CHAPTER 5
5. TRIPS PROVISIONS IN WTO AND INDIAN CONSTITUTION WITH PARTICULAR REFERENCE TO FUNDAMENTAL RIGHTS.

The executive of the Union of India has got ample power to participate in International Conference, associations and other bodies and enter into treaties and agreements with foreign countries and with international organizations and implementing such treaties and agreements in India under Art 246 and 253 of the Constitution of India.

International law enunciates that not carrying out an obligation imposed under International law on the ground that the provision of international law is not compatible with municipal law is not justified. However, taking a realistic view, it is necessary that a country has to balance its international obligations and obligations in the municipal sphere. The balance in obligations has to be maintained not only to sustain its national legal system but also to ensure the protection of citizens.

India is a party to various international treaties including TRIPS. This chapter tries to analyze how the obligations under TRIPS would alter the Indian legal system. While examining about India's international
obligations, it is also mandatory to verify the manner in which the international obligations are accepted. Hence, the power of government of India to enter into treaties is also studied.

As per the provisions in the Constitution the power of the executive to enter into treaty and participation in international organizations is unlimited and wide but however such conferment of wide power under the Constitution is subject to implied and express limitation that contained in the Constitution itself that is the basic structure of the constitution cannot be tampered with, the fundamental rights conferred on its citizens who are the pillars of the constitution cannot be taken away unless it was specifically ordered to do so or authorized herein. Implementing such treaties and agreements in India are envisaged under Art 246 of the Constitution of India. However, the exercise of such power is subject to Art 73 of read with entry 13& 14 of List I of the seventh Schedule to the Constitution, which explains the scope of treaty making power under the Constitution.

"Extent of executive power of the Union- Subject to the provisions of this Constitution, the executive power of the Union shall extend (a) to the matters with respect to which Parliament has power to make laws; (b) to the exercise of such rights, authority and jurisdiction as are
exercisable by the Government of India by virtue of any treaty or agreement.

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect of which the Legislature of the State has also power to make laws

With regard to the implementation of treaties entered into by the executive of the Union of India are contained in Art 253 of the Constitution. The Article starts with a non-obstante clause as follows:

"Legislation for giving effect to international agreements - Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

Under Article 246 of the Constitution, the matters with respect to which Parliament has power to make laws are contained in List I of the Seventh Schedule. It is relevant to take note of the following entries in List I.
E. 13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.

E. 14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

The executive power conferred under Article 73 of the Constitution to enter into treaties must also be read along with Article 253 of the Constitution on implementation of treaties.

The effect of Article 253 is clearly to allow Parliament to make laws implementing a treaty notwithstanding the fact that the subject matter of the treaty is contained in List II of the Seventh Schedule. We note that Article 253 confers Parliament with the extraordinary power to amend laws to comply treaty obligation in State list in the federal structure of the Republic for the purposes of treaty implementation.

Art 246 of the Constitution provides that Parliament has exclusive power to make laws with respect to any of the matter enumerated in List I in the 7th Schedule referred as Union List and Legislature of any State has exclusive power to make laws with respect to any of the matters enumerated in List II in the 7th Schedule referred as State List and the Parliament and the State Legislature have power to make laws subject to
conditions in the matters enumerated in List III Schedule 7 of the Constitution. In view of the above, the lawmaking power of the Centre and State is clearly earmarked and further even if any violation the municipal court cannot refuse to implement it on that account alone.

In this regard the Supreme Court has held that where a law is made in exercise of a power conferred by a specific Art of the Constitution other than Art 245-246 such law must not be construed as being included in Art 13(2) for, to do so would render nugatory the independent provisions of the constitution which stands on equal footing with Art 13

(FN:Yaqub Mohd Vs State of J&K AIR 1968 SC 765)

In this regard we may see the legal and history of the 24th amendment 1971 and 42rd amendment 1976 to the Constitution so that we can appreciate the importance of the consequence of the executive signing the Treaty like WTO.

The essential powers of legislation cannot be delegated by the legislature to any other body and the legislature cannot abdicate its responsibilities for framing laws by saying that the laws framed by another body in the future would be deemed to be incorporated as the laws framed by the legislature. It has been consistently held by the
Supreme Court that this would be an unconstitutional delegation of legislative powers, which falls foul of Article 245 of the Constitution. Therefore, compliance with the provisions of the new treaty without discussion would result in an unconstitutional delegation of legislative power.

The Indian Constitution lays down no formal procedure for the discussion and ratification of treaties. The treaty making power vests with the Union Government. This is not directly granted to the Executive but flows from the general power of the Executive to fulfill and execute the legislative power of the Union. Elaborate lists demarcate the respective legislative powers of the Union and the State as well as the areas on which they share a concurrent power in respect of which priority is given to the Union over the State. The Legislative Power of the Union contains provisions for international negotiations and treaty making which include:

(a) Participation in international conferences, associations and other bodies and implementing of decisions made thereat,

(b) Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries'
As per the article the executive got ample power to do what it likes on all matters on which Parliament can make laws and implement treaties and international agreements, a paradoxical situation is created. If Parliament legislates, the power of the executive is limited by such legislation. If, however, Parliament fails to legislate, the power of the Union becomes uncontrolled and unlimited. The less legislation there is, the greater the power of the Union. But it is precisely this paradox that has been written into constitutional interpretation by the Supreme Court in its decision in the

**FN: Punjab Text Book case (Ram Jawayya Kapur v. State of Punjab, AIR 1955 SC 549).**

The upshot of all this is to create a very wide-ranging power which can only be modified when legislation modifies its extent and use.

The effect of this is that the Government of India does have the power to attend international meetings and conferences and enter into treaties and agreements. But, since this exercise of treaty making power does not stem from any legislation and is merely part of the executive power of the Union, it cannot transgress the fundamental rights of persons and citizens in India. If the treaty making power were controlled by enabling legislation (under Schedule VII, List I, Entry 13 and 14) such a power would become a statutory exercise of power. As a statutory
exercise of power, it could intrude into fundamental rights only to the extent to which this is permissible by the Fundamental Rights Chapter of the Constitution itself.

In order to resist a Fundamental Rights challenge in the exercise of the treaty making power, there are two thresholds that any such exercise must cross in order to pass constitutional muster. The first is the simple but absolute requirement that the authority of enacted law must support any transgression of fundamental rights. If there is no enacted law in operation, that is the end of the matter. The second threshold is that where the power is exercised pursuant to enacted legislation, the legislation itself and any power exercised under it will further be tested by various tests of constitutional limitation.

The other line of reasoning emerges from the recent judgment of the Supreme Court in FN:S.R. Bommai Vs Union of India (1994) 3 SCC 1 that the exercise of executive power cannot be destructive of the basic features of the Constitution, inter alia, federalism, democracy and secularism. The executive power cannot travel outside the basic structure of the Constitution.

In order for a treaty to give rise to rights and obligations within the territory of India, they must be incorporated into legislation
However, once a treaty is negotiated, under Article 253, the Union Parliament has the power to enact implementing legislation even if such legislation encroaches on legislative areas, which are exclusively reserved for the States. The Union Legislature is empowered to pass implementing legislation, which can ingress into the exclusive legislative power of the constituent states.

The power exercised by the executive is subjected to judicial review. One of the landmark judgment of the Supreme Court in SR Bommai v Union of India (1994) 3 SCC 1 at paras 74 and 60 (Per Sawant and Kuldip Singh JJ) the court observed that.

"...............The exercise of power by the President under Article 356(1) to issue Proclamation is subject to judicial review at least to the extent of examining whether the conditions precedent to the issuance of the Proclamation have been satisfied or not. This examination will necessarily involve the scrutiny as to whether there existed material for the satisfaction of the President that a situation had arisen in which the Government of the State could not be carried on in accordance with the provisions of the Constitution"

In SR Bommai case, the President's decision was held to be judicially reviewable to the extent of examining whether the Proclamation
was issued on the basis of any material at all, whether the material was relevant or whether the Final Act was signed in the proper exercise of power.

If the constitutional validity of any provision is not under challenge, the court will have to proceed on the basis that the same is intra and valid and interact the same as such.


The burden of proving all the facts which are requisite for the constitutional invalidity is thus upon the person who challenges the constitutionality. By reason of the presumption in considering the validity of the impugned law, the court will not be restricted to the pleadings of the respondent and would be free to satisfy itself whether under any articles of the constitution the law can be sustained having regard to the circumstances in which it was enacted.

The second consideration regarding judicial review in this case is whether judicially manageable norms can be applied to evaluate the decision of the Union Executive to sign the Final Act. The Supreme Court took the view that judicially manageable standards were available to evaluate the validity of the decision of the President in issuing a Proclamation of Emergency under Article 356 of the Constitution. The
President's power to issue a Proclamation was a conditional power. In exercise of judicial review, the court is entitled to examine whether the conditions have been satisfied or not.

However, as far as the treaty concluded by the executive of the Union is concerned it cannot be enforceable in a Court of law in India. Its provisions are not the law of the land unless and until it were specifically enacted as part of the Municipal law by Indian Parliament. Therefore the provisions of treaty are not the law of the land for enforceability in the Municipal Law but however the executive of the Union of India being a signatory to those treaty which are enforceable against our nation in the international law which is a powerful forum is required to be analysed in view of the impact it carry on the nation. Therefore the treaties like TRIPS are to be analysed not only in the standpoint of its constitutional validity in India but also how far it will affect the nation as a legal entity before the international forum and enforcement body like dispute settlement body under WTO in the light of the power of the executive to enter into treaty which have far reaching consequences in Indian municipal law, domestic industry, indigenous knowledge, culture etc.

One of the strong view of the pharmaceutical industry is that the Govt. failed to protect as required and fell short of the minimum conduct expected of Govts: it facilitated the implementation of TRIPS provision by
giving the green light of affixing our seal to the Transnational corporations at the cost of Indian pharmaceutical industry in particular to devastatingly affect the well being of the nation- India.

The articles embodied in the Constitution read as the guarantee to the people and find implicit right to housing, food, justice etc. The right to certain basic amenities free from the wanton destruction of shelter to be the corollary of combing right to health, property and protection accorded to the people at large. Thus at a minimum, the state neither destroy the available material nor obstruct efforts by individuals to provide such facilities.

In the present analysis by emphasizing that collective rights, environmental rights and economic and social rights are essential elements of human rights guaranteed under the constitution and that no Article in the Constitution that cannot be made effective while Govt may labour under difficult circumstances in trying to improve their relationship with multinational corporation if there relationship fail to be mindful of the common good and the rights of individual and communities. The Govt should establish independent investigator free access to the conduct, ensure adequate safety to provide information to and meaningful access to regulatory and decision making bodies.
Even if we interpret the Union Government and Parliament's treaty making empowerments widely to conclude that these powers extend substantively over all areas (including those occupied by the State List), there is all the more reason for mandatory consent and consultation to be read in to the Constitution so that States are not deprived of their powers without their consultation and consent.

A treaty, the implementation of which would require amendment of a law should be ratified by Parliament before being signed by the Government. It was further submitted that a treaty, the implementation of which would require a Constitutional amendment, should be ratified by the constituent power of Parliament before the Government signs it.

The executive power of entering into a treaty is set forth in Article 73(a) read with Entry 13 and 14 of List I of the Seventh Schedule. The scope of Article 73(a) was discussed in

FN: Jayantilal Amritlal vs. Rana AIR 1964 SC 648 where the Supreme Court held that the power under Article 73(a) will not extend to matters in Lists II and III save as expressly provided in the Constitution. In support of this view, in

FN: Hara K Chand v Union of India AIR 1970 SC 1453 the Supreme Court held that the rule is that 'widest amplitude should be given to legislative entries' But when two entries in different lists appear to be in direct
conflict with one another, then the duty of the court is to reconcile the entire and bring about harmony between them. It is a well-recognized canon of interpretation that a general power should not be interpreted so as to nullify a particular power conferred by the same instrument. The purpose of harmonious construction is to see to it that no entry is robbed of its entire context and made nugatory. It follows that a general power such as that in Entries 13 and 14 of List I cannot be exercised so as to make the specific powers of List II and List III redundant and nugatory.

In FN:Mohini Jain case AIR 1992 sc 1858) the Supreme Court lay emphasis on the Preamble which is guiding and governing force of the nation executive.

The preamble promises to secure justice, social, economic and political for the citizens. A peculiar feature of the Indian Constitution is that it combines social and economic rights along with political and justifiable legal rights. The preamble embodies the goal, which the State has to achieve in order to establish social justice and to make the masses free in the positive sense. The securing of social justice has been specifically enjoined as an object of the State under Art.38 of the Constitution.
The Indian Constitution, though on special situations operates in a unitary fashion is essentially a dual polity as Dr. Ambedkar mentioned in the Constituent Assembly. He pointed out:

"A federal constitution is marked (1) by the existence of a central polity and subsidiary polities side by side, and (2) by each being sovereign in the field assigned to it. In other words, Federation means the establishment of a dual polity. The Draft Constitution is a federal constitution inasmuch as it establishes what may be called a dual polity. This dual polity under the proposed Constitution will consist of the Union at the Centre and the States at the periphery, each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. The American polity is also a dual polity, one of it is known as the Federal Government and the other States, which correspond, respectively to the Union Government and the State Governments of the Draft Constitution. Under the American Constitution the Federal Government is not a mere league of the States nor are the States administrative units or agencies of the Federal Government. In the same way the Indian Constitution proposed in the Draft Constitution is not a league of States nor are the States administrative units or agencies of the Union Government" (B.SHIVA RAO, Framing of India's Constitution Vol. IV Page 422)
This federal fundamental is a basic structure of the constitution, which means that constitutional morality and law demand recognition of the non-negotiable reality of statehood with autonomy, the inevitable inference being that when the Union does an act trenching upon the provincial sphere, it has to be with the concurrence of the States, otherwise federalism becomes a chimera, a teasing illusion.

Another point Dr. Ambedkar stated in the Constituent Assembly was that economic democracy was the country's aspiration and not merely a parliamentary form of government to be instituted through the various mechanisms provided in the Constitution, without any direction as to what our economic ideal, as to what our social order ought to be.

A treaty-by itself- would not be enforceable in Indian courts. Its provisions would not be the law of the land unless they were specifically enacted as part of Indian law by Parliament. But, that would not conclude constitutional misgivings about the treaty, which may set up a powerful external enforcement of the treaty (as has been done in the case of Uruguay Round) so that India and its people would feel the effect of non-compliance with the terms of the treaty. The treaty making power must be deemed to be subject to certain express and implied limitations.
Although the basic structure doctrine was first enunciated to contain an over-extensive use of the power to amend the Constitution, the principles underlying the basic structure are also crucial aids to interpretation and facts to be borne in mind when considering the exercise of executive power.

Ascertaining the Constitutional limitations on the treaty making power and determining whether the Executive acted within these parameters is undisputable a judicially discoverable and manageable task.

The exercise of power by the Executive in entering into a treaty under Article 73 is subject to judicial review at least to the extent of examining whether the Executive acted with the Constitutional parameters, which circumscribe the treaty making power as declared by the Supreme Court in S.R.Bommai's case. These parameters will be defined and examined hereafter.

If the direct and inevitable effect of a treaty is that it will infringe fundamental rights, the judiciary has a constitutional obligation to interfere. Again if the treaty making power subverts the principle of accountability (which is in many ways the cornerstone of democratic governance) to a point that adherence to such principles has become
mere sham and their observance has become illusory, courts will pass necessary orders to restore the norms of accountability. Nor can the judiciary stands by to witness a treaty simply riding rough shoti over the very basic structure of the Constitution including democracy, sovereignty and social justice.

The Uruguay Round is one of the most important treaties signed by the Indian government since independence. Whether the Government's signing of the Final Act constitutes a violation of India's sovereignty and against the spirit of the constitution is a moot question. It raises very fundamental questions about Indian federalism, the welfare State, fundamental rights and the functioning of Indian democracy.

The Preamble to the Constitution states that 'we the People of India, having solemnly resolved to constitute India into a Sovereign, Socialist, Secular Democratic Republic....' It is a settled part of our jurisprudence that the Preamble sets forth the goal of our political society so that it may be invoked to determine the ambit of fundamental rights because it is the ideals of sovereignty, socialism, secularism and democracy which are elaborated by the provisions of the Constitution. As stated by FN: D.D. Basu in shorter Constitution of India (Eleventh Edition 1994) "In short, in the matter of interpretation of the provisions of the Constitution as well as of a statute... the Court is relying on the
objects enshrined in the Preamble to the Constitution, wherever the language of the enacting provision permits.

The concept of sovereignty has two aspects—one is external and the other internal. As stated by the Supreme Court in *FN:Maganbhai v Union of India, AIR 1969 SC 783*, the external sovereignty of India means that it is not subject to the control of any other State or external power; and secondly, that it can acquire foreign territory and also cede any part of the Indian territory, subject to limitations (if any) imposed by the Constitution. In *FN:Synthetics v State of U.P. (1990) 1 SCC 109*, the Supreme Court observed that the internal aspect of sovereignty, in turn, means that the nation has the power to legislate on any subject, to promote the health, morals, education and good order of the people, subject only to the federal division of legislative powers and other limitations imposed by the Constitution. In view of the fact that TRIPS provisions stipulates of minimum standards to be adopted in municipal law both at the central and state level the legislature power as distributed among the union and state under Art 246 is ineffective and infractuous.

The source of all power, Executive, Legislative and Judicial, is the Constitution. If there be a conflict between the GATT agreements and the Constitutional mandates, the latter will invalidate the former so
far as the Indian jurisdiction and jurisprudence are concerned. In the
great words of U.S. Chief Justice Marshall in Marbury v Madison "
certainly all those who have framed written constitutions contemplate
them as forming the fundamental and paramount law of the nation, and
consequently the theory of every such government must be that an act of
the legislature repugnant to the Constitution, is void." A mere decision of
the Council of Ministers pro tem, who are in power under the
Constitution, is an a fortiori case. In India, Art.13 expressly declares void
any law (or executive act) in derogation of or abridges fundamental
rights. So also other Contra-Constitutional action too will be shot down
by writ of Court. Under Art 141 which vests final authority in the
Supreme Court to declare the law, which binds all.

Our Constitution, as of now has created a 'Sovereign Socialist
Secular Democratic Republic' the adjectives are not idle diction but
pregnant with potency and the Preamble to this Paramount deed
luminously explicates the values packed into the description of our
Republic. It follows that the GATT Agreements must be tested on the
touchstone of the Constitution. May be more, beyond the text and
impregnable even by any constitutional amendment are the basic
features of the Constitution.
Indeed, the purpose of the analysis of this proposition is to understand the provisions of GATT/WTO and its impact on the law of the land and the socio-economic and developmental future of the nation. It is the fundamental duty of every citizen of our nation under Art 51 A (a) to abide by the Constitution and respect its ideals and institutions. This equally applies to the executives who are obliged under the constitution while governing the nation.

It is questionable whether Intellectual Property right comes within the founding ambit of WTO in its original structure. Assuming the rather ambiguous and dexterous inclusion of TRIPS is a fait accompli, any structural mutations to be brought into the Indian Patents Act and other allied Act under IPR must be Constitution-friendly and socially value based, since imperial occupation through technological invasion is anathema to the spirit of our Founding Deed. The establishment of WTO and the TRIPS agreement are sui generic among the modern treaties and as such it cannot be equated to the treaties entered into earlier for various other nations.

The Final Act intrudes extensively in every aspect of the domestic economy. The Final Act seeks to restructure vital areas such as domestic food supply, production of essential medicines, sanitary and health standards, manipulation of genes and creation of new life forms,
investment parameters, infrastructure, telecommunications, air transport, banking, insurance, public sector undertaking, and the entire-service economy. There is virtually no sector of economic life, which remains untouched by the Final Act. The Final Act is, in short, an invasion of a new form.

The nature of the Final Act is sui generis, so as to have been its genesis. For the first time, the concerns of democratic governance, namely, the transparency and accountability of decision-making have been shifted from the national level to the international scenario without taking into confidence the people at large who were represented in parliament and logs is nature. Once the concerns were whether national and state governments disclosed sufficient information to the people to permit informed decision-making.

Therefore its view that the entire Union Parliament had been taken for granted by an Executive, which has negotiated away its sovereign legislative power without so much as bringing the matter to Parliament's attention. We face a situation in which Chief Ministers of several states have repeatedly sought consultation and briefings with the Prime Minister only to be met with stony silence. The meaning of democratic discipline has been transformed and made ever more difficult by the fact that grass roots activists and social groups must lobby and pressure the
executive not only at the national level but at exotic locations such as Punta del Este, Uruguay.

Further, the Government of India now has at its disposal reasons and justifications, which appear inscrutable. The First is that it lacked the support of the rest of the developing world. Yet, the reasons for the dissolution of the Group of 77 have never been made clear to the Indian nation. Instead, we witnessed dramatic reversals in the Union's stand without any explanation as to why and when it found itself alone on the world's stage. This argument of isolation is invoked to justify all the concessions and agreements made by the Government of India even while acknowledging the anticipated adverse effects such as the increase in drug prices or dependency on foreign food imports. The new imperative of globalization at all costs has also been invoked to make the signing of the final Act a virtual fact accomplice.

One reason for accepting the treaty is that we cannot survive outside the new system. Yet, even after signing the Final Act, India still remains isolated. The South Asian countries are the only ones remaining outside a regional trading bloc. While the U.S. Canada, Mexico and soon the rest of Latin America will enjoy preferential treatment within NAFTA, the European nations will enjoy the same within the European Union. Likewise, the nations of the Far East will benefit from the preferential
arrangements of APEC, India is the only major industrial power which, in the aftermath of the Uruguay Round will not be part of any regional bloc in which it enjoys preferential treatment as opposed to non-members. This will place India in a distinct trade disadvantage, which are already bears qua the richer nations.

Notwithstanding the new ideology invoked by the Union to justify the Final Act, the bare facts regarding its socio-economic impact are unavoidable. Even the Government admits that they will witness astronomical increases in the prices of medicine and collapse of industry and there is no mechanism to ensure that essential medicines will be available to the poor. The Government also anticipates that the adverse impact on the domestic pharmaceutical industry and economy as a whole will be colossal.

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 Governments, 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.
There has been a total lack of constraint over the executive's treaty making power. This is in marked contrast to most other countries in the world. For example, the Final act has been subjected to ratification by the U.S. Congress without which it has no binding power even qua the nation itself. In fact, the Final Act itself states that the contracting party should submit it for approval by the relevant authority in the respective nations. Yet, notwithstanding the extraordinary reach of the Final Act into every aspect of India's future, no such parliamentary or other scrutiny has taken place. Instead the executive's actions have been taken as a fait accompli and the national waits quietly for the final hour when the signature indicating its entry into force is made. Under these circumstances, it is imperative to examine the constitutional constraints over the executive's treaty making power. Emanating from the constitution, the treaty making power is subjected to constitutional control and cannot be violative of the rule of law.

It is worth mentioning in the context of national treatment under TRIPS which stipulates that even in municipal law of the country it should not differentiate between citizens and foreigners and they should be treated alike, because the laws made under Art 19 is specifically applicable to the citizens of India only. Further in the case of law made under the Constitution shall not become void against non citizens to
whom the fundamental rights is not applicable automatically. (Dularey vodh V ADJ AIR 1984 SC 1260)

Under the Scheme of the Constitution, Parliament should lay down elaborate procedures placing the treaty making process in a context of information sharing, accountability and consultation. This procedure could require ratification by Parliament of all treaties, require consultations with State legislatures or subject treaties to national referenda. However, if Parliament does not pass any law at all, the executive power remains untrammeled. The question then is whether the Union has the power to enter into any treaty or agreement or participate in international conferences and meetings in the absence of enabling legislation?

The signing of the Final Act, (would, in effect gave way to the application of a new series of executive laws override the domestic law if inconsistence found, where silent because of the peculiarity of circumstances again applied as municipal law ) moreover, result in collapse of the federal legal structure of the Republic, adversely affect the fundamental rights of citizens and dilute India's sovereignty. In sum, India's negotiations of GATT and any acceptance of the Final Act are politically and constitutionally require detailed discussion.
A treaty, the implementation of which would violate the basic structure of the Constitution, is wholly unconstitutional and cannot be ratified by the government. Accordingly, the subject matter of the treaty would have to be taken into account. If it is a subject within List II or List III of the Seventh Schedule, then the exercise of Executive Power over such subjects is invalid since no provision of the Constitution states that there are no limits on the exercise of executive power to make a treaty. It follows that the Executive cannot, in exercising his power under Article 73, enter into a treaty, which covers subject matter in the state of concurrent lists.

Our Constitution is federal, not unitary, and any treaty, which travesties or tampers with the federal nature and consequential power of the State must be tested on the Constitutional anvil. In short, treaty-making power is not a totalitarian authority of the Union subversive of limited sovereignty that resides in various repositories under the Constitution.

Accordingly, the power of the Union Executive to negotiate and enter into treaties is co-extensive with and flows from the legislative power qua treaty making. Under the scheme of Article 73 read with Entries 13 and 14 of List I of the Seventh Schedule, there is no self-standing executive treaty making power. Instead, it is derivative from the
legislative power qua international treaties. The question then arises as to whether Parliament has enacted legislation setting the parameters of the executive treaty making power and subjecting it to democratic norms of accountability and transparency. In the context of the Uruguay Round Negotiations, we note that no such legislation has been passed.

Where the government chooses to proceed without serious recourse to any form of accountability, other institutions of governance cannot stand idly by. Where Parliament is rendered powerless, other institutions must secure this accountability to such measure as may be deemed necessary. Where something is done in secret, simply breaking the veil of secrecy may be enough. It all depends on the facts and circumstances.

We begin with the assumption that the treaty making power under the Constitution is not untrammeled. Certainly, the Executive is not totally unrestrained from entering into a treaty, which makes India subordinate to another nation, relinquishes its territory or makes other inroads into its sovereignty. The power of the Executive in entering into a treaty under Article 73 has the capacity to emasculate basic features of the Constitution.
While it is arguable that since treaties do not give rise to enforceable obligations within the Indian legal system, there is no room for judicial interference until legislation is passed, and, further flowing from this argument - since Parliament will assess the situation when enacting implementing statutes, there is no scope for the judiciary to intervene. This argument proceeds on the fallacious assumption that treaties do not pose a danger to the constitutional system and fundamental rights until they are given shape in the form of legislation. This assumption is apparently correct till the conclusion of the multilateral treaty called TRIPS and the construction of WTO at Uruguay. Treaties are solemn obligations. Within their own legal context - and the domain of international law - they are legal and binding on the Union of India and States. They cannot be resiled from, even if legislation implementing them is not passed. The consequences of treaty violation are in the realm of international law. Particular treaties may contain rigorous forms of enforcement. They may prove to be self-fulfilling (even though they are not self-executing and applicable in the domestic legal system). Treaty violations may bring reparations and trade distortions. In this day and age where multi-lateral treaties increasingly regulate the international order, there is little protection from the falsely comforting thought that treaties do not pose a threat since Parliament has to pass implementing legislation to make the treaty enforceable within the Indian
legal system. In the establishment of WTO, the dispute settlement system has got all features of a Court with absolute power to punish the holates.

Whether the final Act violates the fundamental rights protected under the Constitution. A penumbra of fundamental rights is guaranteed under Article 21 of the Constitution. Article 21 protects the right to life and personal liberty of all persons. The Supreme Court has held that the right to life enshrined in Article 21 includes a right to live with human dignity and includes all those aspects of life that go to make a man's life meaningful, complete and worth living.


The right to life also includes the right to food, clothing and maintenance and improvement of public health. The Supreme Court in Bandhua Mukti Morcha v Union of India (1984) 3 SCC 161 aptly observed:

"This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42."

Now one of the issue is whether the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) will have a direct and
inevitable effect on the right to life, including the right to maintenance and improvement of public health. The Patents Act, 1970 secured the right to health in that it permitted the development of an indigenous drug industry and limited monopoly rights so that drug prices in India became among the lowest in the world. Today, drug prices in India range from 5 to 30 times lower than in countries with product patents. Prices in India are from 900% to 3010% lower than U.S. prices for the same drugs. The TRIPS Agreement will require the virtual repeal of the Patents Act, 1970 since the thrust of various provisions based on the recommendation on Hon'ble Mr. Justice Rajagopala Ayyengar and Hon'ble Mr Tek Chand is contrary to the treaty. Further the new act which greatly enhances the monopoly rights of patentees while dispensing with their obligations to public good or welfare of the people in the developing countries whose market potential enhances the value. The provisions of the Patents Act, 1970, which sought to create a balance between the monopoly rights of the patentee and the public interest in obtaining the patented invention at reasonable prices conflict with TRIPS Agreement and will have to repealed.

Whether the Government of India, in signing the Final Act, violated the principle of democracy, which is a basic feature of the Constitution, is matter to be gone into both the content of the treaty and its inroad to municipal law, which had the blessing of the parliament.
Accordingly examine the government of India's handling of the Uruguay Round negotiations to determine whether the Executive kept the people or their elected representatives reasonably informed of the progress of the negotiations, the stance taken by India and other nations, the reasons for any change in India's stance and the impact of the treaty on the political economy.

Furthermore, no exercise of executive power can interfere with the fundamental rights of citizens. It follows that where there is a treaty that affects the fundamental rights of citizens, such a treaty is void as soon as the transgression is demonstrable. It does not have to be shown that the transgression is an unreasonable restriction. The test for determining the transgression of fundamental rights is that the direct and inevitable effect of the exercise of that power (or, making of a treaty) is that it will affect fundamental rights (see Maneka Gandhi v. Union of India, AIR 1978 SC 597).

In order to resist a Fundamental Rights challenge to the exercise of the treaty making power, there are two thresholds that any such exercise must cross in order to pass constitutional muster. The first is the simple but absolute requirement that the authority of enacted law must back any transgression of fundamental rights. If there is no enacted law, that
is the end of the matter. The second threshold is that where the power is exercised pursuant to enacted legislation, the legislation itself and any power exercised under it will further be tested by various tests of constitutional limitation. In order for a treaty to give rise to right and obligations within the territory of India, they must be incorporated into municipal legislation (see reBerubari, AIR 1960 SC 845; Maganbhai v. Union of India, AIR 1969 SC 783). However, once a treaty is negotiated, under Article 253, the Union Parliament has the power to enact implementing legislation even if such legislation encroaches on legislative areas which are exclusively reserved for the States. The Union Legislature is empowered to pass implementing legislation which can ingress into the exclusive legislative power of the constituent state.

However, the scheme of the Constitution is that the power of the States cannot be taken away without their consent. Thus, the Council of States (Rajya Sabha) can request the Union Parliament to enact legislation on behalf of the States. Two or more States can request the Union to legislate in the executive field of the State (Articles 249 and 252). The executive power of the State may be entrusted to the Union on the basis of consent. It seems incongruous that through the non-statutory exercise of executive power, the Union can appropriate the legislative (and consequently the executive) power of the States. It is a moot question as to whether the Union has the power to negotiate a
treaty which intrudes on to the executive and legislative power of the State without making special arrangements to do so. The scope of this power of the Union Parliament needs to be interpreted so that only incidental intrusion into the State List is permitted. Any other interpretation would make Indian federalism a vulnerable casualty in the hands of the executive treaty making power.

Even if we interpret the Union Government and Parliament's treaty making empowerments widely to conclude that these powers extend substantively over all areas (including those occupied by the State List), there is all the more reason for mandatory consent and consultation to be read into the Constitution so that States are not deprived of their powers without their consultation and consent.

A second threat is that to democracy. The negotiation and signing of the Final Act raises the question of whether these actions were undertaken by the executive, which permitted neither transparency, nor accountability of decision-making, the seminal aspects of democracy. It must be ascertained whether the Union Government has complied with its duty of accountability to the people by keeping Parliament, the President and the people informed of India’s stance at the GATT negotiations, the reasons for such stance and any changes thereto, the negotiating position of other nations and the impact of GATT, as it
emerges from the Uruguay round, on the Indian economy and the rights of its citizens.

A third threat to the basic features of the Constitution is that to sovereignty. Sovereignty aspects refer to both external and internal. Internal sovereignty means that the Union and State Legislatures retain the power to legislate all laws necessary for the well being of the people. However, the Final Act restricts the ability of the Legislatures to pass laws by regulating virtually every sector of the economy and vesting the power of interpretation of the Final Act in the Multilateral Trade Organization. The Final Act also requires a delegation of the sovereign executive power to the Multilateral Trade Organization, which is empowered to authorize retaliation against particular nations.

The right to health has been specifically held to be a fundamental right under Article 21 in a series of Supreme Court judgments beginning with Bangalore Water Supply Corporation, AIR 1978 SC 548, M.C. Mehta v. Union of India, AIR 1987 SC 395, Vincent Panikulangara, (1985) 2 SCC 185 and Parmanand Katara, (1986) 2 SCC 285. However, the TRIPS Agreement, which allows the patenting of methods of agriculture and food and medicine products, violates the right to health. In Ajaib Singh v. State of Punjab, AIR 1952 Punjab 309 the court held that fundamental rights guaranteed under. Part III of the Constitution cannot be derogated
from on the grounds that such derogation is necessary for the purpose of
giving effect to the treaty obligations of India.

The provisions of exiting law will have to be changed when the
Final Act is enacted. The Agriculture Agreement will require repeal of
Section 3 of the Essential Commodities Act, 1955 which empowered the
Central Government to issue notifications to regulate prices and setting
procurement prices for foodstuffs. Similarly, Sections 45-48 of the
Customs Act qua importation and Section 51 of the Act qua exportation
will be affected. Section 11 of the Customs Act will be affected because
there should be equivalent treatment between Indian and foreign parties.
The Submissions of the National Law School examined the existing laws,
which will be affected by the TRIMS Agreement. A legislation, which will
be affected, is the Foreign Exchange Regulation Act, 1973 which places
restrictions on the flow of foreign exchange and on the establishment of
foreign companies in India. Section 11 of the Industries (Development
and Regulation) Act, 1951 confers the power of licensing of new
industrial establishments to the Central Government. The Final Act
seeks to deprive the government of the power to impose conditions in the
nature of investment requirements for the grant of a licence. Other
affected enactments are the Companies Act, 1956 that regulates the
functioning of foreign companies and the Foreign Trade (Development
and Regulation) Act, 1992, which governs exports and imports. The
GATS Agreement, in turn, will require changes in existing Indian Laws. The liberalization of services in GATS will require changes to the Banking Regulations Act, 1949 which empowers the RBI to license, control and regulate commercial banks, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 which provides for the nationalization of banks and the Reserve Bank of India Act, 1935 under which the RBI has been given extensive powers to control and regulate commercial banking in India. In addition, the Final Act will affect the Life Insurance Corporation Act, 1956 which nationalized the life insurance business and the General Insurance (Business Nationalization) Act, 1972 which nationalized the business of general insurance in India. The Indian Telegraph Act, 1885 which gives the exclusive privilege of establishing, maintaining and working telegraphs and telephones to the Central Government will also be affected. In the area of air transport, the Air corporations Act, 1953 which nationalized air transport in India and the Aircraft Act, 1934 which empowers the Central Government to control the manufacture, possession, use, operation, sale and export of aircraft will be affected. The judgment of the Supreme Court in Maganbhai v. Union of India which stands for the proposition that where a treaty operates to restrict the rights of citizens or modify existing laws, then legislative sanction is necessary to give effect to the treaty.
TRIPS and its impact

Based on the nature and scope of the Treaty like TRIPS, may bring reparations and trade distortion. Particularly treaty likes TRIPS, which is self-fulfilling though not self-executing and applicable in Municipal law containing rigorous forms of enforcement under the Treaty itself. Therefore the present study discuss as to how far the executive can commit the nation’s obligation on treaty, and their duty towards Parliament which has to give effect to the treaty and enact municipal laws.

Having analyzed the various provisions of TRIPS in respect of our domestic industry and the available provision that are in force before the signing of the Treaty, that gave raise to the establishment of WTO, we now see the fundamental rights guaranteed under the constitution and one of important principles that the basic structure of the constitution which cannot be disturbed while making laws by the parliament is in doubt.

In this regard the present study which involves the implication of TRIPS in India, a unique and a different treaty signed by the Indian Government since independence. It raises very fundamental questions about our welfare and socialistic pattern of society, functioning of Indian
democracy as a sovereign nation, the fundamental rights guaranteed under the constitution and the fundamental duties imposed on the executive in the governance of the nation and its policies.

The next question is whether the Final Act violates the fundamental rights protected under the Constitution. A penumbra of fundamental rights is guaranteed under Article 21 of the Constitution. Article 21 protects the right to life and personal liberty of all persons. The Supreme Court has held that the right to life enshrined in Article 21 includes a right to live with human dignity and includes all those aspects of life, which go to make a man's life meaningful, complete, and worth living. Olga Tellis v. Bombay Corp. AIR 1986 SC 180; Maneka v. Union of India, AIR 1978 SC 597. The right to life also includes the right to food, clothing, and maintenance and improvement of public health. The Supreme Court in Bandhua Mukti Morcha v. Union of India, [1984] 3 SCC 161 aptly observed,

"This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and the least, therefore, it must include protection of the health and strength of the workers, men and women, and of the tender age of children against abuse, opportunities to develop in a healthy manner and in conditions of
freedom and dignity, educational facilities, just and humane conditions of work and maternity relief."

The inclusion of the right to health as part of the right to life enshrined in Article 21 was reiterated by the Supreme Court in Vincent v. Union of India, (1987) 2 SCR 468 at 478:

"As pointed out by us, maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged."

It is settled law that in adjudging the constitutionality of statutory provisions on the touchstone of fundamental rights, the test is whether the provision will have a "direct and inevitable effect" on a fundamental right. Maneka Gandhi v. Union of India, (1978) 1 SCC 248. Further, fundamental rights must be "directly and substantially invaded or are in imminent danger of being so invaded." Maganbhai v. Union of India, (1970) 3 SCC 400 at pr. 21. In this context, it is important to note that in Ajaib Singh v. State of Punjab, AIR 1952 Punj. 309 at 319 (pr. 39), the Punjab High Court has held that the fundamental rights guaranteed under Part III of the Constitution cannot be invaded on the grounds that treaty obligations of India must be complied with:
“Neither of Article 51 nor 253 empowers the Parliament to make a law which can deprive a citizen of India of the fundamentals rights conferred upon him.”

The analysis of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) will have a direct and inevitable effect on the right to life, including the right to maintenance and improvement of public health. The Patents Act, 1970 secured the right to health in that it permitted the development of an indigenous drug industry and limited monopoly rights so that drug prices in India became among the lowest in the world. Today, drug prices in India range from 5 to 30 times lower than in countries with product patents. Prices in India are from 900% to 3010% lower than U.S. prices for the same drugs. The TRIPS Agreement will require the virtual repeal of the Patents Act, 1970 in that it greatly enhances the monopoly rights of patentees while dispensing with their obligations. The provisions of the Patents Act, 1970, which sought to create a balance between the monopoly rights of the patentee and the public interest in obtaining the patented invention at reasonable prices which conflict with TRIPS Agreement as discussed above will have to be repealed.
Furthermore, companies will not be obliged to work the patent so that it may be used as an important monopoly preventing anyone else from manufacturing the invention in India. This will take India back to the situation prevailing under the colonial Patents & Designs Act, 1911 when even essential life saving drugs were not available in India. Thus, the TRIPS Agreement will have a direct and inevitable affect on the affordability and availability of medicines in India.

In view of the fact that the TRIPS Agreement will require repeal of the provisions of the Patents Act, 1970 which made medicines affordable and available in India, we are led to the conclusion that the TRIPS Agreement will have a direct and inevitable effect on the maintenance and improvement of public health and the accessibility of the common man to medicines which are included in the right to life enshrined in Article 21 of the Constitution.

Domestic food aid programmes, namely, the Public Distribution System of Food grains (PDS) will also be subject to scrutiny as to whether eligibility is subject to clearly defined criteria relating to nutritional objectives. In addition, good purchases by the Government must be made at current market prices, thereby preventing the Government from subsidizing farmers.
The foregoing market access requirements will adversely affect Indian farmers by forcing them to compete against the large transnational corporations which have excessive financial power resulting from their oligopolistic control over world food markets. We note that six conglomerates—Cargill, Continental Grain, Louis Dreyfus, Bunge & Born, Mitsui/Cook and André-Garnac control 85% of world trade in grain including wheat, corn, oats, and sorghum. Similarly, eight transnational corporations control 60% of world sales of coffee; five corporations control 90% of world tea sales; three conglomerates control 75% of the global banana market; five corporations account for 75% of trade in cocoa; six leaf buyers control 90% of world trade in leaf tobacco; and fifteen companies control 90% of globally traded cotton. Indian farmers cannot be expected to compete against the enormous financial and technological power of these transnational giants of the rich countries, particularly when they are guaranteed a minimum market access. Domestic food production will necessarily be adversely affected and India will be forced to rely largely on food imports.

India's experience with food imports under the P.L. 480 program made it very clear that foreign countries, particularly the U.S., view food as a weapon with which to pressure foreign countries to comply with American political objectives. It is accordingly likely that food imports into India could easily be cut off or jeopardized if India refuses to comply
with American demands regarding any sector of trade or foreign relations. We must therefore conclude that the Agreement on Agriculture, by adversely affecting India's self-sufficiency in food, will have a direct and inevitable effect on the right to food which is an integral component of the right to life guaranteed under Article 21 of the Constitution.

The next question to be considered by us whether the Government of India, in signing the Final Act, violated the principle of democracy which is a basic feature of the Constitution. In S.R Bommai v. Union of India, (1994) 3 SCC 1, the Supreme Court held that Democracy is an essential feature of the Constitution and part of its basic structure. According to the Court, a sine qua non of democracy is the participation of people in governance. Sawant and Kuldip Singh, JJ...stated as follows at pr. 102:

"The participation of the people in the governance is a sine qua non of democracy. The democratic way of life began by direct participation of the people in the day-to-day affairs of the society. With the growth of population and the expansion of the territorial boundaries of the State, representative democracy replace direct democracy and people gradually surrendered more and more of their rights of direct participation, to their representatives. If it is true to say that in
democracy, people are sovereign and all power belongs primarily to the people, the retention of such power by the people and the anxiety to exercise them is legitimate."

By necessary implication, the people and their elected representatives must be kept reasonably informed of the action of the Executive in order to participate in the process of governance. This view is embodied in Article 75(3) of the Constitution, which provides that the Council of Ministers shall be collectively responsible to the House of the People. Unless the people are provided with information, the Government will be able to avoid any accountability to the people and transparency of decision making will be illusory. Accountability and transparency of governance are implicit in the Democratic principle.

We must accordingly examine the Government of India's handling of the Uruguay Round negotiations to determine whether the Executive kept the people or their elected representatives reasonably informed of the progress of the negotiations, the stance taken by India and other nations, the reasons for any change in India's stance and the impact of the treaty on the political economy.

The Union Government has also rejected the demands of Chief Ministers of four states, West Bengal, Tamil Nadu, Rajasthan and Orissa
for consultations regarding the state subjects, like agriculture, which will be affected by the Final Act. Moreover, the Union Government ignored the conclusions of a Standing Committee of the Parliament ("Gujral Committee") which declared that each of the six critical areas of the treaty promised adverse consequences for the country.

The Preamble to the Constitution states that 'We the People of India, having solemnly resolved to constitute India into a Sovereign, Socialist, Secular Democratic Republic.

"we must not be content with mere political democracy. We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognizes liberty, equality and fraternity the principles of life. These principles of liberty, equality and fraternity are not be. Treated as separate items in a trinity. They form a union f trinity in the sense that to divorce from the other is to defeat the very purpose of democracy.

The Govt should take steps to remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up".
GATT 1994 may aggravate the explosive potential of inequality, if the foreign giant corporations occupy our economic space and accentuate inequalities.

The source of all power, Executive, Legislative and judicial, is the Constitution. If there be a conflict between the GATT agreements and the Constitutional mandates, the latter will invalidate the former so far as the Indian jurisdiction and jurisprudence are concerned. The great words of U.S. Chief Justice Marshall in *Marbury v. Madison*, "certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be that an act of the legislature repugnant to the Constitution is void". A mere decision of the Council of Ministers pro tem, who are in power under the Constitution, is an a fortiori case.

Now the question arose as to whether it is possible or necessary to test the action or power of the Executive who signed the treaty, which has far reaching consequences in Municipal Law, domestic policy of the centre in economic social, political, cultural and State, Sovereignty of the nation and all. In this regard it is relevant to refer to the judgment of the Supreme Court in S.R. Bommai Case (FN: SR Bommai v UOI (1994) 3 SCC 1) Page 200-201, wherein the Court took the
view that the action of the President under Art 356 is a constitutional function and the same is subject to judicial review. The question relating to the extents, scope and power of the President under Art 356 though wrapped with political thicket, per se it does not get immunity from judicial review.

While dealing with the fundamental rights guaranteed to the citizens of India with reference to the mandatory provisions of TRIPS agreement, the declared position of fundamental rights under the constitution in the words of the Supreme Court in its latest decisions are as follows:

   AIR 1998 SC 1703.

   No fundamental rights under III of the constitution is absolute and it is to be within permissible reasonable restrictions. Hence every individual right has to give way to the rights of public at large.


   The primacy of the interest of the nation and the security of the State must be read into every article dealing with fundamental rights.

   The scope of application of the fundamental rights against State refers to in Art 12 gives an extending meaning whereby it includes not
only the executive and legislative organs of the Union and the States but also local bodies such as Municipal authorities as well as other authorities (Bashashar Nath V IT Coma AIR 1959 SC 149) which include the instrumentalities or agencies of the State or bodies or institutions which discharge public functions of the governmental character (Ramana Dayaram Shetty Vs IAAI AIR 1979 SC 1628. (1979) 3 SCC 489) State of Punjab Vs Rajaram AIR 1981 SC 1694 (1981) 2 SCC 66)

This inclusive definition about 'State' and the wider meaning given by the Supreme Court to bring within the campus of State action which violates fundamental (Som Prakash Rekhi Vs Union of India AIR 1981 SC 212 1 SCC 449) to any action administrative (whether statutory or non statutory), Judicial or non judicial along with governmental Dept and Legislature.

The other Article under the Constitution which protect and uphold not only the fundamental rights guaranteed under the Constitution but also declare void the law made by any legislature or other authority which contravenes any of the fundamental rights included in Part III of the Constitution shall to the extent of the contravention, be void. (FNSai Ram Ram Narain Madhi Vs State of Bombay AIR 1959 SC 459.)
The minimal level of information provided by the Union Government made it impossible for either the people or their elected representatives to meaningfully participate in the decision of whether to sign the Final Act or render the Union accountable for its actions. The evasion of any accountability to the people and the lack of transparency of decision making render the Union Government's conduct of negotiations at the Uruguay Round in violation of the Democratic Principles which are part of the basic structure of the Constitution.

The new treaty is qualitatively different from treaties, which have been signed by nation states in the past in that it goes beyond extra-territorial issues and seeks to bind nations in following certain domestic economic policies thereby making deep inroads into their sovereign decision-making.

In this day and age where multilateral treaties increasingly regulate international order, there is little protection from the falsely comforting thought that treaties do not pose a threat since Parliament has to pass implementing legislation to make the treaty enforceable within the Indian legal system. It is again as fallacious assumption when the Parliament assess the situation while enacting implementing statute, the judicial review come into verify the effect of treaty on the constitution.
In view of the foregoing changes to existing laws required by the TRIPS Agreement and Agriculture Agreement and the anticipated effect on the price of medicines and self-sufficiency in food, the Final Act will have a direct and inevitable effect on the fundamental right to life enshrined in Article 21 of the Constitution.

Each situation has to be dealt with on its own. There can be no hard and fast rule that the treaty making power can never be subject to judicial review. There may be something in the nature of treaty, something about the manner in which it is negotiated something about its inevitable consequences and something about its impact on governance, sovereign function that may call for interference. At one level, the judicial power may simply ordain lifting secrecy or providing for consultation. At another level, it may be legitimate to ask whether the treaty offends fundamental rights or puts at risk the very principles of governance on which the constitution rests. These are all judicially manageable standards otherwise the very organs of the constitution namely executive, legislature and judicial will carry no meaning.

The entry into WTO is not a temporary commitment but a continuous and permanent commitment. Therefore the nation as a whole should become aware of adjust their commitment. As the old Roman
adage says all should decide whatever touches us all. The issue of TRIPS is analyzed not merely as an economic issue but in the legal and constitutional basis since its mandates in numbarable separating of domestic law for compliance without discussion by the Union and the State whereas contemplates otherwise.