CHAPTER VII

CONCLUSION & SUGGESTIONS
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INTRODUCTION

Ramkrishna Hegde, the then Minister, at Geneva in 1998 said, "In order to make WTO an effective multilateral body, which serves the objectives for which it was set up, it is necessary to go back to the basic principles. The Uruguay Round negotiators had stated their intentions quite clearly in the Preamble to the Marrakesh Agreement establishing the WTO. They recognized "that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development." They recognized also "that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development".

It is very clear that the intention of the negotiators was to use trade as an instrument for development, to raise standards of living, expand production, keeping in view, particularly, the needs of developing countries and least-developed countries. But question arises after 12 years of its establishment, how far WTO is successful to comply its objectives laid down in its Preamble. The answer is certainly is in negative. WTO fails to protect the interest of developing nations and its people like India as we have seen in
previous chapters. Therefore, Mass deaths! Plunder and massive destruction of natural resources! Destruction of the agriculture of developing countries! Exacerbating landlessness! Causing dislocation, hunger, and poverty! Trampling on workers' and women's rights! Undermining social justice! Jeopardizing health! Undermining food sovereignty were among the numerous "crimes against humanity" the World Trade Organization was found guilty of, India is no exception. The WTO has touched all works of our life from breakfast to going to bed. Without doubt, Government of India is dancing on the finger tips of WTO knowing how the commitments to WTO are threatening our economy.

WTO undermines economic sovereignty and national Constitutions by usurping the space of national decision making as it did on issues of IPRs, Agriculture, Services & Investment in the Uruguay Round, and as it has attempted in Doha on issues of natural resources, investment, competition, Government procurement and trade facilitation. At the international level, WTO is loaded in process and content by the Agenda of the rich and powerful corporations and countries. Development has been reinterpreted to mean trade liberalization and environment is being reinterpreted to mean free trade in natural resources. Unfortunately the very meaning and content of "development" and "environment" is being forced to undergo change.

Development means self-generative, self-determined growth of an organism, a society, or a country. It was used to refer to actions taken by Governments in an effort to improve people's well-being by ensuring their basic needs of livelihoods - food, water, health and education are met. It was used by poor countries in trade negotiations at WTO to refer to the basic needs of their people. "Development" has been redefined by the rich countries further globalization and unrestricted growth of trade. Even development aid is targeted at promotion of "free" trade. After Doha, the slogan of "trade, not aid" has been altered to "aid for trade" which in effect means using tax payer's money as subsidies for exports and conditionality for trade liberalization.
In other words, rich countries are to use their citizens' money to subsidize corporate, commercial activity. The poor in India have disappeared from the "development" equation. "Development" has been redefined as "trade liberalization" and economic reform for corporate welfare and the welfare of the rich. While addressing the E.U. India Business Summit in New Delhi on 22nd November 2001, Pascal Lamy referred to the EU-India cooperation in Science and Technology, Trade and Investment and said, all this is part of our natural effort to get in place the type of "software" that facilitates the everyday life of people like you, business people, who work on turning our aspirations into reality: namely to exchange goods and services that our consumers want, and to undertake the investments that are needed to produce these goods and services, at prices and quality standards that are competitive internationally.

Notice the mutation of the Development Agenda — India has been reduced to her business people who can export goods and services to Europe. Her women, her children, her peasants, tribals, craftspeople, workers and their basic rights have all disappeared. India’s production is not for creating livelihoods for the Indian people or meeting their basic needs. India must produce for rich European consumers and "undertake investments" not for her people’s development but for commercial interests and the growth of consumerism in the North. And she must provide goods and services to the rich in the North at "internationally competent prices" — not at just and fair prices that respect workers' rights, ensure just wages and defend people's livelihoods. In other words, India's workers and farmers must become poorer, her women and children must starve, so that the rich can buy goods and services more cheaply and commercial profits can increase. For this to happen, trade and investment must be further deregulated and "liberalized", labour laws must be dismantled and labour markets deregulated. Corporations should have more freedom to make super-profits, and public money of the North and South should be redirected from support to the poor to a subsidy for rich corporations and rich consumers. This is the new "Development Agenda" of the rich.
People's rights to natural resources and livelihoods is at the heart of the Development Agenda of the poor in India. It is also at the heart of our environment Agenda. It is the poorest of Indian communities who fight hardest to defend their seeds, their forests, their land and their rivers. For us environment is not a luxury, but the very basis of survival. That is why international environmental Agreements like the Montreal Protocol on Ozone Depleting Substances, the Basel Convention, banning trade in toxics, the Rio Convention on Biological Diversity and Climate Change and the Biosafety Protocol to regulate GMOs and the Kyoto Protocol to reduce Carbon dioxide emissions are such important instruments of environmental justice for us.

Patents and Biopiracy are the instruments promoted and legitimatized by the rich country IPR systems and the TRIPs Agreement of WTO for taking over of the natural wealth of biodiversity which is the livelihood base of the two thirds of humanity in India. Even though Article 27.3 (b) of TRIPs which imposes patents on life, establishes corporate monopolies on seeds and plant varieties, and enables biopiracy have been reviewed and reformed in accordance to a mandatory reviewed, no corrections were made in TRIPs in WTO to change the distorted, perverse, unjust and unethical system of IPRs, it forces on people. Much IPR mileage has been claimed by WTO and rich countries on a TRIPs declaration related to public health. However, WTO failed to legally modify TRIPs to protect Farmers' Right to seed and the integrity of biodiversity, and indigenous knowledge systems.

Two thirds of the health care in India is based on biodiversity based indigenous medical systems. Biopiracy of the plants and knowledge which are the basis of indigenous health care is also a threat to public health. The legal reform and correction of TRIPs to stop biopiracy of the intellectual and biodiversity wealth of India continues to be blocked by rich countries.

Moreover, the WTO is destructive of the sovereignty of the people of this country, which we had solemnly resolved to have in our Constitution. Our Constitution is a socio-economic document. It is a promissory Constitution, a
promise made by "WE THE PEOPLE OF INDIA", to ourselves, who had
resolved to constitute India into a "Sovereign Socialist Secular Democratic
Republic" to secure to all its citizens. This promise is contained in the
Preamble. The Preamble and Part IV of the Constitution represent the hopes
and aspirations of the people of this Country.

In his famous Tryst with Destiny speech given on August 14-15, 1947,
Jawahar Lal Nehru declared that the task ahead was "ending of poverty, and
ignorance and disease, and inequality of opportunity." It is this task which we
resolved to be achieved keeping in view the true spirit of the Preamble: "We
the people of India" have enacted the Constitution. 'We' who were 36 crores in
1950 and who are now 110 crores are the architects and founding fathers and
mothers of this Constitution.

The Directive Principles contained in Part IV of the Constitution gave
us a time bound programme not only to achieve the aforesaid task of which
Nehru had reminded the country on the eve of Independence, but also to
bring prosperity by adopting the economy of self-sufficiency and self-reliance
and to become a leading country in the world. Unfortunately, we could not
achieve what was envisaged within that time frame. The history of the
struggle for political freedom of the country had played a vital role in the
making of our Constitution. Certain Fundamental Rights are guaranteed for
citizens in Part III of the Constitution. The civil and political rights are
enforceable through provisions contained in Part III of the Constitution under
the heading "Fundamental Rights," the Part II and III categories of these rights
are contained in Part IV under the heading "Directive Principles of State
Policy", though they are not enforceable through the courts, yet they are
"nevertheless fundamental in the governance of the country" and it is the duty
of the state to apply these principles in making laws.

The Directive Principles exhort the state to ensure that citizens have an
adequate means of livelihood, that the operation of the economic system and
the ownership and control of the material resources of the country sub serve
the common good, that the health of the workers, including children, is not abused, and that special consideration be given to pregnant women. Workers, both agricultural and industrial, are to have a standard of living that allows them to enjoy leisure and social and cultural opportunities. Among the primary duties of the State is the raising of the level of living that allows them to enjoy leisure and social and cultural opportunities. Among the primary duties of the State is the raising of the level of nutrition and the general standard of living of the people.

In complete contravention to these fundamental principles the WTO has reversed the process and is destroying the right to development contained in Part IV.

The Supreme Court of India in a recent judgment noticed: The Directive Principles in our Constitution are fore-runners of the UNO Convention on Right to Development as inalienable Human Right and every person and all people are entitled to participate in, contribute to and enjoy economic, social, cultural and political development in which all Human Rights, fundamental freedoms would be fully realized. It is the responsibility of the State as well as the individuals, individually, singly and collectively, for the development taking into account the need, fuller responsibility for the Human Rights, fundamental freedoms as well as the duties to the community, which alone can ensure free and complete fulfillment of human being. They promote and protect an appropriate social and economic order in democracy for development; The State should provide facilities and opportunities to ensure development and to eliminate all obstacles to development by appropriate economic and social reforms so as to eradicate all social injustices. These principles are embedded, as stated earlier, as integral part of our Constitution in the Directive Principles. Therefore, the Directive Principles now stand elevated to inalienable fundamental Human rights. Even they are justifiable by themselves.
WTO has made impossible for State to apply these Directive Principles taking them to be fundamental in the governance of the country "in making laws", after we become the Member of WTO it is not the Directive Principles but the dictates of the WTO which have became fundamental in the governance of the country. There are clauses in the Treaty that our Parliament has to enact laws in tune with some of its provisions. The People's Commission on GATT headed by Justice V R Krishna Iyer rightly observed that, the Final Act deprives the center of its exclusive legislative power qua some of items in three lists of the Seventh Schedule by making the following observation in concluding part of its report. In short, the Union Parliament and the State Legislatures have been ousted of their legislative sovereignty over an extraordinary range of matters. Even domestic agriculture, under the purview of the state Government, has been transferred wholesale to the WTO. The unavoidable conclusion is a loss of legislative and executive sovereignty and the increasing irrelevance of the Union Parliament as an instrument of governance, worse still; all this has been accomplished without even the knowledge or consent of Parliament. Negotiations were conducted in a clandestine and covert fashion and the only information ever provided to the people that too at the end of the day, were statistic furnished by the OECD.

In the seventh Schedule of the Constitution, there are three lists, which provide the power to Parliament and State Legislatures to make laws regarding various developmental activities. The People's Commission had pointed out that WTO impinges on India's sovereignty by preventing the Centre or the States from legislating in certain matters. It is accordingly obvious that, WTO is destructive of the right to development contained in Part IV of the Constitution of India and takes away our economic and political sovereignty. Right to development can be realized only by people's participation in the process of development. "We, the people of India", should decide what should be the model of development. "We, the people of India" have been caught in cobweb of globalization when in 1991 the Government led by Chandra Shekhar found that, the problem of India's Balance of Payments had become acute and he had to start negotiations with the IMF.
Thereafter the Congress Government with Dr. Man Mohan Singh as Finance Minister announced new economic policies which departed widely from the theories of Welfare State.

Sovereignty means that the people shall decide how to develop themselves. However, the commitments to WTO is creating unemployment, recession, scarcity of raw materials and a haphazard industrial growth and making this country economically bankrupt and it has put us in the cobweb of multinationals with total loss of sovereignty, both political and economic on account of liberalization and globalization. The biggest tragedy of the country is that there is no public criticism of the present state of affairs. The reason is that there is no participation of the people. Public action is necessary to restore sovereignty. The enlightened people of this country believe that this loss of sovereignty at the hands of WTO, World Bank and IMF is far worse than the slavery which we had before August, 1947. The political leaders of our country have divided the people along caste, communal and regional lines. Issues have become non-issues and non-issues are presented as issues. Jean Dreze and Amartya Sen in a recently published work "India: Economic Development and Social opportunity" rightly concludes that "public action in this broad sense, can play a central role in economic development and in bringing social opportunities within the reach of the people as a whole". These eminent social scientists further say, "This depends upon a variety of factors including the nature of the political parties and their leadership, the skill and traditions of investigative journalism and also the level of literacy and education in this region." Independence in 1947 meant transfer of power from an alien to the local political class. The political leadership till about 1970 maintained Constitutional norms to strengthen the nation by giving it a Development Agenda to reach to the commanding heights of the economy. But after 1971, a second generation started attaining adulthood. A process of concentration of power in few hands started. Institutions became secondary. Men and women in power became primary. The process of decay of Institution started. The process was hastened and became very fast since 1980. Market started dominating the Institutions, the fall out of which was
consumer culture, greed and corruption and nexus of political class with criminals, mafias and multinationals. Since 1991, the political leadership of this country started the process of total surrender of Development Agenda in the hands of WTO.

The State is in retreat everywhere and power is being transferred from the political class of this country to the multinationals. This is happening under the garb of liberalization and globalization. Power is being transferred to the business class, first to the Indian Business Class and through it to the foreign business led by multinationals.

So forth, we have seen on the one hand, how we are submitting our democracy and sovereignty in the hand of the WTO, on the other hand the question is, can we stop our selves from the happenings of world market? Is it possible to remain aloof where most of the nation in the world is joining together in various international economic forums? Is it not very pertinent to play our own cards for the sake of our own development? Let us have a look how far we can compromise our sovereignty to balance our economic progress.

Lord Meghnad Desai put a dampener on India's global aspirations when he recently prophesied that "China will be a great power, but India will just be a great democracy." Indian will chafe at this prognostication. But one key question is this: suppose, as Indian will no doubt hope, that the future is unkind to the Desai prophecy. How then should India prepare itself for being an important and influential player in current and new global economic policies and institutions? In other words, what should India’s attitude and approach be when it gets-literally and metaphorically-a seat, even if not the head place, at the table?

Let us see, in the post-war period, what was India’s role in three of the most important global economic institutions-the International Monetary Fund
(IMF), World Bank and the GATT that subsequently became the World Trade Organization (WTO)? There have been important differences in India's role in the Bank and the Fund compared to the WTO. India has been a more important and influential player in the trade institution than in the financial institutions. This was in part an inherent consequence of the fact that in the financial institutions creditor nations have more power than borrowers, while in the WTO power stems from market size; while India has always been a borrower in the Bank and the Fund, it has been a relatively attractive market despite the closed nature of its policies. As a result, India has been more actively involved in issues of a systemic nature in the WTO than in the financial institutions. One manifestation of this has been the fact that the quality of Indian representation, which has been variable at best in the financial institutions, has always met a decent standard of competence and effectiveness in the GATT/WTO.

Notwithstanding these differences, the underlying objective of Indian participation has been similar across all three institutions—the jealous, zealous safeguarding of India's sovereignty; in Strobe Talbot's description, India was a "sovereignty hawk." Whether in regard to conditionality associated with borrowing from the Bank and the Fund or trade rules in the GATT/WTO, India has tried its best to minimize having to do what it would otherwise not want to do. In the trading system, for example, India took upon itself the role of leader of the Group of 77 developing countries that lobbied hard and strong throughout the 1960s, 1970s, 1980s, and even some of the 1990s, to preserve the right to protect its economy through tariffs and quotas. Sovereignty, in this arena, was equivalent to protecting or preventing the imposition of rules and obligations that would deprive India of this freedom. Of course, this objective flowed from an economic ideology that saw, at first, liberalization and market opening as unhelpful to India's interests; and later, that started to recognize the benefits of liberalization but still as something to be undertaken at India's pace rather than dictated by trading partners.
But the last two decades are seeing a change not just in economic ideology but also in Indian perception of its interests, a change that will only accelerate further in the years ahead. The foundation of this turnaround is rapid economic growth and the rapid opening of its economy, which in turn has made the world take notice of India and start considering it a serious player in global economic policy making. A number of specific changes should and will influence the way India sees itself in the future.

First, the Indian economy, especially its dynamic services sector, is highly reliant on foreign markets for its survival and growth. Thus, foreign policies toward Indian exports will matter a lot more than in the past. The more that populist, protectionist views such as those of American TV personality Lou Dobbs gain legitimacy, the more threatened India's economic prospects will be.

Secondly, India is not only becoming a large exporter of goods and services. It is, in an unprecedented development, becoming an exporter of managerial and entrepreneurial capital, illustrated most significantly in the purchase of the Dutch Steel Group CORUS by the TATA Group. Indian multinationals, operating globally (especially in OECD country markets), could be an important future reality. Not just Indian goods and services, therefore, but also Indian capital will be at the mercy of foreign policies.

Thirdly, global warming will have especially significant adverse consequences for India. India, therefore, has a keen stake in getting global cooperative action to try and prevent or postpone global warming or at least to minimize its worst consequences. India will need to persuade other countries, including the industrial countries and China, to undertake action that they might otherwise not be willing to take. What these examples highlight is simple: preserving sovereignty can no longer be the exclusive, or even predominant, concern for India because India's interests and fortunes will increasingly be affected not just by its own policies and actions but those of its
trading partners and others. This calls for a pretty radical change in the Indian mindset in its approach toward global economic policy-making.

This is a change at the level of strategy. The tactical implications of this are likely to be more complicated. When preserving sovereignty is the paramount concern, a country can afford to have a pretty undiscriminating approach (mostly having to say no) in its dealings with other countries across the spectrum of issues and institutions. But when sovereignty becomes an asset or a coin that needs to be traded or partially ceded or pooled, a much richer and more sophisticated menu of options presents itself. Who should India deal with? Should they be the same across economic issues or should they vary? Is multilateralism preferable to regional or bilateral relationships? India will have many more cards to play.

Consider the following example. When the right to protect was the sole imperative for trade, India frowned upon all regional Agreements and dealt exclusively in the multilateral trading system. With India becoming a more global player, with major interests in knowledge exports and exports of skilled labour, it is no longer obvious that multilateralism remains the exclusive option. There are good, or at least plausible, reasons to believe that bilateral Agreements with prominent partners such as the US might have as much, or more, to offer than the WTO, as Aditya Mattoo\(^1\) argued. So a natural question is whether and how India should forge bilateral trade relationships?

On financial issues, the governance structure of the World Bank and the IMF and the process of appointing the heads of these institutions are now an historical anomaly: they seem to be unrelated to current economic realities, especially in not giving adequate weight to the current interests and importance of Asian countries such as India and China. But this antiquated state of affairs is one that industrial countries seem extremely reluctant to correct; the readiness and willingness to offer aid is matched by an equal

\(^1\)"Jagdish Bhagwati and India's Trade Strategy Today"
resistance to ceding power. In this context, should India persist with multilateralism or should it seriously contemplate alternative arrangements, such as a closer Asian monetary union, either for their own sake or at least as a credible threat to rouse industrial countries into meaningful reform of the IMF and the World Bank?

On global warming, there is some confluence of interests and ideology between China and India which could be harnessed in discussions with industrial countries on burden-sharing in the context of determining the ecological fate of the planet. So on economic issues, India's place in the world will likely be very different from what it is today. Its rapid economic growth and growing economic entanglement with the world has seen to it that India is no longer a peninsula unto itself. A fundamental change in mindset is essential to shape the new reality; from shedding its obsession with sovereignty—a legacy both of colonial rule and India's poor economic performance for the first three decades after Independence to determining how engagement, even if it means ceding sovereignty, can best maximize India's long-term interests.

SUGGESTIONS AND RECOMMENDATIONS

India is a reasonably efficient producer of agricultural products. But the problem lies with the employment of people who are displaced in agriculture. In this case instead of finding fault with international law we have to think how best to apply that law in our interests. The problem identified in the existing Agreement on patents, anti-dumping duties, subsidies, trade and textiles indicate that, the developing countries are waking up to the need to ensure that India has to take the lead in ensuring the WTO regime is used to maximum advantage to protect the interests of developing countries.

Some of the suggestions for India which she should observe are:
A. India can increase in fact triple subsidies on agriculture without violating any international law.

B. Fight in the DSB for the patenting rights of some of the medicinal plants

C. Fight for Plant Breeder's Rights

D. Restrict foreigners from fishing in our territorial waters to the extent possible. We can also increase our catch by importing the appropriate technology to fish in deep sea waters

E. Use the articles in the WTO Constitution to fight the exploitation of one country by another in international trade.

F. In the next round of negotiation in WTO, India should seek clubbing of all kinds of support to agriculture in one category and seek some parity among developed and developing countries.

G. In order to reduce the advantage to developed agriculture due to high Government support, other Member countries should have the freedom to impose protective tariff linked to differences in domestic support.

H. In order to counter the adverse impact of Green Box in other countries on domestic produce, we need to pay serious attention to infrastructure development, which has been deteriorating for quite some time.

I. The democratic right of citizens and countries to restrict imports to defend livelihoods and prevent the impoverishment of people.
J. The democratic right of citizens and countries to regulate trade and commerce to defend people's rights to natural resources and prevent ecological destruction.

K. The right of people of all countries to food sovereignty, water sovereignty and biodiversity sovereignty, the reclaiming water and biodiversity as commons, and food as a basic need.

L. The democratic right of people to regulate investment for ecological and social justice.

M. The democratic right of people to not allow public wealth and tax payers' money to subsidize corporations. Public wealth must be used for public good, not private gain.

N. A "food security" or "development" box should be introduced in the the next Ministerial to exempt countries from trade rules on ground of food security and livelihood security for farmers.

O. India should not agree to include water to be covered under Para 32(iii) of the Doha Declaration.

P. The most important things for India to address are speed up internal reforms in building up world-class infrastructure like roads, ports and electricity supply.

Q. India should also focus on original knowledge generation in important fields like Pharmaceutical molecules, textiles, IT high end products, processed food, installation of cold chain and agricultural logistics to tap opportunities of globalization under WTO regime.
R. India's ranking in recent Global Competitiveness report is not very encouraging due to infrastructural problems, poor governance, poor legal system and poor Market Access provided by India. Our tariffs are still high compared to Developed countries and there will be pressure to reduce them further and faster. India has solid strength, at least for mid term (5-7 years) in services sector primarily in IT sector, which should be tapped and further strengthened.

S. India would do well to reorganize its Protective Agricultural Policy in name of rural poverty and Food security and try to capitalize on globalization of agriculture markets. It should rather focus on Textile industry modernization and developing international marketing muscle and expertise, developing of Brand India image, use its traditional arts and designs intelligently to give competitive edge, capitalize on drug sector opportunities, and develop selective engineering sector industries like automobiles & forgings & castings, processed foods industry and the high end outsourcing services.

T. India must improve legal and administrative infrastructure, improve trade facilitation through cutting down bureaucracy and delays and further ease its financial markets.

U. India has to downsize non-plan expenditure in subsidies (which are highly ineffective and wrongly applied) and Government salaries and perquisites like pensions and administrative expenditures. Corruption will also have to be checked by bringing in fast remedial public grievance system, legal system and information dissemination by using e-governance.

V. The petroleum sector has to be boosted to tap crude oil and gas resources within Indian boundaries and entering into multinational contracts to source oil reserves.
W. It wont be a bad idea if Indian textile and garment Industry go multinational setting their foot in Western Europe, North Africa, Mexico and other such strategically located areas for large US and European markets. The performance of India in attracting major FDI has also been poor and certainly needs boost up, if India has to develop globally competitive infrastructure and facilities in its sectors of interest for world trade.

X. The need for explicit recognition of farmer's privileges and Farmer's Rights in the sui-generis system.

Y. The need to harmonise the implications of CBD, CTE and international undertaking on plant genetic resources.

Z. Every patent and plant protection authority should be required to ascertain from the applicant seeking plant variety protection or product patent on herbal or agricultural product that the raw material and information used in the innovation has been obtained lawfully, rightfully and through prior-informed consent of the providing country and the communities.

ZA. Just as there exists a proposal in TRIPs for negotiating global registry of wines, India should assert that a similar Global Registry for Grassroots Innovations is needed to include landraces, herbal products developed by small farmers alone or in collaboration with farmer scientists.

ZB. In view of the impact of lower tariffs on deforestation, the discussion on forest products should be carefully pursued. Since India is unlikely to become exporter of forest products and will remain a net importer, the lower tariff will only mean lesser cost of production by domestic industry based on imported raw material. India may consider this position while negotiating.
ZC. The environmental implications of international trade hold tremendous challenge in agriculture particularly in fishery sector where Indian exports may come up for restrictions due to unsafe handling of protected species, incidental catch of dolphins or other such issues. Since the conservation is a national priority, India should not oppose environmental regulations unless these were discriminatory vis-à-vis importing countries on standards or practices.

ZD. The insistence on DUS for varietal registration should be modified to include distinctive but heterogeneous and stable over three to four generations particularly in marginal environments. This will help in the development of varieties with buffering population and multiline composition for rain fed regions.

ZE. The exemption of small farmers from the restrictions to save, exchange or sell seed without using brand name may be incorporated in the revised Article 27(3b). Similarly, restrictions on varietal protection to varieties in common knowledge must be incorporated and penalty is introduced for such attempts.

ZF. While plant varieties have been covered by UPOV, animal breeds are not covered by any such protection. This may be taken up for negotiation.

ZG. The products of genetically engineered varieties must be compulsorily labelled to help consumer make informed choices. Further the biosafety implications must be also incorporated in the Plant Variety Act so that registration is under PVP is contingent on the satisfactory completion of biosafety and bioethical requirements.
The provision for community Intellectual Property Rights may also be negotiated along with the need for low transaction cost system for small farmer innovator.

The new uses of an existing product are protected as use patents in USA but not in Europe. India may pursue this issue both domestically and internationally.

International registry proposed earlier should also include geographical indication for varieties.

India should reject the case for a multilateral framework with regard to new issues and oppose negotiations on all new issue such as investments, competition and Government procurement. Each Member country must have the right to its sovereign economic sphere and set up the social and economic objectives in line with the will of its people. Subverting this right in the name of an international trade regime on such vital issues is to subvert democracy in the name of trade and serving the interests of global capital.

India should demand and must assert the unqualified right to impose quantitative restrictions on all agricultural imports, without any time-limit, and without any prior consultations, much less approval, in WTO. It should also insist that developed countries eliminate their export subsidies, drastically reduce their domestic support and stop using the sanitary and Phyto-sanitary rules as protectionist measures against the exports from developing countries.

Developing countries must be allowed to provide requisite domestic support. Agriculture plays a crucial role in the life of the people of the third world, with the majority of its people subsisting on agriculture, unlike advanced countries that have only 5-10% of its people in this activity. The vital
importance of this sector from the viewpoint of food security and employment, and the very survival of the people in third world countries, must therefore be recognised and incorporated as an integral part of the approach, objectives and content of the multilateral discipline on agriculture.

ZN. In regard to services, India should demand that the built-in safeguards in GATS in favour of developing countries, must not be allowed to be diluted. The developing countries must retain their right to decide which sectors, if any, be placed on the negotiating table and when; the developed countries should give priority to opening up their services sectors, which are of export interest to developing countries. Besides, the basic asymmetry in the GATS must be removed. That is to say, the right of the movement of labour from labour-surplus economies to labour-deficit economies must be recognised.

ZO. India must carry forward the small momentum provided by the Declaration on TRIPs and Public Health to demand a thorough-going review of TRIPs to address wider issues of period of patent protection; life-form patenting; importation as working of patent; and licensing provisions, including licences of right to ensure technology dissemination, in general; and the right to issue compulsory licences, particularly in public health interest, on manufacturers even in other countries.

ZP. The anti-democratic character of WTO is visible not only in its opaque process of decision-making, which responds to the pressures of the few Member countries representing the interests of global capital and disregards the voice of the large majority of its members, but also, and perhaps more blatantly, in the way its dispute settlement process works. A thorough reform of this mechanism is urgently called for.
ZQ. The powers of dispute settlement and appellate bodies to lay down judicial law should be severely circumscribed: their decisions and rulings, which are in the nature of laying down standards and norms of lawmaking for national Governments to follow, must not be made obligatory except when the Member country agree to accept the same.

ZR. Trade and technology policies must protect the livelihood of women in agriculture. The Agreement on Agriculture must be reviewed with a gender perspective. Quantitative Restrictions must be reintroduced to protect the agriculture from dumping of artificially cheap subsidized products. The right to countries to protect special products and special safe guards, measures must be used to protect the livelihood and income of women.

India as a founder Member of both the GATT and the WTO must become proactive on the World arena by evolving itself into a formulator of visions and leader of the WTO in the new millennium. India must play a much larger and important role in global trade. For a long time, it shut itself from the world and was a recipient of aid. Now India made the transition from closed to market led economies. It is now past that the era of dependence. India became one of the ten industrial countries of the world. The situation is ripe for India to play a leading role at multilateral trade institute. India needs to take the leadership role on behalf of other developing economies.

In the immediate future India should address three sets of issues to withstand in the global trade.

- Firstly, decades ago India had bought its tariffs at GATT on some agricultural commodities at the zero rates. This did not matter as long as these products enjoyed protection in the Quantitative Restrictive regime. But if Indian farmers and processors are to enjoy a modicum of protection, which these tariffs have to be re-negotiated before all the QRs are removed. The negotiations which have been going on for some time have to be completed quickly.
• Secondly, the Government will have to find a way of addressing the anomalous situation of allowing import of some products which are reserved for production in the small scale sector.

• The third and high-profile area is import of used cars. With second hand cars of high quality available at throwaway prices in a number of foreign markets, imports in post – QR regime could pose a major threat to the products – India and Foreign – in the local market. Since India has so far not bound its tariffs on cars, it does have the freedom of setting the import duty on used cars at a sufficiently high level to at least partially neutralize the price disadvantage of domestic manufacturers. The high tariff may even have to be supplemented with non-tariff measures such as tough environmental norms and road-worthiness certificates, if the domestic consensus is that the investment that has been made in the local automotive industry should be protected from import of inexpensive second hand vehicles.

To be a dynamic force and to play a catalytic role in the WTO, India should face the following challenges:

• India has to work creatively and very hard to make a dent in leading edge technologies being developed all over the World.
• India should bring about universal literacy.
• India should make its presence felt in the World of science. India needs a very elaborate national science policy which should address the area of health.
• India should reach the international standards in the quality of both industrial and agricultural products.
• India should properly plan and utilize its cheap and abundant human natural resources.
• India should open up its economy to foreign investment without the detriment of native investment.
India's leadership is required to get the next WTO round started by finding an appropriate way discussing the critical trade related issues. All said and done these are just suggestion and our Government has to take step on these lines immediately. But question remain if our parliament fails to do so what remedy is left with Indian people let us look at our Constitution.

As we have seen earlier, instead of promoting constitutional aspirations, India is forced to make its legislations by referring to the aims and objects of such legislations, the executive commitments made at WTO. One such illustration - there are many, such as the Patents Amendment Act - can be made of the "Protection of Plant Varieties and Farmers' Rights Act, 2001". The Preamble to this Act states: "And Whereas, India, having ratified the Agreement on Trade Related Aspects of Intellectual Property Rights should, inter alia, make provisions for giving effect to sub-Paragraph (b) of Paragraph-3 of Article-27 in Part-II of the said Agreement relating to protection of plant varieties".

In the Constitutions of many other countries, the provisions where the Treaty becomes binding only after it is cleared by the majority of People's Representatives in the Senate/Assembly/Parliament/Government or Parliament? This Act seeks to protect the rights of plant breeders, which only means the protection of multinational seed companies and taking away the inherent rights of farmers over their seeds and traditional variety of their produce. In the Bill of the said Act, a complete go-by was given to the Farmer's Rights. But, when NGOs' protested, it was referred to the Joint Parliamentary Committee, which attempted to balance the rights of breeders as against farmers. This Act of Parliament clearly shows that the interest of our farmers and our agricultural biodiversity which is protected under the Constitution\(^2\) has been subjected to the provisions of TRIPs. If the Constitution is supreme then such legislations cannot and should not survive,\(^2\)

\(^{2}\)Articles -21, 48 and 48A
unless they answer the test of being in conformity with the Constitution. It is
the duty of Parliament to tell people how such legislations can sub serve
common good, protect people's rights, Farmer's Rights, our agriculture, our
biodiversity, etc. Under the oft-repeated slogan of development, the people's
rights given to them under the Constitution cannot be defeated.

A COMPARISON BETWEEN INDIA AND THE US

The treaty-making power under our Constitution has been given to the
Executive under Article-73. Article 246(1) read with Entry 14 of List -I Union
List of the Seventh Schedule empowers Parliament to make laws with respect
to "Entering into treaties and Agreements with foreign countries and
implementation of treaties, agreements and conventions with foreign
countries". Article 253 gives powers to Parliament to make laws for the whole
or any part of the country for implementing any Treaty, agreement or
convention. Article 253 has, thus been given an overriding power. Empowered
by Article 73, an Executive, without any debate in the Parliament or assent of
the people in any discernible way, can commit itself and surrender people's
basic and Fundamental Rights and thus bind the country to enact legislations,
which go against the basic principles of our Constitution and aspirations of the
people.

In contrast to this process, in the US Constitution, the President has
been given power to make treaties by and with the advice and consent of the
Senate provided two-thirds of the Senators present concur.\(^3\) It may also be
pointed out that US has made it clear that none of the decisions of WTO,
which are contrary to their law and Constitution, will be binding on the
American people. Section 102(a) of Uruguay Round Agreement Act reads as
follows: "Section 102(a) (a) Relationship of Agreements to United States Law:
(1) US Law to Prevail in Conflict: No provision of any of the Uruguay Round
Agreements nor the application of any such provision to any person or

\(^3\)vide Article-2 (2)
circumstance, that is inconsistent with any law of the United States shall have effect."

America has, thus, fully protected its sovereignty and the rights of its people. Even in the Constitutions of other countries, namely, in South Africa, Republic of Korea, the Philippines and so on, we find provisions similar to US where the treaty becomes binding only after it is cleared by the majority of People's Representatives in the Senate/Assembly/Parliament, as the case may be.

**PARLIAMENTARY RATIFICATION SHOULD TAKE SUPREMACY**

Therefore, the question which arises is whether the commitment made by our Executive without the people's support can bind us when we have accepted the Constitutional supremacy. The answer, again in the opinion of Justice Iyer, is "No". He says in the same book, Off the Bench: "Democracy, by participation of the people directly or through their surrogates, is a basic feature of the Constitution. So, it follows that a treaty which has neither the sanction of a referendum or ratification by Parliament (Senate ratification is vital for a Treaty in US) is non-est. If the Bommai case is good law the TRIPs Treaty is perilously near invalidity."\(^4\)

**STATES' JURISDICTION VERSUS THE CENTRE**

Furthermore, legislation pursuant to the Treaty obligations, can totally deny the participation of States in such legislative process when the subject matter (for example, agriculture or fisheries) squarely falls within List-II, the States' List. Taking note of this serious lacuna affecting the federal character

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\(^{4}\)Sanjay Parikh Combat Law, Volume 4, Issue 5 (published 08 January 2006 in India Together
of the Constitution and powers of the State to legislate within the domain of List-II, the National Commission to Review the Working of the Constitution in its report recommended that in the decision making on important issues involving the States, prior consultation should be done with the Inter-State Council before signing of the treaty. The Commission thus endorsed the view of the Sarkaria Commission on Centre-State Relations. In fact, if the federal nature of our Constitution is a basic feature, all the legislations which take away the rights of the States suffer from a basic infirmity.

The solution, however, does not lie in discussions with the Inter-State Council but in taking away the power to sign or ratify any treaty from hands of the Executive. It is only after the Executive is empowered by Parliament through majority that such treaties should be signed or ratified.

There is yet another aspect which needs to be addressed. In various judgments, the Supreme Court has been relying on the Treaties/Conventions, for example, those pertaining to Human Rights and environment, which elucidate and effectuate the people's Fundamental Rights, in particular, Article-21 of the Constitution. Many of these Conventions/Treaties have been incorporated as part of Article-21 of the Constitution. As far as the environmental principles forming part of various Declarations/Conventions are concerned, they are accepted as part of the customary international law and thus incorporated in the domestic law and followed by the courts in the absence of anything contrary in the municipal laws. In this case, the safeguard is that the Constitution's supremacy has been upheld and nothing which is in derogation to the Constitutional mandate has been accepted.

It is only after the Executive is empowered by Parliament through majority that such treaties should be signed or ratified. If the executive action of signing GATT/TRIPs and consecutive compulsive legislations are tested on the constitutional anvil, they will fail the basic judicial scrutiny. Are we thus left

5vide Vellore Citizens Welfare Forum v. Union of India & Others, 1996 (5) SCC 647; PUCL vs. Union of India, 1997(3) SCC 433; RFSTE v. Union of India, 2003 (9) SCALE 303
with the only option to challenge all the legislations - which are gradually taking away people’s rights under the cover of development and so-called international commitments - before the Courts, and that too under their limited powers of judicial review and at times facing the argument of policy decisions where the Courts also raise their hands? Is this scenario not unhealthy for a sovereign, democratic republic like India? The only hope lies in amendment to the Constitution.

Submitted By: (KANCHAN GABA)