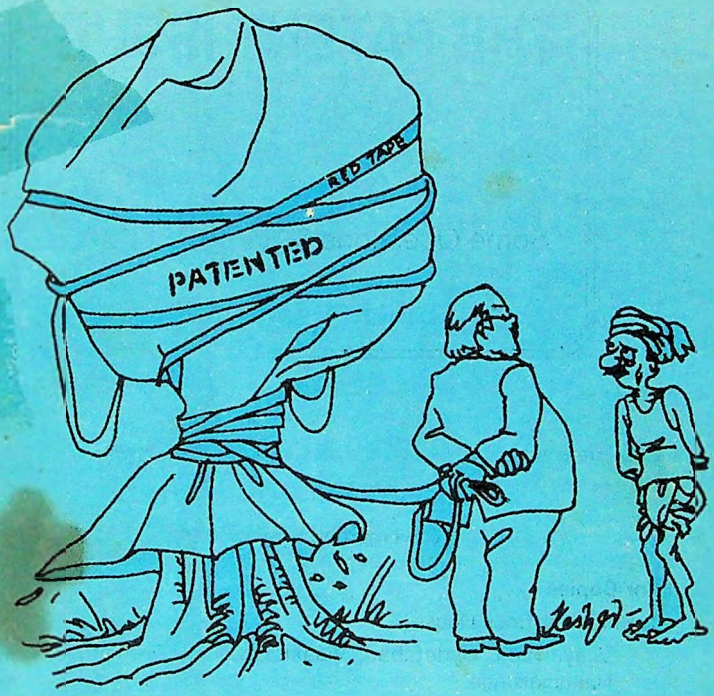
THE PATENT ISSUE

Some Questions : Some Answers



BIPLAB DASGUPTA

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Some Questions & Some Answers

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The Patent Issue : Some Questions Some Answers

BIPLAB DASGUPTA

Q1. What is wrong with the Patent amendment bill to be passed in the coming budget session?

* Everything is wrong about it. The bill is anti-national and anti-people. It is being imposed on us by the unholy international trinity of economic forces - World Trade Organization (WTO), World Bank and International Monetary Fund (IMF), strongly supported by the Western governments led by the United States. If passed , it will close all future possibilities of industrialization and of self-reliant economic and technological development. It will make India perpetually dependent on foreign countries and their multinational companies for technology, and we will never ever be able to catch up with the Western industrialised countries. Whatever development would take place would be within the framework defined by the Western countries and their multinational companies.

Q2. What possibilities are there of defeating such a harmful bill on the floor of the parliament?

* Very Little. In 1995 the Congress government of the time got this bill passed in Lok Sabha by a slender majority, but failed to get it passed through Rajya Sabha, though it adopted a whole range of devious and dishonest means, because at that time BJP joined with the Left and Democratic parties. In Rajya Sabha, the three major forces are Congress, BJP and United Front parties; a combination of any two of them

can defeat the third. In 1995, because the Left and Democratic forces and BJP were together on this issue, their number far surpassed the membership of Congress. Various means adopted by Congress to sneak in the bill, by catching the opposition unprepared, were thwarted by vigilant opposition. Eventually the government agreed to send this bill to a Select Committee of Rajya Sabha, where the non-Congress parties had a majority. However, this Select Committee could not complete its job, as Hawala and 1996 election came in the way.

Q3. Then, why does the bill have a better chance of getting through the parliament this time?

* Because, now BJP is in the government and is sponsoring this bill, and Congress, the main opposition party, is supporting the bill. With these two major parties together they can easily get any bill passed through both Houses of the parliament. And both are determined to get it through the House during the February session of the Parliament.

Q4. Why BJP has changed its position on this bill ?

* Largely because they are now in the Government and under direct pressure from the unholy trinity and the government of the United States. In 1995, Sri Atal Behari Vajpayee walked out of the Lok Sabha, along with the members of other non-congress opposition parties in protest against the passing of this bill, but in 1998 he is the Prime Minister and is keen about fulfilling what he describes as 'International obligation'. This confirms, once again, that, when it comes to class issues as reflected in the economic policies, there is nothing to choose between these two parties. Both the parties are the instruments of landlord and bourgeois classes, which is why they would not allow the Agricultural Workers' bill to be passed or

land reform to be carried out, and , at the same time, would do everything that is possible to get the patent bill passed, to convert FERA (Foreign Exchange Regulation Act) into innocuous FEMA (Foreign Exchange Management Act) that makes violation of foreign exchange regulation no longer a criminal offense but a civil one, and to pass a Money Laundering bill that takes no account of cases like Hawala, Bofors type issues, and over-under-invoicing by companies. In recent years they have been busy completing the tasks of globalisation left unfinished by the previous Congress Government - such as the bill to allow privatisation and intenalisation of the insurance business, to permit Enron and other power companies guaranteed profit, to reform Companies Act and various labour laws, and to expedite the process of globalisation.

Q5. What about their slogan of 'Swadeshi'?

* That was a hoax and an election gimmick, and now that charade has been fully exposed. Immediately after the 1998 election, the new Finance Minister was sent to Washington to assure its masters that 'Swadeshi' was an election ploy and was not meant to be implemented, that they will continue with Fund-Bank policy package that is known as reform, and will expedite globalisation. They have said repeatedly that they would not allow anything to stand in the way of globalisation or reform. After the Pokhran nuclear test, they used the rhetoric of 'swadeshi', 'maryada' and sense of national dignity and so on, while at the same time began giving large concessions to US, Japanese and British multinational companies (MNC) so that they would induce their governments not to implement, and eventually withdraw economic sanctions against India. Now, the Minister of Industry, Sikandar Bahkt, who is piloting this patent bill, is pleading with every one of any consequence with folded hands to get this bill passed

as he is under massive external compulsion. This is BJP double - speak at its worst. One can not have both 'Maryada' and yielding to 'external compulsion' at the same time.

Q6. Is the BJP united on this issue?

* Far from it. The confusion created by this bill is also reflected inside that party. There are still some in that party who take the idea of 'swadeshi' quite seriously, and they are being won over, systematically in a variety of ways by those who want to follow the dictates of the unholy trinity. At one stage the BJP Minister of Parliamentary affairs, Madanlal Khurana, told the press that the bill would be sent to a joint select committee for a detailed examination of its clauses, as demanded by the Left and Democratic Parties, but within half hour that decision was revised and the Minister said that the bill would not be sent to any committee but would be passed directly by both Houses of the parliament. He explained this Volte-face in terms of Congress opposition against sending it to any Committee, but it is true that within his party also a large section supported the Left position on this. This became evident when, after getting the bill passed by Rajya Sabha on 22nd December, they decided not to place it before Lok Sabha next day, the last day of the parliament. However, since then the swadeshi' element in BJP-RSS seems to have reconciled themselves to approving this bill, on the ground that it was after all their government that would lose face if the bill was not passed.

Q7. Why is Congress, the main opposition party, supporting this bill?

* For a number of reasons. Their senior leaders, particularly those

specialising on economic issues, see it as their own bill, that they could not get through in 1995 because of Left-BJP opposition. Now BJP's 180 degree turn on this bill has exposed its opportunism and would, Congress feels, give them added electoral advantage. Congress is more keen and enthusiastic about this bill than BJP, because they are hoping that in the next election they would come back to power. They would like BJP to do all the 'dirty work' for them. To enable them, if they win, to begin with a clean deck, while blame would be put on BJP for sponsoring the bill and getting it passed. There is also another, Machiavellian angle in this.

Q8. What is that ?

* Congress know that once they are in the government and BJP is in opposition, there is every likelihood that BJP, now more under pressure from the swadeshi element, would again take the side of the other opposition parties and defeat this bill. The only way this bill can be passed, therefore, is by having BJP in the government (as 'Sikhandi' of Mahabharata) and with the support of Congress from the opposition. This is the devious game that Congress is playing. The Congress over-enthusiasm in support of a government bill, despite being in the opposition has raised suspicion, quite rightly, in the minds of a section of BJP, that once this bill is out of the way, Congress would do everything possible to bring down the government. One argument, making rounds in BJP circles, is that this bill is the lifeline of the BJP government. As long as this bill remains hanging, Congress would not do anything to bring the government down. This was one of the reasons why on 23rd December BJP government did not place it before the lok Sabha for approval and allowed the session to come to an end.

Q9. Was there no dissension inside Congress ?

* Yes there was. While leaders like Dr. Manmohan Singh and Pranab Mukherjee were pushing hard to give full support to the bill, the official spokesman of the party, Ajit Jogi, had been saying repeatedly, until the morning on 22nd December, that the party had taken no decision. Some senior congress members introduced important amendments to the bill, and one of them had to be shouted at by the party Chief Whip to dissuade him from formally moving an amendment on the floor of the House. The fact is that both of these two major parties have now bought their houses into order : BJP saying that the prestige of the government was at stake and Congress saying that (a) it was their bill that BJP is moving, and (b) the party is committed to globalisation in this form. It is more than likely that no flag of revolt would be raised during the budget session in February when it would be placed before the Parliament for approval.

Q10. What was the attitude of the non-Congress non - BJP parties ?

* Almost all these parties opposed the patent bill and made good speeches in Rajya Sabha on 22nd December. Apart from the Left parties - CPI (M), CPI, Forward Block, and RSP - almost all the other partners of the United Front, such as DMK, Janata, Samajvadi Party and AGP, opposed it. Rastriya Janata Dal also opposed. Only TMC among the United Front parties failed to make its position clear. On the other hand, several partners of the BJP-led government, such as TDP and AIADMK, expressed their unease in their speeches or through their conduct.

Q11. What is patent ? Before you answer that, what is intellectual property, and what right over that entails ?

* Intellectual property, as the name implies, is not like land, car, machine, that is something tangible and having a physical existence. It is not a

product that is sold in a shop and can be purchased across the counter by making payment. It has something to do with mental work, such as a song, a music, a poem, a film, a computer software package. Intellectual property right (IPR) is a right on such properties. For example, the writings of Rabindranath Thakur are the property of Viswa Bharati, because the poet had transferred his rights on those to this institution. Under Berne Convention for the Protection of Literary and Artistic Works (as revised in 1971). Copyright in this intellectual property, that is poet's writings, is vested in Viswa Bharati; no one else can publish his writings without the permission of Viswa Bharati. Trade - mark, another type of intellectual property, reflects the goodwill of a company, e.g. the logo of Bata Shoe carries the imprint of quality production and the consumers would be attracted to it. In case of some companies their brand names are so well known that people identify those with the products themselves, e.g. mobile, the production of Socony Mobil Oil Company, as motor oil, and Xerox, the Photo-Copying machine of the Rank Xerox company, as Photo-Copying itself. These popular brand names or trade-marks - here we are not talking about products but only the right to use those names - can fetch very high prices if sold in the market.

Q12. Is patent right a kind of intellectual property right?

* Yes. This right relates to invention of products, machines or medicines. The inventor of television produced something that did not exist earlier. It was novel or unique. To qualify for patent right this is the first condition - the products has to be something new. Further, it should not be something obvious, that is something that can be deduced quite easily from what is already know. A third condition is that it should be something of practical use. An idea, a theory or a mathematical formula can not be patented. If these three conditions - of being novel, non-obvious and of practical use - are met then a person, such as the one inventing a new type of television,

to arrive at by reasoning from observed facts.

can go to the local patent office and claim patent right. He has to make formal application, give description of his invention, if necessary with diagrams of models, and provide evidence that his claim of this invention being something new is justified. The patent office - in India every metropolis has a patent office - will get this claim verified and only then approve patent right.

Q13. What such patent right entails?

* In short, patent right provides the holder of such right a time - bound monopoly. The right is an exclusive one, that is given only to him and to one else, excludes others, and is given for a specified number of years, say 10 years. Within those ten years no one else can produce this product without the permission of the patent holder. The patent holder, if he so desires, can set up a factory producing this, and thus make the most of this monopoly right by earning a huge profit. He can sell his monopoly patent right to another company at a high price. He can lease out his right to others to produce it subject to certain conditions. He can give his right to Company A, only to produce for the market in market X and for no other market, and only for, say, three years, at a fee. In other words, like land or car, he can sell, transfer ,lease, gift or otherwise dispose of this intellectual property. At the end of that patented period any one can produce it without his permission.

Q14. What is the justification for such monopoly right through patents?

* The justification usually given for this time bound monopoly allowed to an inventor is that it would allow the inventor to recoup his cost of developing this product and would compensate him for the risk he undertook, and, thus, would encourage invention and development of new things and new ways of doing old things. Also that the system of patent, by rewarding inventor in this way, encourages others to go for invention, thus helping to extend the frontiers of scientific and technical knowledge.

Q15. Was the patent right recognized in India earlier?

* Of course. The patent office of Calcutta is one of the oldest in the world. The India Patent Act of 1970 recognises such rights for a period of seven to fourteen years. In every country there are such patent legislations that prescribe rules for recognising such rights after taking into account local environment and local needs.

Q16. Why then the issue of patent has become controversial now if it has a long history?

* This is largely because the issue of patent and intellectual property rights has taken a new turn after the signing of the TRIPs agreement in Marakesh in April, 1994. TRIPs {Trade Related Intellectual Property Rights} is a part of a package of agreements signed - among the others signed are TRIMs, GATS, and those on agriculture - in Marakesh in April, 1994, following the debate on Dunkel draft, as a part of the Uruguay round of discussion on GATT (General Agreement on Tariff and Trade). The Marakesh agreement was followed by the launching of the World Trade Organisation (WTO) in 1995 January.

Q17. Tell us in simple language what all these amounted to, without referring to GATT, Marakesh, and various other agreements, that are too confusing.

* Actually it is quite simple. Before the Markesh agreement every country had its own patent law, based on its own needs and on the local institu-

tions. After the TRIPs agreement under GATT, an universal standardised patent law has been worked out. Every country which is a member of WTO has been asked to amend its national patent law to conform to that universal, globalised format. In effect this will do away with national patent laws and the world market will be virtually ruled by a single system of international patents. The same standardised rules and norms will apply universally, irrespective of the size, capacity and the economic level of the country concerned. The developed countries have been asked to change their laws within one year, and the less developed countries within another five years, and an additional five years for legislation relating to pharmaceuticals, agrochemicals etc. The least developed countries have been asked to make those changes by 2005 AD.

Q18. Is this attempt at global standardisation and uniformity not in conflict with the main thrust of the Rio Earth Summit of 1992 that discussed the conditions for sustainable development?

* Indeed it is in conflict, as these two reveal two contrasting types of international approaches and norms. While the 1992 Earth Summit and 1993 Convention on Bio-diversity focused on diversity as being fundamental to sustain life and development, TRIPs and WTO are pushing for conformity to international standardised norms on patents, services, labour, investment and what not, irrespective of history, ecology, level of economic development, and indigenous skills and resource endowments. These two approaches are diametrically opposed to each other, 170 countries signing one and 150 countries singing the other, with a very large element of common names in both. Still, so far no attempt has been made to reconcile the two. If diversity is so important for sustaining life, would not conformity to standardised global formats prescribed by WTO- on patents, investments,

labour standards and what not - prove to be suicidal?

Another issue that has been raised repeatedly is: why should intellectual property rights be an area of concern with WTO? Until recently the world Intellectual Property Rights Organisation (WIPRO), established in 1974 following a world Intellectual property convention in 1967, was the agency to look after such issues. This was not the first time that other international bodies had been supplanted to make room for Fund, Bank or WTO. The United Nations Environment Programme (UNEP) has been supplanted by Global Environment Facility led by World Bank, trade issues have been taken over from United Nations Conference on Trade and Development (UNCTAD), and labour standards are being imposed by WTO without reference to International Labour Organisation (ILO). In this case, the trade related' part had been added to justify WTO concern with intellectual property when another specialised international agency existed for that purpose. The formal argument for including it in the GATT agenda was that protection of intellectual property rights would enhance trade. By granting and enforcing patent rights internationally, it was argued, owners of patents would no longer be forced to keep details of their inventions secret, since such details would form a part of their patent application., and , thus the knowledge itself would be disseminated more freely. This is more said than done, as a culture of secrecy has spread along with the patent regime. The general experience is that patents create monopoly and massive profits and erect barriers to dissemination of knowledge.

An international expert on technology transfer and patent rights, Constantine Vaitsos, sees patents as a defensive strategy adopted by rich country corporate interests : (the patent) is to preserve markets that were once captured through exports and are subsequently threatened by competitors and / or by the import - substituting strategies of the host countries. In this context, patents , far from providing a stimulus to foreign investment, appear to be a critical factor in blocking investments." Another expert, A.

Nadal, sees patents as a "powerful instrument to achieve control over markets, even without direct investment."

Q19. How would this standardisation induce changes in the Indian patent law of 1970?

* One major change has been in relation to product and process patents. In Indian patent legislation a distinction has made between product patent and process patent. The Indian patent Law of 1970 allowed process patent but not product patent. Process means, say for a medicine, the combination of various ingredients - chemicals, medicinal plants, herbs and other biological products, and so on - in specified proportions, and by using a technique or a way of combining those, that makes the production of such medicine possible. It was, therefore, possible for an Indian Pharmaceutical company to buy a 'process' of making a particular medicine, in exchange of royalty paid to the patent holder in a foreign country, but then to produce the medicine by using cheap, local material. This is why life-saving drugs can be sold in India at a price that is one-twentieth of their price in developed countries. Now, under article 28 of the TRIPS agreement, the distinction between process; and 'product' patent has been abolished. It is the product that is patented, while the process directly used for making the product is also implicitly patented at the same time. After 2005 AD, when the deadline of TRIPS expires and the Indian law is amended accordingly, the"product" cannot be made locally with cheap material, and will have to be purchased from the foreign companies at exorbitant prices. Still another controversial provision (in article 34) is to reverse the burden of proof; it is for the defendant to prove that an identical product has been produced by a process other than the patented one. This violates one of the cardinal principles of Anglo-Saxon jurisprudence, that a person is presumed innocent until found guilty.

Q20. For now long would this patent right continue ?

* Under Indian patent law the maximum period for which patent right can be exercised in 14 years. Now TRIPs has made it uniform and universal at 20 years. This change has come at a time when there are weighty arguments for doing just the opposite - of revising the period of patent rights downwards. These days technologies change much faster, in a matter of three or four years. To give an example, while radio and gramophone lasted for decades, the black and white TV, colour TV, Cable TV, VCR, Multimedia, have come in quick succession, after every four or five years. In this situation, by the time the patent period of 20 years expires, there would be no takers for the obsolete technologies. Even computers do not last beyond 4-5 years, while software packages are revised every two years or so. To revise patent period upwards to 20 years now implies that the MNCs would continue to control technological advance for ever. These MNCs have sufficient money power and brain power to invest in research and development and to perpetually maintain their lead over the less developed countries, so that long before one period of patent would be over another - better and more attractively packaged - product would be launched catering to similar needs.

There is a genuine fear that, apart from raising the cost of technology and their level of dependence on the developed countries, that the International Patent Regime (IPR) would actually obstruct the flow of technology, if those holding patent rights do not do enough to produce or give license to others for work. The IPR also takes away the option, liberally used by all the developed countries to date including Japan, and all the newly emerging countries of East Asia, of liberally using foreign technologies and indigenising those in line with local resources and skilled manpower.

Q21. How does this affect Indian agriculture ?

* Until TRIPs such patent rights were confined to things like machines and medicines, and did not extend to life forms such as animal or plant varieties, cells , DNAs, embryos, human body or parts of human body. The TRIPs agreement now requires ever country to introduce some protection of plant and animal varieties by way of patents; or by way of what they describe as a Suigeneris system. Suigeneris means something unique or distinct, but serves the same purpose. Among the rich countries nearly all, including USA and Japan opted for patent system in case of plant and animal varieties. The European Parliament was the last, as late as May 11, 1998, to adopt patents on life when a new law on patens on biotechnology was passed. The Indian government is also thinking along those lines. There are two more patent legislations in the pipelines: one on bio-diversity, to be sponsored by the Ministry of Environment, and the other on Plant Breeders Rights to be sponsored by the Ministry of Agriculture.

Q22. If the patent legislation is required to be amended by the year 2005 AD , why should we be worried about it now?

* This is because of the preconditions imposed for the membership of WTO, which came into being on January 1, 1995. Those becoming member were required to conform to Exclusive Marketing Rights (or EMR) and the settingup of a mail box. Under EMR, it would no longer be necessary for a patent holder to apply separately to each country for patent rights. Once a product is patented in any one country, it becomes universally applicable to all the member countries of WTO. Every country is bound to give exclusive marketing rights to that patent holder, who can hold patent anywhere in the world, as long as that country is a member of WTO. In other words, patent holder is going to have a lethal combination of two types of monopoly rights arising from patents and EMR. Given that more than 98 per cent of patents are owned by the rich countries, the benefit would accrue overwhelmingly to the multinational companies of rich country origin, and indigenous products would be driven out of the markets of the poor countries like India.

Q23. What is a Mailbox?

* A mailbox means arrangement for receiving patent applications, mainly from the multinational countries. This provision assumes that our patent law would be amended by the year 2005 AD, and under this the government will begin to receive patent applications in order to determine the position of a company in the queue. This is an extra-ordinary piece of legislation that is based on the probability of the passing of another legislation in some future date.

Q24. Were these two preconditions for WTO membership fulfilled by India in January, 1995, when it became a founding member of that powerful organisation.

* Yes, but in a way that became highly controversial. Though the Indian Parliament was in session until the early fourth week of December, 1994, no such legislation was proposed. But as soon as the parliament was adjourned, the government issued an ordinance that incorporated these two entry conditions and joined WTO from 1995 January . Since ordinances are laws as long as these are in force, this measure helped India to satisfy the WTO entry conditions quite legally. The question is whether it is ethical to bypass Indian parliament and, thus, to avoid national debate on such a major issue by taking recourse to ordinances. In many countries including the United States, international agreements are required to be placed before its legislature for ratification, and there have been cases where the US Congress had refused to ratify such international agreement. The Havana charter for the formation of the International Trade Organisation, prepared in the late forties and in the early fifties, failed to get the approval of the US

Congress, and therefore, the idea was ditched. It was revived in a grossly modified form after several decades, with the formation of World Trade Organisation, The US objection to ITO had something to do with the international trade environment in the early fifties and the role the Soviet Union was likely to play in it. Similarly, the active US sponsoring of WTO had something to do with the fact that the Soviet Union was no more. The point we are making here is that, while the United States government can not participate in any international agreement bypassing its legislative bodies, in India such ratification by legislature is not deemed necessary. The people of India were not a party to the fulfillment of these two preconditions for membership by way of ordnance; they were not consulted.

Q25. Whatever has happened has happened. India is a member of WTO now. Then why this controversy is still raging.?

* This is because any ordinance issued by the government when the parliament is not in session is required to be approved by the Parliament within six weeks of the next parliamentary session. When the government attempted this, it faced a serious difficulty. While the government had a small but working majority in Lok Sabha, and got the bill validating the ordinance passed, in the Rajya Sabha it had no majority. With BJP joining the Left parties and Janata Dal on this issue, as we have noted already, there was no way that such bill could be passed. Given this, the government engaged itself in a series of maneuvers to secure a majority by hook or by crook. For instance, though the proposed bill on patents was on the list of business of the House for weeks, it was not actually brought before the House for discussion and voting. Then, on 22nd March, 1995, the item was taken off the agenda, giving the impression that the government was no longer interested in this. But, immediately after a short afternoon break following the conclusion of discussion on another bill, on the same day, suddenly this bill was put as an additional item on the agenda by a supplementary notice. The government was hoping to catch the opposition by surprise and to take advantage of the thin attendance of the opposition members, any of whom had assumed that the business of the day would be over soon after brief discussion on a bill on workmen's compensation. The attendance of the treasury bench was boosted by a promised dinner to be hosted by the Prime Minister that evening.

When that attempt to sneak in the bill failed, a meeting of the party leaders was held next morning at the residence of the deputy Chairman, where it was argued from the government side that this international obligation should be honoured, while the opposition argued that it was never consulted and the matter was never discussed in the parliament. In the House that morning the government, after some discussion in the chamber of the Prime Minister, agreed not to go ahead with the bill; but in the late afternoon the Minister of Parliamentary affairs suggested a special meeting on Saturday to get the bill passed. When this attempt too was frustrated, the government agreed to set up a select committee; but them contrary to convention and an explicit agreement with the opposition, loaded the select committee with more than proportionate number of its supporters. It then got the list of select committee members passed in the middle of a discussion of a private member's bill in a thinly attended House, claiming that it was the consensus of the leaders of all the parties. In response, the opposition boycotted the select committee. The ordinance lapsed and the issue was shelved for the time being. By then, Hawala scandal had become a major issue and the election was in the horizon. The government, realising this, did not make any further effort to get the bill passed again.

Q26. What happened to Indian membership of WTO after the ordinance lapsed ?

* Nothing. In the meeting at the residence of the Deputy Chairman, the

government side warned that the failure to ratify the ordinance would lead to India's expulsion from WTO. That was untrue, as the entry conditions were not linked with expulsion for non-fulfillment of such obligations at a latter date. One way or the other, India is a member of WTO, and the procedure for expulsion are to elaborate and cumbersome to be tried against India. From then onwards India was in an anomalous position of having attained the WTO membership by fulfilling the two conditions of EMR and Mailbox by way of ordinance, and by not fulfilling those any more as the ordinance had lapsed.

Q27. So, does this mean that nothing happened despite India's failure to fulfill conditions relating to EMR and Mailbox ?

* Something did happen. Eventually the government of USA raised the issue before the Dispute settlement Board (DSB) of WTO, and after lengthy deliberations, where the Indian case was not well presented, DSB gave India fourteen months (that is up to 19 April, 1999) to amend the national patent bill and incorporate those two conditions of EMR and Mailbox in it. This is the external compulsion that the Minister of industry referred to again and again.

Q28. Supposing the deadline is not met, and the two pre-conditions on EMR and Mailbox remain unfulfilled on 19 April, 1999. What are the likely consequences ?

* Heven is not going to fall. The idea that a great disaster would strike India if the 19 April, 1999 deadline is not met has no basis as we have mentioned above, India can not be thrown out of WTO because of this, as the procedures for expelling members are different from procedures for membership - they are not linked. Secondly, even though economic penalties can be imposed, that too is time consuming and is likely to be turned

out as ineffective and / or injurious to the country imposing such sanction too. As revealed by the proclaimed sanctions, following the Pokhran nuclear test, this much dreaded threat remained more or less on paper. Such sanction is a double-edged sword and is likely to hurt the developed countries as well, the potential of Indian market being assessed highly by the multinational corporations. Further, to impose economic penalty a country suffering damage, from such non-fulfillment of WTO conditions, say United States, has to apply again to WTO and the procedure involved can easily take up at least five to six months. Under WTO agreement, 20 days are given for request for retaliation, 30 days for authorising such request, and 60 days for final arbitration, and if all these are taken in quick succession, still it would involve about four months. A team of good lawyers can easily stretch it to one year, the time for the international review of the TRIPs agreement. Equally important is the fact that the United States is as keen to retain its markets in India as some others are to take over a part of it should United States withdraw. Italy under a left-led government, France and Dutch, are among the countries that are likely to take full advantage of US dissociation from Indian market by way of economic sanction. This is precisely why the United States, though keeping India on their Super 301 hit-list at least thrice because of India's failure to open the insurance market to US multinational companies, did not carry out the threat of economic sanction. Further, though India has failed to fulfill WTO pre-conditions for membership since April, 1995 for four years, no action has been taken so far.

We can also add that, among the countries, the United States is the most serious violator of GATT/WTO rules. It was expected that, the establishment of WTO would obviate the need for United States to rectify its grievances through unilateral actions such as Super 301, which was always in gross violation of GATT norms. However, as we have seen repeatedly over

the past four years, that has not been the case, Super 301 hit-lists continue to be prepared, alongside sanctions by WTO. It is not clear whether the United States considers the decision of a panel for dispute settlement binding on itself. Of course, theoretically, countries whose trade is adversely affected by the US violation of WTO norms would have the right to retaliate. As one scholar, Jeffrey Scott, commented: 'most countries simply do not present the United States with a credible threat of retaliation; the US market is too important for them to risk. " In sum, the WTO can reprimand but not severely punish violations by major trade powers. "When they regard it a necessary, big countries can still abuse the system. "Such inequity is built into the trade system now controlled by WTO.

Q29. What the left and democratic parties wanted in this situation ?

* There is no ambiguity about what they wanted. First, they demanded that this bill should be sent to a select committee of Rajya Sabha, or to a joint select committee of the two houses of parliament, or to a standing committee which is already functioning consisting of 45 members from both of the two houses. Despite WTO pressure, these parties argued, there was no need to rush the bill through the parliament in December, 1998. The winter session continued until 23 December, but the parliament will again meet in the third week of February, and the inter-session period could be fruitfully used to consider in detail the highly complex issues that are arising with regard to this bill, by referring it to a standing committee or a select committee. The committee system was introduced in order to enable clause-wise and in-depth examination of complex bills. The committees can invite experts and seek their help in their deliberation and can give a considered view in the form of a report. If there was any bill that fully qualified for such examination, the patent bill was that, for a number of reasons. First, the bill is loaded with legal, technical and economic jargons that only a few parliamentarians would be able to follow by simple reading. Secondly, this bill carried serious long term implications, and was likely to influence in a massive way the course of development in the years to come. When so many bills are sent to such committees, the government was unwilling to subject, perhaps the most important of all, this bill, to clause-wise parliamentary scrutiny by any committee before taking the final plunge. Not only the government rejected such demands from non-Congress opposition, they were not willing to allow more than two hours of discussion on the bill on the floor of Rajya Sabha though eventually they were forced to extend it to 10 hours.

Q30. Since they failed to get the bill through Lok Sabha on 23rd December, the last day of the winter session, it is clear that there was in fact time for committee work during the inter-session period ?

* Absolutely right. Rather than getting it examined by a committee - they can still refer it to a Standing Committee - the government has chosen to rule by ordinance. The ordinance issued during the inter-session period, legalising these two WTO conditions, will have to be placed again before both Houses of the parliament in mid-February during the budget session. We are also arguing that if the 1995 parliament found it desirable to refer the bill to a select committee - that could not complete its work for various reasons - why the parliament of 1998 or 1999 would not be able and willing to do so.

Q31. You referred to a review of the TRIPs agreement in 2000. Was the second demand of the Left and Democratic parties linked with that ?

* Under the WTO agreement TRIPs agreement was to come for review in 1999. Now that review has been postponed till April, 2000. Still it is only about a year away. This review will give us the opportunity to rectify the

injustice done to the third world countries during Dunkel negotiations of 1991-93, and the Marakesh agreement of April, 1994. When those negotiations were going on, the third world countries including India played virtually no role in pushing their own interests. The bargaining power of the poor countries was at the lowest following the disintegration of the Soviet Union. Whatever negotiation was conducted was between Europe and the United States, with Japan also playing a vital role. Among the third world countries the East Asian ones - South Korea, Taiwan, Hong Kong and Singapore - were consulted some times, but not India or other countries. The Marakesh agreement was imposed on them as fait accompli. By now, in 1999, the world environment has changed, and the Southeast Asian crisis has exposed the hollowness of the theology of the unholy trinity. There is now a greater understanding of the harmful implications of Marakesh and WTO among the third world countries.

Q32. What India can do to rectify the injustice of 1994-95 ?

* India alone can do little. In world trade negotiations, more than the number of countries on either side of the argument, what counts is the share of a country in world trade. India's share is a dismal half of one percent, between 0.5% and 0.6%. At the time of Independence it was 2.7%, that is five times more. The long reign of the Congress party Governments over the last half century has successfully brought down India's share to this shamefully low figure. But while India alone can do very little, it can combine with others to do a lot. Rather than being brow beaten by the United States and WTO and folding our knees, the time available now should be used to mobilise opinion among the third world countries so that the TRIPs review of 2000 AD becomes favourable to the poor countries India has to play a leadership role, a role that India played under Nehru in the fifties, and one that small

countries like Sri Lanka or Bangladesh can not play. And pending that review India should not give in on a crucial matter like these two WTO preconditions on EMR and Mailbox, that will weaken our resolve and bargaining power.

Q33. What steps can India take for such review ?

* The very first step should be to form a South Asian Common Market or Free Trade Association (SAFTA). During the United Front regime these countries agreed to make SAFTA operational by the year 2000 AD, and a great deal of progress was achieved in terms of identifying complimentarities and trade possibilities. Pokhran has led to a serious setback and the trust needed for such economic cooperation has virtually disappeared. Still, there can be no retreat from such goal. Such customs unions or trade blocks allow, even within the framework of WTO, trade concessions to block members that are not otherwise available. Such advantages are taken by developed countries who have formed their own trade blocks - such as European Union or North Atlantic Free Trade Association (NAFTA) . There are also similar trade blocks among third world countries, e.g., ASEAN of South East Asian countries, Andean Pact of some Latin American countries, CACM (Central American Common Market), Caricom (Caribbean Community), Mercosur (Mercado Caomu del Sur), and in Africa, PTA (Preferential Trade Area for Eastern and Southern Africa), UDEAC (Union Douaniere et Economique de l 'Afrique Centrale) and West African states,. There is no reason why we should not do what others are doing already. by taking the leadership in forming a trade block of South Asian countries. Once such a block is formed it will be easier to negotiate with ASEAN, Andean Pact or OAU (the Organisation of African Unity) for forming a bugger trade alliance. Negotiations can also be initiated within fora like G15, G7, and with coun-

tries like China, Brazil and Russia, as well as the European ones such as Italy, Belgium, Denmark and Holland, to create a new international climate to amend, if not to eliminate entirely, injustice done to the poor countries by way of 1994 Marakesh agreement.

Q34. Is this possible to take advantage of some of the provisions within Marakesh agreement ?

* Why not ? Much depends on the political will of the government. There is a tendency in India to offer concessions far beyond what is required under the Marakesh agreement, e.g. in case of withdrawal of subsidies. While conforming to the 1994 Marakesh agreement and recasting the domestic patent law in line with the international patent regime, there would be some room for maneuver by making skillful use of some of the articles of the agreement. Virtually all patent laws exclude mere ideas or theories; patents are intended to apply to the embodiment of those ideas. The national laws can be so drafted that the flow of ideas is not obstructed. Further, under articles 27.2 and 27.3 of the Marakesh agreement, the countries may deny patent protection., for reasons of morality or for protecting human, animal or plant life or for protecting environment. Protection can be denied also for certain inventions such as those which involve 'diagnostic, therapeutic and surgical methods for the treatment of humans and animals, and plants and animals (other than micro organisms) and biological processes (other than microbiological processes) for their production.

Q35. How does the patent bill being discussed now relate to the issue of bo-piracy?

* To answer this, let us first ask what is biopiracy ? By biopiracy we

mean the stealing and plundering of biological wealth, about two- third of which is located in the third world, by the multinational firms originating in the West. Since the Marakesh agreement of April, 1994, hordes of multinational agri-business and pharmaceutical firms are descending on India, and are searching the countryside, forests and bushes for plant varieties, taking selected specimens out of the country, by means legal or illegal, and then, after some tinkering and cross-breeding with other varieties, producing new varieties that they are claiming as unique and distinct, and then patenting those in their own countries. Once patented such varieties become the private property of the patent holder until the time when the patent right expires, Under EMR. If this amendment is passed, the patent holders of a product patented anywhere in the world would drive out indigenous competitors from the Indian market.

Q36. Could you be more specific about Indian varieties that have been patented in the West ?

* Recently Ricetec, a Texan seed breeding company collected some specimens of the basmati rice plants from India and Pakistan, then cross-bred those with some high yielding varieties, and claimed that it had produced a new rice variety. Earlier they were selling their products as texmati (that is basmati of Texas) or Kasmati' (basmati of Kashmir), playing on the word 'mati' to attract consumers. Now they have dropped those pretensions and are selling their rice as basmati and have patented their product in the United States. Similarly, patent rights have been claimed on neem and haldi among others. Under EMR, they would be able to push Indian basmati out of the Indian market itself.

Q37. What are your objections to patenting of life forms?

* The main objection is that patenting involves privatisation and

individualisation of rights, while in case of plant varieties it was the community, operating collectively, that made their evolution and development possible. How would one find an individual or a company that had developed basmati or a good mango variety through centuries ? Development of these plants and plant varieties took place over a very long period of time, through continuous exchange of information and dissemination of information on new breeds among people. The ownership of the biological wealth, if one is constrained to find an owner, belonged to the communities which, for generations, selectively adapted and developed plant varieties, but without erecting any barrier to the flow of information within or between these communities. Things like basmati, neem and haldi are an integral part of Indian and Pakistani life and cultural heritage. But, these are no longer found in raw state in nature. These have been purposively selected, adapted and developed by Indians over thousand of years. Therefore, unless one takes the view a thing does not exit unless it is discovered 'or ' invented' in the West, from the discovery of America by Columbus to the patenting of neem by a company, the fact is that companies like Ricetec are not inventing anything, but are merely ' discovering' what had been known in India or Pakistan from time immemorial. These are not like machines to be invented, but life forms that can not be created.

Our main argument is that life can not be patented, or otherwise subjected to individual ownership. Those favouring patents say that it would encourage inventions and scientific development, as the inventors would be able to recoup the investment made for such scientific advance and for taking a high level of risk. Without such inducement why should any individual or company be prepared to develop to such new products or processes, they ask. Such an argument does not take into consideration the fact that most scientific research are undertaken with public fund, mainly by the universities and research institutions patronised by the government. What the MNCs

do is to use the fruits of such research by making further investment on their commercial use. They cover only a small part of the total cost of research and then claim patent rights in order to exclude others from the fruits of such research.

Further, as the experience shows, from both industry and agriculture, most of the important original inventions and discoveries are usually made by small guys working in their tiny workshops, which they patent, but then they sell themselves and their patented products to the MNCs as they can not afford further costs of development and sales promotion. It is not usually the giant conglomerates with tentacles spread all over the world that make the earth-shaking discoveries, not even Bill Gates of Microsoft, the icon of the modern computer era.

Q38. How can a community exercise its rights? There must be thousands of those communities operating in India and Pakistan.

* Obviously communities, working separately and independently, can not exercise their rights on their own and protest those against agencies such as MNCs which are out to encroach on those. In a sense the government of a country holds the soverignity as the custodian of the interests of those communities and individual living in those. Several UN resolutions, such as the 1975 UN resolution on Towards a New International Economic Order, and the 1993 Convention on Bio-diversity had recognized those rights of the governments over natural, mineral and biological resources.

Q39. Do you take the view that patenting, by individualizing rights to plant varieties would operate against the collective interest of a nation?

* How can this individualisation of rights help, either agriculture or the agriculturists or even the making in general? Patents, instead of extending the frontier of knowledge, foster a culture of secrecy, create a monopoly on knowledge and in fact deprive others of the use of such inventions. In many cases patents are taken not so much to produce something, but to prevent others from producing it. in order to protect the market of a multinational corporation specialising in a product with a similar use.

Q40. How such patenting affects the future generations?

* Such individualisation usually, takes place at the cost of the rights of the future generations, who are not present as a party to market bargains. An individual company is unlikely to take a long-term view or see beyond 15 years, given the rate of discount of future earning or benefits for deriving their present values. Poaching or standardisation of crops and varieties are unlikely to significantly effect the current generation, while their long term effect can be devastating.

Q41. Can you give an example of a major development that has taken place in recent years without the benefit of patent rights?

* The best example is that of the green revolution technology that has been in operation in India since the mid-sixties, and led to a tripling of the agricultural production in the country in three decades. While sharing many of the ills associated with privatisation of rights and dependence on MNCs, it was free from the patent regime. What made green revolution possible was the purchase of a few kilograms of foundation seed of high yielding wheat, rice and maize varieties from CYMMIT of Mexico and IRRI of Manila, their cross-breeding those in Agricultural Universities, particularly at Ludhiana, with local varieties to produce new varieties that combined the

high-yielding properties of exotic varieties with the durability and adaptability of local varieties to local ecology, and then to release those after several years of experimentation to seed farmers. The seed farmers multiplied those new varieties and sold those to actual farmers who planted those. If the largest growth in agriculture had become possible without patents, where is the case for patents now?

Q42.Why are you so worried about the multinationals moving in?

* - In India most people have no idea about how powerful, and how potentially harmful, these multinationals are. These are very large entities, the largest among them having annual turnover figures that are close to the national income of a country as big as India with 96 crore people. They offer the highest salaries and, therefore, attract the best of brain-power in the world: engineers, mathematicians, chartered accountants, managers. Because their tentacles are spread to practically all the countries of the world, through affiliates and subsidiaries, they aim at profit maximisation at the global level, often at the cost of the interests of the host nations, and can effectively hide their illegal transactions in terms of 'book-keeping' transfers between affiliates. They also operate vertically - in case of an oil company, from searching for oil to its marketing through development, production, refining and transporting - and also horizontally, in collusion with other oligopolistic corporate giants operating in their fields. Empirical evidence amply confirms their shyness in transferring technology or in bearing risk in entirely new areas. The Indian enterprises would be no match for them in competition, and there could be no level playing field between these giants and the Indian dwarfs, as observed by Mahatma Gandhi in another context.

Q43. How has the Marakesh agreement influenced their activities?

* The new patent regime would provide them with monopoly to sell their

commodities in Indian market, and no Indian or competing foreign enterprise would be able to market those in India. Now product patent rights together with the monopoly marketing rights in the hands of the multinational companies would become a lethal combination that would destroy Indian industries and eliminate any hope of achieving self-sufficiency or development the period of patent, at 20 years, would be too long, and, by the time it ended, the multinational companies would be ready with some new, more fashionable, more attractive and more user-friendly to reduce the release of patent right to a matter of no consequence. In east Asia the governments carefully kept these predators out of the way of the nascent indigenous enterprises in the same field, by invoking local content requirements' that made heavy demand on the foreign enterprises in terms of deployment of local manpower, material and so on, or by high tariff, prohibition or quota restrictions. Such local content measures can not be implemented now by India , as TRIM (Trade related Investment Measures) under Marakesh agreement rules out those and demands that the foreign companies be accorded national treatment and no discrimination be practiced against them.

Q44. How are they going to influence the course of agricultural development in the country ?

* Enormously. Even during the British colonial rule the British economic interests seldom directly participated in agricultural production, except in plantations located in sparsely populated areas. Now they are planning to enter India's countryside in a big way, by taking part in waste land development and also by linking their processing activities (e.g. with respect to tomato) with direct agricultural production. As they have done in other countries, they will follow two parallel systems - plantation and contract production. In plantations they will work with their own hired labour, while

under the contract system they would give inputs and technology to the contract farmers, would expect them to operate under their specification and norms, and to deliver their products to the company. The prices of both inputs and outputs would be determined by them and imposed on the farmers, who would lose their independence.

Q45. Apart from production directly linked to processing, in what other way they would influence agriculture ?

* For the rest of the agricultural economy they wish to become the main supplier of seed and other inputs. Here too they would try to make the farmer completely dependent on their supply. Recently, these agri - business companies have developed what is significantly known as the terminator technology. This technology makes the seeds sterile, that is incapable of being used for the second time for germination. The objective behind developing this technology is not to allow the peasants to use the same seed again and again and to force them to go back to the multinational companies for new seeds every year , while agricultural is synonymous with regeneration, renewal and reproduction, this technology strikes at the base of such predominate features of agricultural life making seeds infertile and unsuitable for multiple use. More dangerous is the fear that, even in cases of those who do not use this terminator seed, pollens from the latter would spread over a very large area and would make even other seeds infertile.

Apart from the terminator technology, those relating to fertilizer and chemicals are also making the peasants further dependent on MNCs for supply in place of self reliance practised in the past. They are developing weedicides that are specific to a particular seed variety that it would not harm. Such weedicides would make it possible for the farmers to spray chemicals even when the crop is standing. Similarly, fertilizers and pesticides specific to a particular seed variety is being produced. In other words, the farmer would be forced to depend exclusively on a package of seeds, chemicals, and fertillisers supplied by a particular MNC.

Over time, the concerned MNC, by investing an enormous amount on R &D, will do everything to make the peasants perpetually dependent on it, by producing new packages every few years. As we have noted , in the background of the spate of suicides in Punjab and Andhra, many of the chemicals are spurious and adulterated, while often these MNCs push the farmers to use chemicals more than is good for the plant itself. In the mid - 1980s, 30 farmers of two of the most prosperous cotton growing districts of Andhra committed suicide because the pesticides killed off the main target pest, which allowed other pests suppressed by the main paste grow at an alarming speed and destroy the crop.

Q46. What to do now ?

* It is unlikely that wisdom will dawn on the two major parties and they will desist from this anti-people and antinational activity. Left on their own they would do everything to get the patent bill passed. National interest is not safe in their hands, and they are colluding to betray the people of India and to sell the country to multinationals. It is for the people of India to take up this issue and make them change their position.

Q47. What are the implications of these Patent legislation for centre-state relations ?

* Many. The two areas to be most affected by these Patent bills are agriculture and helalth, both of which are domains of the states under the 'state list' of the Indian constitution. For this reason the non-Congress opposition requested that, before the central government takes the plunge, its moral responsibility is - showing due regard to the federal character of the Indian polity-to consult the state governments who are most likely to be affected by these. The opposition suggested, more specially, that the Inter-state Council, a constitutional body whose main function is to examine such issues, or that of the National Development Council whose membership comprises of the Chief Ministers of various states, be convened. Needless to say, this request was turned down."

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