, there may be two farmers' representatives. There could be individual farmers and representatives of national and State level farmers' organisations. We feel that these are mostly political things and thus, probably, we may not get true representation of the farming community. Therefore, we feel that in addition to what has been written there, we can think of including individual farmers, not necessarily representing organisations. We further feel that since we have nearly 31 agricultural universities, instead of one person, we may think of including two persons representing agricultural universities.

Of course, we have other things like the frequency of meetings of the Authority and the quorum for the meetings, etc. which were not indicated. Probably, the statutes and rules may come subsequently.

Now, I would like to refer to Chapter II. Here, my suggestion is that a State level plant varieties registry should be established through this Bill for each State which should be attached to the national level registry.

Coming to Chapter III, section 15 sub-section 1, I would like to suggest that 'novely' needs to be further defined keeping in tune with the document of the UPOV, 1978. Otherwise, some looseness will exist in the definition.

In Chapter IV, under duration we have included trees and vines. We feel that shrubs should also be included as indicated in UPOV, 1978 document. There are a good number of shrubs available in our own country.

In Section 24, sub-section b(ii), the period of validity mentioned is fifteen years. Since this plant breeding is a dynamic process, fifteen years may be too long a period. So, we suggest that it should be ten years instead of fifteen years.

In Chapter V, we would like to suggest that we should include institutes, agriculture universities after the word 'breeder' and before 'agent or licensee'.

Coming to Chapter VI, I would like to congratulate the Committee for having a separate Chapter on farmers' rights. But this provision could be misused by the non-farmers also. So, there should be some in-built provision to eliminate the possible misuse by the non-farmers. Then, farmers should have access to hybrids. Some provision should be made to meet this requirement. In section 42(1) there is a provision which says, "with the previous approval of the Central Government...". We feel that this may not be necessary. Since this Authority itself is a body of the Central Government, there is no need for a separate permission from the Central Government.

Coming to Chapter XI, The Seeds Act, 1966 needs to be amended on priority to fall in line with the PPV and FR Bill, 1999. Otherwise, there will be a lot of scope for confusion and misuse of provisions under this Act.

Moreover, the Authority should have the right to regulate the prices. If a company protects a very valuable material and demands a very high price, the Authority should have the right to use the material deposited with it.

These are the few suggestions which I wanted to make. Thank you.

MR. CHAIRMAN: Thank you very much for your very valuable suggestions.

SHRI P.K. SINGH: This is a very well drafted document. We had given our suggestions and those suggestions have been incorporated in this. We do not have any additional suggestion to make. We only wish that it is approved as early as possible and is implemented so that the farmers and breeders are benefited out of it.

MR. CHAIRMAN: Thank you. We are also waiting for it.

DR. P.K. MISHRA: Thank you for giving us an opportunity to express our views. The Committee had visited Gujarat earlier when we gave a number of suggestions. I am happy to note that many of them have been incorporated. The other witnesses have also given some suggestions. I would only like to mention two or three points.

Firstly, it was mentioned that there should be a State authority.

MR. CHAIRMAN: The authority could be only one. Of course, there will be branches in different States. Powers will be delegated to them and they will work just like the authority.

DR. P.K. MISHRA: This will serve the purpose.

MR. CHAIRMAN: I think many of the suggestions given by you and your friends have been incorporated in the draft Bill.

DR. P.K. MISHRA: Regarding compulsory cataloguing in clause 82(d), I would like to say that we are not sure whether compulsory cataloguing should be there or not.

MR. CHAIRMAN: That is in the interest of everybody. If we could do that, it would be a wonderful thing. Shri Paroda is also working on it. I think that is a necessity.

DR. P.K. MISHRA: That is basically data-base.

In clause 42, there is a provision for compensation, if the yield is less.

MR. CHAIRMAN: He will have to prove that though all the conditions have been fulfilled, he could not have that much yield.

इसमें हमारा मकसद यह है कि क्योंकि यह बहुत आसान नहीं है इसलिए यदि कोई एप्लाय भी करेगा, तो उसका कोई फायदा नहीं होगा क्योंकि जो यील्ड आपने बताई थी वह तो हुई नहीं। इससे उस पर थोड़ा सा अंकुश लगाने की बात है। पता नहीं लोग क्या-क्या बता देते हैं। अब जो कुछ भी कोई बताएगा वह सोच-समझ कर बताएगा।

DR. MEHTA: I feel there are one or two points worth mentioning in this very well drafted document.

As far as the State level authority is concerned, I quite agree that we should have the National Authority and the branches in the State should have the representatives from the State agricultural universities. In the same way I believe in the National Authority, instead of one there should be two representatives from the universities. Probably, there should be two members from farmers' community and one from NGO and one from cooperative. As far as validity is concerned, now I was just wondering about the developments which have taken place five years or three years back. Maybe, we can make it 10 years or 12 years. Probably, that would be appropriate. These are some of the suggestions which I wanted to make.

DR. R.D. MULEY: Sir, in Mumbai, there were a long discussion on the issue and many suggestions were submitted during the course of discussion. Subsequently, we have forwarded comments of different organisations and Universities to the Committee. I would like to suggest one or two points regarding the extant variety. There is a possibility of any a company claiming to have

developed an extant variety. In order to avoid it, there should be some provision for having a joint registration authority. One registering authority could be of the University of that particular area from which that extant variety comes. Otherwise, some company may claim that a particular variety has been developed by them.

सभापति महोदय : अभी तो कंपनियां हैं ही नहीं। जब कंपनियां होंगी तब हम देख लेंगे।

DR. R.D. MULEY: Sir, now-a-days, seeds are being imported by many companies. there is no provision in the present Bill for the regulation of the imported seeds. I think that should be considered in this draft.

Sir, there should be an organisation to test the claims of the varieties. Then validity of the registration should for 5 years instead of three years.

MR. CHAIRMAN: The thinking of the Committee is that it should be at the mid of the total term. If the term is 12 years, the registration would be after six years and if it is 15 years, it would be after seven and a half years. We have already considered this.

MR. CHAIRMAN: So, we will meet again on 17th August, 2000 at 9 a.m. Thank you.

(The meeting then adjourned)

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