

DILUTION OF RULE OF LAW WITH RESPECT TO THE WORLD

TRADE ORGANIZATION

Abstract-

Rule of Law is a principle on which the entire globe today runs and is expected to follow. It simply means that everyone, sans any exceptions, is subject to the law of the land (or institution) without any kind of discrimination. The idea of 'Rule of Law' dawned with the 1215's historic instrument called the 'Magna Carta', which declared that the Law is above every individual and institution. The Concept was further conceptualized by Dicey and has now come to be applicable at the international level. Majority of the legal systems of the present day world have adopted and inculcated this 'Rule of Law' in their respective societies. At the same time, many global institutions and international organizations which have been in existence since the 20th Century like the United Nations, World Trade Organization, International Criminal Court and so on, have unanimously embraced and assumed this principle. The Public International Law hitherto called the Law of Nations, has existed since the very onset of civilization. However, the International Law has got a better and present shape essentially following the two World Wars, effectively with the creation of the United Nations. The functioning of the United Nations – including its many specialized agencies has been under the censor for many countries, scholars and independent organizations. This is because of the apprehensions, many a times backed by evidence and experience. that the United Nations is in actuality, a vehicle run by and for the 'Big Countries' or the P5 group of countries of the World.

For this Paper, focus will primarily be on the working of the World Trade Organization (WTO) and how the 'Rule of Law' which the General Agreements on Tariffs and Trade (GATT), the Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) mandates, is being compromised with. There appears to be a systematic erosion of the principle of Rule of Law and the very independence of the WTO. The United States of America is infamously known for 'getting the work done' by exercising its hegemony or manipulation over the International organizations or institutions. While, at times the decisions/orders of the WTO adjudicating body are scorned for being biased towards the Chinese mercantilism and being relatively liberal in the name of 'developing countries'.

The idea of a Global order which in terms of trade is expected to be promoted by the transparent and effective working of WTO, while in case of Crimes against Humanity etc, by the

International Criminal Court have both come at the mercy of the Big Countries. The intervention of the powerful countries grossly puts a blot on the sanctity of the mentioned organizations. Preventing them to function and perform their jobs invokes a thought-provoking question that is whether by doing so, are some countries presumably or even overtly attempting to be above the International Conventions/Statutes/ Treaties? For many, the answer to this would instantly be an affirmative one.

Consequently, what ensues is an erosion or dilution of the Rule of Law, perhaps by granting some countries an unreasoned say in the functioning of the institutions. This has allowed polarized approaches by several countries to seep in, which gives a major blow to the global order and thus undermines multilateralism. The logical Way Forward to prevent the WTO from completely breaking down is perhaps, to bring about a major overhaul especially in the Dispute Settlement Body mechanism. Further there is a need to re-negotiate the rights of third-parties to have access to Dispute resolution and also to stipulate an updated and clearer standard for branding the countries as developed, developing and least developed countries. The latter could pacify some major power tussles which have crippled the institution from functioning efficiently. A balance between serving the interests of powerful economies and of ‘development’ in general is to be maintained. All in all, to ensure that the ‘Rule of Law’ prevails within the most crucial institution regulating the International Trade and Intellectual Property, the decades old WTO framework needs to be modified, updated and made digitally-savvy, considering the rising number of digital trade. Henceforth, a democratic set-up within the institution/organization is required to have an image in the International community of that being ‘accountable and transparent’. No state shall be treated as superior/inferior to another. An unbiased scrutiny by the Dispute Settlement bodies needs to be practiced to ease trade facilitation.

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Author 1: Shruti Tiwari (tiwarishruti03@gmail.com)

Author 2: Shrawani Shagun (shrawani.shagun@gmail.com)