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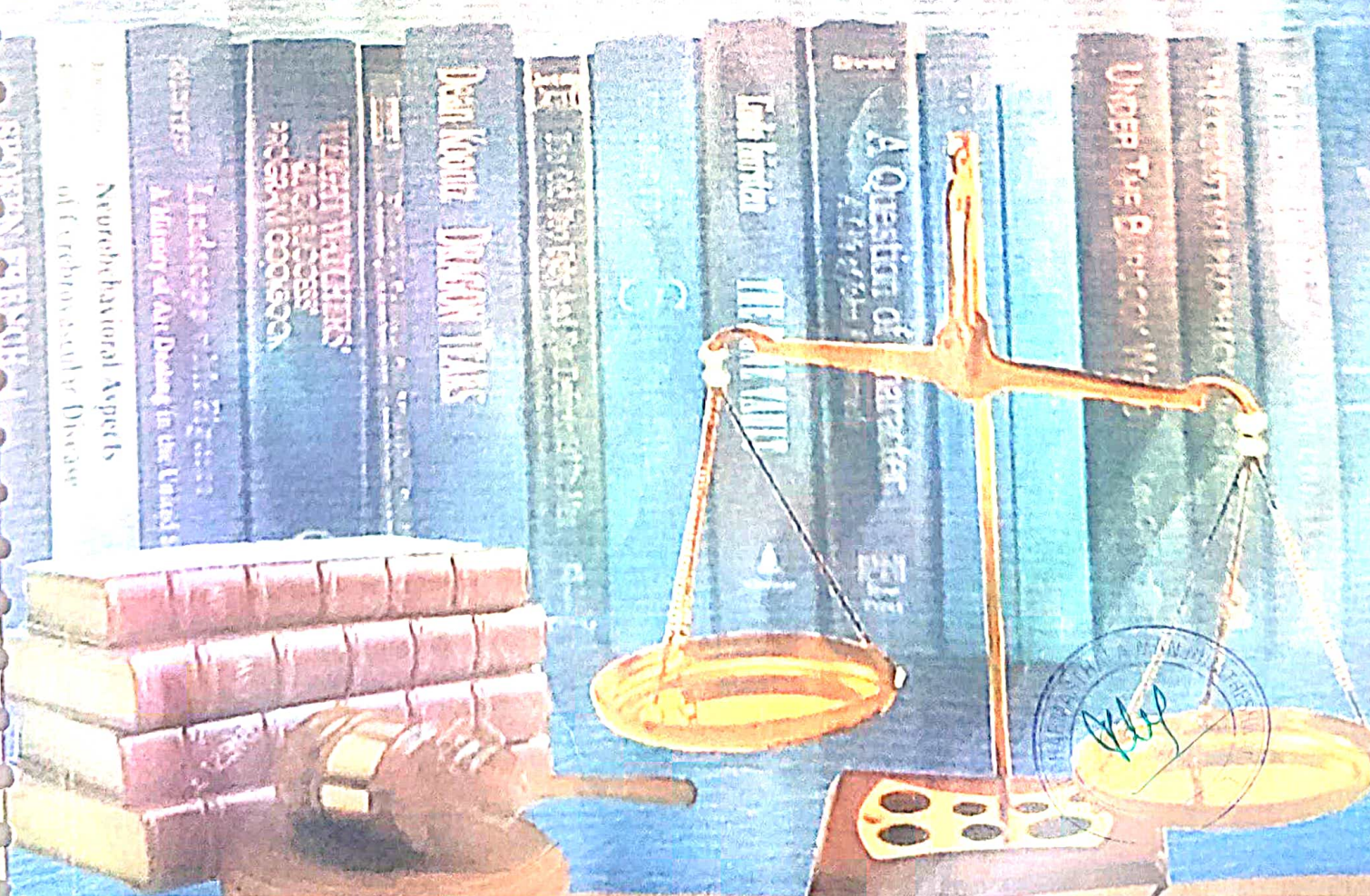
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AN ANALYSIS ON HUMAN RIGHTS IN INTERNATIONAL TRADE AND ITS IMPACT ON DEVELOPING COUNTRIES

Smt. Shubhalakshmi P. *

Abstract

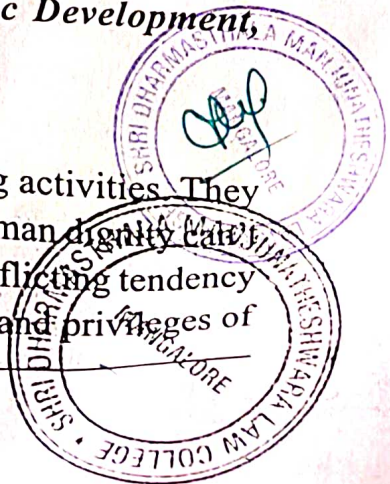
Human Rights and Trade are different dimensions of rights and economic development. The trading activities signifies economic welfare of individuals and human rights throws light on problems relating to individual's dignity and violation of their inherent rights which they acquired by birth. While discussing on this point, these two concepts stands in conflicting mode. When we speak about protection of Intellectual Property on one side, question of protection of human health comes on the other side, agricultural trade on the one hand, right to food on the other. There is need to analyse as to how the trade affects the human rights and how its promotion and protection can be made. Some of the intellectual properties owned by the indigenous communities are claimed by the outside researchers for trade and financial purposes. Even the cotton farmers of West Africa and Banana producers of Caribbean nations apprehend that trade agreements have some negative impact on poverty reduction and development. There are certain apprehensions that basic ideologies of human rights are threatened by international trade policies. That's why, the United Nations Committee on Economic, Social and Cultural Rights adopted a statement in 1998, which called on the World Trade Organisation to consider the impact of trade and investment policies on human rights. Even the UN sub-commission for promotion and protection of human rights adopted a resolution to recognise human right as primary objective of trade, investment and financial policies. So, the cooperation between human right and international trade is the need of the hour.

Key words: - *Human Rights, International Trade, Economic Development, Intellectual Property.*

Introduction

Human resource is indeed required for the development of trading activities. They are interrelated and trade is must for economic development but human dignity can't be undermined at any cost. But trade in slaves is a concept with conflicting tendency where human beings are traded and slaves are deprived of rights and privileges of

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their own. The Universal Declaration of Human Rights contains the values which reinforce the modern international human rights systems like universality, dignity, liberty, justice, equality, accountability, participation, empowerment and solidarity amongst people. Human rights are those rights which are acquired by every human being by birth. This right is not granted by any authority but imbedded as the reason he born as human being. Trade is required for the economic development of every nation and but at the same time dignity of individuals and their integrity must be upheld. It is to be noted that no country can strive for trade excellence at the cost of values of human rights.

Relationship between Human Rights and International Trade

The relationship between Human rights and international trade looks like contemporary issues but they were in existence during the olden days too. The philosophical issues essentially bring the concepts together but the normative relationship concerned about giving solutions to the conflicting interests under international law.¹ The interrelationship between the human rights and international trade is a matter of conceptual problem which involves not only civil and political rights but also social and economic rights. In the zeal of economic development, sometimes human rights are ignored and pushed aside. Trade regulation and human rights protection formed the essential parts of the Atlantic Charter 1942.²

After the Second World War, financial reconstruction was the necessity in the whole world. That's why, in 1944, as a result of Bretton Woods Conference two important financial institutions were created. They are International Monetary Fund and International Bank for Reconstruction and Development for the purpose of international economic cooperation, exchange and payments.³ There was also a proposal for the formation of a body to regulate and manage international trade. Even though efforts were made to establish International Trade Organisation, it did not become successful and ultimately General Agreement on Tariff and Trade came in to force in 1948 after Havana Conference. As, administration of the GATT and its dispute settlement mechanism was not that strong, it lost its existence in international scenario. As a result of various GATT Rounds, Marrakesh Agreement was signed in Morocco in the year 1994, and as realization of efforts of Arthur Dunkel, The World Trade Organisation came in to force on 1st January 1995.⁴

The International Human Rights law has been developed with the adoption of Universal Declaration of Human Rights in the year 1948. Traditionally, trade

- ¹ Sarah Joseph, *Relationship between the WTO and International Human Rights Law*, Orford University Press, available at <https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199565894.001.0001/acprof-9780199565894-chapter-3> >last visited, 3rd September 2019.
- ² Thomas Cottier, Joost Pauwelyn & Elisabeth Burgi, *Human Rights and International Trade Law*, 1sted., (Oxford: Oxford University Press, 2006) p, 3.
- ³ Autar Krishen Koul, *The General Agreement on Tariffs and Trade (GATT)/World Trade Organisation (WTO), Law, Economics and Politics* 1sted., (New Delhi: Satyam Books, 2005) p. 4.
- ⁴ K.R. Gupta, *World Trade Organisation*, (New Delhi: Atlantic Publishers & Distributors, 2000), p. 1.

agreements did not include provisions on protection of environment, labour welfare measures, ban on corrupt practices etc. At the same time, if human rights are violated, there are no strong bodies to tackle the dispute and to handle the issues as it is present in trade disputes.⁵ If the trade laws are violated, then payment of compensation can be done or through any other measures problem can be sorted out. But if the human rights are violated, then it cannot be compensated in the form of money or can't be paid off in any other form.

Pascal Lamy, the former Director-General of the WTO, proclaimed that trade rules, including WTO rules, are based on the same values as human rights. It includes individual freedom and responsibility, non-discrimination, rule of law, and welfare through peaceful cooperation among individuals.⁶

Bridging the gap between human right aspects and international trade would be a contribution to the approach of sustainable development in healthy economic and social development. If disputes brought before the dispute settlement panel is relating to human rights, then proper grievance redressal system is not followed. That's why, countries may not come forward to file such disputes and cases before the panel and issues relating to human rights remains untouched by the trade dispute settlement body. The main reason for this is that, there is not mechanism in WTO to address the human rights issue associated with trade.

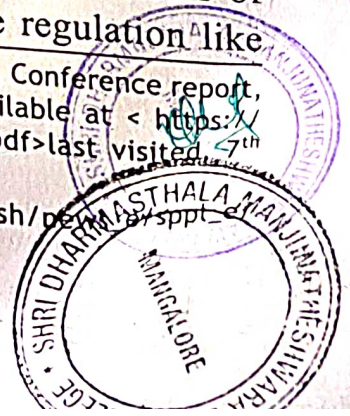
The concept of human rights is expressed in customary international law and Jus Cogens or under the WTO agreement itself. It is presumed that, whenever trade rules are formulated, they should not contradict with other international legal obligations. If it is the case, then human right obligations are also not to be violated by any trade rules. It is said that, the norms of both human rights and international trade have same value and the relevant dispute settlement bodies are likely to prioritize their own system, so the WTO bodies will apply WTO law while human rights bodies will apply human rights law. But in such situation, there is a danger of developing a de facto hierarchy and the trade rules prevailing over human rights rules. It is because, the WTO has a stronger enforcement system compared to the global human rights system.⁷

Human rights reflect and express standards of human welfare aspired by states and the international community. Human rights are important for the functioning of the multi-lateral trading system. International trading system and its process of progressive liberalisation basically supports welfare goals expressed in terms of human rights. There are certain fundamental principles of trade regulation like

⁵ Kim Jensen, Bridging International Human Rights, Trade and Investment Law, Conference report, (Canada: Centre for international Governance Innovation, 2017).p 2 available at < https://www.cigionline.org/sites/default/files/documents/2017_Ottawa%20ON.pdf> last visited 7th September 2019.

⁶ D G Pascal Lamy-Speeches, available at < https://www.wto.org/english/press/sppl146_e.htm> last visited 15th September 2019.

⁷ Supra note 1



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transparency, non-discrimination, protection of property rights, trade liberalisation, which are important and are foundation of international system.⁸

When properly interpreted and applied, the trade regime recognizes that human rights are fundamental and prior to free trade itself.

Human Rights and Preferential Trade Agreements

On the basis of the inherent human dignity of all persons, human rights are recognized for all and it has given with prominence. Trade-related rights are granted to individuals for instrumental reasons. Status of individuals as mere objects rather than as holders of rights. They are empowered as economic agents for particular purposes. While following Preferential Trade Agreements, the developed countries like the US, the EU and so on began to use a non-binding human rights concept and Canada, Mexico, and the US are the first countries to include human rights provisions in their trading activities.⁹

Better than any other trade agreements, in Preferential Trade Agreements the clauses for human rights protection are added. The two agreements were signed by addressing environmental issues and enforcement of labour laws, by the partners of the North American Free Trade Agreement. The Republic of Colombia and Canada were signed an agreement concerning the submission of annual reports on human rights and free trade. It is also required for the state parties to produce the annual reports about the effects of human rights and free trade measures taken under the Canada-Colombia Free Trade Agreement.¹⁰

The European Union used to import bananas from African Caribbean Pacific (ACP) with concessional rate of tariff. The EU banana regime operated on the basis of an annual ACP banana quota for duty-free export to the EU, and an annual quota for bananas from Latin America subject to a tariff. So, it led for the dispute and it came up before the dispute settlement body of the WTO. It is ruled that the EU banana import regime discriminated against Latin American exporters and they have to change the tariff and apply the same tariff rate for all the members nations of the WTO. But the EU, requested for a WTO waiver authorizing tariff preferences for ACP countries.¹¹ There is an important development in EU policies was the January 2008 implementation of the Economic Partnership Agreement between the EU and Caribbean, whereby all agricultural exports from Caribbean ACP countries (including bananas) are allowed duty-free and quota-free access to the EU.¹²

⁸ Supra note 2, at p,22.

⁹ Susan Ariel Aaronson and Jean Pierre, *The Wedding of Trade and Human Rights: Marriage of Convenience or Permanent Match?* available at < https://www.wto.org/english/res_e/publications_e/wtr11_forum_e/wtr11_15feb11_e.htm > last visited, 5th September 2019.

¹⁰ Supra note 5

¹¹ Montfort Mlachila, Paul Cashin, and Cleary Haines, *Caribbean Bananas: The Macroeconomic Impact of Trade Preference Erosion*, IMF working paper, Middle East and Central Asian Dept, available at < <https://www.imf.org/external/pubs/ft/wp/2010/wp1059.pdf> > last visited; 11th September 2019.

¹² Ibid, (Montfort Mlachila, Paul Cashin, and Cleary Haines)

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Human Rights in International Trade Dispute Settlement & Developing Countries

The rules of World Trade Organization and its accompanying agreements evolved into a detailed legal code and they are interpreted as well as defined through a dispute settlement process. International trade and human rights regime need not be in conflict, if the trade regime is interpreted and applied in a manner consistent with the human rights obligations of states. But the rules of the WTO dispute settlement body has not been transparent and it has not viewed the system of dispute resolution in the point of view of human rights impacts. But it can be observed that the provisions of the WTO Agreements on domestic food safety, intellectual property and other technical obligations are directly affects the government's ability to fulfill the human rights obligations of their countrymen.¹³ There are certain essential drugs which are required for controlling some epidemics are not made available as a result of trade regulations. The patent protection for pharmaceutical products rendered mandatory for the WTO members under the agreement on Trade Related Aspects of Intellectual Property Rights (TRIP's) to limit or to ban on cheaper drugs and their importation. So, somewhere the TRIP's and WTO rules stands hostile to the very concept of human rights.¹⁴

The Government of Argentina has developed its intellectual property (IP) laws by facilitating the people to have access to cheaper, generic medicines than the patented versions of the same medicines. But, in June 2002, the US made an allegation about it and made certain demands in this regard. It brought a complaint before the dispute settlement mechanism on the Intellectual Property law formulated by Argentina. So, in response to this Argentina revised its IP legislation in such a way as to curtail national production of generic medicines. So, this situation made Argentina to suffer at a moment when there was severe economic crisis in the late 2001 and people were in need of low-cost medicines to come out from sufferings.¹⁵

The US challenged Brazil's Intellectual Property (IP) legislation before the dispute settlement body of the World Trade Organisation. But the Brazilian laws at stake were designed to facilitate access to generic medicines and it has resulted in sustainable price reductions for essential medicines.¹⁶ The Brazilian Generics Law is celebrating its 20th year of its enforcement which has altered the scene of the Brazilian pharmaceutical industry. It has regulated the entry of generics into the market and so as to reduce the health treatment costs & increasing the nation's access to medicines.¹⁷

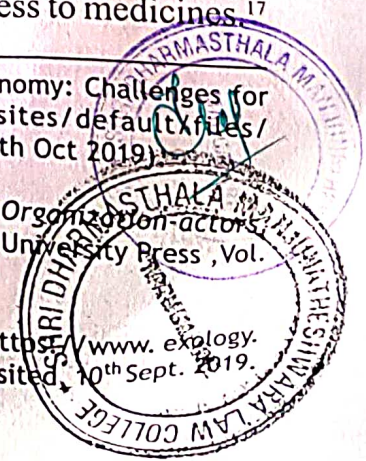
¹³ Robert Howse and Makau Mutua, *Protecting Human Rights in a Global Economy: Challenges for the World Trade Organization*, available at https://www.iatp.org/sites/default/files/Protecting_Human_Rights_in_a_Global_Economy_Ch.htm (last visited on 10th Oct 2019).

¹⁴ Supra note 2, at p 16.

¹⁵ Caroline Dommen, 'Raising human rights concerns in the World Trade Organization processes and possible strategies', *Human Rights Quarterly*, Johns Hopkins University Press, Vol. 24, number 1, p.13.

¹⁶ Ibid

¹⁷ Lexology, 20 years of the Brazilian Generics Law, available at < <https://www.lexology.com/library/detail.aspx?g=0ade7ceb-5a42-4752-b76d-85cf406fb80e> > last visited 10th Sept. 2019.



The provisions of Pharmaceutical Research and Manufacturers of America (PhRMA) are reflected in almost all the recently-adopted US bilateral trade agreements, which are contrary to the right to health principle of facilitating access to medicines. It has kept affordable medicines out of reach of many who are financially poor.¹⁸

According to Paul Hunt, UN Special Rapporteur on the Right to Health, human rights can play a positive role in defining national trade policies that are equitable, attentive to the particular needs of the most vulnerable and respectful of human rights. He has stated that, a country should be able to enjoy essential medicines and life-saving drugs with help of trade policies. And, developing country should use available TRIP's flexibilities to ensure availability of low-cost versions of the drug & it must be accessible to all within the country, especially those living in poverty.¹⁹

But access to essential drugs was settled by means of waiver for exportation under compulsory licensing still it is not practically achieved. But concerns relating to the right to human health can be taken in to account by waiving the obligation to limit the compulsory licensing to predominantly domestic supply under TRIP's.²⁰

The strict protection of genetically modified seeds and the act of biopiracy, harmed and hindered the right to access to affordable food in most of the developing and least developed countries. So, the conflict between international trade and right to food arises. Most of the farmers cannot afford seeds which are genetically modified and patented by other rich nations. For example, the Basmati rice which were grown traditionally in India from time immemorial is patented by Texas based RiceTec.²¹

The expert on trade and the environment advise human rights advocates to ensure that any recognition of human rights and related values in the WTO insulates those values from the trade regime, in order to avoid giving the WTO too much competence on human rights-related issues.

The EU has entered in to an agreement of free trade with certain developing countries like Malaysia, Singapore and India. The time when FTA entered with South Korea, human rights provisions were incorporated but such provisions proved to be hurdles for an agreement with India. India and the EU had long standing trade relation as EU being a biggest trade partner of India. India entered in to FTA with South Asian neighbours and other developing countries which are suffering from same set of economic and social problems. But when the initiative for FTA took place between the EU and India human right issues were not raised. Even India was not interested

¹⁸ Caroline Dommen, *Trade and Human Rights, Towards Coherence*, International Journal of Human Rights, Issue 3, 2015, available at < <https://sur.conectas.org/en/trade-human-rights-towards-coherence/> > last visited 16th September 2019.

¹⁹ Ibid.

²⁰ Supra note 2, at p.16.

²¹ Zachary A. Hale, *Patently Unfair: The Tensions Between Human Rights and Intellectual Property Protection*, The Arkansas journal of social change and public service, (William H. Boven, UA Little Rock, 2018) available at < <https://ualr.edu/socialchange/2018/04/04/patently-unfair/> > last visited 16th September 2019.



to raise the same in trade agreement as they may highlight labour issues and other ethnic issues prevailing in India. In the opinion of the Government of India human right issues must be discussed separately in an appropriate International Forum and not to mix it with trade agreements. But later the EU added human rights clause in its trade agreement with India ²²

Implication of Trade Activities on Human Rights

If there are specific conflicts and tensions between trade law and human rights law, they cannot be understood without studying the relationship between the WTO and other international legal regimes. The GATT Article XX provides that nothing in the GATT shall be construed to prevent the adoption or enforcement of measures necessary to protect public morals by the contracting parties which are necessary to protect human, animal or plant life or health and also relating to the products of prison labour.²³ But the International organisations will be held responsible for violation of human rights if they violate it in the implementation of trade rules. Sometimes developed States may be accountable for certain trade affecting policies such as subsidisation that may have negative impacts on trade development in developing countries. Mr. Alfred de Zayas, the first Independent Expert on the promotion of a democratic and equitable international order- Human Rights Council, stated that the WTO dispute settlement mechanism often fail to consider the human rights impacts in their awards and decisions because of business-bias.²⁴ The activities of the WTO have serious human rights implications but the organisation as such does not properly address the human rights aspects of these activities. Being an international legal personality, the WTO directly cannot violate the concept of human rights, but indirectly there are implications of trading activities regulated by the WTO on human rights and they will come as obstacles in the enjoyment and protection of human rights.²⁵ Article 33 of TRIPS requires Member States of the WTO to provide protection for patent rights for 20 years. Developing States were given a period of time to comply, but these timelines have now run out for all but Least Developed Countries.²⁶

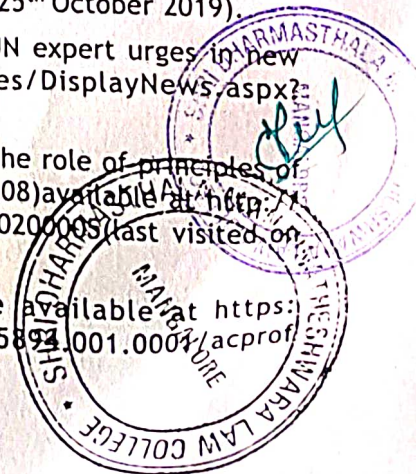
²² Nivedita Sen & Balu G. Nair, Human Rights Provisions In The Forthcoming India-Eu Free Trade Agreement, *NUJS Law Review*, at p 434, available at <http://nujlawreview.org/wp-content/uploads/2016/12/nivedita-sen-and-balu-g-nair.pdf> (last visited on 20th October 2019).

²³ General Agreement on Tariffs and Trade 1994 (GATT 1994), available at <https://www.jus.uio.no/english/services/library/treaties/09/9-01/gatt-1994.xml> (last visited on 25th October 2019).

²⁴ Mainstream human rights into trade agreements and WTO practice - UN expert urges in new report available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20473&LangID=E> (last visited on 12th October 2019).

²⁵ J Denkers; N Jägers, "The world trade organisation and human rights: the role of principles of good governance", *Potchefstroom*, vol.11 n.2 (scielo, South Africa, 2008) available at www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1727-37812008000200005 (last visited on 18th October 2019).

²⁶ Sarah Joseph, Blame it on the WTO?: A Human Rights Critique available at <https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199565894/001.0001/acprof-9780199565894-chapter-8> (last visited on 17th October 2019).



Conclusion

Whenever trade and economic policies are framed, they should be subject to Human Rights Impact Assessment both nationally and internationally. For example, at the time of making some change in the field of Intellectual Property human rights suggest that, the changes should not become hurdles or challenge next to impossible for the common man. When the changes are brought in Patent Laws which may have impact on agriculture, certain issues must be discussed in the light of human rights and it should not discourage those section of people whose life dependent on agriculture. Import regulations and domestic support which can be given to the field of agriculture must be analysed in a proper manner. It is required for the human rights Advocates to look beyond the WTO itself and also required to broaden their focus to include national trade policy making processes and regional and bilateral trade negotiations.

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