

CHAPTER 1

TOWARDS THE SPONSORED STATE

SYNOPSIS

1. The Evolution of the idea of the ‘sponsored state’	17	2. The Broad Features of the Sponsored State.....	21
---	----	---	----

“...it is wrong not to lay the lessons of the past before the future.”

—Winston Churchill, *The Gathering Storm* p. vii

1. The Evolution of the idea of the ‘sponsored state’

The *Encyclopaedia Britannica* notes: “In the middle years of the century (the 19th century) it had been widely held that colonies were burdens and that materials and markets were most effectively acquired through trade.”¹ What was then scripted on the five inches of ivory has become in the Uruguay Round Final Act a plot wrought by self-seeking corporate oligarchs. And “trade” is now receiving such a wide semantic widening that, perhaps, everything would become nothing but *res commercium* in a wider gestalt.”

This reference to history was mainly to highlight a point of great importance essential for comprehending the issues emanating from the Uruguay Round Final Act and the ways of the World Trade Organization. We must adopt a historical perspective for a wise reflection on the problems which engross us “as it is wrong not to lay the lessons of the past before the future.”² The main parameters of the Final Act hark back to the past; and our expectations from the WTO deserve to be moderated by adopting a historical perspective to assess the pragmatics of the present.

It is worthwhile to note certain features of the economic management in the era of mercantilism or merchant capitalism (from the 16th to the 18th century) as these characterize our time no less:

- (a) As an economic counterpart of political absolutism there was a synergy *inter se* the government and the merchants in which each used the other to advance their ends.

¹. Asa Briggs in the *Encyclopaedia Britannica* Vol. 29 p. 85 in the article on the United Kingdom.

². Winston Churchill, *The Gathering Storm* p. vii.

- (b) The colonies served their conjoint interest in acquiring markets for exports, and space for obtaining raw materials.
- (c) There was a passionate pursuit, with no hold barred, for promotion of trade as it led to amassing of wealth in the form of bullion ensuring a favourable balance of trade.³[It was felt that it was the duty of the state to ensure that exports exceeded imports.]
- (d) It promoted a world-view, despite what many liberals said or pleaded, which prized monopolistic gains for certain coterie of persons. It was accurately expressed by Christopher Columbus who said: "Gold is a wonderful thing! Whoever possesses it is master of everything he desires. With gold, one can even take souls into paradise."⁴
- (e) The state power was shrewdly utilized to further economic interests of the merchants; The " merchants being influential in the state, there was a strong belief in the benignity of the state and in state intervention in the economy."⁵ It resulted in "state intervention on behalf of industry, tariff protection, and a policy on balance of payments. But more important than any of these was the arrival of what was to become the dominant economic institution today, the great modern corporation."⁶

It is said that Adam Smith's great work, *The Wealth of Nations*, brought the era of mercantilism to a decent end but many of its traits and the features were exhumed in later times as pragmatic response to the challenges posed by the turns of events. Economic theories cannot evade the operative realities. History is replete with such instances. The so-called "new" materialism is the most glaring of such instances. Describing this the *Encyclopaedia Britannica* observes :

"The protectionist tide engulfed the world economy, not because policymakers consciously adhered to any specific theory but because of nationalist ideologies and the pressure of economic conditions. In an attempt to end the continual raising of customs barriers, the League of Nations organized the first World Economic Conference in May 1927. Twenty-nine states, including the main industrial countries, subscribed to an international convention that was the most minutely detailed and balanced multilateral trade agreement ever approved until that time. It was a precursor of the arrangements made under the General Agreement on Tariffs and Trade of 1947.

The 1927 agreement remained practically without effect. During the Great Depression of the 1930s, unemployment in major countries reached unprecedented levels and engendered an epidemic of protectionist measures. Countries attempted to shore up their balance of payments by raising their customs duties and introducing a range of import quotas or even import prohibitions, accompanied by exchange controls.

From 1933 onward, the recommendations of all the postwar economic conferences based on the fundamental postulates of economic liberalism were

³. Thomas Mun (1571-1641) who wrote *England's Treasure by Forraign Trade or The Balance of our Forraign Trade is the Rule of our Treasure*.

⁴. Referred by Eric Roll in *A History of Economic Thought* p. 61.

⁵. J.K. Galbraith, *A History of Economics, The Past as the Present* p. 39.

⁶. *Ibid* p. 41.

ignored. The planning of foreign trade came to be considered a normal function of the state. Mercantilist policies dominated the world scene until after World War II."⁷

The present-day global economic architecture as built by the IMF, the World Bank, and the WTO is most conducive to the interests of the MNCs, it is appropriate to take into consideration some corporations of the past. The most celebrated of such corporations was the British East India Company (1600—1874)⁸ which became a classical role model for a multi-national company. But before I am on it, a reference to the French Mississippi Company (Compagnie d'Occident), and the British South Sea Company is worthwhile as these became in later years role models for the feats of the sleight of hand. Only crazy greed could have led the investors to believe, to their utter ruin, that great gains could be wrung by exploiting the wheel of perpetual motion, or by carrying on trade in "but nobody knows what it is."⁹ The South Sea Company, formed in 1711, was a trading and finance company. Its stock was so engineered that investing in it became a popular madness and strange delusion. Within eight months its stock scaled the 1000 from just 120. In the ninth month it crashed and ruined the investors. And there was a Parliamentary inquiry which got blunted by several factors, the prime being the maneuvering by Walpole. How close is this story that we witnessed in India. The South Sea Company must have inspired the strategy of a Harshad Mehta or a Ketan Pareekh, or the companies formed to launder money.

Clive knew fully well the possibilities of the company formed to trade, and also the company formed to swindle. He was for a company for trade though trading and looting went together as they most often do. It was the Company's commercial pursuits which fostered its imperial ambition.

Whilst the Dutch East India Company was under the domination of the state of Zealand and the French Company resembled a government department, the British East India Company was dominated by a group of London merchants constituted with the object of trade. The British East India Company being a company of traders lacked at the threshold military power; and so drew most on the art of managing the powers of the day in a less aggressive way till they were in a position to rule the roost. Their initial markup itself was quite high as is evidenced by, what was surely a tour de force, the firmans of the Emperor Farrukhsiyar in 1717 which knocked down for the British traders the trade barriers by way of all duties and customs at the ports, and granted exemptions from dues in certain

⁷. *The Encyclopaedia Britannica* Vol. 21 p. 906.

⁸. For all practical purposes it ended with the Queen's Proclamation announced by Lord Canning at Allahabad on 1 November, 1858.

⁹. Galbraith refers to Charles Mackay, *Memoirs of Extraordinary Popular Delusions and the Madness of Crowds*.

areas of the Empire, besides freezing of rent at existing lower points. Orme rightly called the *firmans* the "Magna Carta of the Company". In a century after this grant by the Emperor, "feeble, cowardly and contemptible" and "strong neither for evil nor for good"¹⁰, the British Government became the paramount power from the Himalayas to Cape Comorin and from the Sutlej to the Brahmaputra. "Clive sowed the seed of the British Empire in India; Warren Hastings preserved it against hostile forces; Wellesley reared it; and Lord Hastings reaped the harvest."¹¹

Clive worked to set up a sponsored government after the Battle of Plassey in 1757 "the result of which was more important than that of many of the greatest battles of the world".¹² To "sponsor" means to play godfather or godmother. Clive made Mir Jafar the nawab and he adopted the strategy which had enabled Bussy-Castelnau to keep the Nizam Salabat Jang under effective French influence. The sponsored state as contrived by Bussy-Castelnau meant, simply stated, a state controlled but not administered. As was inevitable the grant of Diwani to the East India Company led to a morbid consequence, "power was divorced from responsibility and all the evil results thereof followed."¹³ Considered from certain observation-post it was "nothing more than a robber state."¹⁴ The Deccan experiments were mainly political in character, to preserve control of strategic areas; the Bengal one was primarily commercial, to give the Company's merchants a free hand. It failed because the hand was taken too freely.¹⁵ Clive had a clear vision and full grasp of the operative realities. In the Chapter on "Clive the Entrepreneur", Percival Spear writes:

"Free trade for the East India Company's imports from and to India and Europe had long been a cardinal principle of oriental trade. Monopoly at home and free trade abroad were the key words. This free trade was implemented by passes which enabled the Company's merchants and agents to pass the numerous customs posts which dotted the trade routes by land and water. The operative Mughal firman or order in the case of Bengal was the grant of the Emperor Farrukhsiyar in 1717 to John Surman."¹⁶

Spear states Clive's objects with remarkable concision which deserves to be read as Clive used his strategy managing it by clear objective:

'Clive's object was to control Bengal and Bihar through the medium of the nawab and his officers. The detailed administration would be left to Mir Jafar, Clive's function being to shield him from enemies. This would allow the Company to employ its trading privileges without hindrance, and, of course, enable its

¹⁰. Dr. K.K. Datta in R.C. Majumdar et al, *An Advanced History of India* 4th ed p. 521.

¹¹. *Ibid* 720.

¹². Dr. R.C. Majumdar et al, *An Advanced History of India* 4th ed p. 657, *ibid* 720.

¹³. A.P. Das Gupta, "Consolidation of British Power in Bengal" in *The History & Culture of the Indian People* Vol. VIII (The Maratha Supremacy) p. 353.

¹⁴. K.M. Panikkar, *A Survey of Indian History* p. 246.

¹⁵. Percival Spear, *Master of Bengal: Clive and his India* p. 197.

¹⁶. Percival Spear, *Master of Bengal: Clive and his India* p. 111.

merchants to pursue their fortunes in their private capacities. A peaceful Bengal, grateful nawab, a flourishing commerce; it seemed an idyllic prospect. But the means of securing these were to test Robert's skill and exhaust his strength."¹⁷

The idea of a sponsored state adopted a new garb when Lord Cornwallis through the Permanent Settlement created the *zamindars* as powerful intermediaries controlled by the East India Company but responsible for the administration of revenues. Spear has aptly observed:

"... The idea of controlling a state or a region and administering it through Indian agency lived on. For it there were arguments of economy and security; against it, alleged Indian corruption and inefficiency. We see it reappearing, surely, in Cornwallis's Permanent Settlement in 1793."¹⁸

2. The Broad Features of the Sponsored State

On account of the constraints of space and as the purpose is to examine the similarities *inter se* the economic architecture set by the colonialists in the past and the economic architecture being built up by the global institutions like the IMF, World Bank and the WTO, I deem it appropriate to highlight the salient features of the sponsored state as theorized and practiced by Clive. This exposition would help us adopt vigilant and critical attitudes towards the WTO, which is working dexterously to build a regime under which the national governments would be reduced to play a subsidiary role.

Whilst the Battle of Plassey (1757) had placed the nawab of Bengal under the *de facto* control of the East India Company, the Battle of Buxar (1765) placed the Emperor Shah Alam II at the mercy of the Company. Only pragmatics inhibited Clive from turning even Delhi into a sponsored state. Finding himself in a cleft stick Shah Alam II was driven to grant through a firman, on 12 August, 1765, the *Dewani* of Bengal, Bihar and Orissa to the Company. Under the imperial firman the Company obtained revenue collecting power in a vast prosperous area whilst the nawab of Bengal was left with the administration of justice. With the power of money and effective brute force the Hon'ble and Valiant East India Company controlled the nawabi on its terms. For some power and pelf the comprador bourgeoisie consisting of bankers, power-brokers, and adventures sold the nawabi to the Company. After the grant of the *Dewani* the Emperor remained theoretically sovereign and the nawab theoretically supreme within the remit of power which went with his office. Under the public eye the Emperor and the nawab was responsible for administration though the actual control over trade and industry passed to the Company under an expansive exercise of power of revenue collection as the Diwan. Under this system of sponsored state the power and accountability did not go together. The Company used the ramshackle

¹⁷. *Ibid* p. 94.

¹⁸. *Ibid* pp.197-198.

national political structure to promote its ends by keeping a governmental façade operative with *de facto* powers for itself sans responsibility.

Under the WTO regime the sovereignty of the state is recognized merely as a device to deflect criticism of its remissness as it can conveniently come out with a plea that all was, after all, the deeds of the national governments themselves. It establishes a *sui generis* regime under unequal treaties, which in the course of time can wax to incorporate within their terms the whole of the economic process of a political society with a long lasting transmuting impact on the socio-cultural mores. The neo-imperialists learnt from history that it is better to control a country's economy than to face the problems of direct control. Besides, the raw realities of the post-Second World War II have made public international law to recognize both the reach and limitations of a state's sovereign power. The Charter of the United Nations was based on the established principle of *sovereign equality*. The norms which emanated from this principle of customary international law were stated in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (GA Res. 2625 of 1970).¹⁹ It stated, *inter alia*, that all states are juridically equal, each state enjoys the rights inherent in full sovereignty.

The prime-mover both with Robert Clive and the developed countries of which the United States was surely *inter stellas luna minores* (a moon among lesser stars) seem to be the same: the imperialistic drive of an acquisitive society wherein all values lead to and emanate from TRADE²⁰. The way the Britton Woods institutions and the WTO were created and have functioned, one thing should be clear to any perspective observer that the architects had history in their marrow. TRADE operates best if it operates in a sponsored State with wide controlling powers sans political accountability, and social responsibility. If things go wrong for that state, there would be a ready and specious plea that blame lay with the government of the state rather than with those who played good Samaritan. But how to have the best of all the worlds? And this strategy worked as the mini and micro states, whose number increased by the gradual roll back of colonialism, enjoyed the thrill of sovereignty. They felt that their sovereign shell would enable them to amass wealth by providing a regime wherein virtues and vices would become *res commercium*. The massive abuse of the Indo-Mauritius Double Taxation Convention is an example.²¹ At the September 19—21, 2000 Commonwealth meeting of Finance Ministers in Malta, many small States showed unhappiness with the Organization for Economic Cooperation and Development (OECD) as, they felt, the Organization was subjecting them to sanctions for unlawful tax practices for operating offshore financial centres. “Those countries insisted that as sovereign states they reserved the rights to impose their

¹⁹. *Oppenheim's International Law* 9th ed. vol. I (Peace).

²⁰. It is a strange irony that the most glamorous centre for trade in the U.S. was called the World Trade Centre. Its destruction proves that howsoever high an institution be both God and Satan are above it.

²¹. vide *Shiva Kant Jha v. Union of India*, (2002) 256 ITR 563 (Del.).

own tax regimes.”²² Their criticism was more strident in the conference held in Barbados chaired by Prime Minister Owen Arthur.²³

Neither the craft of camouflage practiced with finesse by Clive nor the technique of direct control effected with bang and impact by Lord Hastings could be emulated in the changed circumstances of our days. The developed countries drew on the treaty-making power. They found that “there is nothing to prevent the parties to a treaty from modifying, *inter se*, rules of customary international law in a way which does not impair directly the rights of third states or which does not offend against a rule having the character of *ius cogens*.”²⁴ It was understandably felt that through a treaty even the fundamental norms of international law could be reduced to vanishing point. The Uruguay Round Final Act which gave birth to the WTO is *sui generis* in establishing a closely structured contractual architecture with stipulated mandatory norms and skillfully structured *pactum de contrahendo* protocol.

An extraversion but tuned to the subject matter of this article. We are decreed by our destiny to live in a strange world. Most often it is felt that our economists know a lot but on account of pervasive hubris they often miss the obvious. A character in Dostoyevsky’s *The Brothers Karamazov* considered MAN an indeterminate equation. The passion with which mercantilism was promoted once upon a time, and the vehemence of the intellectual chorus for liberalism which is the fashion of the day reveal the same syndrome at work: not knowing that we may be wrong or we are prone to be led by some lingo capable of forging a trap out of virtue itself. Descent of occasional darkness is a common human frailty but to sway in inertia to the snares of Circe is a depravity for which none else can be blamed. It is human specific to visualize future from the present²⁵, it bodes ill for society in which

*The best lack all conviction, while the worst
Are full of passionate intensity.*²⁶

Most proponents and protagonists of this global liberalism bring back to my mind the words of Prof. Gailbraith:

‘Here another great constant in economic life: as between grave ultimate disaster and the conserving reforms that might avoid it, the former is much preferred.’²⁷

²². 2001 *Britannica Book of the Year*, p. 379.

²³. 2002 *Britannica Book of the Year*, p. 377.

²⁴. *Oppenheim’s International Law* 9th ed. Vol. I (Peace).

²⁵. “There are many gifts that are unique in man; but at the centre of them all, the root from which all knowledge grows, lies the ability to draw conclusions from what we see to what we do not see, to move our minds through space and time, to recognize ourselves in the past on the steps of the present.” J. Bronowski, *The Ascent of Man* Ch. I.

²⁶. W.B. Yeats, *The Second Coming*.

²⁷. *A History of Economics The Past as the Present* p. 236.

It is advertised with high pressure that the IMF, World Bank and the WTO know panacea for ills and are in a position to prescribe what is needed for common good. Rightly did Thomas Balogh say: "The history of economic theory is a tale of evasions of reality."²⁸ Things would have been different if the wielders of political powers and the samurais of the present-day global economic architecture would have been on notice that even they can meet the fate which Cromwell met after his death when his embalmed remains were dug out and hung up at Tyburn where criminals used to be executed. With most politicians and almost all pleaders of the present-day liberalism is their medieval mindset. In my letter dated September 5, 2003, to India's Commerce Minister I had, without mincing matters, written:

"Resort to information technology is not in itself an index of modernity: modernity expresses itself in the articulation of a hypothesis framed after deep critical appraisal but ever available for modification if emerging facts so warrant. In economics we reap consequences of our deeds, not enjoy miracles. This is how public good is promoted. Please see before you leap."

Now to the main topic. Under the sponsored state system which Clive set up he found that despite the dewani which enabled to promote the commercial interests of the East India Company with no holds barred, it was essential to manage the system of governance from inside the ramshackle and truncated political structure over which Mir Jafar or Mir Kasim presided as nawab. Clive pursued this objective with a stroke of stealth by securing for Rida Khan, who was Clive's deputy diwan, the post of the nawab's deputy. The inevitable consequence was the emergence of powerful coterie of bureaucrats and self-seekers who worked for the Company whilst swore loyalty to the nawab. For Mir Kasim even an escape to Monghyr where he removed his capital solved no problem. Finding that the Company and its servants (and also their henchman) had wrung the benefits of trade without taxation, he, as equity demanded, abolished duties altogether. But the English wanted privilege of not paying tax only for themselves; the natives must groan under taxation. The plea of Ellis, the Chief of English factory at Patna, "violently asserted what he considered to be the rights and privileges as against other traders."²⁹ How close is this to the arguments which support that while it is proper to tax the Indian tax-payers, the non-resident tax-payers should be exempted from taxation, or if charged to tax they should be charged at rates most beneficial to them. Without casting our perspective so wide we can see that in matters of economic management and fiscal administration we are already dancing to their tune. There is hardly a superior bureaucrat who does not crave for a stint in the World Bank or the IMF. A schooling at the IMF is most sought after for great assignments in the economic management by the government. New versions of Rida Khans may be more detrimental to our democratic values and the independence of our country.

²⁸. T Balogh, *The Irrelevance of Conventional Economics* p. 32.

²⁹. *An Advanced History of India* p. 663.

Even in the heyday of mercantilism the East India Company followed a monopolistic policy in trade with India not only by excluding or containing the powers competing with England but also with political support in the home country by allowing no scope to any other rival company. The conjoint effects of the *firman*s of the Emperor Farrukhsiyar granted in 1717, and the subsequent political events, were as follows³⁰:

- (i) The Company had secured the privilege of trading in Bengal without paying duties on the condition of paying Rs. 3000 per annum to the Emperor;
- (ii) The Company continued to enjoy the privilege of exemption dues throughout the province of Hyderabad;
- (iii) The Company continued to pay nominal rent for Madras;
- (iv) The Company were exempted from the payment of all customs and dues at Surat hitherto paid by them, in return for an annual sum of Rs. 10,000.
- (v) The Company's trade with Europe was exempt under the firman of 1717.

The Company developed inland trade on massive scale to finance investment in goods to be sent to England. "The Company's monopoly covered the actual trade with Europe and the articles purchased in India to make up its "investment"; but its servants were free to trade otherwise within Bengal and overseas to Asian countries. . . . In Bengal this private trade was subject to internal duties. Mir Jafar's concession, expressed in the form of *dastaks*, or passes, gave them immense advantages over their Indian competitors..."³¹ After the Industrial Revolution machine made cotton goods were imported which being cheap destroyed the cotton industries in India. The Company reaped two advantages: exemption from customs duties, and the benefit of trade at the wreck of Indian handicraft industries.

"In India the administration of civil justice was closely associated with the management of revenue, and the grant of Diwani rights in 1765 comprised both these functions."³² The Company and their English employees secured the administration and management of the civil courts, leaving the administration of criminal law in the hands of the natives. The English believed that with the control over the administration of civil justice they could protect their person and property better; they could carry on their arbitrariness and the loot of the land without any effective judicial control. This system protected and promoted their trade and investment. The colonialists were accustomed to follow this approach

³⁰. *An Advanced History of India* 634.

³¹. *The Encyclopaedia Britannica* Vol. 21 p. 85.

³². R.C. Majumdar et al, *An Advanced History of India* p. 788.

in all the countries which had come under their sway. In China too somewhat similar situation was brought about after establishing their privileges including the Most-Favoured-Nation (MFN) which ensured trading equality. This was brought about through the Treaty of Nanking, the Treaty of Wanghia (with the United States in 1844), and the Treaty of Whampoa (with France in 1844). Later on the colonial power obtained certain benefits of extraterritoriality also. This had the effect of exempting them “from the application or jurisdiction of local law or tribunals.”

How close is this to Article XVI (4) of the [Agreement Establishing the WTO](#)

which obligates :

“Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.”

And Article III(3) prescribes:

“The WTO shall administer the Understanding on Rules and Procedures Governing the Settlements of Disputes. . . in annex 2 of this Agreement.”

Article 23 (12) of the Disputes Settlement Understanding, deals with strengthening of the Multilateral System.

In my letter to Shri Arun Jaitley, the Minister of Commerce, written before his departure to participate in the Fifth WTO Ministerial Conference I had written the following :

“Article XVI (4) of the WTO Charter mandates that each “Member shall ensure the conformity of its laws, regulations, and administrative procedures with its obligations as provided in the annexed Agreements”. This undermines the Rule of Law. The Understanding on Dispute Settlement mandates a procedure sans transparency, sans a judicial control, sans all the trappings of procedural fairness and moderation considered sacrosanct under civilized jurisprudence. There is not much distance between retaliation or cross-retaliation, and retorsion and reprisal often justified under the law of Nationality.”

The whole approach was designed to get over the customary rule of international law which concedes territorial jurisdiction as much over aliens as over citizens. Starke says:

“Territorial jurisdiction is conceded by international laws much over aliens as over citizens of the territorial state..an alien can claim no exemption from the exercise of such jurisdiction except so far as he may be able to show either: (i) that he is, by reason of some special immunity, not subject to the operation of the local law; or (ii) that the local law is not in conformity with international law.”³³

³³. J.G. Starke, *Introduction to International Law* 10th ed p. 209.

Not to provide even a Judicial Review by a superior court of law and justice is a gross negation of the Rule of Law. If the idea is to exclude national judicial system because of the diversity of judicial traditions and approaches, a better course would have been to set up an international tribunal capable of inspiring confidence and trust by its detachment and transparency. While the Company Bahadur ruled our country it was seen that it was the sword that backed all sanctions. If a company under the WTO regime finds that the sanctions under its dispute resolution procedure are not effective it can seek protection from its home state for protection under the Law of Nationality³⁴. This solution is obviously not good.

There is now a clear mismatch between the national, political and the global economic structure³⁵. We should be realistic enough to recognize that our institutions, when put on testing-track, show decay. It would be folly to trust the ways of the political or bureaucratic executive. Our public opinion is not vigilant. Our society of the present resembles the Indian society in eighteenth century, and shares many features of a society in moral decay. Once such a society was the Hellenistic world in its declining days. Writing about this Bertrand Russell graphically observes:

“The general confusion was bound to bring moral decay, even more than intellectual enfeeblement. Ages of prolonged uncertainty, while they are compatible with the highest degree of saintliness in a few, are inimical to the prosaic every-day virtues of respectable citizens. There seems no use in thrift, when tomorrow all your savings may be dissipated; no advantage in honesty, when the man towards whom you practise it is pretty sure to swindle you; no point in steadfast adherence to a cause, when no cause is important or has a chance of stable victory; no argument in favour of truthfulness, when only supple tergiversation makes the preservation of life and fortune possible. The man whose virtue has no source except a purely terrestrial prudence will, in such a world, become an adventurer if he has the courage, and, if not, will seek obscurity as a timid time-server”.

In these locust-eaten years common people must discover their role and mission. Without courage and imagination on the part of people neither our institutions can survive, nor our national character develop.

In the 18th century the political leaders of country were, by and large, deficient both in courage and imagination. They clung to the seats of power, though not for long. They did not possess moral and material wherewithal to meet challenges of the swarming global gladiators, the marauding trading companies which

³⁴. *Barcelona Traction Case* I C J 1973, 3.

³⁵. “Clearly, the reality of globalization has outstripped the ability of the world population to understand its implications and the ability of governments to cope with its consequences. At the same time, the ceding of economic power to global actors and international institutions has outstripped the development of appropriate global political structures. As a result, probably many more years of public confusion and unfocused protests can be expected as the stable new global world order takes shape” 2001 *Encyclopaedia Britannica*, Book of the Year. p. 191.

was as much an instrument of trade as of war. The wielders of political powers were interested in their petty gains wasting all their time in trivial pursuits which left them neither time nor energy to think about the changed global perspective of trade and commerce which had become the joint ventures of rulers and the merchants. Love for the country, mainly amongst the wielders of political power, had declined almost to its nadir. Corruption of all sorts had cancerous growth eating into the vitals of the society. Writing about Mir Jafar, Dr. R.C. Majumdar observed: “the conspiracy of Mir Jafar and others has been regarded as the “Great Betrayal” of the country by her unpatriotic sons”. Common people were indifferent to national interests. Most persons had fallen in love with sufferings accepting their plight with a wonderful smugness in the inertia of religio-cultural complex. No society known to mankind has shown a greater capacity to remain satisfied at the equipoise amidst sufferings. The equipoise in religio-cultural complex even amidst extreme poverty is a distinctive feature of the Indian society which has ruled out not only the occurrence of any traumatic revolution to bring about a structural change, but also made the formal institution of government itself optional. These features did not matter much when the Mughals ruled, or when the British governed our country. The looters and the swindlers of our own day would surely like us to remain a low arousal people capable of not seeing beyond nose.

Our politicians know small history, no geography, and possess no scientific outlook. Corruption has brought about a sordid pass in the country. In *Azadi Bachao Andolan and Shiva Kant Jha v. Union of India*³⁶, Delhi High Court has held that by allowing the abuse of the Indo-Mauritius Double Taxation Avoidance Convention our government allowed an opaque system under which the country lost crores and crores of revenues. What is shocking is not the abuse of a tax treaty but the doggedness with which our government asserted its stand by making its cause common with a tax haven company. And the Public Opinion, without which democracy can not survive, is neither well informed nor assertive. Could we work in the light which John Stuart Mills shed in these lines:

“Political institutions are the work of men; owe their origin and their whole existence to human will. Men did not wake on a summer morning and find them sprung up. Neither do they resemble tree, which, once planted, ‘are aye growing’ while men are sleeping. In every stage of their existence they are made what they are by voluntary human agency”³⁷.

The objectives set out in the preamble to the Agreement of the WTO are couched in heuristic tone. In the preamble to the Agreement establishing the WTO it is mentioned that the objective of the organization is to ensure that the relations of the state in the field of trade and economic endeavour should be so conducted “with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income an effective demand,

³⁶. (2002) 256 ITR 563 Del.

³⁷. *Representative Government*(1st ed. 1865) p. 4.

and expanding the production of and trade in goods and in services while allowing for the optimal use of the World's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development".

The preamble to the Agreement is a poetical prose expressing desires to improve the lot of developing and the least developed countries. The preambles to all other Agreements forming an interesting ensemble of treaties express noble vision, which, knowing the world the way it goes, does not inspire trust. There is an evident danger that the hype which is being created by the high pressure advertiser all over the world may lead us astray for sure and certain fleecing. The advantages of trade would be reaped by certain sections of people. There is a clear risk that the common man would suffer economic deprivation and their conditions would deteriorate because of subtle and shrouded exploitation by an organized band of global gladiators and other adventurers having no other motive but to garner more and more of wealth. We have known how the exploiters use high ideals. Even Devil quotes scriptures. Kipling justified colonialism as it was the White Man's Burden; and the French felt that they had the appointed mission to spread Kulture. So it is appropriate for us not to be led by the high ideals stated in the preamble to the Agreement establishing WTO. It would be prudent to critically scrutinize what is being done under the auspices of the WTO, and with what effect. It would be dangerous if we merely accept the dreams which its advocates attempt to sell. On the testimony of History it can be said that most often the peddlers of schemes are cursed swindlers. Hence it is prudent to look before we leap; and we must not forget what Lord Acton said: The eternal vigilance is the price of liberty. They had enough schooling to learn this lesson in the years in which collective foolishness led to the triumph of the crooks and knaves of diverse breeds. We must work with history in marrow of our bones believing that every government, whatever be the form, is capable of betraying the interest of common man. We should reflect deeply on the chemistry at work in our system of governance. Krishna and Freud have influenced me most. Lord Krishna said in the *Bhagavadgita* :

*uddhared atmana'tmanam
Na'tmanam avasadayet
atmai 'va hy atmano bandhur
atmai'va ripur atmanah.*³⁸

(A man reaps only the consequences of what he does. He is himself his friend or foe.)

And Freud made an insightful comment in these words:

³⁸. "Let a man lift himself by himself ; let him not degrade himself; for the Self alone is the friend of the self and the Self alone is the enemy of the self." The *Bhagavadgita* VI. 5 (Dr. S. Radhakrishnan's Translations).

“There is something to be said, however, in criticism of his disappointment. Strictly speaking it is not justified, for it consists in the destruction of an illusion. We welcome illusions because they spare us unpleasurable feelings, and enable us to enjoy satisfaction instead. We must not complain, then, if now and again they come into collusion with some portion of reality, and are shattered against it”.

“In reality our fellow -citizens have not sunk so low as we feared, because they had never risen so high as we believed”.

In no other phase of history so much informed and critical vigilance was needed than in this phase of global integration under the high-pressure strategic shepherding of the nations by the hegemonic global institutions (like the IMF, the World Bank, and the WTO) facilitating selfish pursuits of the powerful MNCs. There is no gainsaying the fact that we live in the world in which the calculus of pleasure and pain for common good depends on how we succeed in operating the forces of global interdependence and solidarity. What they say should be weighed with discrimination. The task before us is unimaginably difficult. Comprehension of the issues, which we have to address under the aegis of the WTO, is enormously difficult. There is no segment left in our national life which is not going to be affected today or tomorrow. If things move the way they do our Constitution would become an anachronism. By entering into the various agreements under the rubric of the Uruguay Round Final Act, and its sequel, we have already defiled our Constitution. How could the Executive Government enter into such treaties when the subject matter involved taxation, over which it has no power, patents which was legislatively occupied, and scores of other subjects under Parliamentary domain? How could the Executive Government being a creature of the Constitution go counter to it by evading constitutional limitations? How could federal polity that we set up as a basic feature of Constitution be violated in so many ways in so many segments? How could the Executive commit the nation under international obligations without regard to our Fundamental Rights and Human Rights? And these were done without Parliamentary sanction, without any informed public debate! These obligations were undertaken at the forum where the developing countries have only one freedom: to fall in line. India is surely the only country on our earth which can withstand pressure of all sorts. Our irony is that our government rarely rises up to our expectations. The fatal flaw is the institutional decline, poor intellectual caliber in matters of international law and diplomacy, shagging national character, and faltering imagination, on the part of the wielders of political power, to see the shape of things coming up fast. India could have taken a stand that its Executive could not go counter to the constitutional limitations. In fact, a constitution is needed most when a citizen is in distress, or the organs of the government are harangued or pressurized to adopt ways not appreciated by a political society. It is a dyke which must not be broken. In no other major country the Executive is allowed to arrogate to itself the power to debunk and defile the Constitution even if it involves merely acts at international plane. There is no better way of taming one's ego than to keep in mind what Mahatma Gandhi had said (as displayed in Gandhi Smriti, Birla House, New Delhi):

“I will give you a talisman. Whenever you are in doubt or when the self becomes too much with you, apply the following test:

Recall the face of the poorest and weakest man whom you have seen and ask yourself if the step you contemplate is going to be of any use to him. Will he gain anything by it? Will it restore him to control over his own life and destiny? In other words, will it lead to Swaraj for the hungry and spiritually starving millions?

Then you will find your doubts and yourself melting away.”

The discussion of the sponsored state is not to suggest that a new version of the old is emerging. The developed countries headed by the United States want the world to be shaped to their design. There is an acquisitive society with a lust for power. The way they think is understandable. In the present state of evolution mankind by and large can only behave this way only. There is no ceiling on desires; and there is no bottom to degradation in such pursuits. Why should this country wherein most persons are undergoing abject poverty and utter destitution be so magnanimous as to promote interests of those who have no interest in this country except sinister self-interest? Should this country be allowed to be looted through tax haven routes? There is sufficient evidence to think that for the persons wielding power, India is not a mission but a mere means? Why is it that we cannot see writ large around us that the good are silent but crooks croaking round the cloak so loud that even sobs of the poor go unnoticed? What shall the United States do with her enormous oil reserves from Alaska to Mexico? There is only one answer: this is the very grammar of an acquisitive society which prefers power and wealth, nothing else matters.

We are in a strange market where the common Indian can enjoy suffering and swindling justified by dubious reasoning by those for whom even souls amount to *res commercium*. Time has come when we must brace ourselves to our duty. I would love to conclude this Chapter with Lord Nelson’s famous call to the fleet at the battle of Trafalgar;

‘England expects every man to do his duty.’

which Lord Denning aptly describes: “that one sentence was one of the most effective pieces of prose in our language.”³⁹ We read a lot of *the Bhagavadgeeta*, but Nelson knew its quintessence. It is high time for us to variate on Nelson’s:

‘India expects every man to his duty’.

³⁹. Lord Denning, *Leaves from my Library* p. 13.