Chapter – IV

THE ECONOMIC IMPERATIVES

As discussed in the previous chapters, if Kashmir, human rights and nuclear issues created fissures in Indo-US relations during the Clinton era, economic imperatives of globalisation and liberalisation brought both democracies closer. Before discussing these imperatives, however, it is useful to briefly discuss the scholarly debate concerning economic co-operation between two countries.

The Realist vs Liberal Debate

The leading classical Realist, Hans J. Morgenthau, in his, *Politics among Nations*, does not rule out economic co-operation among nation-states. He believes that since pursuit of power is the prime motive of states and economic strength is an important attribute of power, states may co-operate with other states to enhance their power. However, various schools of Realism discuss the issue of co-operation differently.¹ For structural realism, the relevance of economic co-operation lies only in the context of survival, growth, development and prosperity in the era of globalisation. A weaker power goes for alliance to counterbalance a bigger power. Realists do not visualise the scope for co-operation beyond

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security; for they are almost silent on the issue of economic co-operation in the anarchic situation.

However, it is the Liberals, particularly the Neo-Liberals and the Institutionalists, who took the subject matter of economic co-operation to explain the international system.\footnote{Robert Jervis, “Realism, Neo Liberalism and Co-operation”, \textit{International Security} (Cambridge Massachusetts), vol.24, no.1, Summer 1999, pp.42-43.} Whereas, the basic argument of the Liberals is that the nation-states cooperate to maximise gains. According to this school, “The argument is no longer over the slice of the pie to go to each; it is increasingly over the means for increasing the overall size of the pastry”. The States strive for mutual co-operation for common and complementary interest. It is beneficial in comparison to mutual non-co-operation, since it helps the State in attaining greater utility. Many advanced democracies are under pressure to achieve economic growth and social security for providing comfort and welfare to the citizens, so, they are supposed to be more willing to co-operate among themselves.\footnote{One of the most robust, ruthless, scientific and radical rebuttal of Realism (and Neo-Realism) comes from Jayantanua Bandyopadhyaya. See, his, \textit{World Government: For International Democracy and Justice} (Kolkata: Manuscript India, 2002); \textit{A General Theory of International Relations} (Kolkatta: Allied Publishers, 1993); and with Amitava Mukherjee, \textit{International Relations Theory: From Anarchy to World Government} (Kolkatta: Manuscript India, 2001).} Further, they have learned from their own experience that it is only through the combination of both idealist posture and realist approach that they can advance their prosperity.
The Post-Cold War Dynamics

The end of the Cold War shifted the focus of debate in the United States. For, during the Cold War the main debate was between the Idealist, who argued that America’s relations with foreign countries should depend on the latter’s human rights record, and the Realists, who argued that America cannot afford to isolate dictatorship in such places as Pakistan, Philippines or Iran because they needed the support of those countries against the former Soviet Union. After the Cold War, the Idealists still continued to advocate human rights, but increasingly they began to find themselves debating not with hawkish generals but with General Electric, General Motors and other American multinational corporations who argued that the US cannot afford to ignore the growing economies like China, Vietnam and India.⁴

Moreover, by the time President Clinton assumed charge of the White House, American economy was no longer self-sufficient, it had become deeply dependent on export-led growth. The US, therefore, supported the Indian Government’s economic reforms and efforts to cut Government red-tape, encourage foreign investment, reduce the number of imported goods that required licenses and in general stimulate the economy.

It was against this background that India assumed new significance for the United States. Although poor, India's expanding middle class offered a prospective market for the US exporters. At a time when the US was groping to give its foreign policy a new shape, India too began adjusting itself to new environment. When Bill Clinton won the 1992 Presidential elections, a mini economic revolution had already begun in India under P.V.Narasimha Rao's Government. Rao chose an experienced economist Manmohan Singh, to head the finance ministry, who initiated a policy of economic reforms aimed at making the Indian economy a part of the international economic activity. This change attracted the imagination of American commerce, treasury and energy departments as well as American corporations and business houses. Welcoming its new economic policy, US Commerce Secretary, Ronald Brown, said, "India is certainly going to be very important for the economic future of the planet.... It seems to me, in the past, it has been ignored.... We want additional attention to be paid to India".

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Some of the US firms and business groups showed interest in investing in India not only because of availability of vast market, but also due to the fact that skilled labour and services are more cheaply available in India than in developed countries. Besides, India has a stable political atmosphere and well defined and established legal system, which attracted the Americans to invest more in India.⁷

In the post-liberalization phase, therefore, the nature, magnitude and scope of Indo-US economic relations underwent a sea change especially after 24, July 1991 when India’s New Economic Policy was announced. Accordingly, as discussed in the next section, the US emerged as India’s largest trade partner and foreign collaborator. This chapter therefore attempts to examine Indo-US engagements and estrangements during Clinton administration with reference to investments, trade and issues related to Intellectual Property Rights (IPR), General Agreement on Tariff and Trade (GATT) and World Trade Organisation (WTO).

Investment

To begin with, India initiated several schemes to attract foreign investment in general and the US investment in particular. A scheme for attracting portfolio from Foreign Institution Investors (FIIs), for instance, became operational since September 1992. This scheme attracted FIIs and institutions such as pension funds, mutual funds, investment trust, assess managing company. Nominee company institutional portfolio managers were allowed to invest in all the securities traded on the primary and secondary market.

In addition, efforts were also made to generate more investments from Non-Residents (NRIs) of Indians. The Government of India in its budget 1999-2000, offered a number of incentives to attract NRI investment. These incentives included: (a) the facility of automatic approval for investment upto 100%; (b) specified items for compulsory licensing; (c) items reserved for public sector under the industrial policy; and (d) items reserved for small scale sectors. The Reserve Bank of India (RBI) simplified the route for 100% NRI investment⁸.

The Ministry of Finance worked out guidelines and operational details for this purpose in consultation with both the Ministry of Industry and RBI. The Stock Exchange Bureau of India (SEBI) worked out

⁸www.tourindia.com, “Investment in India”.
modalities for the extension of screen based automated trading in securities overseas through opening up of trading terminals abroad to facilitate direct participation of NRIs in the capital market. Similarly, procedures were simplified for NRIs investment in mutual funds also. These initiatives taken during the period 1992-93 paved the way for portfolio investments from FIIs especially from the United States.⁹

Partly as a result of these efforts, the US emerged as the single largest foreign investor in India—over 40 percent of total FDI approval since 1991 were accounted by the US corporations. The amount of US foreign investment in India during the first year of Clinton administration exceeded the cumulative US investment in India from 1947 to mid 1991. India’s then Minister of External Affairs, Pranab Mukherjee, therefore, observed: “The enlargement of our economic ties is dramatically illustrated by the fact that in 1993 alone US firms invested more in India than in the previous 45 years of our relationship”.¹⁰

Though in relative terms, the US investment in India was still small, yet once Indo-US economic interactions began to flourish, 30 top US corporations investing in India set up an India Interest Group in

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⁹Ibid.

Washington. This group began to play a positive role in improving Indo-American relations in the years to come.\textsuperscript{11}

Not surprisingly the US emerged as the largest FDI suppliers to India during the entire post economic reform period, accounting for slightly more than 35\% on an average. The US accounted for about 20\% of all Foreign Direct Investment (FDI) approved (excluding Euro issues and NRI investments) from 1991 – July 2001. The FDI inflows from the US constituted about 16\% of the total actual inflow into the economy. The overall US FDI inflow approval ratio was 19\%. But between 1988 and 1990, the ratio improved to an average of 39 percent.\textsuperscript{12} The Figure 1, illustrates the rise and fall of FDI investment in India from the US.

\textsuperscript{11} Mahapatra, n.5, p.25.

FDI from USA: Approval (in US $ million)

Figure 1: Rise and Fall of FDI investment in India

Secretariat of Industrial Approval (SIA)
Ministry of Industry (News Letter),
January – July 2001
During January 1993 and June 1994 investors from abroad funneled $4 billion into India, about 40% of which coming from the American companies. Though the United States adopted a cautious approach in the beginning, the US direct investment in India reached the $650 million mark in the early 1990s. This was in response to the Government of India’s approval of Indo-American joint ventures in the manufacturing sector and software industry.

In January 1995, the US Secretary of Commerce, Ronald H. Brown led a Presidential Business Development Mission to India. Presidents and Chief Executives Officers of US companies along with other US Government officials accompanied him. During his week-long visit, Mr. Brown inaugurated a new US-India Commercial Alliance (USICA) and took part in the announcement of more than 25 transactions between Indian and American companies worth over $7 billion. These included major growth sectors like telecommunications, power generation, transportation and infrastructure, finance, information systems and food processing.

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It implied that the hitherto protected sectors of power and telecommunications were now made open to foreign investment. As a result, the US decided to invest $100 million in cellular telephone projects to be operated by Motorola and the Hutch Network. The involvement of Enron in Maharastra’s Dabhol power project, later a bone of contention, roped in a commitment of $920 million on that country’s part. Indian and American firms signed another Memorandum of Understanding (MoU) for setting up power plants and a fly ash project in Punjab. Both the countries also signed an agreement for financial services. Indian public sector companies like the Indian Oil Corporation signed agreements with the US Exim Bank to facilitate easy supply of American goods.\textsuperscript{16}

Unfortunately, the newly elected BJP-Shiv Sena coalition Government in Maharastra used unproven charges of bribery to cancel the biggest ever foreign investment in India, a 2450 MW power plant to be built and run by Enron. At the end of the year, however, there were signs that the Maharastra Government, sensitive to the State’s severe

\textsuperscript{16}Ibid, p.289.
power shortage, was close to an agreement with Enron to revive the massive project.  

In addition to Enron, American direct investment, in consumer goods invited domestic resistance in India due to cultural and economic reasons. Environmentalists, for example, forced DuPont to relocate a project from Goa to TamilNadu. In the southern city of Bangalore, a local party threatened to demolish the outlets of Kentucky Fried Chicken (KFC) claiming that it foists unhealthy eating habits on Indians. On January 30, 1996 about 150 volunteers of the Karnataka State Farmers Association, who gained entry in the guise of customers, ransacked the KFC outlet in Bangalore. The KFC outlets had got a raw deal earlier from the Delhi administration in 1995, when they had ordered closing of the outlets in the city on health grounds.

The Swadeshi Jagran Manch, a group with loose links to the BJP, was set up to lobby for restriction of foreign investment. The nationalist programme of “swadeshi” found support among the political left as well, demonstrating a relatively rare alignment of forces on the left and right.  

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19 Anderson, n.17, p.173.
Whatever be the reasons behind such agitation’s or administrative steps in different parts of the country, the fact remained that there was hardly any panic-stricken foreign investment backtracking following the Enron and KFC misadventures. In fact, despite these temporary set backs, the economic relations between the two countries were not severely hampered.

During the New Delhi visit of the US Secretary of State, Madeline Albright, in November 1997, both the countries signed an agreement on promoting investment in India. It was hanging in fire for years because of India’s resistance to conform to the patent regime.²⁰

However, there was a decline in FDI inflows from the US in 1998 (US $ 349 million as against US $ 719 million in 1997), which could be attributed not only to the impact of the Post-Pokharan-II economic sanctions on the general investment climate in India, but also to the South East Asian turmoil and the slowdown in the Indian economy. But there was an upward trend in 1999, with FDI inflows in the first four months of the year (as indicated in figure 1) itself amounting to US $186 million.²¹


Thus, a survey commissioned by the US administration discovered the book value of total investment by 1998 was around $4 billion, while it was $1.6 billion in 1996. The nature and areas of investments also witnessed some changes. During President Clinton’s visits to India, 11 business agreements were signed, four were for information technology sectors; three for environment; three for power and one for promoting tourism industries. During his visit to the US in September 2000, Prime Minister, Vajpayee, in his address to the US-India Business Summit, recognized, “The United States is today India’s largest trading partner. The US companies are also the largest investors in India... we would like to deepen this relationship”.

American companies that have already invested in India’s large consumer market include Coco-cola, Kellog, AT&T, Enron, Citibank, American Express, IBM, Ford, Xerox, Motorola, McDonald’s, KFC, Times and Morgan Stanley. In addition, the US has allowed it companies to hold shares in joint ventures, which was set at 51% which is in

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addition to selling their branded products in India. India’s expanding economic horizons thus increasingly offered several attractive investment outlets for the American investments - both portfolios as well as direct investment during the Clinton Presidency.

Trade

Investment apart, the Clinton administration also witnessed an impressive growth in two way trade between the two countries, as India’s economic reforms generated a trade momentum between India and the US, which was largely due to sweeping changes in its national economic policies to attract domestic and foreign investments in many sectors of the country. The changes had its own effect on trade relations with United States. The US emerged as India’s largest trading partner, accounting for 20% of exports and 12% of imports during 1990’s. Table-I given below illustrates the growth in bilateral trade rate during 1990’s.

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Table I: India-US Bilateral Trade (1992-1999)
(in US $millions)

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<tbody>
<tr>
<td>India’s Exports</td>
<td>3,781</td>
<td>4,551</td>
<td>5,302</td>
<td>5,736</td>
<td>6,169</td>
<td>7,321</td>
<td>8,225</td>
<td>9,083</td>
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<tr>
<td>India’s Imports</td>
<td>1,914</td>
<td>2,761</td>
<td>2,296</td>
<td>3,296</td>
<td>3,318</td>
<td>3,616</td>
<td>3,545</td>
<td>3,707</td>
</tr>
<tr>
<td>Turnover</td>
<td>5,695</td>
<td>7,312</td>
<td>7,598</td>
<td>9,032</td>
<td>9,487</td>
<td>10,937</td>
<td>11,770</td>
<td>12,790</td>
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<tr>
<td>Balance</td>
<td>1,866</td>
<td>1,790</td>
<td>3,005</td>
<td>2,440</td>
<td>2,851</td>
<td>3,705</td>
<td>4,680</td>
<td>5,376</td>
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</table>


The above table shows that India’s exports to the US grow since 1992 at an average of 13.7% in dollar terms. The imports from the USA on the other hand fluctuated. The rate of growth declined by 0.6% in 1996, increased by 8.9% in 1997, declined in 1.96% in 1998 and grew by 4.6% in 1999. Thus trade between the two countries in 1999 totalled US $12.79 billion reflecting an increase of nearly 100% since 1992.

The major items exported from India included gems and jewellery, textiles and clothing, readymade garments, agriculture and agro-based products, pulses, a wide variety of engineering goods, leather and chemicals, carpets and rugs. However, among these exports, there was an increase in the export of diamonds and jewellery, carpets, floor

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coverings, pneumatic tyres, ferro-alloys, parts and accessories of motor vehicles, ornaments and foot wear and leather goods.\textsuperscript{26} It is very pertinent to point out that since the initiation of India’s economic liberalization policy, the composition of India’s exports to the US witnessed a change. Thus, the major exports of India to the USA were both traditional and non-traditional items, which accounted for nearly 5.17\% of India’s total exports in 1992-1993. There were many other major factors, which contributed to the modest growth in India’s exports to the United States, which was subject to bilateral quotas fixed as per the bilateral agreements. The protectionist nature and sentiments in the US led to a series of anti-dumping and countervailing duty investigation affecting the exports of steel and chemicals to the United States. Apart from this, one of the major export areas in the 1990’s was the software exports.

As regards imports, India’s imports from the US during the Clinton administration were confined to high technological category in addition to fertilizers, machinery, pulp, waste paper and vegetable oil\textsuperscript{27}.

\textsuperscript{26}Ibid.

\textsuperscript{27}Iqbal, n.5, pp.65-69.
**Balance of Trade**

A glance at India’s exports to and imports from the US during the period under review shows that there was a negative balance of trade from the US point of view and more positive balance of trade from the Indian side. However, during the year 1993-94 the rate of growth in India’s imports from the US improved and this led to a higher volume of trade between the two countries. It was also very clear that bilateral trade between India and the US gained momentum after July 24, 1991. Similar trend and situation continued with regard to US exports to India and US balance of trade with India, which was positive from the Indian point of view.

Still, India and the US could not realize the full potential of their trade. Keeping this in mind, the then Commerce and Industry Minister of India, Murasoli Maran announced the EXIM policy for the year on March 31st 2000, which removed certain hurdles in both export and import policies between 1997 and 2000. (See Annexure-III) The policy included new initiatives for export promotion, rationalisation of tariff structure and significant changes in India’s regime of quantitative restrictions.
Intellectual Property Rights (IPR)

Intellectual property relates to the creation of the human mind, which shares many of the characteristics that are associated with movable and immovable property. It is an asset that can be sold, purchased, licensed or gifted. Again, like any other form of property, it cannot be used lawfully by anyone without authorisation from its owner.

IPR is generally divided into two parts; ‘copy rights’ and ‘industrial property’. While copy rights refer to artistic creations like books, poetry, music, paintings, motion pictures etc; industrial property includes mainly patents, trade marks, industrial designs and geographical indication.

The issue of intellectual property rights has assumed significance in the era of globalisation and liberalisation. The protection of copy rights and industrial property, namely, patents and trade marks has, therefore, become crucial. It is, thus, imperative to know about the initiative taken by the Government of India to strengthen and modernise such rights both at national and international levels. Since the protection of intellectual property rights at the national level is not enough, it has to be extended or enlarged internationally by negotiated agreements among nation States. These agreements are popularly known as Trade Related Intellectual Property Rights (TRIPS).
The Government of India has been taking initiatives from time to time to upgrade and modernize intellectual property rights in India through legislation and necessary administrative and enforcement actions. Such decisions become crucial for a developing country like India in view of globalization of trade and investment flows and liberalization. As mentioned earlier, the process of economic reforms was initiated in the country in 1991 through delicensing, simplified procedures and lifting controls. Such decisions were vital as they tend to invite and facilitate foreign investment. In an attempt to modernize the administrative framework relating to patents and trademarks, India took up two projects for implementation:

**One**, modernization of Patent Information System (PIS), which facilitates necessary technological informations essential for industrialization and scientific and technological progress. This project was started with the help of the United Nations Development Programme (UNDP) and is being executed by the World Intellectual Property Organisation (WIPO). This project intended to provide a combination of storage media like CD Roms, magnetic disc for efficient storage of patented documents all over the world with the help of computer hardware and software.
Two, modernization of the Administration of Trade Mark Registry, which registers domestic trade marks that helps inform consumers about goods and services available in the market. This project is also being executed by WIPO through assistance provided by the UNDP, commissioned in 1996.28

The US first named India in 1989 as one of the eight countries on a “priority watch list” of most egregious violators” of American IPR. As part of its two track (bilateral-cum-multilateral) strategy, it pressurised India earlier that year to accept the inclusion of TRIPS in the Uruguay Round. Following its placement on the watch list, India back-pedaled somewhat, arguing at the GATT negotiations in Geneva that it had “serious reservations about the relevance and utility of these negotiations as long as the bilateral coercion and threat continue”.29 However, having allowed TRIPS to be placed on the GATT agenda, it was now committed to negotiating for its interests within the expanded framework. Meanwhile, bilateral American pressure continued and after a respite, India was named as an offender on IPR by the United States Trade Representative (USTR) in 1991. Although no action was taken then, in 1992 Washington suspended duty-free privileges under GATT’s


generalised system of preferences for Indian pharmaceuticals and other chemicals to the value of $60 million.

Again during the Clinton administration in 1993, India was identified once again under Special 301 provisions of the US Congress 1988 Omnibus Trade and Competitiveness Unilateral Act. It allowed Washington to impose unilateral sanctions to punish the violators. India remained on the Act’s priority watch-list, but no action was taken because India was falling in line at the GATT negotiations. In mid-June 1994, India became a signatory to the GATT accord of April 1994, which incorporated agreement on TRIPS. In addition, the April 30th deadline for naming India as an IPR violator was extended to June 30th to facilitate Prime Minister Narashima Rao’s visit to the US in May 1994.

On June 30th 1994, the Clinton administration decided not to take action against India under the US trade law Special 301, preferring to enter into negotiations with New Delhi on tightening its provisions dealing with IPRs. The US acknowledged India’s progress towards providing modern intellectual property protection by enacting important amendments to its copyrights law and by introducing trade mark

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legislation.\textsuperscript{31} This development was yet another sign of the improvement in Indo-US relations especially in the economic field.

During December 1994, the Rao Government managed to pass an Ordinance to amend the 1970 Indian Patents Act. When, however, the Government attempted to convert this Ordinance into Parliament Act, the Upper House of Parliament rejected the concerned Bill on 23\textsuperscript{rd} March 1995.\textsuperscript{32} Due to these, the USTR threatened to take India to court for action through the World Trade Organisation. Once again, the US placed India on the “priority watch list” under the special 301 provisions of the US Omnibus Trade Act.\textsuperscript{33}

It is therefore relevant to examine some of the contentious issues concerning IPR that plagued Indo-US ties during the Clinton era.

**Contentious Issues**

A major controversy that plagued India-US co-operation especially during the Clinton era was the patenting of some natural products by the US. This subject, being very emotional, naturally

\textsuperscript{31} *Indian Express* (Chandigarh), 1 July 1994, p.1.


attracted a lot of public criticisms against America’s patenting of “Neem, Haldi, Tulsi” etc. But some of these criticisms were exaggerated as what the US really patented was innovations related to extracts or formulations using these plant materials. The plants *perse* were not patented, and this formulation satisfied all the criteria of patentability: novel, non-obvious and usefulness.\(^{34}\)

Whatever may be the technical merit of the case, India challenged some of the US patents. For instance when the US Patent and Trade Mark Office (USPTO) granted US Patent No:54015404 to two researchers of the University of Mississippi (USPTO) for the use of turmeric powder (*haldi*) as a wound healing agent on March 28, 1995. The Council of Scientific and Industrial Research (CSIR) of India opposed (20 October 1996) this on the basis that it did not satisfy the essential criteria of patentability in terms of novelty, because the use of turmeric powder as a wound healing agent has had been well known in India over centuries. Thirty two references included the wealth of India, citations from Journal of Indian Medical Association and ancient treatise on home remedies were submitted to the US Patent Office in support of

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this opposition. But the USPTO unequivocally rejected all the six claims of this patent on August 13, 1997.35

Another debate was the "Basmati rice issue", which further reinforced the importance of legislating appropriate national legal frameworks dealing with IPR, authentic documentation of traditional practices, plant varieties and their registrations. India won a suit against the US commodity from Rice Tec. Inc in Greece, which had filed for registration of Texmati, Kasmati and Jasmati Trade Mark on rice varieties claimed to be analogous of the Basmati variety grown in India. The decision in favour of India was taken by the statutory Trade Marks Authority Administrative Committee (TAAC) in Greece36.

A similar suit has also been filed by APEDA against Rice Tec. Inc. in the UK. Rice Tec. Inc. also has a US patent on a variety of rice, which they have called "Basmati". The issues under challenge are related to revocation of the patent, possible inappropriate use of the "trademark" and geographical indications". Judgements on these cases will serve as landmarks while sorting such complex issues related to IPR's in the

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36*The Hindu Business line* (Chennai), 7 June 1997.
future. At that point of time the judgements relating to the cases were reserved.

In the meanwhile, on May 1, 1997, the USTR, Charelene Barshefsky, announced that India along with a few other countries, were placed on the “priority watch list” under the special 301 provision for failing to implement its obligation under the TRIPS agreement, particularly relating to the patent laws. A press release issued by the USTR stated:

India has failed to implement its obligations under Articles 70.8 and 70.9 of the TRIPS agreement. These articles require developing countries not yet providing patent protection for pharmaceutical and agricultural chemical products to provide a “mail box” to file patent applications, and the possibility of up to five years of exclusive marketing rights for these products until patent protection is provided.

The Gujral Government in its draft of Patents Law Amendment Bill took into account the views of the ruling national front constituents in view of drastic changes in this field. There is no need for India to agree to bilateral consultations with the US on this issue under special 301. The amending of the patent laws is the sovereign right of the country’s Parliament and India should take its own time to finalise its new Patents Amendment Bill and fight its case in the WTO panel.

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37 Ganguli, n.32.

38 The Hindu, May 1 1997.

The 'turmeric victory' was followed by a setback for India in another intellectual property dispute. The WTO's dispute settlement panel (September 9, 1997) upheld a complaint by the US, India's largest trade partner, that India had not modified its domestic patent law in line with WTO commitment.

As the US Trade Representatives office put it, this clearly "serves a notice" to India and other developing nations that they could not continue to evade obligations under multilateral agreements which require them to stiffen their IPR regimes.40

Regarding the IPR, once again India remained on the priority watch list by US in 1999. In December 1999, Indian Parliament passed the Copyright (Amendment) Bill 1999, which provided added protection to the rights of performing artists. Earlier in March 1999, Indian Parliament passed the patent legislation to allow Exclusive Marketing Rights (EMRs) for foreign pharmaceuticals and agro-chemical firms. In passing the legislation, India was responding, in part, to a commitment to the World Trade Organisation that it would amend its patent law, following a trade dispute with the United States. The new legislation

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intended to do the groundwork for the introduction of product patents; Indian law currently recognises patents only on manufacturing process.\textsuperscript{41}

Thus, Indian policy was highly defensive in the beginning because of numerous fears about the adverse affects of changing its IPR policy, fears effectively fanned by powerful domestic interests. The main differences between the Indian and American positions were: (1) India permits patent protection only for 14 years as opposed to the US's 17 years and the 20 years protection sought by the advanced countries under GATT; (2) India gives only 7 years protection for patents in three key industries - chemicals, pharmaceuticals and food - and that too only if the product is locally manufactured: a provision unacceptable to the US; (3) India provides patent protection only for processes, permitting Indian firms to copy American products and independently develop similar ones using different processes, whereas the US insists on product patents regardless of the process used; (4) Indian law provides for compulsory licensing if a patented product is not manufactured in India, whereas the American stand is that a patent should operate even if the product is imported; and (5) Enforcement of copyright in India is lax.

\textsuperscript{41}Barbara Leitch Le Poer, Foreign Affairs Defense and Trade Division, CRS Issue Brief for Congress (Received through the CRS web), \textit{Congressional Research Service}, the Library of Congress, Updated June 14, 2001, p.15.
On all these points, the US sought to change Indian policy through both bilateral pressure and the GATT negotiations. Indian critics, led by the National Working Group on patent laws, stressed that Multi National Corporations (MNCs) would swamp the Indian market and garner high profits at the expense of the common people. They argued that drug prices would shoot up to 10 to 30 times, farmers would be forced to buy seeds every year from MNCs, India’s rich genetic resources would be cornered by MNCs through patents, and that indigenous research and development would be seriously inhibited.42

Gradually, however, more positive views came to be aired in the vigorous public debate on IPR, with the Government forcefully defending its decision to accept the TRIPS accord. To summarise the arguments in favour of the decision, it may be pointed out that (a) only new products can be patented, not the existing ones; (b) “farmers privilege” under a plant breeders rights system would permit farmers to retain the existing practices of using farm-saved seeds and exchanging seeds with other farmers; (c) competition would restrain prices of patented pharmaceutical drugs; (d) increased use of patented hybrid seeds would multiply agricultural productivity; and (e) adherence to the

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TRIPS agreement was expected to bring a much greater quantum of foreign investment and technology to India.\(^{43}\)

On the negative side, India’s stand had to be modified because of the stark reality that opting out of the GATT accord at Marrakesh would have left India isolated and even more vulnerable to all kinds of bilateral pressures.

The bilateral American threat lost its teeth with the signing of the GATT accord. Once the accord came into force, the US was not able to exercise direct leverage as all disputes could be routed only through GATT’s successor, the WTO. This was publicly acknowledged by the Clinton administration.\(^ {44}\) The change in India’s stand was attested to by: (i) suitable amendments to the 1957 Indian Copyright Act in May 1994; (ii) the impending Plant Varieties Act, which provides for IPR on plant varieties and seeds conforming to the 1991 Convention for the Protection of New Varieties of Plants, even though the deadline for this legislation extends to 2005; and (iii) Commerce Minister Pranab Mukherjee’s announcement in May 1994 that the Government proposed to set up an expert working group to recommend changes in the Indian Patent Act.


\(^{44}\)“US to make 301 Act Consistent with WTO”, *Economic Times*, 7 May 1994.
and to decide whether to bring the desired changes into effect before the required internationally agreed deadline. While these changes were perceived by some critics as caving in to American pressure, it is arguable that the opposite was the case. Indeed, the alacrity with which the Government of India took its new course revealed a measure of confidence in distinct contrast to the earlier dragging of its heels on TRIPS.

To sum up, the emergence of a global economy, characterised by growth in world trade and spread of foreign investments in international markets, thus clearly changed the paradigm, governing relations between India and United States during the Clinton administration. Although power and security still constituted the nuclei of foreign policy in all countries, the emphasis on economic aspects assumed greater significance. As stated at the outset, while the issue of human rights and nuclear non-proliferation proved to be major irritants and a source of tensions in Indo-US relations in the recent past, the factor of economy and trade proved to be a countervailing force defining positive aspects of Indo-US relations.

There emerged a reciprocity of interests between the two countries as the domestic economic problems forced them to reach out to each other, the US in search of new markets for its exports and India to
seek soft loans and foreign investments in various sectors of economy. In fact, the Clinton administration saw a definite link between commercial policy, domestic policies and foreign policies. This wholesome approach was aimed at improving the country’s economic competitiveness and production in industry and agriculture and the reduction of trade deficit which consequently needed markets for American exports. This need to look for markets turned the Clinton administration towards India.

Similarly, it could be seen that the basic features of the Indian economic system showed tremendous resilience and flexibility in adopting to the changed economic situation in the light of liberalization and globalization bringing the issues of productivity, efficiency and growth into main focus. In fact, new economic pragmatism played a vital role in determining US’s India policy under President Clinton. India’s own economic liberalization programme acted as a catalyst for the Clinton administration to have a close look at India. Despite minor irritants in Indo-US trade relations, both countries exhibited a spirit of moderation and compromise with reference to some crucial issues like IPR, TRIPS, etc. It is clear from the above exposition that there seems to be genuine source of convergence between India and the US in the 1990s.
Similarly, the respective foreign policies of the two countries gave an economic thrust. For example, the US sought market access to India and India sought soft loans and investments from the US. Despite the political differences between the two countries, one hopes that new pragmatism and rapprochement will be a permanent feature of Indo-US relations.

Even though the specific issues have been discussed in the earlier chapters covering the domestic inputs briefly that shaped respective policies of both the countries during the Clinton era, we now propose to examine how far the domestic factors played a key role in determining the Indo-US relations in general and Clinton administration in particular in the forthcoming chapter.