

INDIA'S NEW ECONOMIC LAWS: WTO IN CONTEXT*

The fraternity, which the Constitution of India emphasises in its

Preamble, is suggestive of, and a step in the direction of universal fraternity. Article 51 of the Constitution of India lays down as a Directive Principle of State Policy that the State shall endeavour to promote international peace and security, maintain just and honourable relations between nations, foster respect for international law and treaty obligations, in the dealings of organised people with one another, and encourage settlement of international disputes by arbitration. The World Trade Organisation, its work principles and policy, as also the recent trend in the economic laws of India, both seek to establish a world order where there is no place for envy or enmity, but a consolidated, constructive and united universal effort made at marching ahead with an attitude of helping each other and lending such assistance as one is capable of providing to the other.

The most civilized and peace loving people in the society are the men of business and industry and the men of law. They survive or sink with peace and order in the society. Business, commerce and industry flourish and prosper with the prevalence of rule of law. Prosperity is the first casualty of any threat to law and order. This national seminar proposes to bring both of them - the men of trade and the men of law, together for interaction and exchange of views in search of a common path from within the nation towards a synchronized and homogenous Universe, its constituents marching ahead, hand in hand.

World trade acts as a stimulus to national economies, encouraging growth. Free flow of trade, crossing over artificial barriers, brings about global prosperity and peace. It is interesting to note that the natural geographical barriers such as rivers, oceans and mountains far from acting as obstructions to free flow of trade, at times, contribute towards stimulating trade ties. Nature is not difficult to win but the man-made barriers and artificial territories pose problematic issues to cross or break. The only advantage of destruction is : it leaves behind the surviving humanity wiser with unforgettable lessons to learn from. The two world wars, fought in the previous century, have led to emergence of ideas and their translation into action, bringing into being multiple liberal trade agreements and liberalization of world trade through multi national institutions. There have been rounds of global meets and discussions, leading to the birth of unique international trade treaties and settlements like General Agreement on Trade and Tariff (GATT 1986), World Trade Organisation (WTO 1994), Trade Related Investment Measures (TRIMS), Trade Related Aspects Of Intellectual Property Rights (TRIPS), Trade Policy Review Mechanism and Settlement of Disputes, and so on.

Not only the manpower, but the intelligence – natural and artificial, labour, capital and resources also have assumed unprecedented mobility with freedom and deregulation at national and international levels. During the last part of the preceding century, the contours of international trade have significantly changed. The productivity emphasis is shifting from heavy industries and manufacturing sector to service sector, such as banking, insurance, tourism, airlines, shipping and various other trade related services and infrastructure, such as information technology, intellectual property rights and knowledge-based industries. The monopoly of

individual industrial houses is dissolving in favour of professional groups and organizations coming up. It will not be an over-statement to say that it is now the trade and industry which has a shaping impact on politics and governance while it used to be the other way round, a little before. As a young student I read Charles Darwin's theory of 'Survival Of The Fittest', the rule which was held good in the stone-age and when the humanity was not civilized. The 'Survival Of The Fittest' is proving to be an all-time truth though its application is different. We are heading towards a singular world trade regime wherein also the rule of survival of the fittest shall be the rule. One who can make the best use of his faculties, intelligence and resources shall rule. However, this is no reason to feel diffident. What is needed is continuous process of thinking, survey, research and planning to explore what is best in us from the point of view of material resources, intelligence, means and capacity. We should find out what we can deliver to other countries, the fields wherein we can excel over others, and what we can on liberal terms, procure from others which if indigenously produced would prove uneconomical. World trade gives an opportunity for perfection in the field of production and excellence in the field of professionalism thus, putting the resources and faculties to optimum utility, which in turn would ensure a better quality of life to all participants of the new order. Globalisation and liberalisation have no place for the shackles of 'babudom', quota, permit, licenses and inspectors. Hopefully, we may also get rid of corruption eating into the roots of society.

At times, the development of new economic trends has given rise to severe adverse criticism. Articles and opinions have been galore that with the entry of multi-nationals, we are opening doors for business wizards into our country and thereby, once again heading towards economic slavery and repeating the same error which we committed by allowing the East India Company to spread its legs on the Indian land. We are mistaken for two reasons. One, we cannot afford to be aloof or left isolated and trailing behind. We shall have to be dynamic and visionary both in our action and thought to keep pace with the world order. Secondly, the way for moving ahead is to grip with firmness the hands of those who are on fast track or choose a well-laid path of our own on which we can afford to compete and be ahead also to lend a helping hand, waiting for and encourage those who are moving slow. In any case we shall have to move. Just as a deadly disease like SARS, though originating in China, is not the problem of China alone, it will affect the whole world, so is the case with boom and prosperity. No single country can afford to rise alone unless it takes other nations along and equally shares the fruits of success.

In all the international Covenants, Settlements and Treaties, relating to trade and industry, the professional experts from the field of commerce and law have made their collective contribution. To be independent and self-supporting, it is necessary for the men of commerce to know the law and for the men of law to know the commercial concepts. The two shall have to join hands while continuing to be independent in their own fields. The need is writ large from the spurt in the field of legislation within our country. Amendments of far-reaching consequences in the Securities and Exchange Board of India Act, 1992, The Negotiable Instrument Act, 1881, the Consumer Protection Act, 1986, The Companies Act, 1956 and the emergence of unique and innovative legislations like the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Act, 2002, the Insurance Regulatory and Development Act, 1999, the Competition Act, 2002, Anti-dumping laws and so on are strong indicators of how the law is expanding its hold to have a regulatory effect on commerce, industry and services. The smooth flow of trade related activities needs the governance of law in the interest of certainty and peaceful settlement in the event of disputes arising.

Already the disputes under new economic laws have started coming to the courts of law. Two things I have clearly noticed therefrom. Nine basic principles of the WTO trading system are

: (i) Transparency (ii) Most Favoured Nation (MFN) Treatment (iii) National Treatment (iv) The Free Trade Principle (v) Dismantling trade barriers (vi) Rule Based Trading System (vii) Special and Differential Treatment for Least Developed Countries (LDCs) (viii) The Competition Principle, and (ix) Environment Protection.* The businessmen shall have to be honest, transparent, trained and well organised in their business dealings. They shall also have to be meticulously precise and cautious in documentation and correspondence. They cannot afford to be aloof from law. They must have legal advice, invariably, available at their elbows' distance. So also, the litigation under the new economic laws is so complex that a lawyer, to be proficient, ought to well acquaint himself with the ways, policies and problems of commerce without which he cannot effectively argue a case in court of law nor a non-conversant judge can deliver a just decision.

I hope this national Seminar would prove a concrete step in the direction of bringing business, commerce, industry and law together. The subjects shall be better understood and familiarized by all concerned sitting together. Apart from understanding and educating ourselves, the Seminar would also provide an opportunity for critical examination of the laws so as to detect the hidden flaws and locate the places where there is room for improvement.



* Inaugural address delivered at the two-days Seminar on "India's New Economic Laws: WTO in context" at New Delhi, on 26-27 April, 2003.

* WTO in the New Millennium: Edited by – Arun Goyal & Noor Mohd.