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BALANCING THE SCALES OF JUSTICE: WITNESS ANONYMITY AND RIGHT OF ACCUSED TO FAIR TRIAL

Revati Naik¹

Introduction: -

Witness anonymity has now been considered as a one of the important protective measure for ensuring the safety and security of witnesses. Recently the Witness Protection Scheme approved by the Supreme Court in the case of Mahender Chawla V Union of India² has also provided for the witness anonymity as a protective measure. The scheme is however silent as to the procedure that needs to be followed while granting the anonymity to the witnesses and how to balance the conflicting rights of the accused to have the fair trial. The witness anonymity is important but slippery protective measure as it calls for comprising some of the basic rights conferred on the accused under the statutory law such as right to have the evidence recorded in his presence³ and right to the effective cross examination⁴. The Law Commission of India has also published the consultation paper and in its 198th report has given the draft bill on witness anonymity⁵. Law commission has also addressed the need to balance the conflicting claims of witness anonymity and right of the accused to have fair trial. Under the present legislative framework, we can find the protection of privacy rights of victim in the form of prohibition on publication of name⁶ and conducting the in-camera trial⁷. However, allowing the anonymity to the witnesses so as prevent the disclosure of his identity to the defence is something which is not of common prevalence under the Indian law. In this background it is very interesting to know how the witness's anonymity has been dealt at international law. In recent past, the international law has been the trend setter in many ways. This research article is an attempt to understand and analyse critically the evolution of anonymity of witness as the protective measure under the international law. For this purpose, the author has selected four jurisdictions, i.e. International Criminal Tribunal of Yugoslavia, International Criminal Tribunal of Rawanda, International Criminal Court and European Court of Human Rights.

1. International Criminal Tribunal of Former Yugoslavia (ICTY):-

The disintegration of the communist regimes in the Eastern Europe caused the wave of nationalization in the Socialist Federal Republic of Yugoslavia which resulted in armed conflict in various regions and mass atrocities which included systematic rape of women and girls, torture and the formation of concentration camps where prisoners were grievously victimized by using various brutal methods. With the objective of dealing with these atrocities and to restore the peace and security in the former Yugoslavia the United Nations Security Council by its resolution no 827 established the International Criminal Tribunal for the former Yugoslavia (ICTY) on 25th May, 1993⁸. The ICTY was independent and impartial tribunal consisting of three separate organs, i.e. Chambers, the Office of Prosecutor and the Registry⁹.

ICTY was established as a war crimes tribunal which is authorized to prosecute individual persons responsible for any or all of the following four categories of international crime:

- a. Grave breaches of the 1949 Geneva Conventions¹⁰,
- b. Violations of the laws or customs of war¹¹,
- c. Genocide¹²
- d. Crimes against humanity¹³ and serious violations of international humanitarian law committed on the territory of the former Yugoslavia since 1991 as the part of armed conflict subsequent to the breakup of the former Yugoslavia¹⁴

With the objective of minimizing the risks to the safety of witnesses, ICTY endeavoured to provide variety of protective measures including the measure of granting anonymity to the witness. The evolution of witness anonymity as a protective measure at ICTY is discussed as follows: -

1.1. Anonymity (Withholding the

identity of witness from the defence):-The anonymity as a protective measure was utilized in those cases where disclosure of witness identity of a witness before trial posed substantial fear to life or limb of the witness. The issue of granting full blanket anonymity to the witnesses was confronted by ICTY in its very first trial i.e. Prosecutor V Tadic¹⁵. Dus Ko tadic was the first accused to appear before the ICTY and he was charged with the commission of serious violations of international humanitarian law including, forcible sexual intercourse or rape, wilful killing or murder, wilfully causing grave suffering or serious injury, torture, cruel treatment and the commission of inhumane acts and which were alleged to constitute grave breaches of the Geneva Conventions of 12 August 1949 as recognized by Article 2 of the Statute, violations of the laws or customs of war as recognized by Article 3 of the Statute and crimes against humanity as recognized by Article 5 of the Statute. He appeared before the court and pleaded not to be guilty. While his trial was still pending, the prosecution filed the motion requesting the protective measures for some of its victims & witnesses. The protective measures prayed for by the prosecution were basically of following categories-

a. Measures regarding Confidentiality: - Non disclosure of identity of witness form public & media

b. Procedural Protective measures: -to be observed while recording of evidence either for preventing retraumatization of victim witness due to confrontation with the accused or out of security concerns such as Closed Session hearing or by using one way closed circuit television

c. Measures providing Anonymity: - Withholding of identity of certain witnesses form the defense & accused

d. Other miscellaneous measures

The defense agreed to some measures but it specifically objected the measure providing anonymity to certain witnesses from defense and accused. It was contended by the defense that such measure will infringe the right of public and fair trial of the accused as enshrined under the statute. The majority judges comprising of Judge McDonald and Judge Vohrah granted the request

for anonymity and non disclosure of the information to the accused to four witnesses while Judge Stephen gave partially dissenting judgment¹⁶.

The court observed that the power of the court to grant protective measures for victim and witnesses has its origin in Art 20¹⁷ and 22¹⁸. Art 20 makes it mandatory for the tribunal, while conducting trial to have due regard for protection of victim and witnesses and Art 22 confers a vast power on the tribunal to provide for tailor made protective measures similar but not limited to in camera proceeding and protection of victim's identity. It insisted that provisions of the statute must be interpreted within its own legal context, purpose and unique characteristics instead of relying on the interpretations made by other international judicial bodies. Striking down the argument of the defense that anonymity and confidentiality granted to victims and witnesses infringes the right of the accused to have public and fair trial, the court further observed that while the jurisprudence of other international judicial bodies is relevant for examining the meaning of concepts such as "fair trial", whether or not the proper balance between the accused's right to fair and public trial and the protection of victims and witnesses is met depends on the context of the legal system in which the concepts are being applied. Judge Macdonald relied upon two exceptional circumstances as a justification to qualify rights of accused – a) that ICTY at that time was operating in the midst of the conflict and b) at that time ICTY did not have any witness protection program or police force to protect the witnesses.

The majority in the case of Tadic laid down the five jacket formula for granting the anonymity to the witness. Before granting the anonymity to the witness, the court must be satisfied about the fulfilment of following conditions-

- a. Firstly, there must be real fear for the safety of witness or her or his family.
- b. Secondly, testimony of the particular witness must be important to the prosecutor's case. The evidence must be sufficiently relevant and important for prosecutor's case.
- c. Thirdly, the trial chamber must be satisfied that there is no prima facie evidence that the

the informant while Judge Judgment¹⁶. power of the or victim and and 22¹⁸. Ar bunal, while d for protec rt 22 confer ide for tailo but not lim protection o provisions o n its own le aracteristic ations made ies Strikin at nymy ims and wi used to hav ner observe : internation amining the ial", whether he accused' ie protection ends on th the concept l relied upo justification ICTY at th the conflic ave any wi fe to pro

witness is untrustworthy.

Factors such as nonexistence of witness protection program, absence of police force should be taken into consideration while granting protection measures.

Measures should be strictly necessary. If a less restrictive measure can suffice the purpose, then that measure should be applied.

Justice Stephen interpreted the statute of ICTY in the wider context of "internationally recognized standards and concluded that the use of anonymous witnesses is inconsistent with the Rules of Procedure and Evidence. In his separate dissenting judgment Justice Stephen pointed out that, not all the rights of accused granted under Art 21 are subjected to due regard for the protection of victim and witnesses under ART 22 but only the specific right of public trial of accused under Art 21(2) is qualified due to its being subjected to Art 22. According to him it is only public quality of trial can be given way to the need to protect victim and witnesses. Justice Stephen categorically argues that by no means these two articles can be interpreted to contemplate an unfair trial for the accused. He states that the kind of protection being thought of in Art 22 is essentially those measures which will affect the public nature of the trial rather than its fairness. He noted that not disclosing a witness identity is only contemplated in Rule 69 as a pre trial measure until the witness is within international Tribunal's protection and only as an "exceptional measure" even then.¹⁹ According to him the wholesale anonymity granted the witness can deprive the accused of his right to fair trial. His conclusion that the Tribunal's statute forbids the use of anonymous witnesses in trials is based on the belief that although the statute guarantees protection to victims and witnesses to some extent in Article 22, it "certainly does not contemplate unfair hearings."

In any judicial proceedings, when any witness testifies before the court, his testimony is nothing but the recollection of the facts which he witnessed long back at the time of the incidence. Cross examination of the live witness gives the other party an opportunity to point out inconsistencies, whatever may be, in the statement given

by the witness originally and what he deposed in the court. Granting the anonymity to the witness deprives the accused of his right to cross examination and vitiates the due process to which he is entitled.

Since Tadic the ICTY never granted such anonymity to any witness but it inclined more towards the dissenting opinion of the Justice Stephen. After Tadic, in the Prosecutor V Blasic²⁰ case it made the restrictive interpretation of the five guidelines given in Tadic and observed that the right of the accused to equitable trial should have precedence and the veil of anonymity conferred on the witness should be lifted if required.

2. International Criminal Court of Rwanda (ICTR):- The ethnic enmity between the Hutu and Tutsi community in Rwanda resulted in the armed conflict and genocide which continued for 100 days and took a toll of 1 million of Tutsi and moderate Hutus. Considering the grave violations of humanitarian law at Rwanda and in response to the request by the Rwandan Govt, after examining several official reports from UN, the Security Council by the resolution no 955 established the international criminal tribunal for Rwanda with its seat at Arusha, Tanzania²¹. Like ICTY, it was the subsidiary of UN having authority to deal with following crimes-

1. Genocide²²
2. Crimes against Humanity²³
3. Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II²⁴

The witness protection measures adopted by ICTR were more or less similar to that of ICTY and it also included the anonymity. The witness anonymity as a protective measure is discussed as follows: -

2.1. Witness Anonymity at ICTR:-

The Rules of Procedure and Evidence of the ICTR Rule provided that the prosecutor could request the chamber the measure of non-disclosure of identity of witness only in the exceptional circumstances²⁵ and further it was also provided that more in any event the identity of witness must be disclosed to the defence prior to the trial so as to allow to the defence adequate time for the

preparation of the case²⁶. Obligation to disclose the identity of witness prior to the trial was in consonance with the right of fair trial conferred upon the accused, more specifically the right prescribed which provided that the accused shall be entitled to have adequate time and facilities for the preparation of his or her defence²⁷.

ICTR however in number of cases compromised this mandate by allowing the prosecution to withhold the identity of witness even after the commencement of trial. E.g. in Barosara trial the ICTR allowed the prosecution to disclose the identity of witness on 'on rolling basis' to be measured from the date of the scheduled date on which a witness was to appear before the tribunal to testify. It directed the prosecutor to disclose all information regarding such witness not later than thirty-five days before the date of testimony of such particular witness or when the witness came under the protection of the tribunal, whichever was earlier. The tribunal further refused to admit the prevailing inherent conflict between rights of fair trial of accused and witness protection needs. It observed, "there is nothing within the Statute that indicates that an accused right to a fair trial is somehow hampered or compromised in service of witness protection. The concepts of protective measures for witnesses, including delayed disclosure of identity, did not streak like a meteor across the existing statutory and regulatory landscape of the accused right to fair trial and effective cross – examination."²⁸

While justifying its order allowing prosecution to shield witness identity from the accused even after the commencement of the trial, ICTR relied upon ICTY precedent in Tadic²⁹, but it failed to take the cognizance of jurisprudence regarding witness protection developed by ICTY subsequent to Tadic. Subsequent to Tadic in Blaskic³⁰ ICTY partially overruled/ modified its criteria for granting witness anonymity. Therefore, in the ICTY jurisprudence we see Tadic as an exceptional case which due to unique circumstances of its time permitted restriction on the right fair trial of the accused. Due this ICTR was criticized for its selective reliance on the outdated authority of Tadic and ignorance of subsequently reformed law laid down in Blaskic.³¹

3. International Criminal Court (ICC):-

In pursuance of the Rome statute, the International Criminal Court which has jurisdiction over the most serious crimes which is the concern of international community as whole, is established. It has jurisdiction over the crimes such as genocide, crimes against humanity, crimes of aggression and crime of aggression³².

Witness protection measures at ICC are aimed to provide protection to the safety, physical and psychological wellbeing, dignity and privacy of victims and witnesses³³. At ICC the witness protection measures are provided at all different stages of the trial such as pre-trial, trial and at the appellate stage.

3.1. **Witness anonymity:** - The ICC in exceptional cases resorted to granting the anonymity to victim witnesses, however the careful scrutiny as to the precise circumstances of request of anonymity and potential prejudice to other parties and participants is considered necessary. Considering the anonymity necessary in case of vulnerable victim witness, the Pre-Trial Chamber I ordered that the victims should only have access to the public documents and participate at public hearings, and that they would not be permitted to add any point of fact or any evidence and to question the witnesses.³⁴ The leave of the defence on the ground that such anonymity vitiates the fair trial for the accused was rejected

4. European Court of Human Rights (ECHR): -

The European court of human rights is the remedial mechanism provided to deal with any violation of human rights guaranteed under the European convention of human right. Art 2³⁵ of European Convention of Human Rights provides for the right to life. Right to life under this article comprises of negative obligation as to restrain itself from depriving life of others as well as a positive obligation which requires the state to steps for the protection of life against threats from third parties.

The European Convention of Human Rights provides that in both civil and criminal case everyone is entitled the fair and public hearing³⁶. The article further makes it clear that the right of public hearing may be compromised in cases

where the publicity is likely to prejudice the interest of justice. The Convention further confers the right to examine the witnesses and procure their attendance³⁷. These explicit provisions offer the tussle to witness protection measures specifically to the witness anonymity³⁸. It is pertinent to note that the convention do not provide for the face to face confrontation between the witness and the alleged offender. The article 6 underlies the principle of equality of arms which means that all parties should be treated equally in same circumstances. With respect to the anonymous witness the trial can be said to be fairly conducted if the accused gets the adequate opportunity to challenge the testimony of such witness or its contents

Art 8³⁹ of the European convention provides for the right to respect for private and family life, his home and correspondence. Interference with this right by public authority is permitted only in interest of national security, public safety, economic wellbeing of the country, prevention of disorder or crime, protection of health or morals, or for the protection of the rights and freedoms of others.

4.1. **Granting Anonymity:** -As per the judicial pronouncements of ECHR the anonymity could be granted to the witness only when he faces the threat. The threat for this purpose is not required to be effective threat, but even the subjective threat suffices the ability to grant the witness procedural protection. The witness may feel to be threatened due to the circumstance in which he is. In *Kok*⁴⁰ case the court observed that,

'..... the fact that the applicant was reasonably suspected (and later convicted) of membership of a criminal organization..... the court considers that the applicant could reasonably expected to a threat by persons aware of his dealings'.

The court through its rich case law has endeavored to achieve the balance in the conflicting interest of the witness protection and right of the accused to the fair trial. In *Kostovaski v Netherlands*⁴¹ the court observed that the right of fair administration of justice holds so prominent place in a democratic society that it cannot be sacrificed to expediency. It held that absence of

proper counterbalancing factors to so as remove the handicaps under which the defense labored due to admissibility of evidence by the anonymous witness, limited the rights of defense and hence in violation of guarantee provided under Article 6 of the convention. The court laid down stricter requirement for imparting admissibility to the statements by anonymous witness which are as follows: -

1. Such statement must be recorded by the judge who is aware of the identity of the witness and who has express in the official record, his reasoned opinion as to reliability of the witness and reasons for the desire on the part of such witness to remain anonymous

2. The defence must have got some opportunity to put questions to such witness

In *Doorson v Netherlands*⁴², in this case about drug trafficking, it was observed that the article 6 in conjunction with art 8 requires counterbalancing of the need of witness protection with the right conferred on the accused to have the fair trial and this requirement put the obligation on the contracting state parties to organize their criminal proceeding to achieve that end. The court further made it clear that the if the handicaps under which the defence is laboured due to anonymity of the witness is counterbalanced by the procedure followed by the judicial authorities, there is no violation of Art 6(1) read in connection with 6(3)(d). In this case, as the investigating judge who recorded the statement of the two anonymous witness was aware of their identity and considered the evidence to be reliable, the counsel for the accused was given the opportunity to cross examine them without disclosing their identity, the opportunity was given to the defence to challenge and to cast the doubt on the reliability of the evidence tendered by them, all these factors were considered sufficient to counterbalance the handicaps resulting from anonymity. Further as all other requirements as to the good reason for allowing anonymity, evidence of the witness should be received with great care and caution and such evidence should not be the sole or decisive basis for the judgement were observed to be fulfilled, the court held that there was no violation of Art 6 of

the convention.

*Al-Khawaja and Tahery v. the United Kingdom*⁴³ is the important case on the issue of admissibility of the statement given by the absent witness. This case comprised of two applications concerning the admissibility of the statements of absent witness. One of the applications involved the question of admissibility of the statement made by the victim of indecent assault, to the police, who died before the trial and her statement was referred and considered by jury. Another application involved the admissibility of the statement of the witness who remained absent due to the fear which was made to the police.

After analyzing the domestic law specifically, the admissibility of the hearsay evidence under domestic jurisdiction in detail, the court reiterated its view that admissibility of the evidence is a matter for regulation by the national law and national courts and the court's only concern is to examine whether the proceedings were conducted fairly. The court laid down two requirements as to the admissibility of such evidence first that there must be the good reason for the non-attendance of the witness and secondly a conviction should not be based solely or decisively on depositions made by a person whom the accused has had no opportunity to examine which is contradictory with the guarantees provided by article 6⁴⁴. The court further observed that for the purpose of whether the defendant's right to the fair trial is violated, the court has always considered the impact of inability of the defendant to cross examine on overall fairness of the trial⁴⁵. Court upheld the admissibility of the statement on the ground that the statement was recorded by the police in the proper form and reliability of it was supported by the corroborating evidence of two witnesses to whom the victim deposed about the incidence, specifically in the light of the fact that these witnesses were cross examined by the defendant. Therefore, the court concluded that there was no violation of the Article 6 of the convention. However, in the case of Tahery, the untested evidence being the only direct evidence, in absence of any strong corroborative evidence it was declared to have made the trial unfair for the defence⁴⁶. Therefore, before acting on the unsworn testimony, the need

is to ascertain that handicap suffered by the defendant due to it, is sufficiently counterbalanced. The triple test laid down in this case as to the admissibility of the absent/anonymous witness can be summed as follows: -

1. Whether there was a good reason for the non-attendance of the witness
2. Whether the evidence of the absent witness was the sole or decisive basis for the conviction of the defendant
3. Whether there were sufficient counterbalancing factors to compensate the defendant as to the handicaps suffered by him due to admissibility of the untested evidence

While dealing with the issue of admissibility of absent or anonymous witness so as to lead to the violation of Art 6 of the convention, the court needs to apply this test for the purpose of deciding whether the trial as a whole was unfair.

The triple test laid down in the above case and interrelation between its three steps was reviewed in detail in *Schatschaschwili V Germany*⁴⁷. While analyzing the proposition laid down in *Al Khawaja and Tahery* that the requirement that there should be a good reason for the non-attendance of the witness i.e. the first step should be decided as a preliminary question before deciding whether the evidence of such absent witness was sole or decisive the grand chamber in *Schatschaschwili V Germany*⁴⁸ held that all the three steps are inter related and together they help to decide whether the proceeding as a whole was fair for the defendant and therefore in the proper case they may be examined in a different order specifically if one of the step proves to be particularly conclusive as to either the fairness and unfairness of the proceedings.

The granting of anonymity to witnesses even though considered as a powerful and required measure to protect the safety and well being of witnesses, it is very much clear that in conflicts the very basic right of the accused to the fair trial. This conflict necessitates the balancing of this conflicting claims in such a way so as achieve the goal of witness protection but reducing the handicaps which the accused or defendant may suffer due to such anonymity.

The analysis of witness anonymity as a

protective measure also makes it clear that the challenge to it is faced more in adversarial jurisdiction than the inquisitorial one. One of the reasons for it can be well enumerated and protected rights of the accused. The way in which these conflicting claims are balanced can definitely provide guidance for evolution of witness anonymity under the Indian law.

(Endnotes)

- 1 Assistant Professor, Marathwada Mitra Mandal's Shankarrao Chavan Law College, Pune
- 2 2019(2) JLJ384.
- 3 Section 273 of the Code of Criminal Procedure, 1973(Act 2 of 1974).
- 4 Section 311 of the Code of Criminal Procedure, 1973(Act 2 of 1974).
- 5 Law Commission of India, 198th report on Witness Identity Protection and Witness Protection Program, (August 2006).
- 6 Section 228A of the Indian Penal Code, 1860 (Act 45 of 1860).
- 7 Section 327(2) of the Code of Criminal Procedure, 1973(Act 2 of 1974).
- 8 RESOLUTION 827 (1993) Adopted by the Security Council at its 3217th meeting, on 25 May 1993 http://www.icty.org/x/file/Legal%20Library/Statute/statute_827_1993_en.pdf lastly accessed on 10 December, 2016.
- 9 Article 12 of the statute of International Criminal Tribunal for the former Yugoslavia deals with the composition of the chambers.
- 10 Article 2 of the statute of the international criminal tribunal for the former Yugoslavia (Adopted 25May, 1993, By Resolution.827).
- 11 Article 3 of the statute of the international criminal tribunal for the former Yugoslavia.
- 12 Article 4 of the statute of the international criminal tribunal for the former Yugoslavia.
- 13 Article 5 of the statute of the international criminal tribunal for the former Yugoslavia.
- 14 Article 1 of the statute of the international criminal tribunal for the former Yugoslavia.
- 15 Prosecutor V Dusko Tadic A/K/A Dule (Decision of Prosecutor's Motion Requesting Protective Measures for Victims and Witness) IT-94-1-T , International Criminal Tribunal of Former Yugoslavia(ICTY) available at <http://www.icty.org/x/cases/tadic/tdec/en/100895pm.htm>.
- 16 Ibid.
- 17 Article 20(1) of the Statue of ICTY provided that the trial chamber shall ensure fair and expeditious trial and in its proceeding before the trial chamber, due regard shall be given for the protection of victims and witnesses.
- 18 Article 22 of the Statute of ICTY provided that, the International Tribunal shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.
- 19 Natasha A Affolder, "Tadić, the Anonymous Witness and the Sources of International Procedural Law" (1998) 19:2 Mich J Int'l L 445
- 20 Prosecutor v Blaškić, Case; Decision on the Application of the Prosecutor dated 17 October 1996 requesting protective measures for victims and witnesses, Case no. IT-95-14-PT, 5 November
- 21 United Nations security Council through its resolution no 955 dated 8th November, 1994 resolved to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda. The said resolution is available at <http://unscr.com/en/resolutions/doc/955> lastly accessed on 28th June, 2017.
- 22 Article 2 of the statute of International Criminal Tribunal of Rwanda.
- 23 Article 3 of the statute of International Criminal Tribunal of Rwanda.
- 24 Article 4 of the statute of International Criminal Tribunal of Rwanda
- 25 Rule 69(a) of the RPE of International Criminal Tribunal of Rwanda.
- 26 Rule No 69 (c) the RPE of International Criminal Tribunal of Rwanda.
- 27 Article 20(4) of the Statute of International Criminal Tribunal of Rwanda.
- 28 Decision and scheduling order on the prosecution motion for harmonisation and modification of protective measures for witnesses case no ICTR-98-41-I available at <http://ictr-archive09.library.cornell.edu/ENGLISH/cases/Bagosora/decisions/051201c.html> decided by trial chamber

- III, 5/12/2001.
- 29 Supranote 14 on 3.
- 30 Supra note 19 on 5.
- 31 ' Joanna Pozen "Justice Obscured: The Non-Disclosure of Witnesses" Identities in ICTR Trials" 38 NYUJ Int'L L & Pol 281(2006).
- 32 Article 5 of the Rome Statute.
- 33 Article 68 of Rome Statute.
- 34 The Prosecutor V. Thomas Lubanga Dyilo, Decision on the arrangements for participation of victims a/0001/06, a/0002/06 and a/0003/06 at the confirmation hearing, ICC-01/04-01/-06-462-IEN.
- 35 Article 2(1) of European Convention of Human Rights provides that Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
- 36 Article 6(1) of the European Convention of Human Rights.
- 37 Article 6(3)(d) of the European Convention of Human Rights.
- 38 Prof. Dr. Gert Vermeulen (ed), EU standards in witness protection and collaboration with justice,37 (Maklu Publishers,Antwerpen, 2005).
- 39 Art 8 of the European convention of human rights provides for right to respect for private and family life.
- (1)prescribes that everyone has the right to respect for his private and family life, his home and correspondence.
- (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
- 40 Kokv the Netherlands, judgement of 4 July, 2000, Application no 43149/98, reports 2000-VI para 55.
- 41 Kostovaskiv the Netherlands(1989) 12 EHRR 434.
- 42 Doorson v The Netherlands (1996) 22 EHRR 330.
- 43 Al-Khawaja and Tahery v. the United Kingdom Application Nos. 20766/05, 2228/06 (GC, 15 December 2011).
- 44 Ibid,Para 119
- 45 Ibid,Para 146
- 46 Ibid,Para 164 and 165
- 47 Schatschaschwili V Germany Application no 9154/10 decided on 25 December, 2015
- 48 Ibid para no 118

A BIRDS EYE VIEW ON HISTORICAL FRAMEWORK OF THE WORLD TRADE ORGANISATION AND ITS DISPUTE SETTLEMENT MECHANISM

Smt. Shubhalakshmi P.¹

Introduction

Trade is an economic activity which helps to strengthen economic condition along with human relations. Trade may take place within the nation or even outside the nation. International trade is nothing but trade takes place between different nations of the world. It brings the nations closer and helps consumers to enjoy and reap the benefits of variety of goods. Usually there are situations which may lead to disputes between the nations in relation to trade and violation of trade related contracts.

Formulation of international body to regulate trade

There must be proper regulation of trade and a body should act as controlling mechanism of international trade. Every nation has its own rules and regulations in relation to trading activity, but some may be flexible and some others are rigid in nature. The beginning of the 19th century witnessed free trade and less protectionism, but by the end of the century, the independent countries adopted protectionist policies by moving away from free trade policy.²

By the year of 1920, outside Europe, in the UK, Netherlands, Belgium and Scandinavian countries, prohibitions, quantitative restrictions and exchange controls had largely disappeared. In Central and South Eastern European states, non-tariff barriers were dismantled more slowly with relapses. The Economic Committee of League of Nations convened the Brussels Conference in 1920 for the purpose to recommend for the abolition of artificial restrictions on international trade and restoration of pre-war trading. This conference resulted in achieving two major works to maintain an order in international economic relations. Firstly, a precedent and an example for future attempts at multilateral solutions of international problems. Secondly, it formulated a number of precepts which later exerted influence on Governments and expert opinions.³ After the

second World War, there was a universal feeling that political security couldn't be separated from international economic and financial stability, so the US took initiative which culminated in the Atlantic Conference of 1941.

The Atlantic Conference released as Atlantic Charter regarded as its application is universal in nature, and states that every nation has a right to expect that its legitimate trade will not be diverted or suppressed by towering tariffs, preferences, discriminations or narrow bilateral practices. An undertaking to promote mutually advantageous economic relations and the betterment of world economic relations were stated in an agreement called Mutual Aid Agreement signed between the US and the UK in 1942. The objectives of this agreement were inter alia the elimination of all discriminatory treatment in international commerce and the reduction of tariffs and other trade barriers.⁴

The Anglo-American financial collaboration progressed by the beginning of 1943, further taking the shape of the White and Keynes plan. The White plan originated in the US and Keynes plan in the UK, but these plans were designed to facilitate the achievement of balance of payment equilibrium in an international environment of multilateral trade and even to achieve full employment within the nation.⁵

Whites and Keynes plan led for the establishment of two prominent institutions in international level like the International Monetary Fund (IMF), and the International Bank for Reconstruction and Development commonly known as World Bank.⁶

International Trade Organisation

The Second World War has disastrous effect on the economy of Great Britain and its allies and in the process of extending support to them for their participation in the war, the US economy also hit hard. It led the US to pursue International