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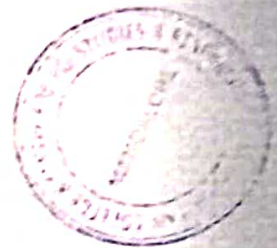
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4

Sr. No.	Topic	Name of Author	Page No.
1.	Right To Free Speech Vis-A-Vis Right To Privacy In India	Dr. Nitish Nawsagaray	1
2.	Freedom of Expression on Internet And Democracy : Judicial Perspective	Dr. Naresh Vishwanath Waghmare	11
3.	Freedom of Religion & Equality Before Law- Issues & Challenges With Special Reference To Uniform Civil Code	Dr. Kranti Deshmukh	17
4.	Paid News Vis-À-Vis Freedom of Speech in India	Suvarna S. Nilakh	21
5.	Shreya Singhal V. Union of India: From Censorship To Saving Free Speech	Dr. Chandrika	24
6.	Casting Light On The Issue of Drug Trafficking In Asia And Latin America- Need of An Hourtanaya	P Kamlakar	28
7.	Balancing The Scales Of Justice: Witness Anonymity And Right of Accused To Fair Trial	Revati Naik	35
8.	A Birds Eye View on Historical Framework of The World Trade Organisation And Its Dispute Settlement Mechanism	<u>Smt. Shubhalakshmi P.</u>	43
9.	Block Chain Technology and Law	Arokia Sushma	48
10.	Social Media: Regulatory Framework And Technological Advancement	Ayush Mishra	53
11.	Nexus Between A Right To Grant Compulsory License, Protection of Public Health and Access To Medicines	Archana S. Deshpande	57
12.	Historical Perspective of Consumer Law With Respect To The Modern Era- An Analytical Study	Gauri D. Deshmukh	62
13.	Nuclear Technology and Law in India	Savita Saxena	68
14.	Capital Punishment In India : Rarest of Rare Case	Divya Nair	73
15.	Class Action Lawsuit As A Weapon For The Minority Interest Holders	Raj Vishnoi	77
16.	Misuse of Anti-Dowry Laws- A Dark Side of Marriage	Allaraham Ali	84
17.	The Idea Of Secularism and The Freedom of Religion in our Constitution	Rachit Khamparia	92
18.	Women Prisoners Deprived of Their Rights	Humanshu Mishra	96
19.	Study Of International Law On Rights of Children With Critical Analysis of The Juvenile Justice (Care And Protection of Children) Act, 2015	Deepak Chatap, Vaishnavi Somani	104



A BIRDS EYE VIEW ON HISTORICAL FRAMEWORK OF THE WORLD TRADE ORGANISATION AND ITS DISPUTE SETTLEMENT MECHANISM

Smt. Shubhalakshmi P.¹

Introduction

Trade is an economic activity which helps to strengthen economic condition along with human relations. Trade may take place within the nation or even outside the nation. International trade is nothing but trade takes place between different nations of the world. It brings the nations closer and helps consumers to enjoy and ripe the benefits of variety of goods. Usually there are situations which may lead to disputes between the nations in relation to trade and violation of trade related contracts.

Formulation of international body to regulate trade

There must be proper regulation of trade and a body should act as controlling mechanism of international trade. Every nation has its own rules and regulations in relation to trading activity, but some may be flexible and some others are rigid in nature. The beginning of the 19th century witnessed free trade and less protectionism, but by the end of the century, the independent countries adopted protectionist policies by moving away from free trade policy.²

By the year of 1920, outside Europe, in the UK, Netherlands, Belgium and Scandinavian countries, prohibitions, quantitative restrictions and exchange controls had largely disappeared. In Central and South Eastern European states, non-tariff barriers were dismantled more slowly with relapses. The Economic Committee of League of Nations convened the Brussels Conference in 1920 for the purpose to recommend for the abolition of artificial restrictions on international trade and restoration of pre-war trading. This conference resulted in achieving two major works to maintain an order in international economic relations. Firstly, a precedent and an example for future attempts at multilateral solutions of international problems. Secondly, it formulated a number of precepts which later exerted influence on Governments and expert opinions.³ After the

second World War, there was a universal feeling that political security couldn't be separated from international economic and financial stability, so the US took initiative which culminated in the Atlantic Conference of 1941.

The Atlantic Conference released as Atlantic Charter regarded as its application is universal in nature, and states that every nation has a right to expect that its legitimate trade will not be diverted or suppressed by towering tariffs, preferences, discriminations or narrow bilateral practices. An undertaking to promote mutually advantageous economic relations and the betterment of world economic relations were stated in an agreement called Mutual Aid Agreement signed between the US and the UK in 1942. The objectives of this agreement were inter alia the elimination of all discriminatory treatment in international commerce and the reduction of tariffs and other trade barriers.⁴

The Anglo-American financial collaboration progressed by the beginning of 1943, further taking the shape of the White and Keynes plan. The White plan originated in the US and Keynes plan in the UK, but these plans were designed to facilitate the achievement of balance of payment equilibrium in an international environment of multilateral trade and even to achieve full employment within the nation.⁵

Whites and Keynes plan led for the establishment of two prominent institutions in international level like the International Monetary Fund (IMF), and the International Bank for Reconstruction and Development commonly known as World Bank.⁶

International Trade Organisation

The Second World War has disastrous effect on the economy of Great Britain and its allies and in the process of extending support to them for their participation in the war, the US economy also hit hard. It led the US to pursue International

multilateral cooperation⁷

In 1947, a general agreement was endorsed by the 23 member states and uppermost on the agenda was the establishment of the International Trade Organisation (ITO) through which problems of trade and development could be addressed. As a new specialised agency of the United Nations a few countries agreed upon the draft charter of the International Trade Organisation. The charter was intended to provide world trade disciplines along with the rules relating to employment, commodity agreements, restrictive business practices, international investment and services⁸. Although the ITO charter was finally agreed at UN Conference on Trade and Employment at Havana in March 1948, its ratification proved impossible as the US Congress did not vote it⁹. But at the same time, General Agreement on Tariff and Trade (GATT) remained as only multilateral instrument governing international trade from 1948 until the establishment of World Trade Organisation (WTO).

General Agreement on Tariff and Trade

The idea of GATT grew out of the US administration in the interwar years the phase in which the increasing strength of the US in the world economy was getting clearly manifest. In 1945, bilateral negotiations took place between two world powers, the US and Britain, in which forms and functions of the institutions that was to govern world trade was laid down¹⁰. As the ITO did not materialise, countries desirous of liberalisation came back to GATT, where major decisions were taken by the inter-session committee of contracting parties¹¹.

The GATT had been negotiated in 1947, before the ITO negotiations were concluded. The GATT was created as an interim agreement but it has incorporated many of the specific provisions of the ITO and it was a temporary trade agreement which had lacked an institutional structure¹².

In comparison with ITO, GATT has proved to be an engine in the growth of international trade trying to develop a multi-lateral international economic and legal order.

Basic Purposes of GATT

On 30th October 1947, the General Agreement on Tariff and Trade was signed by 23

nations in Geneva and took effect on 1st January 1948. The GATT had three main provisions. The most important requirement was that each member must confer most favoured nation status to every other member. All members must be treated equally when it comes to tariffs. It permitted tariffs if their removal would cause serious injury to domestic producers. Secondly, GATT prohibited restriction on the number of imports and exports. The third provision was added in 1965. That was because most developing countries joined GATT, and it wished to promote them. Developed countries agreed to eliminate tariffs on imports of developing countries to boost their economies.¹³ An overview of GATT 1947 revealed in its original 35 Articles and subsequently in the year 1965, three more Articles were added to the list. The basic purposes of the GATT can be understood through its various Articles and the text which is divided in to four parts.¹⁴ In the year 1965, part IV was added, which gives prominence to less developed countries.¹⁵

Dispute Settlement Mechanism under GATT

The General Agreement contains many provisions designed to resolve trade disputes between its contracting parties. Most of them provide for consultations between the contracting parties. If the parties are unable to settle their differences through negotiations, they may resort to GATT Article XXIII, which was GATT's basic dispute settlement mechanism.¹⁶ Number of disputes are settled and resolved by the GATT dispute settlement system in satisfactory manner. But as time passed away, the membership also increased and factors that had resulted for success of dispute settlement system earlier, diminished gradually. It has reached unsatisfactory condition after ten years of its establishment.

There are certain reasons which led for its decay are firstly, the formation and expansion of European Community diverted the attention of most European countries which had previously been active in using the dispute settlement system. Secondly, certain provisions on agriculture, textiles and safeguards were not strictly enforced. As a result of it, contracting



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parties developed a mentality that no GATT provisions should be strictly enforced. So, relying upon GATT for the settlement of dispute viewed as inappropriate. Thirdly, the emergence of Japan and the EC as superpowers changed GATT from an organisation dominated by the US in to an organisation dominated by three powers. Newly emerged powers were interested in new model for dispute settlement.¹⁷

The biggest default of GATT was that, the Governments of the industrial countries dominated the administration of GATT. In fact, the developing countries were left out of the main stream of the GATT system and no serious efforts were made to try to build up a special system of rules appropriate to their needs and changing circumstances¹⁸.

Other than these, absence of Institutional Machinery was also a cause for its downfall. Even though, the GATT was formulated on temporary basis to look after international trade issues, it became the world's trading organisation as ITO did not come in to force. The absence of this institutional mechanism reflected in its legacy is represented in the absence of an institutional tool for dispute adjudication too¹⁹.

GATT system was misused in various ways. The GATT was used by invoking dispute settlement measures frequently in the early days, and also misused by relying on unilateral measures as well as misused by bringing political disputes to the GATT forum²⁰.

The GATT dispute settlement machinery has become a platform to initiate unnecessary disputes between the countries. Even though there are genuine grievance, countries started getting their steps back to go for dispute settlement body because once a country files a complaint, then country will become target for counters on its other policies.

The major weakness of the dispute settlement mechanism of the GATT was delay in conducting the disputes settlement and deciding the matter came before it. Sometimes even after giving final panel report, countries were not ready to accept it and follow instead use to block the adoption of panel report²¹. There was problem of implementation of decisions in effective manner.

So gradually system became inappropriate, irrelevant and led for the establishment of World Trade Organisation as successor of General Agreement on Tariff and Trade.

Emergence of World Trade Organisation

The goals of GATT were to convert all trade barriers to tariffs and progressively reduce them. It aimed at achieving free trade but GATT has never been uniform in its effect since countries have unwillingly to liberalise certain areas of trade. Functioning of GATT was not that satisfactory, and the US wanted to acquire high status in the world. Later various Rounds of Conferences were held like, Geneva Round, Kennedy round, Tokyo round, and in 1993 Uruguay Round held²². The Geneva round of GATT covered certain tariff concessions in trade. Later Annecy Round of negotiation held in which 34 states were participated. Tariff concessions negotiated in Torquay round of GATT. Geneva round concluded in 1956 with participation of 22 countries. Later Dillon round held which was put forwarded tariff concessions. Kennedy round involving 48 countries increased the scope of GATT agreement. Tokyo round continued GATT's efforts to progressively reduce tariffs. It also discussed on non-tariff issues²³.

Uruguay round of negotiation is GATT's most ambitious round which brought trade in services and agriculture in to negotiation for the first time. The Uruguay round was launched in Punta-del-Este which has been led for the establishment of WTO and amended GATT 1994 and various multilateral and plurilateral agreements²⁴. In 1986, Uruguay round of GATT held wherein differences among participating countries on certain critical areas, led the negotiation unsettled. To remove this deadlock Mr. Arthur Dunkel, Director General of GATT and the official chairman of the TNC (Trade Negotiation Committee), compiled a very detailed document, popularly known as Dunkel Proposals. This proposal culminated into the Final Act on 15th December 1993. India signed this proposal on 15th April 1994. All 124 countries signed and became member of this agreement²⁵.

The Dunkel text being a legal and technical document, covered seven areas for negotiations.

... market access agriculture, textiles and clothing, GATT rules, Trade Related Intellectual Property Rights (TRIPS), trade in Services and economic issues. The Ministerial meeting held on 17th of April at Marrakech and adopted the Ministerial Declaration led by the establishment of WTO on 1st January 1995. The WTO is essentially not concerned with the behaviour of private business as dealt with the actions of Government, establishing disciplines on trade policy instruments such as tariff quotas, subsidies or state trading. The WTO is a regulator that regulates actions of Governments which affect trade and the conditions of competition among imported products in domestic markets.²

Dispute Settlement Mechanism under The World Trade Organisation

The World Trade Organisation succeeded General Agreement on Tariff and Trade from January 1995, with a hope not to repeat the defects and weakness of old GATT system. The success of WTO depends upon the uniformity between member countries and effectiveness of its rules to mould the national laws and systems in consonance with the regime established by WTO.³ The WTO is an international organisation that administers multilateral agreements pertaining to trade in goods, services, and trade related aspects of intellectual property rights. The WTO provides an executive, legislative and enforcement apparatus for a code of conduct regarding international trade policies and practices of the countries of the world.⁴ It has a trust and confidence agenda, which covers trade in goods, services and issues on Intellectual Property Rights.⁵ The World Trade Organisation functions with various organs which also include dispute settlement body. The dispute settlement system was present under GATT but the remaining portion progressively evolved and modified the emerging procedural dispute settlement practices by the dispute settlement body and system are not really new for World Trade Organisation.⁶

The Dispute Settlement Mechanism of WTO works on principles suitable, fast, effective, and mutually acceptable. Without a means of settling disputes, the international system would be less

effective because the rules could not be enforced. So, the dispute settlement mechanism is the central pillar of trading system.

To make trading system more secure and predictable, WTO's procedures of dispute settlement should follow the rule of law. It has set out the procedures and the timetable to be followed in resolving disputes. If a case goes its full course to a first ruling, it should normally take more than one year and if the case is appealed then its 15 months. The agreed limits are flexible and if the case is considered urgent it means, matter on perishable items, and then it is accelerated as much as possible.⁷

The WTO's procedure provides for resolution of disputes between the countries in trade matters. If countries felt that their rights under the WTO agreements are infringed the Governments can bring them to the door of the WTO dispute settlement body.⁸ The system encourages members to settle their differences through consultation with each other. If consultation fails, the complainant may ask the Dispute Settlement Body to establish a dispute settlement panel. The dispute settlement panel hears the case and reports back to the Dispute Settlement Body. If the complaint is upheld, the respondent must either change its practice or negotiate an agreeable resolution. Otherwise the complainant may request that the Dispute Settlement Body authorize suspension of obligations, thereby giving permission for the complainant to retaliate. Procedures are clearly set out with specific timetables at each stage.⁹

Conclusion

Even though the dispute settlement mechanism under World Trade Organisation is systematic than that of Dispute Settlement system under GATT, there are certain issues raised and focused by developing and Less Developed Countries. These countries are not coming forward to file the case in dispute settlement body for many reasons especially because of prevalence of partiality and favouritism for developed countries. If the dispute arises between the developing and developed countries then the priority will be given to parties matter to the developed countries in the context of

Dispute Settlement
(End)

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