

**THE DIMINISHING STATE OF SOVEREIGNTY IN LIGHT OF  
WORLD TRADE ORGANIZATION; THE INDIAN  
CONSTITUTIONAL LAW APPROACH**

Dissertation submitted to National Law University, Assam  
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## DECLARATION

I, VISHWAS RAI, do hereby declare that the dissertation work “THE DIMINISHING STATE OF SOVEREIGNTY IN LIGHT OF WORLD TRADE ORGANIZATION; THE INDIAN CONSTITUTIONAL LAW APPROACH” submitted by me for the award of degree of MASTERS OF LAWS / ONE YEAR LL.M. DEGREE PROGRAMME of National Law University, Assam is a bonafide work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise.

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A handwritten signature in blue ink, appearing to read 'V. Rai', with a horizontal line underneath.

## CERTIFICATE

This is to certify that VISHWAS RAI has completed his dissertation titled “THE DIMINISHING STATE OF SOVEREIGNTY IN LIGHT OF WORLD TRADE ORGANIZATION; THE INDIAN CONSTITUTIONAL LAW APPROACH” under my supervision for the award of degree of MASTERS OF LAWS / ONE YEAR LL.M. DEGREE PROGRAMME.

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## ABBREVIATIONS

1.	AOA	Agreement on Agriculture
2.	DSU	Dispute Settlement Unit
3.	EU/EC	European Union / European Commission
4.	GATS	General Agreement on Trade in Services
5.	GATT	General Agreement on Trade and Tariff
6.	IBRD	International Bank Of Reconstruction And Development
7.	ICJ	International Court Of Justice
8.	IMF	International Monetary Fund
9.	IPR	Intellectual Property Rights
10.	ITO	International Trade Organization
11.	MNC	Multinational Corporation
12.	MEA	Ministry of External Affairs
13.	NAFTA	North America Free Trade Agreement
14.	NATO	North Atlantic Treaty Organization
15.	OECD	Organization for Economic Cooperation and Development
16.	OPEC	Organization of Petroleum Exporting Countries
17.	SPS	Sanitary and Phytosanitary Measures
18.	TBT	Agreement on Technical Barriers to Trade
19.	TPRM	Agreement on Trade Policy Review Mechanism
20.	TRIM	Agreement on Trade Related Investment Measures
21.	TRIPS	Agreement on Trade Related Aspects of Intellectual Property Rights
22.	UN/UNO	United Nation Organization
23.	UNGS	United Nation General Assembly
24.	UNSC	United Nation Security Council
25.	USA	United States of America
26.	USSR	Union of Soviet States of Russia

27.	WTO	World Trade Organization
28.	WB	World Bank

### TABLE of CASES

1. Lloyds Chills Offshore versus Union of India, AIR 1930 Cal 22, 121 Ind Cas 625.
2. Solomon versus Commissioner of Customs and Excise, (1967) 2 Q.B. 116.
3. Melon versus Metropolitan Police Commissioner, (1979) 1 C.H. 344.
4. Jolly George workers versus Bank of Cochin, AIR 1980 SC 470.
5. Contempt of Court Case- Attorney General versus BBC, 1981 EC 303.
6. C.H.E.A.L.L versus Association of Professional Executive Clerical and Computer Staff, (1983) 2 AC 180.
7. CCSU versus Minister of Civil Service, (1985) AC 374.
8. TN Govardhanan versus Union of India, [1986] 160 ITR 318 ; AIR 1986 SC 1668.
9. J H Rayner Limited versus Department of Trade and Industry, (1990) 2 EC 418.
10. Australian High court in Minister for Immigration and Ethnic Assets versus TEOH, (1995) 183 CLR 273.
11. Vellore Citizens Welfare Forum versus Union of India, AIR 1996 SC 2715: (1996) 5 SCC 647.
12. Vishaka versus State of Rajasthan, (1997) 6 SCC 241.
13. Ram Jethmalani versus Union of India, (2011) 8 SCC 1.
14. G Sundarrajan versus Union of India, (2013) 6 SCC 620.
15. National Legal Services Authority versus Union of India, (AIR 2014 SC 1863).
16. State of West Bengal versus Kesoram Industries, 2004 (10) SCC 2015.
17. Jeeja Ghosh versus Union of India, (2016) 7 SCC 761.
18. W. E. S. Ireland versus. Director General of Civil Aviation, WP(C) 871/2015 & 747/2015.
19. Keshavnanda Bharti versus State of Kerala, (1973) 4 SCC 225.

## PREFACE

Entering into treaties and agreements with foreign powers is one of the attributes of State sovereignty. No State can insulate itself from the rest of the world whether it is in the matter of foreign relations, trade, environment, communications, ecology or finance. This is truer since the end of the World War II. The advent of globalization and the enormous advances made in communication and information technology have rendered independent States inter-dependent. This chapter contains introduction to the topic and historical background on the development in the field of implementation and conclusion of international trade treaties in India. Sovereignty means the independent authority of a State. It means that it has the power to legislate on any subject; and that it is not subject to the control of any other State or external power. According to the preamble, the constitution of India has been pursuance of the solemn resolution of the people of India to constitute India into a 'Sovereign Democratic Republic', and to secure well-defined objects set forth in the preamble. Sovereignty denotes supreme and ultimate power. It may be real or normal, legal or political, individual or pluralistic. In monarchies, sovereignty was vested in the person of monarchs. But in republican form of governments, which mostly prevail in the contemporary world, sovereignty is shifted to the elected representatives of the people.

In this dissertation, I attempt to give the basic introduction to international law, visit its branches and concepts and examine them in relation to the municipal laws of India. It is well known that India is a signatory to most international conventions and treaties but there are no direct statutory provisions acknowledging the same. Therefore, for Indians to know all about international laws, it's highly recommended to depend on the Constitution of India and various judicial pronouncements. It would be appropriate to examine, in the first instance, the legal background to our constitutional scheme. It is well known that British India had been following the British practice in

the matter of treaty making. In India, constitutionally speaking, treaty-making is an executive act. Entry 14, List I read with Article 246 of the Constitution of India makes it crystal clear that the power to make laws with respect to implementation of international treaties rests with the Union Government.” Article 53 vests the executive power of the Union with the President of India. Article 73 says that the executive power of the Union extends to exercising all powers accruing to the Government of India from any International Treaty or Agreement.

By virtue of Article 73 of the Constitution, however, the Executive power of the Union extends, in the absence of parliamentary legislation, to the matters with respect to which the Parliament has power to make laws subject, of course, to constitutional limitations. It is well known that the Parliament has not so far made any law regulating the procedure concerning the entering into treaties and agreements nor with respect to their implementation. Equally clearly, no law has been made regulating the manner in which the Government shall sign or ratify the international conventions and covenants. The resulting situation, unfortunately, is that it is left totally to the Executive to not only enter into treaties and agreements but also to decide the manner in which they should be implemented, except where such implementation requires making of a law by Parliament. Parliament, no doubt, has a constitutional control over the Executive; but it cannot be disputed that the creation of the obligations undertaken in treaties and the assent to their form and quality are the function of the Executive alone. Once they are created, while they bind the State as against the other contracting parties, Parliament may refuse to perform them and so leave the State in default. In a unitary State whose Legislature possesses unlimited powers, the problem is simple. Parliament will either fulfill, or not, treaty obligations imposed upon the State by its Executive. The nature of the obligations does not affect the complete authority of the Legislature to make them law if it so chooses.

The courts are the guardian of the Constitution of India. In the absence of any “treaty regulating legislation” in India, it mainly has to play vital roles. It may have to interpret the legislation implementing a treaty. In case of ambiguity it may have to interpret the International treaty provisions along with the legislation implementing a



treaty in domestic law. The role of the courts in case an international treaty has been ratified but not incorporated within domestic law. The role of the court in case where an international treaty to which the executive has ratified but with some reservations.

## TABLE of CONTENT

Declaration.....	i
Certificate.....	ii
Acknowledgement.....	iii
Abbreviations.....	iv
Table of Cases.....	v
Preface.....	vi-vii
Table of Content.....	viii-xi
CHAPTER 1- Introduction.....	1-11
1.1. Research Background / Introductory.....	1-4
1.2. Statement of Problem.....	4
1.3. Aims.....	5
1.4 Objectives.....	5
1.5. Scope & Limitations.....	5-6
1.6. Detailed Literature Review.....	6-9
1.7 Research Questions / Hypothesis / Hypotheses.....	10
1.8. Research Methods applied to test the hypothesis/hypotheses.....	10-11
CHAPTER 2- Evolution of the Concepts of State Sovereignty & World Trade Organization.....	12-33
2.1. Concept of the Constitution.....	12-13
2.2. Development of the International Law.....	13-15
2.3. World War I & II.....	15-18
2.4. International Trade Arrangement in 3 <sup>rd</sup> World (Post 1945).....	18-19

2.4.1. The Up rise of the United State of America as World Leader & Superpower.....	19-24
2.5. Emergence of Independent State.....	24-26
2.6. Concept of Sovereignty.....	26-28
2.6.1. Internal & External Sovereignty.....	28-29
2.7. World Trade Organization in 2020.....	29-30
2.7.1. Globalization through World Trade Organization & Its Adverse Effects on Indian Rural Population. ....	31-33

CHAPTER 3- Relation & Conflict Between the Indian Constitution & Agreement

Establishing the World Trade Organization .....	33-46
3.1. Evolution of the Indian Constitution.....	34-35
3.2 Supremacy of the Constitution.....	36
3.3. India as a Sovereign State Trough its Preamble.....	36-37
3.4. Basic Structure of the Constitution.....	37
3.5. Marrakesh Agreement.....	38-39
3.6. Other Agreements of World Trade Organization .....	39
3.6.1. Multilateral Agreement on Trade in Goods: General Agreement on Tariffs and Trade, 1994.....	39
3.6.2. Agreement on Agriculture.....	40
3.6.3. Agreement on the Application of Sanitary and Phytosanitary Measure.....	40
3.6.4. Agreement on Technical Barriers to Trade.....	41
3.6.5. Agreement on Trade Related Investment Measures.....	41
3.6.6. Agreement on Implementing Article 6 of the General Agreement on Tariffs and Trade 1994: Anti-Dumping Agreement.....	42
3.6.7. Agreement on Implementation of Article 7 of the General Agreement on Tariffs and Trade 1994: Custom Valuation Agreement. ....	42
3.6.8. Argument on Pre-Shipment Inspection. ....	42
3.6.9. Agreement on Rule of Origin. ....	43
3.6.10. Agreement on Import Licensing Procedures. ....	43
3.6.11. Agreement on Subsidies and Countervailing Measures.....	43

3.6.12. General Agreements on Trade in Services.....	44
3.6.13. Agreement on Trade Related Aspects of Intellectual Property Rights.....	44
3.6.14. The Dispute Settlement Unit: or Agreement for Understanding the Rules and Procedure Governing the Settlement of Disputes.....	44
3.6.15. Agreement on Trade Policy Review Mechanism.....	45
3.6.16. Agreement on Government Procurement.....	45
3.6.17. Plurilateral Trade Agreements.....	46

CHAPTER 4- Exercise of Executive Power in Conclusion & Implementation of World Trade Organization Agreements.....47-52

4.1. Treaty Making Power under the Constitution. ....	47
4.2. Current Procedure & Executive Personalities Responsible.....	48
4.3. Policy Making & Implementation of Treaty.....	49-52

CHAPTER 5- Exercise of Legislative Power of Parliament in Context to World Trade Organization Agreements.....53-63

5.1. Conclusion of Treaty & Ratification.....	53-54
5.2. Delegated Legislation.....	55
5.2.1. Understanding Level of Members of Parliament.....	55
5.2.2. Limitations of Delegated Legislation.....	55-56
5.3. Absence of Statute. ....	56-58
5.4. Law Making on the Subject Matter. ....	58-59
5.5. Approach of other Nations.....	59
5.5.1. Australia.....	59
5.5.2. France.....	60
5.5.3. United States of America. ....	60
5.5.4. Argentina and Mexico. ....	61
5.5.5. Organization of Economic Cooperation & Development Nations. ....	61
5.5.6. United Kingdom.....	61-62
5.5.7. Switzerland. ....	63

CHAPTER 6- Approach of Indian Judiciary to Harmonize Domestic Law & International Law on Trade Arrangements of World Trade Organization .....	64-70
6.1. Powers of the Supreme Court.....	64-65
6.1.1. Questions to be Concerned by the Supreme Court.....	65-66
6.4. Enforcement of International Law.....	66-68
6.3. Vienna Convention on Law of Treaties & Pacta Sun Servanda.....	68-70
CHAPTER 7- Conclusion & Recommendations.....	71-78
7.1. To Determine.....	71-72
7.2. Opposition to World Trade Organization Agreements.....	72-75
7.3. Questions.....	75-77
7.4. Suggestions.....	77-78
BIBLIOGRAPHY.....	xii-xvi

# 1. INTRODUCTION

## 1.1. Research Background / Introductory

The primary objective of this particular research paper is to provide a deep knowledge into and on the subject matter of understanding the relationships and conflicts between the “independent national governments”<sup>1</sup> and “transnational or multinational organizations”<sup>2</sup> (corporations) in the context that how the later has impact and influence on the “sovereignty, independence and control”<sup>3</sup> of the former.

It has been argued through this paper that the present existing literatures and scenarios have fallen short of predicting and estimating that “globalization especially through the World Trade Organization has critically compromised”<sup>4</sup> or in other words diluted the independence of the states specially in the context of “Republic of India”<sup>5</sup>, our country which is on the path of “economic growth and development today becoming the fastest growing economy”<sup>6, 7</sup> and “sixth largest economy on the globe”<sup>8</sup>.

The paper has utilized the notions and concepts of “independence, sovereignty and autonomy”<sup>9</sup> through our Constitution repeatedly in the literature as changing pattern can be identified from “1947”<sup>10</sup> to the present year of 2020. In the context of WTO, we are forced to examine that India as an independent state is losing both “internal and external sovereignty”<sup>11</sup> in the age of global and international trade through WTO. The Constitution of India serves as the grunt norm for the state and any law in

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<sup>1</sup> Adopted from the Constitution of India, 1949.

<sup>2</sup> In context to World Trade Organization, established in 1994.

<sup>3</sup> Sharma, B.M. and Bareth Roop Singh (Ed.), Good Governance Globalization and Civil Society, Rawat Publications, Jaipur, 2004, p. 10.

<sup>4</sup> Bhaduri, A., Nationalism and Economic Policy in the Era of Globalization in Nyar Deepak, Governing Globalization, Issues and Institutions, (ed) Oxford University Press, 2006, p. 22.

<sup>5</sup> Library of Congress – Federal Research Division Country Profile: India, December 2004.

<sup>6</sup> <https://economictimes.indiatimes.com/news/economy/indicators/india-remains-fastest-growing-economy-ahead-of-china-despite-up/downs/Articleshow/67334194.cms>.

<sup>7</sup> World Bank report 2015, 2016, 2017, 2018, Fitch Rating 2018, NITI Aayog Report 2018.

<sup>8</sup> The World Bank Global Watch report, 2018.

<sup>9</sup> The Preamble to the Constitution of India.

<sup>10</sup> Year when India gained independence from the British Crown into an independent State.

<sup>11</sup> Internal/external: The state of sovereignty, Prokhovnik, Raia, 1996, Contemporary Politics, VL - 2, IS - 3, UR - <https://doi.org/10.1080/13569779608454736>.

violation to the Constitution is impliedly invalid<sup>12</sup>. The Constitution through its preamble declares India as a sovereign state and through its Articles provides for “express and implied limitations”<sup>13</sup> on the conclusion and enforcement of international trade arrangements. The ties of India’s Constitution with international law date back to the pre-independence days. Even during the British rule, India was the separate member of the League of Nations. It is also the founding-member of the United Nations & WTO. In this paper, I have sketched general scheme of the Constitution with reference to international law and further proceed to analyze certain important provisions and aspects relating to the “conflict between the Indian Constitution and the Marrakesh Agreement”<sup>14</sup>. This paper will only focus on the various WTO agreements and The Indian Constitution. The relation and conflicts between the two laws will be restricted to the concept of state sovereignty through the Constitution and the requirements of concluding and implementing the trade arrangements of WTO. The research will not include any other international instrument or treaties other than that of WTO or any domestic/special/general legislations of the Indian legal system.

The power blocks of the globe presently are the “state superpowers”<sup>15</sup> like the United States of America, United Kingdom, China, etc., the transnational organizations like the “World Trade Organization”<sup>16</sup>, “United Nations”<sup>17</sup>, “Organization for Economic Cooperation and Development”<sup>18</sup>, etc. all to be noted established after the World War II in leadership of the United States of America, or the multinational corporations (MNC) like “Apple”<sup>19</sup>, Google, Toyota, etc. all having its principle place of business

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<sup>12</sup> Article 12 and 13 of the Constitution of India, 1949.

<sup>13</sup> 026\_Position Relating to Treaties under the Constitution of India (113-130).pdf, Journal of Indian Law Intitute, Vol. 17:1,last visit 16.08.2020.

<sup>14</sup> Overlaps and Conflicts ofJurisdiction between the World Trade Organization and Regional Trade Agreements, Kyung Kwak and Gabrielle Marceau, The Canadian Yearbook of International Law 2003 (Annuaire canadien deDroit international 2003), WTO and Regional Trade Agreements

<sup>15</sup> As defined by International Institute of Strategic Studies.

<sup>16</sup> Established by the Marrakesh Agreement in 1994 as successor of GATT 1947.

<sup>17</sup> Established by the UN Charted on 26<sup>th</sup> June, 1945 as successor of League of Nations..

<sup>18</sup> A unique forum where the governments of 36 member states with market economies work with each other, as well as with more than 70 non-member economies to promote economic growth, prosperity, and sustainable development, <https://usoecd.usmission.gov/our-relationship/about-the-oecd/what-is-the-oecd/>, last visit 10.08.2020.

<sup>19</sup> 1<sup>st</sup> trillion dollar company by the Forbes, 2018.

in super developed nations, “today corporate influential power and reach without any political, geographical or territorial borders and limitations”<sup>20</sup>. Death threat are posed to a country like India by the superpowers like U.S., is both externally and internally hampering the “the Constitutional objectives of our nation”<sup>21</sup>. The most recent example of “China”<sup>22</sup> in terror combat against Pakistan in Pulwama terror attack or “oil sanctions”<sup>23</sup> made by the U.S.A. against India on Iran oil making it a necessity for India through “Indian Oil Corporation to consider a deal of 100 billion \$ (USD) to buy oil from U.S.A.”<sup>24</sup>.

The formation of World Trade Organization involve issues regarding violation of area of influence on independent nations and in a formal sense on the “sovereignty”<sup>25</sup> of the decision and policy making aspect of the Indian state. For example India cannot back out from the Indus Water treaty entered in 1960 with Pakistan to make our “neighboring state compensate for its dreadful deeds of sponsoring and assisting terrorism as the treaty is backed by the World Bank”<sup>26</sup>. On the other hand U.S.A. has globally declared War against Afghanistan for its own revenge “killing nearly 2800 civilians in the armed conflict only in 2018.”<sup>27</sup>

This paper tends to argue that the power blocks have taken advantage of the process of the establishment of the World Trade Organization “to increase their strength, income, revenue, influence, authority and control over the independent sovereign nations across the globe as such the arrangement was laid down by such”<sup>28</sup> power blocks after the World War II to “fulfill their thirst and greed of resources and

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<sup>20</sup> Speech of Singapore’s Deputy Prime Minister Lee Hsien Loong to policy makers in Washington DC in May 1998.

<sup>21</sup> The Preamble to an act sets out the main objectives which the legislation is intended to achieve.

<sup>22</sup> Being a permanent and veto power member of United Nations Security Council.

<sup>23</sup> <https://www.worldoil.com/news/2018/12/19/india-circumventing-us-oil-sanctions-on-iran>.

<sup>24</sup> <https://www.reuters.com/Article/us-india-ioc-usa/indian-oil-signs-first-annual-deal-to-buy-up-to-3-million-tons-u-s-oil-idUSKCN1Q70BU>.

<sup>25</sup> The concept of external independence of the Indian State through the Preamble of the Constitution of India.

<sup>26</sup> <https://thewire.in/diplomacy/pulwama-unsc-statement-india-us-china>.

<sup>27</sup> <https://edition.cnn.com/2018/10/10/asia/afghanistan-airstrikes-civilian-deaths-un-report-intl/index.html>.

<sup>28</sup> Huntington, Samuel. 1968. Political Order in Changing Societies. New Haven, CT: Yale University Press.

wealth”<sup>29</sup>, “for example the US and the UK”<sup>30</sup>. It is also very important to mention that the reason of both the World Wars was “over exploitation of resources”<sup>31, 32</sup> from nations whose struggle and fight for independence led to creation of the independent states known as “Third World Nations”<sup>33</sup> and India is no exception to this struggle of freedom.

## **1.2. Statement of Problem**

The formation of World Trade Organization affected our individual lives in many ways. Similarly it affected the policies and governance of the states. In fact international organizations are deciding the policies of some concerned states. International organizations and instruments are being established and developed to facilitate free and cross boundary trade and commerce formed through the so called free trade global arrangements. It can be argued that developed countries and the multinational corporations of these developed nations are the bodies which benefit the most as international trade institutions and instruments are used a passage to enforce other nations to abide by the rules and regulations.

In the context of WTO, we are forced to examine that India as an independent state is losing both internal and external sovereignty in the age of global and international trade through WTO.

India enters into an international trade arrangement through the President in exercise of his executive power, on the aid and the advice of the Council of Ministers headed by the Prime Minister and no court of law in India may question its validity. However no agreement or treaty entered into by the President is enforceable by the courts

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<sup>29</sup> Sikdar Soumyen, Contemporary Issues in Globalization, An Introduction to Theory and Policy in India, Oxford University Press, 2002 pp 1-2.

<sup>30</sup> Dr. Shashi Tharoor, Member of Parliament, Lok Sabha, <https://www.independent.co.uk/news/uk/home-news/dr-shashi-tharoor-tells-the-oxford-union-why-britain-owes-reparations-for-colonising-india-in-viral-10407997.html>.

<sup>31</sup> FCPS HS Social Studies, 2014.

<sup>32</sup> Geography and History – Bilingual Studies – IES Parque de Lisboa, Alcorcón (Madrid).

<sup>33</sup> The term Third World was originally coined in times of the Cold War to distinguish those nations that are neither aligned with the West (NATO) nor with the East, the Communist bloc. Today the term is often used to describe the developing countries of Africa, Asia, Latin America and Oceania. Many poorer nations adopted the term to describe themselves.



which are incompatible with Indian Constitution / National Laws as India follows dualist theory for implementation of International laws.

Execution of global trade laws in India can be done if the Parliament wishes to codify the agreements entered into by the executive thereby making it enforceable by the Courts in India; it may do so under the Indian Constitution. The Indian Constitution demarks three organs for the democratic set of the nation, namely the Executive, the Legislative and the Judiciary. This paper tends to examine the role and approach of all the three organs in the process of ratification, conclusion and implementation of international trade treaties and arrangements of WTO.

### **1.3. Aims**

India as a fastest developing state loses its both internal and external sovereignty in the global world of free trade and liberal economy. Today economic factor plays a more important and effective role than military or politics. Thus the developing nations like India lose on grounds of economic, politics and military influence and presence under the pressure of global trade..

### **1.4. Objective**

1. To determine the diminishing status of Indian State external and internal sovereignty in the globalized trade world.
2. To determine the Constitutional requirements for (a) conclusion of treaty & (b) implementation of treaty.
3. To determine the role of domestic courts of India and their approach to harmonize municipal laws with international laws.

### **1.5. Scope & Limitations**

The Constitution of India serves as the grunt norm for the state and any law in violation to the Constitution is impliedly invalid. The Constitution through its

preamble declares India as a sovereign state and through its Article provide for express and implied limitations on the conclusion and enforcement of international trade arrangements. The ties of India's Constitution with international law date back to the pre-independence days. Even during the British rule, India was the separate member of the League of Nations. It is also the founding-member of the United Nations & WTO. In this paper, I have sketched general scheme of the Constitution with reference to international law and further proceed to analyze certain important provisions and aspects relating to the conflict between the Indian Constitution and the Marrakesh Agreement.

This paper will only focus on the various WTO agreements and The Indian Constitution. The relation and conflicts between the two laws will be restricted to the concept of state sovereignty through the Constitution and the requirements of concluding and implementing the trade arrangements of WTO. The research will not include any other international instrument or treaties other than that of WTO or any domestic/special/general legislations of the Indian legal system.

## **1.6. Detailed Literature Review**

1. Effects of Globalization on Sovereignty of States, Elizabeth A. OJI (Ph.D.) and M.V.C Ozioko , Lecturers, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Journal of International Law, Available at: <https://www.ajol.info/index.php/naujilj/article/viewFile/82410/72564>, gaugedreguaged.doc, Accessed on: 02.03.2020.

The interrelationships of markets, finance, goods and services, and the networks created by transnational corporations are the most important manifestations of economic globalization. Though the capitalist world-system has been international in essence for centuries, the extent and degree of trade and investment globalization has increased greatly in recent decades. Economic globalization has been accelerated by what information technology has done to the movement of money. It is commonly claimed that the market's ability to shift money from one part of the globe to another

by the push of a button has changed the rules of policy-making, putting economic decisions much more at the mercy of market forces than before.

2. Globalization and Its Impact on State Sovereignty, Dr. Inakshi Chaturvedi.  
Available at; [http://paperroom.ipsa.org/papers/paper\\_249.pdf](http://paperroom.ipsa.org/papers/paper_249.pdf), Accessed on 01.04.2020.

The state's role is changing as a result of globalization. According to them, there is the possibility of states adapting themselves to the transformations in international society, in the form of pooled sovereignty – the idea that states that would be weak and ineffective acting independently could acquire greater influence by working together with other states through the vehicle of international or regional institutions. Others believe that globalization is itself driven by the state. States are themselves the authors of globalization by promoting and shaping the nature and pace of globalization. Trade agreements and regionalization are instances of this. Political elites in different countries often use globalization as an ideological device to make the move towards market reforms appear inevitable and irresistible. States are now more concerned about their role as actors in global markets to protect national economic well-being and are entrepreneurial.

3. Globalization and Sovereignty, Julian G. Ku and John Yoo, Maurice A. Deane School of Law at Hofstra University, 31 Berkeley J. Int'l L.210 (2013)  
Available at:  
[https://scholarlycommons.law.hofstra.edu/faculty\\_scholarship/574](https://scholarlycommons.law.hofstra.edu/faculty_scholarship/574), Accessed: 31.01.2020.

Globalization represents the reality that we live in a time when the walls of sovereignty are no protection against the movements of capital, labor, information and ideas-nor can they provide effective protection against harm and damage. 'The typical account points to at least three ways that globalization has affected sovereignty. First,

the rise of international trade and capital markets has interfered with the ability of nation-states to control their domestic economies. Second, nation-states have responded by delegating authority to international organizations. Third, a "new international law"<sup>34</sup>, generated in part by these organizations, has placed limitations on the independent conduct of domestic policies.

4. Globalization and Sovereignty: Why do States Abandon their Sovereign,  
Published in *Age of Globalization*, No. 1, 2008, pp. 22–32. *Journal of Globalization Studies*, Vol. 3, Num. 1, May 2012, pp. 3–38 under the title *New Basics of State Order or Why do States Lose Their Sovereignty in the Age of Globalization*.

The process of globalization undoubtedly contributes to the change and reduction of the scope of state sovereign powers. The list of threats to state sovereignty often includes global financial flows, multinational corporations, global media empires, and the Internet etc. At the same time (note that this point is debated surprisingly little and occasionally), since the end of World War II, increasingly more states have been willingly and consciously limiting their sovereign rights. And what is extremely important, many countries quite often give away some of their sovereign powers voluntarily. In the article, it is argued that the factor of voluntariness in reducing one's own authority is, no doubt, the most important in understanding the future of the state.

5. International Morality, Author(s): L. S. Woolf Source: *International Journal of Ethics*, Vol. 26, No. 1 (Oct., 1915), pp. 11-22 Published by: The University of Chicago Press Stable URL: <https://www.jstor.org/stable/2376732> Accessed: 07-04-2020 05:08 UTC.

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<sup>34</sup> Diane Marie Amann, *Benchbook on International Law*, American Society of International Law, 2014, *Am. Soc'y Int'l L.*, Preface, in *Benchbook on International Law* (Diane Marie Amann ed., 2014), available at [www.asil.org/benchbook/preface.pdf](http://www.asil.org/benchbook/preface.pdf), last visit 15.08.2020.

It is not therefore surprising that in practice international morality so rarely determines foreign policy. What does determine it is diplomatic morality. The result is that the motive of a state's action is frequently not even its own interests but the interests of particular persons. "That is after all what is meant by the statement that the actions of European powers in the undeveloped quarters of the globe are so often influenced by financial and commercial interests."<sup>35</sup>

6. National Commission to Review the Working of the Constitution, A Consultation Paper on Treaty - Making Power under our Constitution, Shri P.M. Bakshi, Former Member, Law Commission of India, January 8, 2001.

Entering into treaties and agreements with foreign powers is one of the attributes of State sovereignty. No State can insulate itself from the rest of the world whether it be in the matter of foreign relations, trade, environment, communications, ecology or finance. This is truer since the end of the World War II. The advent of globalization and the enormous advances made in communication and information technology have rendered independent States inter-dependent. Every State has entered into and is entering into treaties – be it multi-lateral or bilateral – which has a serious impact upon the economy and the social and political life of its society. In spite of the fundamental importance of the treaty-making power, it has unfortunately received very little attention in our country, though in many other countries, good amount of research and debate has gone into it. We in India cannot afford to ignore this subject any longer, particularly because of the experience of W.T.O. Treaties signed by our Government without consulting or without taking into confidence either the Parliament or the public or, for that matter, groups and institutions likely to be affected adversely thereby.

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<sup>35</sup> Southeast Asian Paper Tigers?: From Miracle to Debacle and Beyond, Routledge Curzon Studies In The Growth Economies of Asia, 46, First published 2003 by Routledge Curzon, 11 New Fetter Lane, London, EC4P 4EE.

### **1.7. Research Questions / Hypothesis / Hypotheses**

1. Whether the Marrakesh Agreement of 1994 overshadows the Indian Constitutional limitations and restrictions on international arrangements of WTO?
2. Whether the International Trade Treaties concluding (making) power subsists with the Union Government of India (Union Executive) or with the Parliament of India (Union Legislative)?
3. What is the jurisprudence & objective behind Article 253 of the Indian Constitution and its impact on Article 73 of the Constitution?

### **1.8. Research Methods applied to test the hypothesis / hypotheses**

The nature of research adopted is doctrinal based on secondary sources involving examination of impact of ratification of international trade treaties on the external and internal sovereignty of India and incidental cases having effects on the organs of the Indian Government (Executive, Legislative and Judiciary) as well as opting analytical methodology in order to arrive at a complete understanding of the concerned topic.

The research methodology adopted for this paper requires gathering significant resources mostly from the secondary data which includes journals, articles, commentaries, textbooks, reference books, internet sources, e-books. Citation method used is Bluebook 20th Edition.

Further, the research methodology is adopted because the aim of this dissertation is to analyze the existing procedure on ratification of international trade treaty and to examine the efficiency of such procedures and laws in implementation and execution of such treaties and the related challenges incidental to it. In light of this, the Dissertation will use the deductive method of research so as to reach a sum up result by concluding the general findings.

The researcher has gathered materials from various sources i.e. primary as well as secondary sources available at the NLUJA Library and NLUJA online e-resources

database. For this mentioned reason, the Researcher will analyze the scholarly articles, international instruments and conventions, the Constitution of India, legislative provisions, decided case laws and comments on different aspects associated with the issue.

## **2. EVOLUTION OF THE CONCEPTS OF STATE SOVEREIGNTY AND WORLD TRADE ORGANIZATION.**

### **2.1. Concept of the Constitution**

A Constitution is a political and legal document which has a special legal sanctity which sets out the framework and structure of the government with the principal functions of the organs of the government of a state and declared the principles governing the operation of those organs. There is no concrete, hard and fast definition of Constitutional law. Generally and universally accepted use of the term Constitution it means the rule which provide for the principal and regulate the structure all the government organs and their relationship to each other determining the objective on which the functions, working and accountability of the government towards its citizen.

The Constitution can be said either a set off fundamental principles or established procedure that contribute the legal and political basis of apology governance organization or any entity which, digital mine that whole the entity is to be around.

The end of World War II in the year 1945 resulting into the formation of different independent States which attained freedom from existing empires such as the British Kingdom.

To safeguard the independence of the state and its population the concept of the modern written Constitution emerged firstly nearly 200 years ago from the United States of America and later on nearly every country on this globe adopted a set of rules and fundamental principles guiding the power of the government the freedom of its population and other social cultural religious political and civil rights.

The Constitution is not merely a set of rules but it is the feeling of freedom and independence of the people which are governed by the same and can be said as a basic law which is created by the peoples for their own governments and does it lays down



the supreme authority which place is the government or the parliament into a position to safeguard the freedom and will of its population.

## **2.2. Development of the International Law**

Today in the “modern era international law is established in four primary ways”<sup>36</sup>:

- 1- Formation of treaties between independent states or between the states and intergovernmental organizations.
- 2- Judicial decisions and pronouncements of domestic Supreme or Federal courts or International Court of Justice.
- 3- The United Nations Security Council actions as the most powerful global body.
- 4- And Customs or Principles universally recognized and adopted.

The most familiar of these is formation of treaties which are agreements between independent States separately or through various international platforms making the most of the international law. In the present world of 21<sup>st</sup> century it is established by the states that contracting, consenting or agreeing to a certain principal, set of rules, norms for procedure, etc. contracted between the parties through the instrument of treaty does forming the rights and liabilities towards each other which is binding and obligatory in nature.

International law reflects the establishment and subsequent modification of a world system which is exclusively founded on the basis and notion that all states are independent, sovereign and are the only relevant actors or players in the formation of international system or arrangement which now has developed into a separate branch of law as international private and public law.

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<sup>36</sup> Willis, Hugh Evander, A Definition of Law (1926).Articles by Maurer Faculty.Paper 1250. <http://www.repository.law.indiana.edu/facpub/1250>.

During the 19th century when the world witnessed the great two World Wars the concept of natural rights further evolving into “human, political, civil and social rights”<sup>37</sup> played a prominent role in the American and French Revolution and later on becoming a vital element in the international politics. During the start of 20th century natural rights had not attend a significant role but the disasters and grave violation of human rights during and between the World War 1 and II made the role of natural law peak and expand universally.

During the expansion of industrial revolution which led to the over exploitation of resources (basically natural resources limited in capacity in terms of both quantity and geographically), the notion of independent States with having its exclusive domestic jurisdiction and the concept of non-intervention in the internal affairs of the other states evolving into an idea universally accepted spirit throughout the world when the globe attained independence from the European Imperial powers.

In the start of 20th century, however the idea of positive and natural played an important role in international law resulting into the growth of international organizations like the “League of Nations”<sup>38</sup> founded in 1919, the “United Nations”<sup>39</sup> founded in the year 1945, the ITO founded in 1946, the Bretton Wood conference establishing the World Bank and IMF.

The era of cold War between the US and USSR give rise to the independent group of non-aligned and newly decolonized States so to be named as Third World Nations who support was eagerly sort by both the superpowers of the cold War era. The

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<sup>37</sup> Pound gives the following as a classified List of all the social interests which have received protection up to date: I. General Security. A. Personality. 1. Physical Person. a. Direct Injury. b. Bodily Health. c. Freedom of Will-Physical Existence. d. Mental Health. c. Nervous System. f. Privacy. 2. Honor and Reputation-Social Existence. 3. Belief and Opinion-Spiritual Existence. B. Domestic Relations. 1. Parental. 2. Marital. C. Substance-Economic Existence. 1. Property. 2. Freedom of Industry and Contract. 3. Promised Advantages. 4. Advantageous Relations. 5. Free Association. I. Security of Social Institutions. A. Domestic. B. Religious. C. Political. III. General Morals. IV. Conservation of Social Resources. A. Natural Resources. B. Dependents and Defectives. V. General Progress. A. Economic (Free invention, trade, property, industry). B. Political (Free criticism and opinion). C. Cultural (Free science and learning). VI. Individual Life.

<sup>38</sup> Dowding, K., Encyclopedia of power. Thousand Oaks, USA: SAGE Publications, 2011, pp. 382-383.

<sup>39</sup> Charter of The United Nations and Statute of The International Court of Justice, San Francisco, 1945.

formation of United Nations and the rule of law which created the base for the development of modern international law through treaties meet the biggest contribution to this development. At present the United Nations General Assembly holds more than 500 multilateral treaties deposited with the Secretary General of the UN, who is officially responsible for ensuring the proper execution of all treaty arrangements and its action relating to the treaty section of the UN office of legal affairs carrying out the role of monitoring the execution and implementation of the treaties by the independent States.

After the mass disasters and trauma leftover by the Second World War the League of Nations (created after World War 1 and its failure) was succeeded by the UNO in 1946 which tried to remedy and correct the defects of the League in the year 1947. The UN headquarters is also established in the US reflecting the realities of shift of power away from Europe and today has become a truly universal institution with great powers and that's why today's world only superpower the United Nations. The advent of decolonization fulfilled the expectations of the General Assembly of the United Nations and currently it has more than 192 member states.

And then UNO started and established by the leadership of United States which was firstly provided to the world intimates and dominates the 20<sup>th</sup> and 21<sup>st</sup> century have been carried out till date with a vast increasing number of international agreements and organizations, strengthening the system of arbitration development of institutes like OECD, WTO, etc. which is forming the essence of future development of international law favorable to the U.S..

### **2.3. World War I & II**

Imperialism was the major factor behind the World War 1. The concept is based on the notion that when a state or country increases their power, wealth and resources by draining and exploiting the natural and human resource through the territory in control of the state and also the additional territories under the control of other independent population or states. Before the World War 1 major parts of Africa and

Asia was points of contention among the European Imperial power like the British, France, German and Spain on one side of the globe in conflict with Asian power such as Japan and Ottoman Empire to control the natural and human resource in freely available abundant quantity existing in Asia and Africa. This was especially true because of the availability of the raw materials these natural areas could provide with huge local labour force available for the extraction and production of these resources. The increasing competition and desire between the power blocks for greater and greater empires lead to an increase in concentration and over exploitation that forced and pushed the world into World War 1.

Many historians also point out that militarization was the key factor behind the World War 1. The world entered the 20th century and does it showed an increase in the arms race. It was started by Germany in 1914 which show the greatest increase in military buildup. Both Great Britain and Germany greatly increased in military power and mobilization of resources in the time period. In the same period particular relief by the Japanese and the Russian improved and expanded the military establishment to have a greater influence on public policy and global events. This increased in military needed many natural resources like oil, iron, human force and labour which indirectly comes to the same result of over exploitation of resources.

It was said by Napoleon that “God is always on the side of big battalions”<sup>40</sup> but the 20th century also showed the importance of resources which has been offered by many historians and scholars with a view which was providing that not only quantity but quality and its availability at the time and place is also important. The level of economic development was very crucial in the age of mobilization of resources for the so-called total Warfare that characterized the First World War.

The whole globe was hit by an economic depression in the late years of 1920. After the end of World War 1, in this situation and period of depression, economies shrank, proportion and availability of trade was reduced and majorly restricted businesses

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<sup>40</sup> <https://www.escholar.manchester.ac.uk/api/datastream?publicationPid=uk-ac-man-scw:15m1755&datastreamId=FULL-TEXT.PDF>, last visit 15.08.2020.

closed, prices falling, banks falling and ever increasing rise in unemployment caused people to look forward for a strong political leadership. To resolve their problems, does the factor of economics gave rise to powers and people like USSR, USA, Adolf Hitler, aggression of Italy, expansionist movement of Japan and so on to restore the wealth and power of the nation and the people. The Great depression also gave rise to dictatorships.

Addressing the issues of the World War on the basis of ability of materials, today even in the present world, quantitative terms to be proved is a complex and impracticable task. "The manner of resource mobilization by USSR, United States, Britain and Germany led to over exploitation of natural and human capitals from all around the globe"<sup>41</sup> which also lead to a feeling of growing nationalism and spirit to have a free and independent political and social structure which govern the population through their own will.

The economic implications and over exploitation of resources by different powers to prepare and utilize the same for War and expansion and thus inhuman execution of their policies provided for a platform for aggression and rebellion creating the third world Nations.

The beginning of the Great depression led to a very unstable trade and economic situations. To undermine any further disasters of the situation, every attempt at creating a more safe open cooperative and peaceful post World War One order was made by many nations and institutions like the League of Nations. The American stock market crashed in 1929 not only causing a worldwide deterioration in economics but completely disintegrating several Nations particularly Germany. Deteriorating economic conditions helped form the Nazi party becoming as the nation's largest political party and blaming the treaty of Versailles for Germany's economic hardship fuelled Hitler's rise in popularity in the German population making

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<sup>41</sup> The economics of World War II: an overview, the paper appeared as a chapter in *The Economics of World War II: Six Great Powers in International Comparison*, pp. 1-42, Edited by Mark Harrison, Cambridge: Cambridge University Press, 1998.

him the chancellor of the state in full power in 1933 and causing the spark of the World War II.

It is also important to note that Imperial power such as the British, French, Soviets and Americans had large colonial empires or global territory in control having much of the natural and human resources though in form of over exploitation and slavery. But it was much needed by the world to have raw material and human labour by countries such as Germany, Japan and Italy for re buildup.

The destruction in the international trade also lead to the formation of more regional trade blocs which had Nations forming blocks among colonial lines like Great Britain Imperial preference system. After all the main reason can be seen as the direct destruction of economy of Germany by the World War 1 which led to the rise of “German Dictator Hitler”<sup>42</sup> and the start of World War II with military and economic expansion, the resources to be exploited from other regions of the globe.

#### **2.4. International Trade Arrangement in 3<sup>rd</sup> World (Post 1945)**

The World War for this particular research paper is important from the point of two issues in the economics of 20<sup>th</sup> and the following 21<sup>st</sup> century.

Firstly - is the contribution of economics that is resources both natural and human to the victory and defeat of the greatest powers on earth during the 20th century. Secondly - it is very important to note and express on the impacts of the Word Wars upon the long-run economic trends and post (1945) World War institutions in the economy of the great power blocks to take a diverge view more controllable and non-aggressive towards the availability of resources, capital, human force, market, etc. around the globe.

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<sup>42</sup> Mein Kampf Adolf Hitler Translated into English by James Murphy, 1939.

After the end of World War II in 1945, the general pattern between the Wartime allies and enemies was catching up of the platforms and convergence between the Nations through international institutions was more effective than ever.

The US economy after the War had the biggest and the strongest stock of unutilized capacity from which only a part was mobilized in 1938 – 39. There was no catching up in the case of Britain, Japan or Germany because the War has left a negative impact on the economy which will be felt strongly for over decade. The Americans were easily back into the world market and in the leadership of the strongest and the great United States of America which not only helped the allies in winning the world War and controlling the disasters of the Japan and Germany which was preferably given a position of leadership on the world platform and from then it is clear that for the last 70 years and the coming 50 years that the US will remain the most armed and richest economy in the world.

All the Nations became active participants in the multinational institutional framework of the post-War global economy lead and formed by the US. Through the Bretton Woods conference the IMF, the IBRD later known as the World Bank and the GATT was established. There was no turning back of economies like German, Japan or Korea due to the vast damages during the War. Only the British and the Soviet Empire survive the War where the Soviet Empire took a diverging route making its own economy internally powerful because of ability of mass natural resources and land areas and on the British on the other hand became an all-time ally of the US to safeguard its economy, military and political influence in the region and the globe.

#### **2.4.1. The up rise of the United State of America as World Leader & Superpower**

The determination of the United States of America to expand the free global market for its capitalist rulers can be clearly seen in the multilateral economic arrangements and treaties / agreements which was entered into by the United States of America in the last decades of the 20th century following the World War II. Washington D.C., capital of U.S.A., expanded the free market of the nation to the globe for its capitalist

lords which can be clearly identified in the multilateral economic agreement. The last decades of the 20th century calling in the world on a international platform, the Washington was on cooperative and structural ways to rebuild its own economy through world economy creating a more rigid institutional and controllable framework within which the United States of America my best utilize its military, economic strength, influence and power. The restructuring by many scholars is said to be based on the law of free trade but comparative advantages to the US.

The first step towards the issue called free trade was taken at conference of Bretton Woods, New Hampshire, where 44 nations of the globe met in 1944 creating the International Monetary Fund (IMF) to oversee the world's monetary and exchange rate system. The Bretton Woods conference also established the World Bank to rebuild Western Europe and utilizing the US Marshall Plan. The US Congress passed the Bretton Woods agreements act in 1945 (House of Congress 345 votes 18 and House of Senate 61 votes to 16). Here it is too important it being to be mentioned that the US Congress only rejected the bill of the International Trade Organization formed in 1946, as the bill was not in the comparative advantage of the US economy but provided advantage two other world Nations.

In 1946, the 1<sup>st</sup> meeting of the “Preparatory Committee of the UN Conference on Trade and Employment”<sup>43</sup> established the 1947 “General Agreement on Trade and Tariffs”<sup>44</sup> that to which the United States was the managing frame worker. The details of the charter were part of the Havana Charter of 1948 in which all member nations were present and interestingly because the rules and western made principals governing world trade organization was set out in the manner which was very ambiguous in context to taxation and equity between developed and developing

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<sup>43</sup> Michigan Journal of International Law, Volume 41, Issue 1, 2020, Trade Multilateralism and U.S. National Security: The Making of the GATT Security Exceptions, Mona Pinchis Paulsen, Stanford Law School.

<sup>44</sup> The Governments of The Commonwealth Of Australia, The Kingdom Of Belgium, The United States Of Brazil, Burma, Canada, Ceylon, The Republic Of Chile, The Republic Of China, The Republic Of Cuba, The Czechoslovak Republic, The French Republic, India, Lebanon, The Grand-Duchy Of Luxemburg, The Kingdom Of The Netherlands, New Zealand, The Kingdom Of Norway, Pakistan, Southern Rhodesia, Syria, The Union Of South Africa, The United Kingdom Of Great Britain And Northern Ireland, And The United States Of America.



nations. The US Congress refused to ratify the US membership in the International Trade Organization. The United States joined through an executive agreement using power given to the President and that the Reciprocal Trade Agreements Act 1934 of the United States.

The U.S. Congress in the past has never recognized the GATT but in the “Trade Expansion Act of 1962”<sup>45</sup>, it extended the power given to the President in the 1934 act to negotiate on international arrangements for tariff and trade also providing the power reduce tariffs, restrictions and barriers in trade. The U.S.A. having the strongest economy from then 1945 till date is the biggest contributor of funds and thus controlling the decision making aspect and influence on global multinational institutions like the IMF, World Bank, GATT, WTO United Nation Security Council and others.

The initial purpose of the GATT was to provide a platform on international level to negotiate tariff concessions among members and to establish strict code of conduct and procedures for the resolution of trade disputes by negotiation. The main advantage for the American participation in these efforts to encourage multilateral trade arrangements was that international cooperation in trade and investment created harmonious relations and reduced tensions between the states the was founded on the principle of nondiscrimination and multilateralism in international trade. Non-discrimination was expressed through the concept of Most Favored Nations status for all contracting parties. By this convention all tariffs on imports and export from one country on all goods and services from other countries member to the GATT must also be reduced at the same range.

The so called arrangement of the agreement treaties has been a preferred device for the US in dealing with the states like China. When the US gain access to markets like India and China setting up like powers of the Imperial Expansionist Empire like the British in the old days. The critics for this American leadership by my view restated

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<sup>45</sup> Pubuc Law 87.794-Oct. 11, 1962, the Trade Expansion Act by Irwin R. Hedges, the Yearbook of Agriculture, 1964, Pg. 379-384.

that way the economic standpoint of the United States was the strongest during the formation of such international institutions. Other Nations like India was much in need of funds which was availed through trade and tariff. But when innocent principals came into play the US on one side had enough economic power to generate infrastructure, employment, remove poverty and hunger from its population but countries like India and China on the other hand having all human and natural resources but not having an economic standpoint was at the disadvantage to build infrastructure and eliminate poverty from its population and territory.

It was also seen in the year 1970 and 1980 when the free trade arrangement created by the US started providing advantage to the European Nations, Japan and China. At the first instance Washington was very clear to maintain the advantage of instructional structures by regulating and promoting the expansion of the global trade rules but through a series of “multilateral trade negotiations”<sup>46</sup> called negotiating rounds to progress lower tariffs and eliminate unfair trade practices.

The Uruguay round of negotiation 1986 to 1994 in which 117 countries participated the GATT agreement was extended by the US to include such areas such as services, patents, trademarks, copyrights and most important agriculture. At the final meeting held in Marrakesh, Morocco in 1994, the European round also created the World Trade Organization which from 1995 would take over the administrative functions formally conducted by GATT. The US Congress legislated to implement the agreement as it was most suited for their economic position in the world.

Under the U.S. President Reagan the U.S. adopted once again protectionist measures. It attempted to stand to promote and safeguards its traditional areas of domestic industries, but also provided safeguard to the comparative and competitive advantage through regulated and managed trade and ending the subsidies provided on agriculture. When the members of the GATT resisted, the Washington reverted on a

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<sup>46</sup> Uruguay Round of Multilateral Trade Negotiations, 1994.

bilateral and unilateral policy going back to “Section 301 of the Trade Act”<sup>47</sup> which provide power for more effective and restrictive (punitive) action for regulations on goods and services entering the border of United States. The United States of America has also entered into the bilateral trade arrangements with neighboring countries, Canada and Mexico to make its continent safer and an economic power house through regional trade arrangements.

At the end of 20th century once again the world economy saw turmoil of microeconomic factors and failure of macroeconomics failures across countries has created steady level of poverty, hunger, unemployment in both rich and poor countries alike. Except the USA as most of the traditional and indigenous industries of the world were destroyed by the over expansion of the capitalist structure and so called multinational corporations or international companies from the United States.

The American protectionist practices side by side along with the program dictated by the International Monetary Fund and World Bank also helped to increase the gap between the rich and the poor countries. Mexico for example was one of the countries whose economic was at risk because of foreign debt owed to America. The national and central banks had signed the framework of international lending to stabilize economies around the world and in response to IMF demand began to restructure its economy along lines acceptable to the US economic and financial interest. Such kind of requirements all over the globe in developing and poor countries included elimination and restriction on entry and use of the free market, privatizing sectors and areas of the economy of the national interest that was previously under public control and state control and eliminating restrictions on foreign investment so as to gain access to all the global markets of the world.

United States which stood at what time the defender of the multilateralism and free trade sought for regional solution to its economic power. One such initiative was the

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<sup>47</sup> This Section authorizes the US government to investigate foreign government act or policies which burden, restrict or discriminate against US commerce.

NAFTA- North American Free Trade Agreement signed between US, Canada and Mexico designed to create a free trade zone in North America. “The United States International Trade Commission”<sup>48</sup> has estimated through its 2016 report that “American Companies (MNC’s)”<sup>49</sup> stand to accumulate 61 billion dollar a year from the third world nations. If US protectionist demands are satisfied, opponent also demand that the creation of NAFTA are based on the United States economic rules by US Congress but restricted the rules of origin requirement created to keep foreign competition out of its own territory in present date.

## **2.5. Emergence of Independent State**

The end of Second World War and the rise of socialist power in U.S.S.R., India and China opposing the imperial power of the Europe and the U.K. provided for the independence to the third world nations. It is pronounced by many scholars that the fear among the Imperial powers that the mass population of Asia and Africa would join the communist or the socialist power and would become a more powerful state or a national park let to providing independence for nations like China and India which today operate on communist and socialist pattern of governance.

Within about 25 years of the end of World War II, most countries of Asia, Africa and Latin America which has been for centuries under the rule of imperialist power wanted the freedom to agree with the struggle of decades or centuries. After the year 1995 we can clearly see that the small pockets of population having their own territory in different part of the world organizing a status structure called state. In the world today, is free from any direct political control of any other country.

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<sup>48</sup> The Commission investigates and makes determinations in proceedings involving imports claimed to injure a domestic industry or violate U.S. intellectual property rights; provides independent analysis and information on tariffs, trade and competitiveness; and maintains the U.S. tariff schedule.

<sup>49</sup> The total market capitalization of U.S. stock market is \$35,503,373.1 million (6/30/2020). The market value is the total market cap of all U.S. based public companies listed in New York Stock Exchange, NASDAQ Stock Market and OTCQX U.S. Market. During the year 2019, the total market value of American companies increased 25.2%. Between 1/1/2010 and 12/31/2019, the market cap of public U.S. corporations increased 149.9%.

The main reasons was British and Spanish and other rulers oppression, industrial slavery and over exploitation of resources which before the United Nations with the help of United States intervened on behalf of the office people forming countries like Hawaii, Porto Rico, Cuba, Panama, etc..

The countries today are free, in fact formally can be seen as a Republic in the sense that the nation is not ruled by another country. The mass population of the world was free from the clutches of the white minority where by the ratio 20% of the white's (Europeans) controlled and ruled over the 80% of the mass global population. The World War II can be reviewed on every part of the globe as a walk to defend freedom and democracy. It has taken the forces of the freedom movements in the countries which were under colonial rule.

India was one of the first countries to achieve independence after the Second World War. Though the British rulers were successful in partitioning the country into Indian and Pakistan whose adverse aftereffects can be witnessed today also. India's independence was a great historical importance for the world. India's freedom movement and struggle has been a source of inspiration to all freedom movements around the globe in all colonial countries of Africa and mainly in Asia.

Even before the independence of India the leaders of freedom movement have brought together the leaders of many Asian countries on a common platform known at that time as "Asian Relations Conference"<sup>50</sup> which was organized in the leadership of India. This symbolizes constantly the emergence of Asia as a new factor of power in the world. Independent India became a source of strength to all people fighting for the independence.

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<sup>50</sup> The Asian Relations Conference was held at Purana Qila (Old Fort), New Delhi from 23rd March to 2nd April 1947.

Independence in the formal sense at the level of international relations has been invested in the UN Charter.

Article 2.1 - The organization is based on the principles of social equality of all its members.

Article 2.4 - All member states in the international relations are free from the threat or cause of force against the territorial integrity or political independence of any state.

The major factors of an independent state can be said as: Firstly equality - all nations on the globe are considered equal in terms of their sovereignty.. Independence also brings that States are independent from interfacing from other states including the use of force, threat, political, cultural, religious or economic disturbances. Territoriality showing equality is confined to a physical space the area within which the Nations States independence may be exercised and the population resides having an organization structure to govern and decide for their population of the territory. Other factors can be said as continuity, uniformity, and nation hood.

Today the factor that a state can be only recognized as an independent, sovereign state only when it is recognized by the United States, as the largest and most inclusive multilateral organization. its functioning of providing statehood makes sense as in the present world do the factor of population, territory and controlling structure plays an important role but international recognition is a more effective factor now.

## **2.6. Concept of Sovereignty**

Sovereignty is the term that is used for the concept to describe the independence and autonomy of a modern nation state. Opposing the view of earlier leaders where countries were ruled by kings in mediaeval and historic times and later on by colonial powers in the 18th and 19th century, sovereignty in the 20<sup>th</sup> century and the present world refers to the fact of absolute independence both internally and externally and autonomy that nation state have to be there itself with respect to the decision making,

policy implementation and all matters concerning the citizens, population, territory, security, trade, environment, culture, religion and tradition.

Sovereignty means that the nation States independent are free to decide for themselves about the kind of democracy that the population want, the kind of rulers that the people want, their policy internally and externally and regards of the citizen and territorial integrity. More often the concept of sovereignty is invoked to mark the distinction between taking decisions on their own by nation States and restricting the external influence or pressure to see the decision making process in the independent nature. In such a respect sovereign states are expected to be autonomous and independent when the performance of policies and politics that is in their own interest of their own people interested and not according to what the foreign power or other blocks dictate.

Globalization and sovereignty at today is a subject matter which within a century has developed a complex relationship and conflicts over each other. In recent decades the concept of Sovereign state has been debated all around the globe because globalization means that independent States submit themselves to international treaties and agreements that are not always in the best advantage or interest of the population. This relationship imposes some amount of coercion or direct pressure on the nation States especially in the developing world on the poor Nations and thus globalization has come to me as imperialism in another structural and formal form. Though countries like India who has the taste of imperialism by the British rule, they understand and thus are reluctant to submit to the policies of the World Bank, the IMF the WTO or other international bodies. However it is also the case that the options are limited as resisting these global bodies like the World Trade Organizations means that the country is developing and much need of the infrastructure and economic stability will be opted out from export opportunities, global market, support from superpowers like the United States or the World Bank like in the case of North Korea.

The emergence of post-colonial powers after the World War II however in the recent economic crisis that was started in 2007 has proven that unity of the nation been

suppressed by international bodies cuts way as a global economy is tightly interconnected and the Nations in today's world cannot regulate such subject matter in isolation. But on the other hand the effectiveness and reluctant of the newly emerging economies like India and China means that there is still place of national sovereignty and independence instead of being completely dictated by the western powers.

For this it is stated that colonial powers and foreign powers or international bodies cannot interfere in their internal or external assets or decision making of the country. The fact of sovereignty is also important as an indicator that the struggle for freedom fought for centuries and a victory is gained from the colonial States are bearing the fruits of the struggle. This is also a sign of the emergence of new power blocks on the global seas combining the factor of independent and the objective of the freedom struggle.

Finally on this, my submission is that sovereignty for many countries has been achieved at huge expense of countless life and sacrifices and hence in the present world it cannot be curbed by the successive generations and this holding principles of freedom, equality, choice of political structure, democracy cannot be overrun by international bodies which are controlled by once are rulers in the past.

### **2.6.1. Internal & External Sovereignty**

This particular topic distinguishes the external sovereignty from internal sovereignty. The difference is based not on the subject matter of governance as both of them tends to affect the population, territory and the structure of political rule of an independent state. By external sovereignty it is meant that the state is not subjected or under control of any other authority or foreign power and it is independent and autonomous in nature for any decision making for its population. Today every independent nation reserves and controls the authority to restrict any trade treaties or to enter into any military agreements. It is the liberty of the state to determine its foreign policy and how to join any power blocks.



The term internal sovereignty can be defined as a relationship between the power of the state structure and the political community for the population which is controlled by the sovereign power. Like in India the sovereign power is based in the hands of the parliament that is the legislature at the center to form policies for the welfare of its citizens and territory integrity. “The parliament of India and its members are directly elected by the citizens of India to govern and provide security of social, cultural, economic, religion, political and civil rights”<sup>51</sup>. With the parliament being the supreme authority whose power are delegated by the citizens of India can be seen and refers to the internal affairs of the state for governing the welfare of the population and territory. On the other hand external sovereignty can be defined as a relationship between the foreign powers or states and the sovereign power.

## **2.7. World Trade Organization in 2020**

“The World Trade Organization today in the present world is the only true international organization dealing with the global laws and rules for trade between independent nations”<sup>52</sup>. “Its main function is to ensure that the global trade flows as smoothly as possible, predictably and free from all restrictions and tariffs as possible”<sup>53</sup>.

The result of WTO is the assurance for consumers and producers all over the world can know that they can enjoy “secure smooth and reasonably priced supplies and

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<sup>51</sup> The Fundamental Rights are defined as the basic human rights of all citizens. These rights, defined in Part III of the Constitution, applied irrespective of race, place of birth, religion, caste, creed, or gender. They are enforceable by the courts, subject to specific restrictions. The Directive Principles of State Policy are guidelines for the framing of laws by the government. These provisions, set out in Part IV of the Constitution, are not enforceable by the courts, but the principles on which they are based are fundamental guidelines for governance that the State is expected to apply in framing policies and passing laws.

<sup>52</sup> Global rules of trade provide assurance and stability. Consumers and producers know they can enjoy secure supplies and greater choice of the finished products, components, raw materials and services they use. Producers and exporters know foreign markets will remain open to them, Available at: [https://www.wto.org/english/thewto\\_e/whatis\\_e/inbrief\\_e/inbr\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr_e.htm), Last visit 16.08.2020.

<sup>53</sup> This leads to a more prosperous, peaceful and accountable economic world. Decisions in the WTO are typically taken by consensus among all members and they are ratified by members’ parliaments. Trade frictions are channeled into the WTO’s dispute settlement process, where the focus is on interpreting agreements and commitments and how to ensure that members’ trade policies conform with them. That way, the risk of disputes spilling over into political or military conflict is reduced.

greet number of choices of the finished products or raw materials and the services which are globally available in any corner of this world”<sup>54</sup>. On the other hand “producers and exporters are well known on the fact of foreign markets, foreign exchange, international scenario and national economic policy which are in coherence with the WTO rules and regulations”<sup>55</sup>.

Many economists debate that the result of the establishment of WTO has provided for a more peaceful and accountable world economics which lead to the prosperity of people all around the globe. Decisions in the WTO today are taken on the principle of consensus among all the member countries of the organization and the decisions taken there of ratified by members parliaments or legislatures of members.

WTO dispute settlement unit has become more accountable and transparent to keep up the pace of the developing nations with the developed one also providing a vast variety of “exceptions to depart from the WTO general principles to safeguard the economy or environment, indigenous and traditional industries”<sup>56</sup>. The breaking down of trade barriers by WTO in the international market has also resulted to “reduce the gap and increased communication between the people and the nations all around the globe”<sup>57</sup>.

Today WTO system is based at the heart called the multilateral trading system agreement for arrangements negotiated and signed by a consensus of all the majority nations of the world. Trading system ratified by the national legislature, the multilateral agreements can be seen as a legal ground or rules of international trade

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<sup>54</sup> Global value chains in a changing world, Edited by Deborah K. Elms and Patrick Low, Fung Global Institute (FGI), Nanyang Technological University (NTU), and World Trade Organization (WTO), 2013, ISBN: 978-92-870-3882-1.

<sup>55</sup> IMF, World Economic Outlook, May 1997; T.N. Srinivasan and Jagdish Bhagwati, Outward Orientation and Development: Are the Revisionists Right?, Yale University Economic Growth Center Discussion Paper No. 806, 1999; and Jeffrey Frankel and David Romer, Does Trade Cause Growth, American Economic Review, June 1999.

<sup>56</sup> Congressional Research Service, World Trade Organization: Overview and Future, Direction Updated December 6, 2019, Available at: <https://crsreports.congress.gov> R45417

<sup>57</sup> Independent Group of Scientists appointed by the Secretary-General, Global Sustainable Development Report 2019: The Future is Now – Science for Achieving Sustainable Development, (United Nations, New York, 2019).

and commerce. These agreements are like contracts providing member nations important trade rights also binding the governments to keep the trade policies within the agreed limits of the WTO for the benefit of all.

The view today what is criticized is that the agreements of the WTO negotiated and signed by the government but their purpose do not fulfill the requirements of the population but on the other hand benefits the producers of the good and services, the players of the export and import market and other business houses. Do the goal of the WTO is to improve the welfare of the people of member countries but the mass population of many developing nations of deprived of this benefits.

### **2.7.1. Globalization through World Trade Organization & its Adverse Effects on Indian Rural Population**

“More than 67% of Indian population (out of the 121 crores Indians, 83.3 crores live in rural areas of India while 37.7 crores stay in urban areas)”<sup>58</sup> in 2020 still lives in rural areas without proper infrastructure and basic human needs such as education, health care, sanitation, power, etc.. It is to be noted that “today in 2020, 75% of the extremely poor population of India exist in rural area of the country (out of 336 million populations below poverty line)”<sup>59</sup>.

There is a viewpoint through this paper that the economic reforms initiated in the early 1990’s by then Finance Minister Dr. Manmohan Singh through LPG policy of Liberalization, Privatization and Globalization are responsible for the collapse of rural and indigenous economies and the after effect and agrarian crisis is Still underway 30 years later. “Thus the question arises that how the socialist and welfare state objective with equal distribution of income, wealth and resources of the Indian Constitution is

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<sup>58</sup> The Census of India's 2011; Provisional Populations Totals of Rural-Urban Distribution in the country, released by Union Home Secretary RK Singh.

<sup>59</sup> De La O Campos, A.P., Villani, C., Davis, B., Takagi, M. 2018. Ending extreme poverty in rural areas – Sustaining livelihoods to leave no one behind. Rome, FAO. 84 pp. License: CC BY-NC-SA 3.0 IGO.

fulfilled when the rural masses are driven out of economy as an important player without any safeguard?”<sup>60</sup>

“I tend to describe that the level of inequality has risen to extraordinary levels. As per report of World Bank India’s richest 1% holds 58% of total country’s wealth and only 57 billionaires in the country have same wealth (\$216 billion) as that of bottom 70% of the population.”<sup>61</sup> When at the same time; hunger in India has reached its highest level in independent India. It is also important to note that rural economy across India has collapsed or are on the verge of collapse due to the neo-liberal policies of the government of India since the 1990’s. Human cost of the liberalization has been very high. The huge wave of farmer suicide in Indian rural population from 1997 to 2017 is close to 2 lacks according to official statics.

The Parliament of India has faulted the policies pursued by the government which according to me resulted in a very high proportion of rural households getting into the death cycle resulting in a very high number of farmer suicides. Government policies encouraging farmers to switch to cash crop in place of traditional food crops has resulted in an extraordinary increasing form input cost while market forces determine the price of the cash crops. It is pointed that disproportionally the large number of affected farmers suicide have occurred with cash crops because with food crops such as rice even if the price falls day is food left to survive on. Inequality in India has reached one of the highest rates India has ever seen during the time when public investment in agriculture shrank to 2% of the GDP the nation suffered the worst agrarian crisis indicates the same time as India became the nation of second highest number of dollar billionaires.

The major two adverse effects of the formation of WTO and India being its member implementing the WTO agreements brought down the poverty reduction rate from

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<sup>60</sup> Article 46 of Vienna Convention on the Law of Treaties 1969: A party may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

<sup>61</sup> Rights Group Oxfam report, 2018.

over 3% per annum before 1990 around 1 % per annum during 1990's. Also the employment growth rate declined from 2.4 % in 1983 to 1990 to nearly 1% in 1992 to 1997.

Agriculture investment also declined due to diversion of resources in other sectors like tourism, transport and communication. Market forces attract investment to region with more developed infrastructure and thus states like Uttar Pradesh, Madhya Pradesh, Bihar, Jharkhand and other having huge and rural population were at severe loss mainly in agriculture society. As per the 2011 census of India more than 60% of the population still base their livelihood on agriculture as India today also remains a major agriculture dominant nation but the total contribution of agriculture through nearly 67% of the population only contributes to nearly 17 % of the Indian GDP and economy.

### **3. RELATION & CONFLICT BETWEEN THE INDIAN CONSTITUTION & AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION**

#### **3.1. Evolution of the Indian Constitution**

Historically India had the oldest civilization on earth known as the Indus valley civilization. From then India also known as Bharat has been governed from the historical age to the ancient and the mediaeval period by many set of rulers expanding from Hindus, Muslim (Mughals), Persians, Pandavas, Cholas, Marathas and many others. During the 17th century the rise of the British Empire made India under the control of the British rule for nearly 200 years which invaded and exploited India in many economic and traditional ways but united India and different rulers under one British banner.

The system of administration and the Constitution of India presently also has been deeply rooted by the common law system and the system of English courts, administration, executive and legislature. When India attained independence through the struggle of “200 years of freedom fight costing countless number of lives, economic deprivation, social, traditional and religious changes”<sup>62</sup>. The British crown provided for the Constitution of Constituent Assembly which will be constituted only by the Indian people to form a legal and political document known as the Constitution of India to govern the population and territory of the Republic of India which was all passed by the British government has paved a way for the Indian Constitution.

At the time of independence India was divided into two segments: that was the “British India and the Princely States”<sup>63</sup> ruled by their own rulers. The Constitution of India provided for the concept of “Union of India”<sup>64</sup> where the central has attained

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<sup>62</sup> India’s Struggle for Independence 1857-1947, Bipan Chandra, Mridula Mukherjee, Aditya Mukherjee, K N Panikkar & Sucheta Mahajan, Penguin Books, 2014.

<sup>63</sup> Roy, Tirthankar (2014) Geography or politics? Regional inequality in colonial India. *European Review of Economic History*, 18 (3). pp. 324-348. ISSN 1361-4916.

<sup>64</sup> The Constitutional Mechanisms for Settlement of Inter-state Disputes, Treaty Making Power under our Constitution, Institution of Governor under the Constitution and Article 356 of the Constitution in Volume II (Book 2) of the report and the Background Papers on Concurrent Powers of Legislation

more power than the states. In 1946 the British decided to grant India independence and the “Cabinet Mission”<sup>65</sup> from and under the Crown were dispatched to India for the discussion and negotiations for the transfer of power. On 26 September 1947, “the Drafting Committee was established as Dr. B.R. Ambedkar, its chairman”<sup>66</sup>. “On 26th January 1950, The Constitution of India came into force”<sup>67</sup> and India celebrated its first Republic Day. “Dr. B.R. Ambedkar is also known as the father of the Indian Constitution”<sup>68</sup>. The constituent assembly also comprised of every relevant Indian politicians, activists, economists, lawyers and others from different segments of the society, profession and from all religion basis and every minority.

Some prominent members of the constituent assembly were “the first prime minister of India Pandit Jawaharlal Nehru, the first home minister of India Saedar Vallabhbhai Patel, Abdul Kalam Azad, Rajendra Prasad, C Rajagopalachari, Alladi Krishnaswamy Iyer, Rajkumari Amrit Kaur, Durgabai Deshmukh, Sarvepalli Radhakrishnan, Shyama Prasad Mukherjee, Govind Ballabh Pant, Sucheta Kriplani, Kailash Nath Katju”<sup>69</sup> and many others.

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under List III of the Seventh Schedule, Barriers to Inter-State Trade and Commerce and Article 262 and Inter-State Disputes Relating to Water in Volume II (Book 3).

<sup>65</sup> Cabinet Mission was a high-powered mission sent in February 1946 to India by the Atlee Government (British Prime Minister.) The mission had three British cabinet members – Pethick Lawrence, Stafford Cripps, & and A.V. Alexander. The Cabinet Mission’s aim was to discuss the transfer of power from British to Indian leadership.

<sup>66</sup> Dr. B.R. Ambedkar and the Constitution - Making In India Author(s): J.P. MISRA and J.P. MISHRA Source: Proceedings of the Indian History Congress, Vol. 52 (1991), pp. 534-541 Published by: Indian History Congress Stable URL: <https://www.jstor.org/stable/44142653> Accessed: 19-05-2020 08:50 UTC.

<sup>67</sup> M Laxmikanth, Indian Polity, McGraw Hill Education (India) Private Limited, Fifth Edition, 2017.

<sup>68</sup> On 26 November 1949, We, the People of India, resolved to adopt, enact and give to ourselves the Constitution of independent India. In commemoration of the 125th Birth Anniversary of Dr. Bhimrao Ambedkar on 26 November in the year of 2015, both the Houses of Parliament held dedicated sittings for discussion on Commitment to India's Constitution as a part of Celebrations. Since then, the day of 26 November is celebrated as the Constitution Day every year. Earlier, this day was commemorated as National Law Day, after a resolution by the Supreme Court Bar Association, a lawyers’ body, in 1979.

<sup>69</sup> The Role of Constituent Assemblies in the Constitution Making, Yash Ghai, IDEA (Institute for Democracy and Electoral Assistance).

### **3.2 Supremacy of the Constitution**

India as an independent state after 1947 follows the rule of supremacy of the Constitution. A federal state like India derives its existence and power from the Constitution just as a corporation or body derives its existence from the grant by which it is created or came into existence. Hence every power of the government, whether the executive or the legislative or the judiciary, whether it belongs to the nation or the state or the individuals, is subordinate and under the control of the Constitution made by our founding fathers after 200 years of freedom struggle from the British rule. The Constitution in a federal state like India constitutes the supreme power and law of the land. The Constitution is very essential in governance if the state is federal in nature for its working, unity, integrity, sovereignty and independence.

### **3.3. India as a Sovereign State Through its Preamble**

The preamble to the Indian Constitution sets out the main objectives for which the Constitution was enacted and intended to achieve. It can be said as a sort of introduction or objective resolution to the statute and at several times is very helpful to understand the policy and legislative intent of our founding fathers. The preamble clearly expresses what they had thought or dreamt for so long during our freedom struggle. The Constitution makers give to the preamble the place of pride or in legal sense a place of objective resolution. It embodies in itself all the ideas, ideals and aspirations for which the country had struggled during the British rule. In the landmark judgement of *In re Berubari* case the Supreme Court has said that the preamble to the Constitution is a key to open the mind of the makers and shows the general purpose for which they meet the several provisions in the Constitution.

The first and opening line of the preamble declares that we the people of India, having solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to secure to all its citizens justice, Liberty, equality and fraternity. Two important aspects from our point of view are the concept of sovereignty and that the



Constitution is based or framed for We the people of India indirectly providing power to the parliament of India through direct adult franchise election.

The preamble of the Constitution of India 1949 declares India to be a sovereign socialist secular democratic and Republic state the word sovereign emphasizes that India is no more dependent upon any outside authority. It means that internally and externally India is sovereign to take decisions for its population. Its membership of the Commonwealth of Nations and that of the United Nations or international organization do not restrict its sovereign power.

#### **3.4. Basic Structure of the Constitution**

The theory of basic structure of the Constitution of India was laid down by the Supreme Court in the case of “Keshavnanda Bharti versus State of Kerala<sup>70</sup>” popularly known as the fundamental rights case where the petitioner has challenged the validity of the Constitution 24th amendment act 1971 of the Kerala land reform act 1963. In this Landmark is the Constitution bench of 13 judges has enumerated certain essentials of basic structure mainly the supremacy of the Constitution, the democratic form of the government, the sovereign character of the Indian state and separation of power between the executive, judiciary and legislative also safeguarding the federal structure.

The judgement of the Supreme Court does made it clear that the Constitution of India not the parliament is supreme in India this is in accordance with the intention of the framers who adopted the written Constitution for the country which clearly distinguished between the ordinary legislative power and constituent power that is the amending power of the parliament.

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<sup>70</sup> (1973) 4 SCC 225.

### **3.5. The Multilateral Marrakesh Agreement Establishing the World Trade Organization<sup>71</sup>**

“The agreement establishing the World Trade Organization is commonly known as the Marrakesh agreement”<sup>72</sup>. It was signed in “Marrakesh, Morocco, on April 15th 1994, which was the concluding round of the Uruguay Round of multilateral trade negotiations of the GATT 1994 agreement”<sup>73</sup>.

This particular agreement specifically defines the “principles on which WTO is established, the scope and function of the WTO, the structure which will be followed by the WTO including the general assembly, trade dispute unit and all other related structures”<sup>74</sup>. Before the establishment of the WTO, the previous negotiated rounds were under the General Agreement on Tariffs and Trade along with other agreements concluded during the Uruguay round like the TRIPS, the GATS which are included in the analysis of the Marrakesh agreement together and formerly are considered to be the WTO agreements. All the present WTO members in 1994 had signed the Marrakesh agreement making it binding and enforceable on the sovereign states. “The agreement was enforced on 1st January 1995 and has no expiration date”<sup>75</sup>.

Though the Marrakesh agreement has not provided a direct application to any multinational or multilateral organization or corporations but was either established to

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<sup>71</sup> [https://www.wto.org/english/docs\\_e/legal\\_e/04-wto.pdf](https://www.wto.org/english/docs_e/legal_e/04-wto.pdf) , last visited on 15.08.2020, with Final Act, Annexures & Protocol Concluded At Marrakesh, On 15 April 1994 (Number 31874).

<sup>72</sup> No. 31874, Multilateral, Marrakesh Agreement establishing the World Trade Organization (with final act, annexes and protocol), concluded at Marrakesh on 15 April 1994, Authentic texts: English, French and Spanish, Registered by the Director-General of the World Trade Organization, acting on behalf of the Parties, on 1 June 1995.

<sup>73</sup> Representing the 124 Governments and the European Communities participating in the Uruguay Round of Multilateral Trade Negotiations, on the occasion of the final session of the Trade Negotiations Committee at Ministerial level held at Marrakesh, Morocco from 12 to 15 April 1994, Recalling the Ministerial Declaration adopted at Punta del Este, Uruguay on 20 September 1986 to launch the Uruguay Round of Multilateral Trade Negotiations.

<sup>74</sup> India and the WTO, Editors: Aaditya Mattoo and Robert M. Stern, A copublication of the World Bank and Oxford University Press, The International Bank for Reconstruction and Development / The World Bank, 2003.

<sup>75</sup> The Place of the WTO and its Law in the International Legal Order, Pascal Lamy, Director-General of the WTO. Address before the European Society of International Law, Paris, 18–20 May 2006, The European Journal of International Law Vol. 17 no.5 © EJIL 2007; EJIL (2006), Vol. 17 No. 5, 969–984, doi: 10.1093/ejil/chl035

provide the economies welfare around the world. A set of rules and procedure to carry out international trade without any restrictions or barriers to make the world a single economy and a global marketplace. Also this agreement aimed at benefiting the population of the world and the state government but in fact it rather provided more advantage to the business houses, multinational corporations and power blocks from the globalization of trade and commerce. Some economist also say that if you have a problem regarding the WTO, call upon the U.S. government for your help and the U.S. as the biggest donor and stake holder of all international corporations and institutes have much of a influence and pressure on the WTO institution. It is also noted that nominations made by the U.S. government for the executive post in the WTO and the World Bank are never rejected by the institutions and agreed upon.

Some main Articles of the WTO agreements are Listed as:

Article 1 - Scope and definition of WTO.

Article 2 - Most Favored Nation Treatment.

Article 3 - Transparency and Disclosure.

Article 4 - Increasing participation of developing countries.

Article 5 - Economic integration.

Article 6 - Domestic regulations.

The WTO establishing agreement has 29 Articles continued by several Annexures carrying other agreements related to WTO as on goods, services, investment, IPR, agriculture, etc..

### **3.6. Other Agreements of the World Trade Organization**

#### **3.6.1. Multilateral Agreement on Trade in Goods: General Agreement on Tariffs & Trade, 1994<sup>76</sup>**

This general agreement concerns for providing reduction in trade barriers and tariffs by all member nations of the WTO for the effective import, export and international

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<sup>76</sup> Annexure 1A of WTO agreements, Multilateral agreement on Trade in Goods, Done at: Geneva, Date enacted: 1994-04-15, In force: 1995-01-01.

exchange of goods. This particular agreement only concerns the movement of tangible goods or products being finished goods or raw materials to and fro from the international boundaries. The agreement came into force in the year 1947 as a successor of International Trade Organization and in 1994 was converted as a base into WTO agreement.

### **3.6.2. Agreement on Agriculture<sup>77</sup>**

This specific agreement was founded to resolve the disputes between the U.S. and the European Nations on the imports and exports of agriculture material to and fro from the developing nations. The agreement specifically binds commitments from all WTO members and its government in areas of market access, domestic support and export subsidy for strengthening the global disciplines and improving trade in agriculture to secure food security and eliminate hunger from all parts of the globe. At 10 year period was provided to implement this agreement. The concept of quantitative restrictions or subsidies and countervailing measures were provided for the agriculture agreement and domestic support for developing and least developing nations.

### **3.6.3. Agreement on the Application of Sanitary & Phytosanitary Measures<sup>78</sup>**

The main aim of this agreement was to ensure that every nation on this globe has right to verify, secure and ensure that it's population is served with the right kind and quality of food to eat and water to drink. This agreement establishes a multilateral international framework for the planning, adoption and implementation of such measures to prevent any arbitrary and unjustified discrimination to restrict international trade and movement of drinking and eating goods and services.

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<sup>77</sup> India and the WTO's Agreement on Agriculture (A-o-A), Kalirajan, Kaliappa & Singh, Kanhaiya, 2006.

<sup>78</sup> The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), Suppan, Steve, 2005.

#### **3.6.4. Agreement on Technical Barriers to Trade<sup>79</sup>**

During the establishment of WTO it can be clearly seen that many nations have a very vast and huge difference between the technological development and scientific advancement. To reduce and restrict any such kind of trade barriers resulting from the subject matter of technology or scientific advancement this agreement came into force. The standards and conformity assessment system was established such as industrial, environmental, IT sector, etc. may not become unnecessary trade barrier or extensive or abused use offset system to restrict trade. It also brings harmony between the international standards of technology and providing technical assistant to developing and least developed nations.

#### **3.6.5. Agreement on Trade Related Investment Measures<sup>80</sup>**

Today in the global market, the world is seen as one economy. It is very important that the flow of investment and capital is not handed or restricted in any sense to secure a free international trade. Thus in relation to the cross-border investment the developing and least developed nations, which require huge amount of investment. But it is also has to be seen that the developed nations does not benefits too much from this investment through asset building or interest received on such investments. It was the same measure taken by the WTO for the nations requiring imposing restrictions on foreign investments, conditions for setting of corporations, to safeguard their own industry and so on for a balance between the domestic manufacturing or production and international trade

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<sup>79</sup> The agreements were the outcome of the 1986–1994 Uruguay Round of world trade negotiations held under the auspices of what was then the GATT (the General Agreement on Tariffs and Trade). The full set is available in *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts*. It includes about 60 agreements, annexes, decisions and understandings, but not the commitments individual countries made on tariffs and services.

<sup>80</sup> Victor Mosoti, *The WTO Agreement on Trade Related Investment Measures and the Flow of Foreign Direct Investment: Meeting the Development Challenge*, 15 *Pace Int'l L. Rev.* 181 (2003).

### **3.6.6. Agreement on Implementing Article 6 of the General Agreement on Tariffs & Trade 1994: Anti-Dumping Agreement<sup>81</sup>**

Anti-dumping occurs when an exporting nation dumps its product into other nation on the price low or below the price sustaining in the domestic market of that importing nation. This process lead to the destruction of traditional or domestic production house or manufacturing hub of the importing nation. Thus this agreement names to restrict and codifies rules for calculating dumping margins and conducting dumping investigations in order to prevent anti-dumping measures to be used and to see its misuses like in case of China and India.

### **3.6.7. Agreement on Implementation of Article 7 of the General Agreement on Tariffs & Trade 1994: Custom Valuation Agreement<sup>82</sup>**

In order to implement Article 7 of the GATT in a more reliable manner this agreement has been processed to specify all rules and regulation for the application of this Article and to harmonize a situation for revaluation of customs that the duties on imports on an international basis of standard by eliminating all arbitrary or unnecessary domestic valuation systems.

### **3.6.8. Argument on Pre-shipment Inspection<sup>83</sup>**

To secure transparency and accountability of the goods imported and exported it is a right of all nations to have inspection of the goods or services transferred or transported from one nation to another to secure its population and territory. This agreement was established to restrict and provide transparency to all government, agencies and exporters for the solution that no unnecessary restrictions are imposed

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<sup>81</sup> The Future of the WTO and the Reform of the Anti-Dumping Agreement: A Legal Perspective, Konstantinos Adamantopoulos & Diego De Notaris, Fordham International Law Journal, Volume 24, Issue 1, 2000, Article 4, ISSUE 1 & 2.

<sup>82</sup> Le, Doan & Nayyar, Anand & Lu Rots, Nhung, (2018), Implementation of the WTO Agreement on Customs Valuation: Trade Integration and Local Compliance, Indian Journal of Finance, 12, 42-56.

<sup>83</sup> Rome, Emily, The Background, Requirements, and Future of the GATT/WTO Preshipment Inspection Agreement (1998). Minnesota Journal of International Law. 166.

from the conduct of inspection, of quality, volume, prize, tariff, classification custom value, valuation quantity, are the mode of production and transportation required by member states.

### **3.6.9. Agreement on Rule of Origin<sup>84</sup>**

This particular agreement is in the process of negotiation after the WTO establishment as the dispute settlement unit of the WTO is based on the consensus bases and does the rule of origin is required to be harmonized between all member Nations.

### **3.6.10. Agreement on Import Licensing Procedures<sup>85</sup>**

Many member nations of the WTO before coming to the full age of globalization has the process of import licensing which required every exporter or importer from foreign nation to get permission of the government before international trade. This legal formality and use of paperwork was simplified by WTO on standard basis which helped in the smooth transportation and delivery or supply of goods and services across international boundaries.

### **3.6.11. Agreement on Subsidies and Countervailing Measures<sup>86</sup>**

This particular agreement firstly is to clarify the definition of subsidies as many countries to protect its industries like in India in case of agriculture provide subsidies on agricultural goods, fertilizers and other public health related issues. Thus it was an exception provided to the number nations mostly to the developing and least developed nations to strengthen their own domestic population and classify all the countervailing measures the WTO member can adopt to refrain from international trade.

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<sup>84</sup> The Agreement on Rules of Origin , Imagawa, Hiroshi & Vermulst, Edwin, 2005, 10.1007/0-387-22688-5\_15.

<sup>85</sup> Guidelines for the Implementation of Import Licensing Procedures in ASEAN, 2011.

<sup>86</sup> Export Incentives In India Within WTO Framework, Rajeev Ahuja, Indian Council For Research On International Economic Relations, 2001.

### **3.6.12. General Agreements on Trade in Services (GATS)<sup>87</sup>**

The agreement specifically deals with the trade in services not good. This agreement also provides list of 155 global services and provides a set procedure and standard for all WTO members to maintain or introduce laws in relation to the service sector. As today services account for more than 50% of the global economy and many services like banking, insurance and finance are so complexly interconnected that the destruction of the services in one nation can lead to economic and instability all around the globe.

### **3.6.13. Agreement on Trade Related Aspects of Intellectual Property Rights. (TRIPS)<sup>88</sup>**

The agreement came into play in 1995 and was the most disputed agreements in context to India where the subject matter of covers copyright, trademark, geographical indications, industrial designs, patents, layout designs, sensitive and undisclosed information was taken into account to secure a global standard procedure for around the globe. But this agreement hampered the indigenous and traditional industries and the rural economy of most of the developing and least developed nations and still provides for a great concern between the developing nations to safeguard themselves against multinational corporations and power blocks for free availability of many lifesaving goods and services such as public health care or essential drugs.

### **3.6.14. The Dispute Settlement Unit: or Agreement for Understanding the Rules and Procedure Governing the Settlement of Disputes<sup>89</sup>**

The main departure from the GATT 1994 or 1947 and to the establishment of WTO was huge shift in the process of dispute settlement which today in WTO is most

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<sup>87</sup> The General Agreement on Trade in Services (GATS), Water, and Human Rights from the Perspective of Developing Countries, Alam, Shawkat & Mukhopadhaya, Pundarik & Randle, Netherlands International Law Review, 58.10.1017/S0165070X11100029, 2011.

<sup>88</sup> Peter K. Yu, The Objectives and Principles of the TRIPS Agreement, 46 Hous. L. Rev. 979 (2009).

<sup>89</sup> Crisis in the WTO: Restoring the WTO Dispute Settlement Function, Robert McDougall, Centre for International Governance Innovation ,2018.



recognized and transparent. The main aim to strengthen the dispute settlement procedure by prohibiting unilateral measures and establishing dispute settlement panels whose reports have to be adopted by the general WTO body, the establishment of the dispute settlement appellate body and giving a level platform for the developed and developing nations in the international body.

### **3.6.15. Agreement on Trade Policy Review Mechanism (TPRM)<sup>90</sup>**

This particular agreement in 21<sup>st</sup> century provides for the procedure of trade policy review mechanism which provide powers and right to the WTO main body to conduct periodical review of the trade policy economic policies and other commerce or industry related regulations like labour laws of the member nations of the WTO to secure our international standard and smoother international commerce.

### **3.6.16. Agreement on Government Procurement<sup>91</sup>**

The government of every state is also a very big dealer, producer and consumer of goods and services. This agreement deals with the procedure to make the process of government procurement, that is government sales or purchase more transparent and open and not only restricted to domestic supply or demand but also to provide a fair chance for international competitive. The new Tokyo round agreement of 1979 on the procurement of the government is also taking into account documents of central government entities, government related agencies, public sector units, public sector organizations and States or provincial governments.

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<sup>90</sup> WTO Trade Policy Review Mechanism: Participation of Small Developing Countries, Julien Grollier, Cuts International, Geneva, 2017.

<sup>91</sup> Government Procurement in India Domestic Regulations & Trade Prospects, CUTS International, 2012.

### **3.6.17. Plurilateral Trade Agreements<sup>92</sup>**

1. Agreement on Trade in Civil Aviation.
2. International Dairy Agreement.
3. International Bovine Meat Agreement.

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<sup>92</sup> India's Trade Policy Dilemma And The Role Of Domestic Reform, Hardeep Singh Puri, Carnegie Endowment for International Peace, 2017.

## **4. EXERCISE OF EXECUTIVE POWER IN CONCLUSION & IMPLEMENTATION OF WORLD TRADE ORGANIZATION AGREEMENTS**

### **4.1. Treaty Making Power under the Constitution**

“India as an independent and sovereign country has all powers to enter into any treaty or agreement with foreign powers and international organizations”<sup>93</sup>. After the end of Second World War no nation can isolate its independent and sovereign from the rest of the world in matters of trade, environment, communication, environment, finance, foreign relation and security. We Indians cannot afford today in the globalized world to ignore the subject of International trade any longer. This is particularly because of the negative and adverse effects and experience of WTO trade arrangements entered by our government (executive organ) without consulting, informing, debating or taking the Parliament into confidence or the population of India into the confidence which are the representatives of the people directly elected in the world largest democracy.

The arrangements entered by the Indian government under the WTO has far reaching effects to the masses in reference to agriculture, intellectual property rights, environment, culture, indigenous industries and so on.

The question addressed here is that to whom this power belongs to, weather to “the executive or the parliament”<sup>94</sup>. And if this “power exists with executive whether it is subjected to parliamentary control or supervision”<sup>95</sup>?

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<sup>93</sup> The Treaty- Making Power under the Constitution of India, Wali Ulla, (1971) 2 SCC (Jour) 20.

<sup>94</sup> The Executive versus the Legislature: Background Note for the Conference on Effective Legislatures, Kaushiki Sanyal, PRS Legislative Research, Centre for Policy Research, 2009.

<sup>95</sup> Executive—Its Accountability to Parliament, Parliament of India, Rajya Sabha, Rajya Sabha Secretariat, New Delhi, 2018.

What will be the effects of the power provided by entry 14 of List 1 of the seventh Schedule and Article 253 of the Constitution of India upon which the federal structure and concept of separation of power is based?

#### **4.2. Current Procedure & Executive Personalities Responsible<sup>96</sup>**

The Government of India through the Ministry of External Affairs (MEA) form a panel of delegation for any international conference at which they represent the Republic of India for negotiations on any agreement, treaty or convention. The delegation is required to provide dossier and credentials signed by the Minister of External Affairs which constitutes the authority to participate in any negotiation as representatives of the Government of India and to initiate the negotiations for any agreement or treaty for the conclusion.

According to the Business Rule of Transactions formed by the Standing Committee of the Parliament, all international agreements or treaties is required to gain the Union Cabinet approval before the delegation sign or ratify the said treaty or arrangement. Before the process of conclusion of any treaty, agreement or MOU it is put forward for the approval of the Union Cabinet for signing and ratification and also the text of the treaty should be cleared by the Legal and Drafting departments of the Ministry of External Affairs through legal angle by treaties division and by the concerned territorial division from the political angle also the draft note from the Cabinet is circulated by the administrative ministry to be sent for the concerned ministry clearance and every legal and treaty division of the concerned ministry provide for the advice, recommendation or guidance on the legal and implementation aspects. Once the Union cabinet prescribes approval the delegation is authorized to sign the treaty or agreement on behalf of the Republic of India in full powers to ratify the same.

It is also important to note that certain executive personalities like the President, Prime Minister, Minister of External Affairs and Ambassadors of high commission

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<sup>96</sup> Guidelines For Concluding International Treaties Between India And Foreign Countries, Joint Secretary (L&T), Ministry Of External Affairs, 2018.

have full power to enter or conclude into international trade arrangements and treaties in diplomatic and foreign relation as prescribed by practice of international law.

### **4.3. Policy Making and Implementation of Treaty**

On some issues like the investment and competition policy India as a sovereign nation strongly feel that having a multilateral agreement would be a serious harm to the autonomous and independent rights of the countries. The major difference is marked in our Constitution between:

Firstly, the Constitutional requirements for conclusion of any trade treaties.

Secondly, the requirements of the Indian Constitution for the implementation or execution of any trade treaty obligation on the territory or population of the state.

Thus it is very important to make it clear that the state or the “government with the power of its executive branch may have the capacity to conclude a treaties but the lack of necessary parliamentary or legislative intent cannot provide the power to give effect to the treaty obligation”<sup>97</sup>. The first point of conclusion of treaty refers to the validation of treaty in terms of capacity to create an international obligation of becoming a signatory on an international platform or with a foreign power. And the second point refers to the ability or the power to execute, perform or implement any treaty obligation within the territory of India over its population. The judiciary also reference to the treaty making power having two different aspects. Firstly the state that is the Government of India can enter into a treaty obligation but will be unable to implement or force treaty without the cooperation of the legislature that is the parliament and the international obligation will be invalidated due to lack of domestic laws.

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<sup>97</sup> From *Joining to Leaving: Domestic Law’s Role in the International Legal Validity of Treaty Withdrawal*, Hannah Woolaver, *European Journal of International Law*, Volume 30, Issue 1, 2019, Pages 73–104.

The aspect of international trade to an extent in areas such as investment and agriculture for India lead to the ceiling of sovereign right of the nation and the government particularly in the developing countries like India with too little room in deciding the matters of economic policy taking the national priority at first instance. Not only India but other regional organizations like the “Organization of Petroleum Exporting Countries”<sup>98</sup>, the “European Union”<sup>99</sup> or “Association of Southeast Asian Countries”<sup>100</sup> has provided a difficulty in agreement implementation of the WTO as this organization tends to safeguard their national and regional interest first.

India is a member of WTO and from its founding days and today is seen as the leader of developing and underdeveloped world. India also represents the developing world in the blockage of the Doha round negotiations. As we all know the WTO decisions are taken by consensus so there is a most possibility that anything severally unfavorable to India's interest and national priority can be strongly and unilaterally opposed.

India can build constructively from the WTO while safeguarding its developmental concerns but it has to have a strong relationship with other developing nations and interest groups to have a strong point on the issue of every negotiation. In absence of any such bodies as the WTO today India stands to lose a platform to have international trade. But today India is self-sufficient to mobilize its capital, labour force, human resource and natural resources without the selfish interests and support of the west. India today thanks to the vast availability of resources both natural and human can easily have a prominent influence on trade, economics military and politics on the smaller countries of Asia and its surrounding neighbors. To have a smooth economy as in the Pacific and Indian Ocean region with India and its neighbors having all the kind of natural resources required to have a strong economy.

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<sup>98</sup> The Role of OPEC in the 21<sup>st</sup> Century, Dr. Rilwanu Lukman, Secretary General, Organization of the Petroleum Exporting Countries, World Energy, Vol.3 No. 1, 2000.

<sup>99</sup> OECD Economic Surveys, European Union, Executive Summary , 2018.

<sup>100</sup> India-Asean Relations Analysing Regional Implications, Mohit Anand, Former Research Officer, IPCS: Institute Of Peace And Conflict Studies, 2009.

It is also prominent to note that major number of cases of complaints against India has been brought down into the “WTO majorly by the United States, European Commission or the Chinese”<sup>101</sup>.

The advantage of India in the two fields namely agriculture and intellectual property has always proved for India's dislike from the Western community especially the US and UK. Where the world knows that India is a leader in the market of agriculture and intellectual property and hence the WTO agreements affecting such sovereign rights of India creates issues. India has also recently stayed out of the Information Technology agreement to which was held in Nairobi. Because today most IT companies based in the U.S. gains a lot from the huge population and market of India which increases the inequality in income and wealth. India also stands difference when it comes to the sector of services because today India is an emerging global power in it and business services through outsourcing and domestic production. So it's demand WTO to negotiate a more liberal commitments on the part of trading partners for cross border supply of services including the movement of natural person that is the human resource to developed countries as the cost of bringing up the natural resource is bared by the Indian economy.

India has been constant to raise the issue of disadvantage seen as the sector of “health, sanitation, health insurance, essential drug facilities, IT sector, non-conventional energy, need of outward foreign direct investment”<sup>102</sup> and so on where India tends to negotiate in the WTO on strong grounds.

Moreover, because of the coalition politics era and until strong confidence in House of the People i.e. Lok Sabha is established in the favor of International agreements or a suitable implementation on stet level is in place, there are so many difficulties in getting the approval of the Cabinet for it. In most matters the exercise of the Executive powers “are not far removed from legislation”<sup>103</sup>. “The Constitution makers

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<sup>101</sup> Dispute Settlement in WTO: Developing Countries & India, ICRIER Policy Series, No. 15, 2012.

<sup>102</sup> WTO and Its Implications on Indian Agriculture, National Institute of Agricultural Extension Management (MANAGE), 2016.

<sup>103</sup> Jayantilal Amritlal v. F.N. Rana, AIR 1964 SC 648.

not intended the Union Government to be possessed of an Executive power which is wider than the narrower duty on legislators”<sup>104</sup>. “But while exercising this wider power, the rights of citizens cannot be abridged without specific legislative sanction and authority”<sup>105</sup>. “In normal circumstances also, it is expected that the Executive must exercise power in accordance with the principles of the basic structure of the Constitution”<sup>106</sup>. “Moreover, now-a-days the exercise of Executive power remains no longer exempted from judicial review”<sup>107</sup>. “The Supreme Court clearly held that neither of Articles 51 and 253 empowers the Parliament to make a law which can deprive a citizen of India of the fundamental rights conferred upon him”<sup>108</sup>. “The simplistic view, adopted by many under the influence of the British Constitutional practice, is that an International Agreement is not a matter of domestic concern unless it affects: (a) the law of the land, and (b) the vested rights protected under the law”<sup>109</sup>. “As held by the court that the positive commitment of the State parties ignites legislative action at home but does not automatically make the covenant an enforceable part of the Corpus Juris of India”<sup>110</sup>.

India today has not provided open market access in higher education as foreign education tends to distort the tradition, culture and indigenous education of the society on which India is built upon. India continuously has put its support both internally and externally to prevent issues harming its developing importance to safeguard its mass rural and agricultural based economy and population and has also marked a red line in sector of agriculture making it very clear that there is no scope of compromise on this position on the world platform of WTO. Recently India has shown itself as a rigid and uncompromising negotiator on the world platform. The Doha Development round where India leads the developing and least developed nations tends to negotiate and

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<sup>104</sup> Ram Jawaya Kapur v. Union of India, AIR 1955 SC 549.

<sup>105</sup> Bijoe Emmanuel v. Union of India, AIR 1987 SC 788.

<sup>106</sup> S.R. Bommai v. Union of India, (1994) 3 SCC 1.

<sup>107</sup> Central for Civil Services Union v. Minister of Civil Service, (1984) 3 All ER 935.

<sup>108</sup> Ajaib Singh v. State of Punjab, AIR 1952 Punj. 309.

<sup>109</sup> ShivaKant Jha, International Agreements Making Power: The Context, retrieved from [http://www.shivakantjha.org/openfile.php?filename=Articles/3\\_International Agreements...](http://www.shivakantjha.org/openfile.php?filename=Articles/3_International%20Agreements...), last visited on 15.07.2020 at 5:00 pm.

<sup>110</sup> Jolly George Verghese & another v. The Bank of Cochin, AIR 1980 SC 470.



shift the world power and market in economy from west to east through its “look East international policy”<sup>111</sup>.

## **5. EXERCISE OF LEGISLATIVE POWER OF PARLIAMENT IN CONTEXT TO WORLD TRADE ORGANIZATION AGREEMENTS**

### **5.1. Conclusion of Treaty & Ratification**

The treaty making power or entering into a binding agreement with other foreign nations has both international as well as internal aspects. Internal aspect on the treaty making power in India resides in the limitations on that power provided by the Constitution of India which automatically comes into the operation whenever such powers are exercised by any organ of the state. The Constitution of India provides for a federal structure which forms the basis of the Constitutional organization. The division of power and function between the center and the state being an essential characteristic of the Constitution provides limitations on the power of the central legislature, that is the parliament and thus the question arises that to whom this real power subsist. The various provision of the Constitution which governs the India's foreign affairs or treaty making power are provided in Article 51, 73 and 253 read with the entries in List 1 of the Schedule 7 also read along with Article 245 and 246 with the same List.

The matter in India is that the power of inclusion of a treaty resides in the present with the executive but the power for the implementation of the treaty. That is ratification of any international trade treaties resides with the legislature of the country. Though the Constitution it is not clear but has been made a practice in the Indian affairs that the power is provided to the central legislature that is the parliament for the ratification of any treaty. Therefore it is also important to note that in India there is a difference

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<sup>111</sup> India's 'Look East' Policy: The Strategic Dimension, S.D. Muni, Institute of South Asian Studies, 2011.

between “the formation and the performance”<sup>112</sup> or the enforcement of the obligations imposed by a treaty towards the Indian state.

When we read “Article 253 and Entry 14 of the List 1 of the Schedule 7 of the Constitution, it clearly provides that the power persists with the parliament of the India which can make law for the whole or any part of territory of the India for implementing any treaty agreement”<sup>113</sup> or conventions with any other foreign power or any arrangement made in by the executive at any international conference, seminar, association or body. It is also debated that Article 253 already overrides differential distribution of power of the implementation of treaty as the state legislatures are not taken into account for the approval by the parliament.

It is to be also made clear that Article 253 cannot describe or restrict a citizen of India of any of the fundamental rights conferred upon him by the Constitution. So for the enforcement of any treaty obligation by the courts of India it is a mandate that the parliament should ratify the international obligation through a domestic legislations which would be applicable in the territory of India which provides the judiciary the power to enforce and the executive the power to implement any treaty obligation.

Ratification can be defined as the final confirmation given by the central parliament to an international treaties concluded by its so-called executive representative to have a power of implementation and enforcement within the territory of India over its citizens and population. Thus in absence of any law enacted by the parliament, the President of India has the full executive power which his office enjoys to conclude any treaty with foreign countries. On the other hand legislative action is required for the performance or execution of the treaty obligation. The parliament alone has the exclusive power to make laws to implement treaties and the power is exercised by the legislature also when the subject matter is enumerated in the state list.

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<sup>112</sup> Law of Treaties in the Contemporary Practice of India, Upendra Baxi, The Indian Year Book of international Affairs, Vol. XIV, 1965.

<sup>113</sup> Ajaib Singh v. State of Punjab, AIR 1952 Punj 309(321) reversed on other points, by State of Punjab v. Ajaib Singh, AIR 1953 SC 664.

“However, the most important treaty that created a lot of hue and cry in India, the World Trade Organization Agreements were signed by India without obtaining Parliamentary approval”<sup>114</sup>.

## **5.2. Delegated Legislation**

The concept of delegated or subordinate legislation can be defined as rules of law made under the authorities of the supreme legislature that is the parliament. It is very clear that laws are to be made by the legislature that is the parliament or the state legislature but many a times the legislature by special statute delegates its power of law making to other persons or bodies mainly the executive branch of the government.

These statutes are commonly known as enabling act which provide for the power of law making two bodies other than the legislature and list down the broad principle and leaves the detailed rules to be provided by regulations rules bye laws made by a ministry or other executive body.

Some of the major factors for the growth of delegated legislation are first pressure or parliamentary time as we all know parliament being a busy body has insufficient time to deal advocate Lee with the increasing mass of detailed legislation necessary to regulate affairs of a complex modern state.

### **5.2.1. Understanding Level of Members of Parliament**

It is important to also note in this present context that there is no educational qualification required in India to be a member of the Indian parliament and this technicality of the subject matter like conclusion and ratification of international trade treaties require expertise knowledge which is not expected of the legislative in the

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<sup>114</sup> Parliamentary Committee attached to Ministry of Commerce expressed great concern over signing of the WTO Agreements especially the one on Trade Related Aspects of Intellectual Property rights (TRIPS), 1994.

Indian parliament composed of politicians based on caste wealth business and other factors

### **5.2.2. Limitations of Delegated Legislation**

It is very necessary to limit and restrict the use of delegated legislation in various fields as the Constitution sets up the democratic structure of India which is world's largest in the hands of the parliament who are directly elected by its citizens and this it has been held in many cases that the legislature cannot delegate its essential legislative functions. It has been argued that the primary duty of legislature to supervise and control the exercise of delegated power by the executive authorities.

Parliamentary control over the delegated legislation is exercised at three stages. Firstly; the introduction of Bill in the legislature.

Secondly; when the rules made under discharge of delegated power are laid before the houses of parliament through the committee, it has to be scrutinized and voted on.

And thirdly the minister or ministry concerned is collectively responsible towards the parliament for every delegated legislation.

### **5.3. Absence of Statute**

The Founding Fathers of our Constitution were also aware of the situation and future scope of entering into treaty obligations. In the first instance it is expressly included in “the Constitution that the treaty making power is within the legislative competence of the parliament of India and secondly Article 253 in part XI of the Constitution was incorporated”<sup>115</sup>. “Article 246”<sup>116</sup> provides for distribution of legislative power

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<sup>115</sup> The Constituent Assembly Debates (CAD) on this aspect contained in Vol. V, VII and VIII that took place on 27th August 1947, 29th & 30th December 1948 and 13th June 1949 respectively. The text of the entire Constituent Assembly Debates is available at Parliament of India website at <http://parliamentofindia.nic.in/ls/debates/>. Last visited on 08-06-2012 at 8.00 p.m. Further, the discussion in the CAD on Power to Conclude (Enter into) Treaties and Power to Implement Treaties is inseparable and hence dealt with together in this Chapter.

<sup>116</sup> Article 246 reads as; Subject matter of laws made by Parliament and the Legislatures of the State - (1) Notwithstanding anything in clauses (2) and (3), Parliament has power to make laws on the subjects enumerated in List – I in the Seventh Schedule ( the Union List).

between the Parliament of India (Union) and the State Legislatures stating that parliament has all power to make laws on any of the matters listed in the Seventh Schedule List 1 referred as Union List. Entries 13, 14, 15 and 16 in the Union List are very relevant to this subject matter particularly entry 14.

Entry 13 – Participation in international conferences association and other bodies and implementing of decisions made there.

Entry 14 – Entering into treaties and agreements with foreign states and implementing of treaties agreement and conventions with foreign states.

Entry 15 – War and Peace.

Entry 16 – Foreign Jurisdiction (enforcement).

“The Supreme Court in *Rao v. Union India*”<sup>117</sup> has observed executive power is the residue of functions of government, which are neither legislative nor judicial. “It extends also to carrying on trade or business without specific legislations on the subject matter”<sup>118</sup>. It is obvious that the parliament through List 1 and Article 246 is in power to make a law on every subject matter mentioned in the List 1 of Schedules 7. In other words treaty concluding (making) is not an exclusive power of the executive but the union parliament.

The issue arises by the virtue of Article 53 and 73 of the Constitution which states that the “executive power of the union through the President of India extends in the absence of any parliamentary legislations to the matter with regards to which the parliament (Union Legislature) has power to make laws subject of course to Constitutional limitations and powers”<sup>119, 120</sup>. The educational qualification of the

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<sup>117</sup> AIR 1971 SC 1002, see also *Madhav Rao v. Union of India*, AIR 1971 SC 530, para 94-96, *Sanjeevi v. State of Madras* AIR 1970 SC 1102.

<sup>118</sup> *Rai Sahib Ram Jawaya Kapur & Ors. v. The State of Punjab*, AIR 1954 SC 549.

<sup>119</sup> Article 53 reads as; Executive Power of the Union- (1) The Executive Power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution.

<sup>120</sup> Article 73 reads as; Extent of executive power of the Union- (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend - (a) to the matters with respect to which Parliament has power to make laws, and (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement: provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution

members of parliament and other related factors has made it a known fact that the parliament has not in lapse of 70 years made any law regulating the procedure for the issue of entering into treaties and arrangements and also in reference to their implementation. It is also equally clear that “no law has been made regulating the manner through which the government has power to signed or ratify the international conventions or arrangements”<sup>121</sup>.

#### **5.4. Law Making on the Subject Matter**

On 5<sup>th</sup> March 1993, Shri. George Fernandes, Member of Parliament, Lok Sabha provided a notice of the intent to introduce the Constitution Amendment Bill for amending the Article 253 so as to that trade treaties be mandated to be ratified by each House of Parliament by majority of the memberships of each house and by a special majority of the state legislatures before the executive can enter into any treaty or arrangement. This amendment bill has been never taken up for consideration in the Lok Sabha or till now.

The second attempt was made by Shri Satya Prakash Mishra, (Member of Rajya Sabha) who questioned he government (number 6856) inquiring whether the present government is willing to introduce any legislation or amending act to the Constitution to safeguard for parliamentary approval, control and scrutiny of international treaties been entered by the executive forming the part of government of India who are collectively responsible for or in the lower house of the parliament.

Also Shri M. A. Baby, (M.P., Rajya Sabha) provided a notice to the house for introducing the Constitution Amendment Bill, 1992) to amend the Article 73, 77 and 253 of the Constitution of India providing that every agreement, treaty, memorandum of understanding, contract or deal entered into by the Government of India through its

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or in any law made by parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

<sup>121</sup> P.M. Bakshi, Treaty Making Power under our Constitution, A Consultation Paper presented to the NCRWC - January 8, 2001. Full paper available at <http://lawmin.nic.in/ncrwc/finalreport/v2b2-3.htm> visited on 18-06-2012 at 12.45 pm.

executive branch including borrowings under Article 292 of the Constitution with any foreign country or international organization of social, economic, political, financial or cultural nature and settlements relating to trade, tariff and patents shall be laid before each house of the parliament prior to the implementation of such agreement, treaty memorandum of understanding, contract or will and shall operate only after it has been approved by resolution of both houses of parliament , Shri Chitta Basu (M.P., Lok Sabha) supported the bill of Shri M.A. Baby. It is also pertinent to mention here what Pandit Jawaharlal Nehru as a Prime Minister said in the Lok Sabha;

“The treaty making power under the Constitution rests with the executive government, of course to give effect to the treaty, one has to come to Parliament and the Government of India, that is the union executive, if it does a wrong thing may be punished for it”<sup>122</sup>

It was also pointed that in the year 1946 when after the World War II the International Trade Organization was established, the US Congress rejected the bill as the ITO was not favoring the US economy and thus the ITO was abolished and that GATT was established in 1947 which was in favor to the rising economy of the United States so such powers should also be vested in the Parliament of India.

## **5.5. Approach of Other Nations**

### **5.5.1. Australia**

The stand of the government was made clear in the year 1997 when the bill was introduced in the federal legislative assembly of Australia mainly to form and supersede the decision of the “Australian High court in Minister for Immigration and Ethnic Assets versus TEOH”.<sup>123</sup>

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<sup>122</sup> Lok Sabha Debates, Col. 6265 (19th Dec.) 1960. Cited in Rajeev Dhavan, Supra note 14, p.17. It is not clear what Nehru meant by punishment. Rajeev Dhavan opines on the punishment aspects of the Nehru statement that it may be no-confidence vote or retaliation permissible to other nation states under international law.

<sup>123</sup> (1995) 183 CLR 273.

The said introduction of the bill voted on by the parliament resulted in the decision onto the propositions, firstly that in the Australian Constitution system a treaty and its formation into by the federal government that is the executive branch does not become a part of municipal or domestic law and it is not enforceable by the courts in the territory until the parliament, that are the legislature legislate or undertake the legislature on the executive on that behalf. Secondly a treaty on international convention finally ratified by the government at center gives rise to an expectation at law that could form the base for challenging the executive decisions in the judiciary.

### **5.5.2. France**

Since the power to conclude treaty in one of the oldest state on the globe is within the execute powers of the President of the country by the power which expressly mentions that the president not only negotiate but also ratified the international treaties.

Article 52 of the Constitution expressly includes peace treaties, trade treaties, human right treaties and treaties seeding and exchanging or adding territories. It is also important to note that Article 55 of the French Constitution itself provides that trade treaties concluded by the President do not require any legislations (in nature of enforcing or implementing) in order to make the treaty enforceable.

### **5.5.3. United States of America**

On the subject matter to the effect of treaties Article 6 clause 2 of the Constitution of U.S.A. expressly provides that all treaty piece concluded or made with the authority of President in exercise of executive powers is the supreme law (enforceable in nature) of the state and the judges in every domestic courts of the federation shall be bounded by the obligations of the treaties, though such laws are in conflict with the Constitution. This rule is a fundamental opposite of the British practice which India has implicated in its own Constitution. In the United States the treaty obligation and



it's enforcement is not only supersedes any law of the state but also overrides limitations and requirements of the Constitution of the state or any other laws made by any State Congress of the country.

It is to be noted that different sets of rules are made in the USA for distinction treaties and agreements. The Vienna Convention on the Law of Treaties applies only to treaties and not to executive agreements. So as far as the treaties on matter of trade and economy are concerned they are mandatorily required by the Constitution to be tabled and debated for approval and ratification that is to the US federal Congress. But so far as the agreements and particularly that those which are known as executive agreements are concerned they are agreed upon and concluded by the President in executive dimension and such agreements and not legally referred as treaties by the US domestic laws.

#### **5.5.4. Argentina and Mexico**

As it appears on the face also follows the same principles as of the United States pattern.

#### **5.5.5. Organization of Economic Cooperation & Development Nations**

In a majority of 24 countries of OECD there is an express mention that parliamentary that is the legislature approval is mandate requirement for all treaties including trade and taxes excluding only the executive treaties expressly mentioned.

#### **5.5.6. United Kingdom**

The Indian law is greatly influenced and deeply rooted in the common law of the British Empire through the 200 years of presents in executive administrative legislative and judicial background of our country.

The legal position on the subject matter in UK has been pronounced in the decision of the Privy Council formed by the House of Lords in the case of “J H Rayner Limited versus Department of Trade and Industry”<sup>124</sup> where the council said that the government may negotiate, conclude, construe, observe, breach, repudiate or terminate a treaty. The legislature has full powers to amend or change the laws of U.K.. The domestic courts should enforce such amended laws and the judges have no power to grant performance of a treaty obligation. This is to avoid any injury against the sovereign state for breach of a treaty or to invent law or misinterpret any domestic legislation or international arrangements for enforcement of a treaty.

As against the law of the United States in regards to the effect of concluded treaties on domestic law the English law is very clear that in case of a conflict between the British laws and the provision of a treaty the British law will prevail over any international law treaty or agreement.

It is a vital principle of the British Constitutional law where however the parliament of U.K. undertakes an action for legislation to give effect to trade treaties. It has been held by the courts that the judiciary must presume that the parliament through the Constitution is supreme.

This law was also qualified in “the appellate court in Solomon versus Commissioner of Customs and Excise”<sup>125</sup> stating that such a course is only allowed with the terms of legislations is clear and capable to implement or in force the international obligation. In the case of “CCSU versus Minister of Civil Service”<sup>126</sup> it was laid down that international conventions are not part of law of the British country.

This point of view of British judiciary is also supported by “Melon versus Metropolitan Police Commissioner”<sup>127</sup> and “the House of Lords and Freedom of

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<sup>124</sup> (1990) 2 EC 418.

<sup>125</sup> (1967) 2 Q.B. 116.

<sup>126</sup> (1985) AC 374.

<sup>127</sup> (1979) 1 C.H. 344.

Association Keys C.H.E.A.L.L versus Association of Professional Executive Clerical and Computer Staff”.<sup>128</sup>

### **5.5.7. Switzerland**

The legal position in Switzerland is altogether mixed and combined.

In some cases parliament authorized the federal council in advance not only to sign a treaty but also to bring it into force.

Secondly there are treaties which require approval of the parliament before they become unforeseeable.

Thirdly a treaty may be subjected to an optional referendum as provided for by the categories of treaties subjected to these procedure activities which are effective for an indefinite period without the possibility of denunciation.

And lastly in some cases the agreement has to be approved by a compulsory referendum as provided for an agreement subjected to this procedure are those which provide for adherence to Supra national organizations and organizations for collective scrutiny.

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<sup>128</sup> (1983) 2 AC 180.

## **6. APPROACH OF THE INDIAN JUDICIARY TO HARMONIZE DOMESTIC LAWS & INTERNATIONAL LAWS ON TRADE ARRANGEMENTS OF WTO**

### **6.1. Powers of the Supreme Court of India**

International treaties are based on providing advantage to big power blocks which are on the level playing field and are never transparent for the developing or least developed Nations. Thus the concept of public debate and parliamentary ratification is a must requirement in India especially over the TRIPS agreement which is the trade related intellectual property rights set as a trap by the US and EU to capture the traditional and indigenous industry and self-reliance of India on its products and innovations.

In the current world no human ethics code or law binds the transnational and multinational corporations. The marketing wisdom of the Western Nations and recent technological blessings has made Indians a country of over billion populations unhappy. The background of the present patent amendment Bill in India before the parliament persuade and tends me to think and communicate some of the serious consequences that India is facing. The grave risk for an instance is the global financial flow operations to satisfy the market greed of the power blocks to rob growth and available natural resources of Indian population who are in desperate and great need of resources like essential life drugs, medical facilities, communication, information and industrial technology which is the key to rapid development.

Every Indian national living in this great Gandhi country must not hesitate or fear but should resist in every measure possible with power and strength to curb down the monopolistic idea of the west which weakens the internal economic system based on rural economy and agriculture. The Doha negotiation round of the WTO started in 2001 is in a situation of blockade from eighteen years between the developed Nations

represented by the US, UK, Japan and Canada and the developing nations of the world having most of the mass population headed by Brazil, India and China. Besides the WTO agreement and the final act of the Indian government at the final round of negotiations especially in Uruguay had let us Indian down.

### **6.1.1. Questions to Be Concerned By the Supreme Court**

The Supreme Court has never stood ideal from its establishment to witness a treaty on international platform to overshadow order and spoil the very basic structure of our Constitution including democracy, sovereignty, federalism, welfare and social justice. Firstly in respect to the basic structure of the Constitution the first question which the government of India should always consider before becoming a signatory to any treaty is about the federal structure of a Constitution. Today India is the biggest democracy in the world and also democracy is a pillar of the basic feature of our Constitution, thus treaty enactment without any public opinion for legislative debate or intent not only set back the Indian population but also in future can result into unprecedented outcomes like unstable economy or overturning political situation.

The sources of all power exercised by the organs of the government be it the executive, the legislative or the judiciary is provided from the Constitution. It is therefore if a conflict arises between the WTO agreement and the Constitutional requirement and mandates the latter will always invalidate the former so as the Indian jurisdiction and jurisprudence is taken into account. Article 141 of the Constitution vest the final authority in the Supreme Court of India to declare the law which is binding on all the authorities and organ of the government also the Constitution itself provide for the Supreme Court to be the interpreter and guardian of the Constitution. Any decision by the council of ministers or the executive heads or the legislature if invalidating the part 3 of the Constitution through Article 13 will be null and void automatically.

Some may argue that the law of the Constitution is what the judges see or believe to be but the same goes for the executive also. A person or a group of person cannot

decide for 140 crores of Indian population. It is also a question in my mind from the beginning of my research work that why always the Indian media is silent about this subject matter.

The question here is will our rulers restrict or lend our freedom in disguise of free trade on international platform? No. “This is the time for us to protest and to safeguard our population, knowledge and innovation as India from centuries has led the world”<sup>129</sup> in the field of indigenous knowledge, culture, tradition, respect for environment and so on.

### **6.3. Enforcement of International Law**

Is in the present date the supreme court of India is confused about the application of international law. The recent judgement’s of “the apex court as in Ram Jethmalani versus Union of India”<sup>130</sup> my view shows a misunderstanding of relationship between international law and domestic Indian law greater conceptual clarity on this subject matter is very critical in today's age of globalization.

The Supreme Court judgement in “Jeeja Ghosh versus Union of India”<sup>131</sup> is celebrated for a farming the Constitutional right under Article 21 for a person to live with dignity. The Vienna Convention on the Law of Treaties 1963 requires India's internal legislation to comply with international commitments. Article 27 of the treaty states that a state party may not invoke the provision of its internal law as a justification for its failure to perform a treaty. The Vienna convention was imposed in 1980 and the Supreme Court discuss the same in 1963. The principle of factor Pacta Sunt Servanda, Article 26 and 27 of VCLT states that every treaty signed by a contract in country is binding on it and the obligation imposed by the treaties must be added and performed by the state in good faith.

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<sup>129</sup> Roy, Ramashray, Inaugural Speech delivered in the Seminar on State and Globalization in the Department of Political Science, University of Rajasthan, Jaipur, 12 Feb., 2008.

<sup>130</sup> (2011) 8 SCC 1.

<sup>131</sup> (2016) 7 SCC 761.

The best possible way to on treaty obligations is to ensure that the country's domestic laws are consistent with its treaty obligations as laid in the case of “Jolly George workers versus Bank of Cochin”<sup>132</sup>. In this respect Article 26 and 27 of the convention on which “the Supreme Court based its judgement on State of West Bengal versus Kesoram Industries”<sup>133</sup> and “G Sundarrajan versus Union of India 2013”<sup>134</sup> provides the impression that the court is trying to justify the expression of Pacta Sunt Servanda principal by invoking the VCLT Articles whereas the court has already pointed out that VCLT altogether has a different purpose not binding on the agreement between the states and international organizations.

In several cases like the Vishakha or National Legal Service Authority case the court had specifically said that is the parliament of India has made any registration which is in conflict with the international law that Indian courts are bound to give effect to the Indian law disregarding the international law of treaties signed by the executive of a government. However in the absence of a contrary registration municipal courts in India wood respect the rule of international law if it does not dilute or conflict not only the Constitution but any domestic or municipal law act applicable in the territory of India.

Also in such cases the court has often relied on Article 51 clause C of the Constitution read with Article 253 to support the said reasoning where Article 51 clause C as Directive Principles of State policy directs the state to endeavor to and thereby respect for international law and obligations / arrangements of treaties which are not enforceable in the court of law.

It was also questioned by “the judiciary of India in Vellore Citizens Welfare Forum versus Union of India, 1996”<sup>135</sup> from the executive that although one is to ensure if any distinction between the power of the three branches of the government as laid down by the Constitution has any merit and practical consequences for instance if the

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<sup>132</sup> AIR 1980 SC 470.

<sup>133</sup> 2004 (10) S.C.C 201 5.

<sup>134</sup> (2013) 6 SCC 620.

<sup>135</sup> AIR 1996 SC 2715: (1996) 5 SCC 647.

government of India that is the executive branch we write in adopting measures to implement international treaties which are inconsistent with domestic law or even when the parliament has not enacted a legislation giving effect to such an international treaty is the Supreme Court jurisprudence is to be understood in support of the direct effect theory then the executive in any sense will not stand right in doing so.

#### **6.4. Vienna Convention on the Laws of Treaties & Pacta Sun Servanda<sup>136</sup>**

The Vienna Convention on the Law of Treaties (referred to as VCLT) is a treaty concerning the international law on the formation and foundation of treaties between the contracting states. The convention was adopted on 23rd May 1969 and came into force on 27th January 1980. Till the year 2018 the VCLT has been ratified by 116 sovereign States.

The scope of the convention is limited to the only aspects that it applies to the treaties concluded between the states and does not cover agreements between states and international organizations or between organizations themselves. Thus in the present subject matter the VCLT is not binding on agreements between India and the WTO.

According to the Vienna Convention a treaty means an international agreement concluded between states in written form and in force which are governed by international law whether embodied in a single instrument or in two or more related instruments and whatever its particular designation in the global context. Ratification, acceptance, approval and accession means in each case of international act so named where by a state establishes on the international plane its consent to be bound and obligatory by a treaty.

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<sup>136</sup> Vienna Convention on the law of treaties (with annex). Concluded at Vienna on 23 May 1969  
Authentic texts: English, French, Chinese, Russian and Spanish. Registered ex officio on 27 January 1980.



Treaty Agreements in full powers means a document verified or accepted from the competent authority of a state designating a person or persons to represent the state for negotiating, adopting or authenticating the text of a treaty for expressing the consent of the state to be bound by a treaty or for accomplishing any other act with respect to a treaty.

Negotiating state means a state which took part in the drawing up of the adoption of the treaty text.

Contracting state means a state which has consented to be bound by the treaty whether or not the treaty has entered into force.

Article 9 - Adoption of the text.

Article 10 - Authentication of the text.

Article 11 - Means of expressing consent to be bound by a treaty.

Article 12 - Consent to be bound by a treaty expressed by signature.

Article 13 - Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty.

Article 14 - Consent to be bound by a treaty expressed by ratification, acceptance and approval.

The Indian domestic courts have for the most part of time has provided a general approach in applying the international law but in the case of “Delhi High court in a W. E. S. Ireland versus. Director General of Civil Aviation”<sup>137</sup>, the judgement delivered in March 2005, it was held that the Indian legislation has never ratified the convention of aircraft protocol and does it has been never adopted as a part of Indian municipal laws providing the power to the Supreme Court and all the high Courts not to enforce the same in the territory of India. The same approach of the Indian judiciary and “the Supreme Court of India can be concluded in Lloyds Chills Offshore versus Union of India”,<sup>138</sup> 2008, where the court consistently held that in the absence

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<sup>137</sup> WP(C) 871/2015 & 747/2015.

<sup>138</sup> AIR 1930 Cal 22, 121 Ind Cas 625.

of municipal law treaties cannot be looked into if they are in the conflict of municipal laws.

In the case of “Vishaka versus State of Rajasthan”<sup>139</sup> and “National Legal Services Authority versus Union of India”<sup>140</sup>, the Supreme Court of India again applied international law even when there was no municipal law holding field on the certain subject matter.

In the landmark case of “TN Govardhanan versus Union of India”,<sup>141</sup> 2012, the Supreme Court laid down a short but category all directive for the Indian states that treaties and all international law not contrary to the municipal laws can be deemed to be incorporated in the domestic laws but the restrictions and limitations of not only the Constitution of India but other domestic loss have to be kept in mind whenever the executive out of the scrutiny or control of the parliament enters into any treaty agreement.

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<sup>139</sup> (1997) 6 SCC 241.

<sup>140</sup> (AIR 2014 SC 1863).

<sup>141</sup> [1986] 160 ITR 318 ; AIR 1986 SC 1668.

## 7. CONCLUSION & RECOMMENDATION

**This paper is to determine –**

Firstly determine the diminishing status of Indian State external and internal sovereignty in the globalized trade world.

Secondly to determine the Constitutional requirements for (a) conclusion of treaty & (b) implementation of treaty.

Thirdly is to determine the role of domestic courts of India and their approach to harmonize municipal laws with international laws.

After the end of World War II (post 1945) the period witnessed the rise of superpowers after England, France, Germany and Japan which were the United States of America and the Union of Soviet Social Republic which rose up to the most powerful blocks. The United States in collaboration with European Union nations formed the North Atlantic Treaty organization and also developed the Bretton Woods system of the World Bank, International Monetary Fund and International Trade Organization.

Though in the year 1946 the US Congress rejected the proposal of ITO and pushed forward for the establishment of General Agreement on Trade and Tariffs in 1947 which was more favorable to the economy of United States and thus the negotiations from 1947 to 1994 in which 8 rounds of negotiation took place established the World Trade Organization which provided advantage to the already rich superpowers, multinational corporations and international trade organizations based in the United States as the world was open for trade and the US took the most advantage of the same.

In the last 70 years the development of international and transnational organizations has led to important changes in the obligation of decision making structure of the world politics and state sovereignty. New forms of multinational organizations have been established and with them arises the concept of collective decision making

involving States independent in nature, intergovernmental organization and a whole variety of transnational pressure groups also moderated the idea of state sovereignty.

The fact that the US emerged as the world's only superpower its dominance over the world primary due to the rise of the European Union and the US collaboration has made a pattern of shift in the world mind set which sees today that economic domination in the world is more important and powerful than cultural, traditional, indigenous and military strength or capabilities.

In the present global scenario it is very hard to make a clear distinction between domestic law and policy making and on the other hand foreign and global policy is becoming more and more effective. The concept of sovereignty today also remains the most distinguishing feature of an independent state like India. The process of globalization headed by the United States through world trade organization and the operation of international law in nearly 70 years has provided the international organizations and the non-governmental organizations worldwide such power to “redefine the meaning of policy making more legitimate and accountable to the world community”<sup>142</sup> like the WTO and the United Nations .

**My disagreement on the World Trade Organization principles exists in the sense for India and Developing States that:**

- WTO and Western nations tends to dictate the policies to be followed by sovereign nation.
- WTO requires at any cost the implementation of free trade which negatively affect the economy and revenue of the government of India.
- Commercial interest takes priority over development and inside structure and infra building.
- The WTO is undemocratic.
- The WTO is ruled by the western powers mainly the United States.

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<sup>142</sup> Camilleri J.A. and Falk, J., The End of Sovereignty: The Politics of a Shrinking and Fragmentary World, Edward Elgar, England, 1992, p. 148.

- Weaker countries, developing and least developed in nature are forced to join the WTO or they will lose the platform of import, export and global market.
- The WTO is a tool of formal and legally structuring for the powerful lobbies of multinational corporations and global leaders.
- Many small and underdeveloped countries are powerless in the WTO.
- WTO destroys job, increases poverty, create inequality in income and wealth, harms indigenous and traditional industries.
- Many issues has been continuously raised by many nations but it has been never discussed or debated India WTO on issues like health, safety, security, military race, agriculture, food security and so on.
- The commercialization of international market has given rise to environmental degradation.
- Reduction in tariffs on trade and commerce and services result in less revenue of the government of India which is very significant for developing nations to build its infrastructure, eliminate poverty and hunger and does indirectly we have to rely on the World Bank or donations of western nations like the US to do welfare for the people.

It is very evident to mention here that many scholars and economists strongly argue and feel India as an economy has gained from the policy of liberalization, privatization and globalization of 1992 but it is only one side of economy as statistics of economy can be used to show case a result in the benefits of interested persons or groups as by my view done by the UPA government of India. The immense shift in economic policy was due to a very low level and amount of foreign exchange reserve left with Indian central bank which would lead to low level of international trade. It is also stated by many that the emergence of central banking system and connected economy is the most harming factor for financial instability in the world. The time when globalization was not prominent in the economic system in the 18<sup>th</sup> century India shared 17% of the world economy which today after establishment of the WTO has shark to low than 2% of global economy. But the same LPG policy has deprived rural and poor population, traditional and indigenous industries, on which Indian economy was based with ever increasing level of hunger and poverty and today India

stands at the biggest level of inequality of income and wealth. The new economic policy focusing more on international trade of export or import rather than building up its own domestic infrastructure, economy and safeguarding the welfare of the people, socialist structure of the economy by the Constitution of India.

Today we can also see that the current president of America, Mr. Donald Trump has the slogan make America great again and continuously provides for oil, trade and other economic sanctions rejecting international agreements and trade arrangements to save guard his own economy and population. Mr. President Donald Trump keeps on saying to cut short the H1B Visa and not allow the foreign immigrants to take away the jobs of the American population. This scenario also purchased in by many nations around the globe. Currently the ongoing U.S. - China trade War is the biggest example of deviation of WTO principles. Though the US has the biggest and positive amount of foreign exchange reserve but having a deficit of 300 billion dollar of foreign reserves in comparison to export and import of China making the President to provide sanctions and customs on more than 200 products traded from China starting the biggest trade War in the history of mankind. Moreover powerful nations have used the tool of sanctions as to fulfill their own need and deprive developing nations like India to not purchase or secure imports and exports from other nation but from the western powers and destroying the trade connections and routes to Middle East or Asian nations which are cheaper and provides a low transportation cost.

Indian economy is based on rural economy, agriculture economy, indigenous and traditional industries like handicraft and many others and these four economies has been greatly adversely affected by the international trade. Still after 70 years of independence India has not able to safeguard the socialist and welfare concept of the Indian Constitution the mass population deprived by the extent of globalization and international trade by WTO today lacks basic necessities like safe drinking water, electricity, infrastructure, schools, education, medical care, health insurance, energy usage, etc..

Today the issue of the subject matter of international trade and WTO has not taken pace or debated in India largely due to the illiteracy of people and the understanding level of the Indian mass population as the subject matter is not a part of manifesto or a subject matter of elections in any state assembly or central legislature due to the ignorance of the Indian population on this subject matter. It can be said that in the coming future the people will be more educated and known of the factors of international market and foreign relations. This issue will be taken up in the election propagandas of the nation.

Today India is the biggest and strongest fastest growing economy on this earth with a rate of 8% per annum while the U.S. or the European nations only have two to four percent of growth economy. India is the biggest democracy in the world, 2nd populous state and the sixth largest economy. It is very important to mention that on one side like the US having a population of 30 crores and UK or France has more population less than 5 crores have economy of more than 20 trillion dollar any stock market of more than 28 billion dollar where the India having a population of 130 crores have an economy of less than 3 trillion and stock market also at 2.8 trillion U.S. \$. Realizing this vast differences between the economic situations of the countries of India and China as compared to the U.S., U.K., France, Italy or Germany mainly the European Union or the US has caused us and many scholars and economics to think on this aspect that how the globalization of trade through WTO has benefited the developing or the least developed nations.

**Questions to be addressed presently:**

- Will the treaties signed by our government would take our independence and self-reliance which we have learnt, discovered, acquired and invented for centuries from the period of our Vedas till some decades back?
- Will the WTO agreements and treaties infiltrate and blow up so as to develop an inequality of opportunities and wealth?
- Will the agreements of WTO override the Constitution of India as well as the Supreme Court of our country where every Indian having knowledge about the

subject matter feels that the parliament and the state legislatures should be consulted formally and their views obtained through public debate should lead to the final decision of the government of India?

- Will the WTO agreement continue to hamper the economic interest of the Indian states, its agriculture, and its indigenous and rural industrial development?

Our nation is independent, our parliament directly elected by We the people of India is supreme, our judiciary is independent who's worth it bind Indians even against external authorities should have a declaratory decisional finality so long as free India under our Constitution governs the executives of a nation.

- Should the Indian Constitution be made a sacrificial goat in the name of WTO agreements for free and liberal trade?
- Should the WTO laws be prevailed over all supreme law of the land?
- Should the exercise of power by the executive through our President entering into any treaty under Article 73 be subjected to both parliamentary scrutiny and judicial review at least to the extent of examining whether the executive has acted within the Constitutional parameters which govern all the organs of the government of India?
- Whether the Marrakesh Agreement of 1994 overshadows the Indian Constitutional limitations and restrictions on international arrangements of WTO?
- Whether the International Trade Treaties concluding (making) power subsists with the Union Government of India (Union Executive) or with the Parliament of India (Union Legislative).?
- What is the jurisprudence & objective behind Article 253 of the Indian Constitution and its impact on Article 73 of the Constitution?

Today there exist very critical and important point of facts and laws which need to be answered by the judiciary or are the parliament. Because today India as a fastest developing state loses its both internal and external sovereignty in the global world of



free trade and liberal economy. Today economic factor plays a more important and effective role than military or politics. Thus the developing nations like India lose on grounds of economic, politics and military influence and presence.

**Suggestions made:**

**First** - We should agree with my proposal that the entry 14 of List 1 of the seventh Schedule of the Constitution of India read along with Article 253 marks the opposition from the law of the United Kingdom on the question of the power of executive organ to conclude trade arrangements and agreements with outside power and its power to be the signatory authority for concluding or ratifying any international trade conventions and covenants. This position should be changed to tilt from U.S. legal system to that of U.K..

**Second** - The Union Executive that is the Government of India has all powers to enter into a trade arrangement which will have effects on the subjects mentioned in the List 2 to that is the State List and the List 3 Concurrent List in the Seventh Schedule of the Constitution without being approved by the Parliament or the State Legislatures by a majority by making a law as provided by Clause 1 of the Article 73 and or without the approval or consent of the concerned Legislature.

**Third** - The present position in India should be strictly and mandatorily changed and debated.

**Fourth** - We should support the proposal that the legislatures (both the parliament and the state legislatures with special majority) should make a specific law (statute) clearly stating the powers and authority of the executive organ on the subject of trade treaty formation which includes forming agreement with foreign states and international organizations as well as satisfying the parliament for international obligations and mandates.

**Fifth** - The Parliament of India in consultation with the majority of State Legislatures be advised to enact any law providing power and authority to the executive for treaty making considering all the possibility of implementing problems being created for one or more of the States, the consent are concurrent to be made a mandate for the enactment of the law.

**Sixth** - The power and authority or control of the parliament should not be restricted only to the all arrangements and agreement related to trade and national economy.

**Seventh** – We should support my proposal to amend Article 253 by the insertion of an additional clause that is close to provide express mention that no treaty formed by the government (executive) shall have any implementation or enforcement through law within India and that no Constitutional rights or safeguards of the population of India can be founded upon by such treaties by anyone without the consultation of parliament.

**Lastly** - It is also recommended that a mandatory approval and consultation process be made an obligation with both the governmental agencies affected and non-governmental bodies or experts in the areas concerned before the personalities in executive authority could ratify for or conclude a treaty or agreement which could not be able to hold the democratic pillar of our Constitution and the Indian state to promote national interest under shelf of participation and belonging among the population.

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