

# WTO And Its Influences on Federal System of India



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## Abstract

The world trade organization is an international organization for facilitating trade among different nations of the world. It was established on 1 January 1995 by Uruguay round of negotiation. There are lots of advantage of formation of WTO, but India's agreement and commitment towards WTO has been reducing the power and sovereignty of our parliamentary system of democracy. The role of the Indian parliament in trade policy making has mostly been marginal. While many countries (both developed and developing) struggle with ensuring democratic control over trade policy making through parliamentary supervision, the issue in the Indian context, needs to be considered in the light of the low quality of parliamentary governance in India in policy making overall. Therefore Indian government should carefully analyse the pros and cons of the WTO agreement, so that it could not adversely affect our democratic system and power of parliament.

**Keywords:** WTO Indian Federal System, International Treaties, Indian Parliament.

## Introduction

Indian federalism is characteristically complex, therefore an easily misunderstood, model of federalism. It defies any singular generalization. It is a complex amalgam of dual federalism, organic-interdependent federalism, and cooperative federalism. As a result, the Indian model is uniquely a Union model of federalism. It has in built tendency to circumstantially centralize or decentralize. Imperatives of national unity and political economy determine the extent of autonomy and degree of centralization within the federal polity. It is precisely the reason that federal praxis is varying from time to time. In the first four decades of post independence, the polity functioned generally along the lines of a centralized federalism. Shaped in the dynamics of party politics (congressism vs anticongressism), frequent conflicts over the constitutional distribution of competence and authority marked the relations between the centre and the states. States demanded autonomy of functions in the realms constitutionally allotted to them.

The constitutional demarcation of Union-State jurisdictions in the Seventh Schedule has been affected by constitutional amendments over the years. Between 1950 to 2001 a total of 27 changes were brought about by amendments: nine in the Union List, eleven in the State List, and seven in the Concurrent List.

The World Trade Organization (WTO), established in 1995, regulates trade among member states which in furtherance implements regulations of WTO within its domestic framework. The purpose of study is to examine that how the regulations of WTO affect the basic structure of Indian federal system. This article further argues how International treaties are diminishing the power of Indian Parliament. Lastly, the paper provides solutions by analyzing how Indian Parliament has amended its laws to facilitate the implementation of WTO's regulations to further the objective of liberal trade.

## Aim of the study

1. To analyse the role of WTO on the Indian federal structure?
2. To study the impact of WTO on sovereignty of the India?
3. To study and analyse the pros & cons of WTO on the Indian federal system?
4. To analyse the impact of WTO on the political system of the nation?

## India and WTO

India is one of the founding members of WTO along with 134 different countries. India's participation in an increasingly more rule based system in governance of International trade,

would eventually lead to better prosperity for the nation. Various change disputes of India with other countries have been settled by WTO. India has also performed a vital phase in the positive system of foremost trade policies. By being a member of WTO various international locations is now buying and selling with India, for this reason giving a boost to production, employment, well-known of living and an opportunity to maximize the use of the world resources?<sup>1</sup>

The patents bill in 1999, which amended India's Patents Act to conform to its Trade-Related Aspects of Intellectual Property Rights (TRIPS) World Trade Organization (WTO) commitments, was finally passed in May 2002, but only after the government conceded key amendments demanded by the main opposition party regarding compulsory licensing to allow a government to grant licenses for patented drugs in the event of health emergency.

#### **International Treaties and the Diminishing Power of Parliament**

If Parliament is the premier representative institution through which the sovereignty of the people is given concrete expression, nowhere has that sovereignty been more at risk in recent times than in the matter of signing international treaties and incurring international obligations.<sup>2</sup> As India increasingly integrates into the global order by signing treaties, joining more multilateral institutions with sanction-binding power and entering into bilateral arrangements, it is becoming increasingly clear that Parliament's role in incurring these international obligations is quite minimal. This is despite the fact that the Indian Constitution expressly places treaty-making powers within the jurisdiction of Parliament. In much traditional political theory that delineates the separation of powers between the legislature and executive, treaty-making powers were largely left to the discretion of the executive. The legal tradition that India inherited from the British, by and large, upheld this position. A famous decision of the Privy Council in the case of Attorney General for Canada versus Attorney General for Ontario in 1937 argued that Parliament no doubt has constitutional control over the executive, but it cannot be disputed that the creation of obligations undertaken in treaties and the assent to their form and quality are functions of the executive alone. This judgment went on to say that once such obligations are created, they bind the state against other contracting parties, but Parliament may refuse to perform them and thus leave the state in default.

Under Article 246 of the Constitution, Parliament is given exclusive power to make laws with respect to matters enumerated in List I of the Seventh Schedule of the Constitution. This list includes items such as "entering into treaties and agreements with foreign countries and implementation of treaties, agreements and conventions with foreign countries". Thus, it is fairly obvious that treaty making is within the purview of Parliament and is not limited to the executive. But the de facto experience of entering into treaties

since independence has left the matter solely to the executive. Parliament has not enacted any laws that regulate the manner in which the executive shall sign or ratify international treaties and covenants. Nor does Parliament decide the manner in which these treaties should be implemented, except in cases where such implementation requires Parliament to enact a law. Indeed, not only has Parliament not adopted any formal procedure for ratification, it has also explicitly rejected the requirement that treaties be ratified. As early as 1960, the speaker of the Lok Sabha declared:

A number of treaties have been entered into so far, and they have not been brought up for ratification here. It does not prevent the government from bringing up any particular treaty for ratification before signing it, but it is not obligatory to do so.<sup>23</sup>

There have been intermittent attempts to formally bind the executive to a ratification procedure. In 1993, then Minister of Defense George Fernandez introduced a bill to amend Article 253 of the Constitution stipulating that treaties and conventions be ratified by not less than half of the membership of each house of Parliament and by the legislatures of not less than half of the states. During the 1990s, two other private members' bills were introduced to this effect. Unfortunately, like Fernandez' bill, they were not even brought up for consideration.

As far as we can determine, during the last two decades Parliament has only once debated whether it should legally ratify treaties. This was a debate conducted in the Rajya Sabha in response to a private member's bill introduced by M.A. Baby, in light of several WTO-related agreements signed by the government. The overwhelming sentiment of the house was that such ratification was unnecessary and would potentially lead to adverse consequences. In fact, in one of the longest speeches during the debate, Pranab Mukherjee argued more or less that if Parliament were obliged to ratify treaties, many treaties that had been of enormous benefit to India would not have been signed. Thus, historically there has been widespread sentiment that politicizing the signing of international treaties by subjecting them to a ratification procedure would weaken India's position rather than strengthen it.

It could be argued that the fact that Parliament has not taken an active role in monitoring the executive on the matter of international treaties does not imply that the executive has been given a free hand by the legislature. In a parliamentary system with a party government, presumably to government will enter into treaties that do not have significant support within their own parties, and by implication, among the legislators. In principle, this political dynamic should function. In practice, it appears that political parties, even of the government in power, are not widely consulted. There is a great deal of secrecy surrounding international negotiations and members of most political parties admit that they learn of international treaties only after the fact.

It has also generally been the case that many treaties of importance are brought to the attention of Parliament, but the government does not make a decision unless the sentiments of Parliament are clear on the matter. The Comprehensive Nuclear-Test-Ban Treaty has often been debated in Parliament and successive governments have used their assessment of parliamentary sentiment on the matter not to sign the treaty. The other side of the story is the WTO treaties signed in 1994 on which there was relatively little prior discussion in Parliament as a whole. The interesting analytical puzzle is this: Would a formal ratification procedure strengthen India's hand in international negotiations? Would it be the case that in international negotiations, India could use the fact that the treaties it signs will have to be ratified to put pressure on those with whom it is negotiating to change the terms of the agreement? Certainly, the American government uses the argument that a treaty will have to be ratified by the United States Congress as a bargaining tool. In the Indian case it is difficult to imagine what the 23rd Lok Sabha debates on 14 November 1990.

Counterfactual would look like, but there is very little evidence that Parliament and the executive have strategically joined hands to strengthen India's bargaining position.

Another reason for not being too alarmed at the lack of parliamentary oversight of treaties is that most international agreements and treaties can be made effective only by incorporating them into domestic legislation. For example, a treaty that entails ceding territory would require amending the Constitution. But other treaties require incorporation into the national legal system via legislation approved by Parliament for instance, many of the provisions that accrue from joining the WTO. It could be argued that even if Parliament did not have a role in signing a treaty, it would exercise its sovereign authority to decide whether or not an obligation stemming from an international agreement would become Indian law. Theoretically speaking, Parliament can, at that stage, refuse to incorporate the provisions of a treaty into domestic law and render the treaty ineffective. After all, the TRIPS agreements required that India's domestic patent laws be modified and the 1970 Patents Act be amended. The attempt to change India's patent law failed to pass muster in 1995, although it succeeded in doing so later. But, as the argument goes, the very fact that treaties require corresponding domestic legislation means that the authority of Parliament cannot be by-passed.

In principle, this argument has merits, but in practice, a treaty already signed is something of a fait accompli. It is true that Parliament refused on many occasions to incorporate the requirements of WTO-related agreements into domestic law; it is also equally true that it did so just before the provisions of these treaties were to be enforced. In fact, the whole tenor of Parliament's posture on the TRIPS agreement, for example, was against the provisions of the treaty at least in public until as late as 1997. The story of TRIPS-related legislation in India is sobering. The draft provisions of the TRIPS

agreement ran counter to India's official negotiating position as outlined in a background paper submitted by a negotiating committee in 1989. The government then decided to refer the matter to a parliamentary standing committee of the Ministry of Commerce consisting of 40 MPs drawn from all political parties.<sup>3</sup> In 1993, the standing committee submitted a report that vehemently opposed most of the provisions and stipulations of the draft legislation. It was, for instance, opposed to granting product patents, granting patents for 20 years and various conditions attached to the transition period for developing countries. But despite such overwhelming skepticism from the parliamentary standing committee, the government signed the TRIPS agreement without again consulting the committee or even Parliament itself.

For the subject under discussion, the substantive merits or demerits of the TRIPS agreement are beside the point. The crucial point is that the government signed a major agreement disregarding the recommendations of a parliamentary standing committee. This raises two questions. First, what is the point of such standing committees if their deliberations have no impact on the government and do not compel it to seek wider parliamentary consultation? Second, the government signed the TRIPS agreement despite the prevailing parliamentary sentiment against it at the time. This sentiment was subsequently expressed by Parliament's refusal to incorporate the TRIPS provision into domestic law until the deadline of the agreement drew near. It is, in some sense, impossible to tell whether Parliament ratified TRIPS by incorporating it into domestic law because it had genuinely changed its mind or because the agreement, once it was signed by the executive, was seen as a fait accompli. We have to bear in mind the fact that most international treaties that countries enter into in the contemporary world have self-enforcement provisions, in as much as the country in question has to suffer the consequences sanctions, for instance if it does not incorporate the requirements of the treaty into domestic law. In this sense, more and more international treaties are fait accompli and are treated as such by Parliament if they are presented to it after the fact.

The fact of the matter is that the impact of international treaties on domestic policy is vastly increasing in both scale and scope. It is manifestly the case that many of the international treaties that India has signed during the last decade have profound ramifications not only for economic policy, but also for the structure of the Indian polity as well. Let us take one example.

Under the Indian system of federalism, certain items are placed within the jurisdiction of the state government, some within the jurisdiction of the Central government, and some are on a concurrent list. Notwithstanding this separation of jurisdictions, Parliament, under Article 253 of the Constitution has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any country or

countries or any decision made at an international conference, associated or other body.

This provision, if extended to all domains, has the odd effect of effectively allowing the provisions of an international treaty to trump the basic architecture of the Constitution. For instance, under the allocation of subjects in the Constitution, agriculture is considered a state subject. A case can be made that India's signing of the agriculture-related provisions of the WTO not only has an impact on Indian economic policy, but also transforms the nature of Indian federalism. In effect, crucial parts of agricultural policy, a matter left to the states by the Constitution, is now being determined by international agreements that have not been discussed, let alone authorized, by state legislatures. The point is that the lack of parliamentary involvement in formulating, authorizing and ratifying international treaties may also diminish its capacity to define the terms of Indian federalism.

Despite considerable federalization since the 1990s, the high-handedness of the Union leaves the States down and dry. For example, Punjab and Tamil Nadu have had to move the Supreme Court to oppose the unilateral signing of the World Trade Organization (WTO) treaty in 1995 which adversely affects exclusive jurisdictions of States, e.g. agriculture. The matter is still pending in the court. Similarly, the Parliament, alone or in collusion with richer non-Hindi States, has recently (2002) partitioned some Hindi-speaking States like Bihar, Uttar Pradesh and Madhya Pradesh in a cavalier way. The same category of States have also been robbed of increased parliamentary strength that they would have gained by delimitation of constituencies after each decennial census by freezing the process in 2002 until 2026. The Hindi-speaking States that dominated the politics of the country in the era of Congress dominance have lost weight in the current phase of multiparty federal coalition governments.

Multilateral agreements, global accords and international covenants will increasingly rely on treaties and treaty making to bring about changes that will directly or indirectly affect millions of people around the world. Such treaties obliterate the distinction between domestic and foreign policy. Much of parliamentary deference to the executive on treaties has its origins in an environment where the distinction between domestic and foreign policy could, to a certain degree, be maintained. In a changed environment, where international agreements determine the range of policy choices on issues from agriculture and tariffs to the structure of property rights, Parliament can maintain an important legislative role only if it is an effective part of the treaty-making process. The process of formulating and signing international treaties is posing a significant challenge to all representative institutions. Parliaments of Australia, New Zealand and the United Kingdom are all debating procedures to democratize treaty negotiations in a manner that does not entirely by-pass Parliament. Admittedly, as most parliamentarians in India acknowledge, subjecting treaties to parliamentary supervision is not

an easy task. This makes international negotiations more complex and potentially endless as Parliament must have the institutional and infrastructural capacities to participate in such a process, and often its interests lie in not democratizing the treaty-making process. Treaties can, after all, give parliaments cover to push through legislation in the face of political deadlock. But Parliament cannot avoid the thorny question of disciplining international treaty making by the executive. It will have to consider issues such as: How does Parliament make treaty making subject to accountability? How does Parliament create clear norms that require prior consultation with Parliament on particular classes of treaties? Should Parliament legislate something for a formal ratification proposal? Parliament's viability as a key decision-making body will depend upon finding some procedures that address these concerns.

#### **Conclusion**

The role of the Indian parliament in trade policy making has mostly been marginal. While many countries (both developed and developing) struggle with ensuring democratic control over trade policy making through parliamentary supervision, the issue in the Indian context, needs to be considered in the light of the low quality of parliamentary governance in India in policy making overall. While some (perhaps rightly) argue that more parliamentary supervision in India of trade policy making will make any policy reform impossible and create efficiency concerns, the need for democratic control over trade policy making a component of governance that affects every citizen, is also an issue that cannot be ignored in the long term.

Most of the international treaties that India has been signing do not have prior parliamentary approval and become almost a fait accompli for the legislature. In some cases, delegation has impeded the ability of legislatures to make the relevant tradeoffs.<sup>2</sup> If everything from the price of utilities to the technology to be used in broadcasting, from interest rate management to telecommunications regulation falls outside the ambit of legislative power, can legislatures make the relevant tradeoffs that they have been authorized to do? The virtue of independent delegation is also its vice: it increases the number of veto points. Curiously, we now have the possibility of politicians being penalized for decisions that they did not make and were powerless to control. If tomorrow the electorate decides that it is unhappy with utility pricing, for example, it is likely that politicians might be blamed simply because they are the only ones subject to popular sanction.

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**Footnotes**

1. <https://www.indiamart.com/proddetail/india-wto-6438442973.html>
2. *The Union List and State List, originally with 97 and 66 items respectively, were larger than the Concurrent List, which included 47 subjects. Over the last half a century, the State List has become constricted, as the Concurrent List has gained some new items through constitutional amendments and the Union has functionally entered into exclusive jurisdiction of States, using its spending power via discretionary grants (as distinguished from mandatory constitutional*

- grants) and centrally-sponsored schemes administered by the States. See the text of the Seventh Schedule of Indian Constitution, P. M. Bakshi, Eight Ed. p.370.*
3. *The Indian Parliament as an Institution of Accountability, Devesh Kapur and Pratap Bhanu Mehta, Democracy, Governance and Human Rights Programme Paper Number 23 January 2006. [http://unrisd.org/80256B3C005BCCF9/\(httpAuxPages\)/8E6FC72D6B546696C1257123002FCCEB/\\$file/KapMeht.pdf](http://unrisd.org/80256B3C005BCCF9/(httpAuxPages)/8E6FC72D6B546696C1257123002FCCEB/$file/KapMeht.pdf)*
  4. *Towards a post democratic age?, Pratap Bhanu Mehta, The Hindu,28 Oct.,2003*