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**IMPACT OF GLOBALISATION ON INTERNATIONAL
TRADE: A LEGAL PERSPECTIVE**

Summary of the Thesis
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Doctor of Philosophy in Law

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IMPACT OF GLOBALISATION ON INTERNATIONAL TRADE: A LEGAL PERSPECTIVE

Introduction

Curiosity, wants, needs, jealousy etc. are human traits which exist now and have existed ever since these words were unknown to mankind. It is this human nature or requirements that inspired him to think beyond what he had in his hands. When a person saw something which he did not have but another had he had the urge to acquire it, the same phenomenon occurred in the mind of the opposite person and this led to the birth of something which we call today as TRADE.

With the evaluation of mankind, human entered into the transaction/relationship called trade to make his life more meaningful, as it was not possible for any individual to own everything under the sun. Initially as shown above trade was limited to exchange of one thing for the other. People started to trade in things which they had extra with the things which they required and this developed a system of trading called the Barter System of Trade which remained in vogue for a considerable period of time. This is probably the root of the well developed system of trade that we see today.

With different ages and passage of time the relationship called trade acquired new dimensions and went beyond simple exchange of goods and entered into new and different era of buying and selling. Almost anything could be traded and this started the process of wealth creation. States also started to regulate, interfere or help in trade as the importance of trade was understood by the rulers.

The concept of economy and the relationship of trade with that of economy got instilled into the minds of the people, economists and the rulers of the States. Trade being the essence of the economy of any civilization, country or any place it reflects upon the financial stability and strength of an economy. It is therefore important to first of all understand the full meaning of the word "Trade" and analyze the same in depth.

With changing times people around the world started understanding that in order to achieve real growth and better standards of life and overall development, things and materials available in different parts of the world needed to be brought into their own State. This gave rise to the thought of what today we call "imports" and against that came the understanding of selling their own goods to the outer world to balance the so called "imports" which gave rise to the phenomenon we call today as "exports". This "import" and "export" gave rise to International Trade. Once people started understanding the economic value of such International Trade it started to flourish and States all over started to promote amongst their traders. This gave rise to an increase in overall trading activity throughout the globe and it brought a new realization and understanding of the other parts of the world to one and all.

This International Trade brought about knowledge of things which were unknown to the people. Cultural changes, changes in daily life, changes in tastes of everything etc. started to develop amongst the people of the world. This led to the origin and development of the word we call as Globalisation.

Globalisation is a word which everyone today uses very normally and associates it with any and every thing, but the vastness of the word is not the way it appears to us normally. It encompasses within itself any relationship or process which crosses the boundaries of one State to the other.

Globalization” refers to the growing interdependence of countries resulting from the increasing integration of trade, finance, people, and ideas in one global marketplace. International trade and cross-border investment flows are the main elements of this integration. Enabling people of one nation to communicate with those of the other nation(s) is the biggest achievement in terms of globalization and development. The culture, trade, business, ethics and conduct of one group in one part of the world can influence others may or may not be of same nation. It is irrespective of the time and space and language bindings as these communications are in terms of trade, social internet forums. The process of globalization is therefore, an amalgamation of interaction and integration among different groups

of people, various organizations and governments of different nations.¹

We need to first of all understand this phenomenon / concept called Globalisation so as to understand its impact on International Trade and how the two complement each other.

In order to understand this phenomenon of Globalisation and International Trade we need to examine the events since ages and understand the development of Globalisation and International Trade and the principles and provisions of law (if any) that applied to such concepts in the distant past. The effort in this study shall be to search the origin of Globalisation as such, i.e. how it started and its implications on trade more particularly on international trade and the legal issues involved in it. This can provide an understanding as to how and in what manner the International Trade was carried out in different era in the past and how and which law was applied. Therefore this study concentrates on how the concept of trade grew and developed from time to time, era to era and in some important theoretical periods, the manner of evolution of International Trade and the Impact of Globalisation on different aspects of International Trade.

The biggest impact of globalisation on International Trade can be felt on the emergence of Free Trade Zones being set up for promoting such trade. We analyze the concept of Free Trade Zones, what it

¹ *RESPONDING TO GLOBALIZATION: INDIA'S ANSWER*, by Dr. C. Rangarajan Chairman Economic Advisory Council to the Prime Minister

means, its advantages and disadvantages *vis a vis* the normal system of trading. This study also analyses the impact of globalisation on labour and environment in this study. How tariffs act as barriers in development of trade and how globalisation and international trade flourish under a regime of non-trade barriers.

Along with the development of trade and international trade, disputes also arise. Any study related to trade shall not be completed without analyzing the disputes resolution mechanism. The different sets of rules which apply to different aspects of International Trade and the dispute resolution mechanism in the days as compared with the existing dispute resolution mechanism must be analyzed. In order to have a set of rules and provisions governing such Inter-country trade, agreements would be created which would deal with different possible situations and the solutions in any such case, dispute resolution etc. Such Inter-country agreements for trade, in a way, bilateral agreements were used to settle disputes arising in the trade.

Traditionally, the sources of international law are regarded as being listed in Article 38 of the Statute of the International Court of Justice.

These are:

- International Conventions whether general or particular establishing rules expressly recognized by 'the contesting states';
 - International custom as evidence of a general practice accepted as law;
 - The general principles of law recognized by civilized nations;
- and

- Judicial decisions and the teachings of the most highly qualified publicists of the various nations (as subsidiary means for the determination of rules of law).

Nowadays, the term 'convention' is assumed to be referring to a multilateral treaty; but at the time Article 38 of the UN Charter was drafted 'convention' denoted any sort of treaty: bilateral, multilateral or regional. And in the context of Article 38 it still has this meaning.

Dispute resolution in cases of International Trade and also International Trade as such is governed and controlled by International Commercial Arbitration under UNCITRAL (**United Nations Commission on International Trade Law**). The provisions of UNCITRAL need to be studied in depth and compared with the other related provisions of different countries. There are various bilateral and multilateral treaties and agreements governing Trade between a set of countries, the provisions of some such treaties also need to be examined, so that one good set of provisions governing International Trade can be created.

There are numerous conventions, agreements, treaties and other provisions governing International Trade including those, which impose certain restrictions on different classes of transactions in different manner. Different countries use customs, tariffs, licenses etc. for governing the imports as compared to exports. This in effect can be seen as a limiting factor to the concept of Trade without barriers. This study also tries to examine the effect of such restrictions on Free International Trade.

Certain provisions have come into existence due to the customary usage since ages, just as in the case of our legal system, wherein customs are considered as an important source of Legislation. Looking at the above, in order to study the statutory position of different provisions on International Trade it shall be important to study the Customary Laws, UNCITRAL, Bilateral and Multilateral Agreements, Treaties and Regional Agreements. But the emphasis has to be on UNCITRAL as this is the source of all legislations governing International Trade, in the world today. A detail study of the provisions of the UNCITRAL shall be made initiating from the provisions under the New York and the Geneva conventions.

A special focus is needed to study the dispute resolution mechanism in the event of a transaction of International Trade. International Commercial Arbitration under the UNCITRAL is analyzed in detail in this study.

The scope of this study is limited to a legal perspective of the impact of globalisation on international trade and the other aspects have not been considered in depth.

Significance of the Study

One of the most important benefits of globalization is the major progress and growth of global trade. Through this, goods, services, labor, capital and technology are able to move freely across national borders. International trade expansion led to higher international capital flows, labor and technology. Universality in cultural, political, legal and institutional practices among neighboring countries was also made possible through this benefit. With international trade,

countries are able to distribute their goods to a larger market. Aside from economic development, the ties shared by participating countries can also be a useful resource for less developed nations.

Globalization is usually understood as a process in which barriers (physical, political, economic, cultural) separating different regions of the world are reduced or removed, thereby stimulating exchanges in knowledge and goods. Globalization allows freedom of movement (liberalization), and to most people this seems positive. Globalization also promotes mutual reliance. As the number of exchanges of goods and of information increase, the result is a growing interdependence between countries as they come to rely on various imported products, services, and cultural input. However, there is another side to globalization that is less savory. In the absence of barriers, globalization invites the strong to invade the territory of the weak, opening the door to wholesale exploitation. In economic terms, what this amounts to is that the rich get richer and the poor get poorer; in environmental terms, it means the accelerated destruction of the planet's biosphere.² Since Globalisation is a complex issue, it is difficult to judge its impact on trade and more particularly on international trade. This study therefore limits the study of the impact of globalisation to international trade with a special reference to labour and environment.

There are many legal issues involved including the issue of international dispute resolution mechanism and its shortcomings.

² GLOBALIZATION - AN INTRODUCTION by Eric Squire

The purpose here is to identify the key links between globalization and its impact on International Trade and more specifically limiting it to the legal aspects, from regulations to its effectiveness and the dispute resolution mechanism. The study deals with to provide comprehensive mechanism to address this burning issue of the impact of globalisation on international trade and dispute resolution system. The significance of the study is that it also involves redirecting the process of globalization so that the distribution of wealth becomes less skewed, and so that environmental concerns are given more priority.

Objectives of the Study

Today the world has become a small place to live in and business or trade has acquired a different and very vast meaning than the limited meaning that it had in the past. Today trade encompasses almost every aspect of our lives and has its impact on everything that we do. One therefore needs to examine "Trade" in depth and this study is an effort to perform this as one of the objectives.

Trade has now become global and International Trade has now come in vogue, nowadays people are not happy or satisfied with domestic trade, import – export i.e. International Trade is of a much greater aspiration.

This study is based on the belief that Globalisation being the 'in thing' today, any person, especially a professional in the legal field



must be aware of its impacts on trade in general and especially International Trade. In today's world the word 'Trade' must be construed as having an International effect and therefore this study is based on the impact of Globalisation on International Trade.

The world is getting a smaller and smaller planet now and looking to the speed at which distances are in effect lessening and International Trade is increasing by the minute, it is highly desired to examine the effects of Globalisation on such trade. One needs to understand whether there are only positive effects of Globalisation on International Trade or there are certain negatives as well.

In order to simply keep up with the trend today i.e. of everything getting global, wherein trade, activities etc. are not bound by national boundaries anymore, it is highly desirable that the legislations affecting International Trade are understood in detail. One must be aware of the cause and effect of each and every provision in any given situation and whether any International Law affects the same or any National Law can / shall apply. Under given circumstances in case of a dispute, which law shall apply and what shall be the effect on the transaction. How the dispute may be settled or how the decision on the same may be carried out. The difference between the prevailing legislation on a certain point in a particular circumstance between two different countries and whether there is a uniformly applicable law on the same needs to be analyzed. These are some of the questions, which need to be answered and the same is going to be the endeavor of this study.

This study shall help us in understanding the various provisions of the UNCITRAL and its effect on any particular event. The major part and thrust of this study shall be on the provisions of the UNCITRAL as it is considered as the mother of all International Trade Laws and many countries have and are accepting the same and incorporating the provisions of the UNCITRAL in their own Legislations. This study aims to bring out the salient features as well as the lacunae present in the present dispute resolution mechanism for International Trade disputes.

The International Trade scenario of various blocks of countries or countries shall be compared with the Indian scenario and the endeavor shall be to find the negatives as well as positives of each system.

Area of the Study

This study aims to analyze the impact of globalisation on trade and more specifically international trade with a legal perspective. The three main concepts viz. globalisation, trade and international trade are too vast in themselves therefore a special endeavor has been made to restrict them to the legal sense as far as possible, though due to certain requirements of the study and the intermingling of the three concepts with the legal side the financial and economic aspects of globalisation, trade and international trade have been studied.

The impacts of globalisation are far-fetched in every sphere of our lives. Therefore it is necessary to see how much this concept affects us in reality and to what extent. Whether it is all positive as is the

normal thinking and consensus or are there any negatives associated with it. How far and in what manner does globalisation influence international trade and the degree of help it offers international trade to thrive in today's world.

Trade, be it domestic or international, is today not just a simple buy-sell relationship, it is a complex relationship involving a number of issues, especially legal issues. These legal issues need to be studied in detail therefore; this study encompasses the provisions of various regulations governing international trade in today's world. A comparison needs to be made with the regulations prevailing in ancient times and times thereafter for the conduct of international trade with the regulations today. Therefore this study deals with the history of trade, international trade and globalisation and the regulations in place in the ancient times for the conduct of trade.

There is also the issue of dispute resolution in the event of a dispute over a transaction in international trade. This study therefore enters into the details of the dispute resolution mechanism available today for the settlement of disputes arising in international trade. An effort has been made to analyze the different types of regulations in vogue in the present scenario and the effect that such regulations have over trade as a whole. This study shall point out the salient features and lacunae in this dispute resolution mechanism available today for the settlement of disputes arising in international trade.

Rationale of the study

Inter-country trade in the past was done without much confusing laws or regulations and without much of confusion, but then there were very less complications to contend with. Today the system of International Trade has become much more complicated and therefore many rules, regulations etc. have been inculcated in the whole system. The system as of today needs to be full proof so as to minimize the risks associated with International Trade.

In effect Globalisation itself is a phenomenon which is positive as well as negative so long as its effects on International Trade are concerned. Along with the advent of technology, a number of technology related crimes have come up which need to be curtailed. Over and above this, there are number of different aspects which make us believe that today there is the need of a system wherein there is minimal chance of disputes and also a legislation, which tries to take care of as many possibilities as possible for dispute resolution. Over and above that, there is also a need to have a suitable and practical manner of implementing and enforcing the provisions of such a Legislation.

This study persuades us to become aware of the International Trade practices, laws applicable to it and other related aspects. It also brings to our knowledge, how people in the past used to trade with each other especially inter-country trade and how the same was regulated. The past needs to be compared with the present and also the different systems of the present era need to be compared to arrive

at some practical, effective and suitable system which can ward off the problems as above associated with International Trade.

This study explores in detail the present law related with International Trade i.e. UNCITRAL, it compares the provisions of the same with the provisions existing in some other systems and the endeavor is to try and find out some better system acceptable to majority of the countries, such that it does not favour any country or a block of countries.

An effort has been made in this study to bring out and analyze the various aspects of Globalisation, its impacts on International Trade, how and in what manner it impacts the trade, the provisions governing International Trade and the dispute resolution mechanism.

Scope of the study

There are numerous conventions, agreements, treaties and other provisions governing International Trade including those, which impose certain restrictions on different classes of transactions in different manner. Different countries use customs, tariffs, licenses etc. for governing the imports as compared to exports. This in effect can be seen as a limiting factor to the concept of Trade without barriers. This study also tries to examine the effect of such restrictions on Free International Trade.

Certain provisions have come into existence due to the customary usage since ages, just as in the case of our legal system, wherein customs are considered as an important source of Legislation. Looking at the above, in order to study the statutory position of different provisions on International Trade it shall be important to study the Customary Laws, UNCITRAL, Bilateral and Multilateral Agreements, Treaties and Regional Agreements. But the emphasis has to be on UNCITRAL as this is the source of all legislations governing International Trade, in the world today. A detail study of the provisions of the UNCITRAL shall be made initiating from the provisions under the New York and the Geneva conventions.

A special focus is needed to study the dispute resolution mechanism in the event of a transaction of International Trade. International Commercial Arbitration under the UNCITRAL is analyzed in detail in this study.

The scope of this study is limited to a legal perspective of the impact of globalisation on international trade and the other aspects have not been considered in depth.

Hypotheses of the study

Following important hypotheses have been formulated to conduct the study bearing in mind that the variables involved in this study have huge impact on the world at large.

- Trade, including international trade, is the essence of any economy and forms the basis of almost all political as well as economic and legal decisions, International Trade, now being a normal and day-to-day thing in everybody's life, needs to be thought of seriously and the provisions affecting the same need to be analyzed in depth
- Globalisation is a very important aspect in life today having immense impact on our day-to-day life and of any country as a whole, this study is based on the belief that Globalisation being the 'in thing' today, especially a professional in the legal field must be aware of the impacts it has on Trade. Today the word 'Trade' must be construed and believed to include and mean International Trade. Therefore Globalisation needs to be analyzed in the light of International Trade
- The impact of Globalisation on International Trade needs to be worked upon at length
- Tariffs, Trade Barriers etc. in a Globalised world; are such measures for the good of a country
- Disputes are a part and parcel of any commercial transaction and there are laws in force to settle such disputes, but the disputes arising in an International Trade transaction have to be settled in a special manner and wherein legislations of two or more different countries are involved, in such a scenario the regulations or laws which apply
- Provisions enshrined by and under the UNCITRAL, internationally the most accepted regulatory body for the regulation

of International Trade are very exhaustive but still there is a scope for improvement

- Dispute Resolution Mechanism under the UNCITRAL though preferred by most nations is not absolutely concrete
- An ideal, suitable and model system for international trade in the globalised world today is of utmost requirement in order to make International Trade a happy and benefiting experience

Methodology of the study

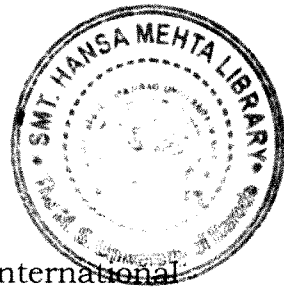
The study being related to International Trade and Globalisation which are subjects affecting all spheres of life and on each and every country of the world, a purely doctrinal method has been adopted for this research work, because it cannot be properly conducted purely by the experimental or non-doctrinal method.

The relevant information is collected from various statutory enactments, rules published thereunder and rules evolved by the Judiciary from time to time in specific cases. The relevant material is collected from primary and secondary sources. Material and information are also collected from both legal and financial sources like published works, national and international journals, papers presented at various seminars, original judgments of various national and international courts and websites on relevant topics. A comparative analysis is made of various enactments related to International Trade and also the system prevalent in various countries for the International Trade.

Overview of the study

The entire study is divided into nine different chapters. Even though every chapter is capable of being a separate topic, all the chapters form a part of this entire study.

Chapter I begins the study by giving an introduction to the subject of Trade, International Trade and Globalisation along with the inter-relation between them. This chapter further provides an overall understanding of the concept of this study and gives a brief outline of each topic in this study in a broad manner. It defines the area and scope of the study i.e. to analyze the impact of globalisation on trade and more specifically international trade with a legal perspective. The three main concepts viz. globalisation, trade and international trade being too vast in themselves, a special endeavor has been made to restrict them to the legal sense as far as possible, though due to certain requirements of the study and the intermingling of the three concepts with the legal side the financial and economic aspects of globalisation, trade and international trade have been studied. The rationale behind the study has been pointed out. Further, the objectives of this study are pointed out. The hypotheses have been formulated on the basis of trade in the commercial and globalised world of today and the relationship between globalisation and trade having a legal perspective in mind. The methodology adopted has been explained and the scheme of the study is shown bringing out the overall view of the whole study.



Chapter II deals with the concept of trade as a whole and international trade specifically. The meaning of the word trade has been dealt with elaborately and the concept of trade since the ancient times of the Indus Valley Civilization has been discussed at length. Trade can be said to represent a commercial transaction between two or more persons wherein the concerned parties enter into the relationship, voluntarily, believing that the proposed transaction is beneficial to them. Trade has been in vogue since ages in one sense or the other, with any name whatsoever or even when people did not have or associate any names to such relations.

The chapter further goes to explain the meaning and concept of International Trade. International trade is exchange of capital, goods and services across international borders or territories. With time travel became easier, people started to get an overview into the lives of others in different places. This view beyond the boundaries of their own States and the goods which were available or scarce led to the thought of trade beyond boundaries. The importance and need to expand trade beyond the boundaries was a new idea which germinated thereafter.

Trade has now become global and International Trade has now come in vogue, nowadays people are not happy or satisfied with domestic trade, import – export i.e. International Trade is of a much greater aspiration. The reasons of the development of International Trade are discussed at length in this part of the study.

There has been a shift in the mindset of people of one era to the other. It has been noted that the type of trade (be it domestic or international) carried on and the pattern being followed changed from

one style to another due to different factors affecting them. Trade remained constant but the way of trade and the reasons behind the actions changed. This evolution of pattern of trade and the mindset of the people during different era has been discussed further by using philosophies like the natural philosophy, the conceptual philosophy and compared the same with trade patterns today.

The history of trade as a whole has been dealt with at length from the ancient days of the Indus valley civilization till date providing an insight of the system of trade prevailing in each of the important periods of Indian history. The chapter ends with an in-depth study on the three important theories of trade viz. The Theory of Mercantilism, The Laissez Faire Era and The Cost Comparative Approach. These three important theories provide us the reasons of each system of trade prevailing at the particular time and the objectives of the people professing trade in those periods.

Chapter III deals with Globalisation, its meaning, definitions, concept and development. 'Globalization' means integration of economies and societies through cross country flows of information, ideas, technologies, goods, services, capital, finance and people. Cross border integration can have several dimensions – legal, cultural, social, political and economic. In fact, some people fear cultural and social integration even more than economic integration. Effectively Globalisation is trade without barriers. In the absence of barriers, globalization invites the strong to invade the territory of the weak, opening the door to wholesale exploitation. In economic terms, what this amounts to is that the rich get richer and the poor get poorer; in environmental terms, it means the accelerated destruction of the planet's biosphere.

Although globalization is a frequently heard word these days, it is not really a new phenomenon. In the past, various waves of 'globalization' occurred, usually within an imperialist framework. The Macedonians under Alexander the Great, for example, expanded their trade to many countries in the far and Middle East. The expansion of the Roman Empire fueled a longer wave of globalization. For almost 500 years, the Romans traded throughout Europe and much of North Africa. But nothing in the past was ever as extensive, as truly 'global', as the latest wave of globalization.³

This chapter further discusses at length the historical evolution of Globalisation and its negative and positive effects on today's world.

Chapter IV deals with the concept, history and development of Free Trade Zones. Free trade is a type of trade policy that allows traders to act and transact without interference from government. The policy permits trading partners' mutual gains from trade of goods and services. Free-trade zones are among the most versatile, and under-used, devices available for saving on duties, taxes, and other costs involved with global trade. However, the rules and benefits vary widely from country to country. It came into wide usage around the globe after World War II as a way to encourage foreign investment, mostly in Third World countries. It supports free trade without all of the infrastructure and politics that multilateral agreements require. Therefore, free-trade zones and similar initiatives continue to advance the cause of globalization.

A free trade zone (FTZ) or Export processing zone (EPZ) or Special Economic Zone (SEZ) is one or more areas of a country where tariffs

³ Globalisation – An Introduction by Eric Squire

and quotas are eliminated and bureaucratic requirements are lowered in hopes of attracting new business and foreign investments. Free trade zones can be defined as labor intensive manufacturing centers that involve the import of raw materials or components and the export of factory products.

The Indian equivalent of FTZ i.e. Special Economic Zones is discussed at length along with the applicable provisions and benefits and requirements for such SEZs in this chapter.

Chapter V deals with the Impact of Globalisation. Globalisation has numerous effects on almost all the spheres of life, therefore this study concentrates on the impact of globalisation on international trade with a special focus on the impact on labour and environment.

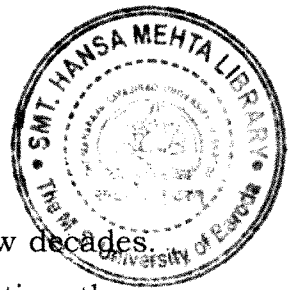
The global economic system is one characterized by a growing level of integrated services, finance, retail, manufacturing and nonetheless distribution, which in turn is mainly the outcome of improved transport and logistics, a more efficient exploitation of regional comparative advantages and a transactional environment supportive of the legal and financial complexities of global trade. The outcome has been a shift in global trade flows with many developing countries having a growing participation to international trade. The nature of what can be considered international trade has also changed, particularly with the emergence of global commodity chains. This trend obviously reflects the strategies of multinational corporations positioning their manufacturing assets in order to lower costs, maximize new market opportunities while maintaining the cohesion of their freight distribution systems. In addition, another important

trade has been growing imports of resources from developing countries, namely energy, commodities and agricultural products.

The dominant factor behind the growth in international trade has been an increasing share of manufacturing activities taking place in developing countries with manufacturers seeking low cost locations for many stages of the supply chain. The evolution of international trade thus has a concordance with the evolution of production.

Chapter VI deals with the regulations governing international trade. Beginning with the legal system in ancient India this chapter leads us to the world of conventions, treaties and agreements. The concepts of bilateral, multilateral and regional treaties are discussed at length. Starting from one of the first intellectual property conventions, The Paris Convention for the Protection of Industrial Property this chapter deals with other important Global conventions like GATT (General Agreement on Tariffs and Trade), WTO (World Trade Organisation), TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights), TRIMS Agreement on Trade Related Investment Measures, WIPO (The World Intellectual Property Organization) and the most important regulation of all, UNCITRAL Model Law on International Commercial Arbitration 1985 as amended and adopted in 2006. The provisions of these regulations have been studied in detail and the important aspects have been brought out in this chapter.

Chapter VII deals with the concept of the dispute resolution mechanism for international disputes under the UNCITRAL. International Commercial Arbitration is growing at an accelerating pace, as there has been a concomitant rise in international disputes by way of a



rapid interaction in international commerce in the past few decades. The reasons for the steadily growing practice of submitting these disputes to arbitration may vary from case to case. One of the most common explanations for such a practice is that rather than permit international disputes to be settled in national courts, many parties often prefer to submit them to a tribunal that is not part of the governmental structure of a particular state. Although nationalistic favoritism may also be avoided by selecting a forum in a neutral state, arbitration offers many advantages in addition to judicial neutrality. The difficulty of finding a neutral adjudicator is particularly acute when a state is a party to a dispute with a private person. Private persons want to avoid being tried in the courts of their sovereign opponent⁴, and foreign states are reluctant to have the courts of another foreign state sit in judgment of their conduct. Further this chapter brings out the salient features of International Commercial Arbitration and discusses the Geneva Convention and The New York Convention for enforcement of Arbitral Awards.

Chapter VIII deals with the need of a wholesome approach for dispute resolution in international disputes. Few lacunae in the model law and the procedures under the international commercial arbitration are pointed out. Only the signatories to the UNCITRAL (not all States are signatories to the UNCITRAL) are obliged to follow the regulations enshrined under it, the remaining nations have their own set of rules governing trade, this poses a major hurdle in having an integrated international dispute resolution mechanism which can be applicable to all the States of the world. The enforcement of award by the

⁴Kerr, *International Arbitration vs. Litigation*, 1980 J. BUS. L. 164.

international courts in such non-signatory States is a very awkward question but the same needs to be answered.

Chapter IX deals with Conclusion and Suggestions. We find that Trade as a whole is a very important aspect of any economy. Economy always gets the priority in any country. The word trade has now become synonymous with international trade and especially with the advance in information technology and telecom the world has become a very small place and trade can be easily meant to include international trade.

Globalisation is “**the**” happening thing today but it is not at all a new concept. Globalisation in trade means trade without any boundaries or barriers like tariffs etc. A truly globalised world would mean one huge market without any restrictions. The impact of globalisation on international trade goes to such an extent that people use these two words interchangeably. A special focus on the impact of globalisation on labour and environment shows us that there are certain blots in the good name of globalisation.

The other important gift given by globalisation to the world of commercialism is the concept of “Free Trade” which saw to the development of “Free Trade Zones” the world over. These FTZs are a boon to the commercial world due to a regime of zero or negligible tariffs, least procedural formalities and tax exemptions, but they do have their negative impacts so must be use judiciously.

Today in this highly competitive world trade has become too complex with numerous issues involved; out of these the most important are

legal issues as the degree of impact of such issues is direct and colossal on the transaction as a whole. This study has specially concentrated on the legal aspects involved in the regulation and governance of international trade. It provides the know-how of legalities involved and the regulations in place for international trade. International Trade is governed by and under special global conventions on different issues like GATT, TRIPS, TRIMS etc. and bodies like WTO and UNCITRAL and each such convention and / or body deals with specific issue or issues pertinent to trade as a whole. International commercial arbitration is the mechanism for resolution of disputes in International Trade and is acceptable to the majority, but it has some lacunae which have been brought out and remedies are suggested along with the lacunae as under

- Not all countries of the world are signatories to such above mentioned conventions, which make Enforcement of the foreign award a major issue. This is a major problem and needs to be tackled as quickly as possible.
- The UNCITRAL Model Law just being a model, may or may not have been accepted as a whole even by the signatory nations, therefore domestic laws may be applying to certain aspects which creates a confusion while dealing with the dispute.
- Parties to the international contract are given the discretion to choose their own applicable laws and place of arbitration, in the agreement itself, which at times creates confusion as to the laws which shall apply in the event of a dispute.
- Even the issue whether a dispute is arbitrable under the domestic laws of a country or not is a problem, as arbitrability of a dispute is a matter which concerns the domestic laws, in

the event of the domestic laws of the countries of the disputant parties to not confer on this aspect, there is a major concern of the manner in which the dispute is to be settled.

- A court may set aside foreign arbitral awards on different grounds out of which the setting aside of the awards on the grounds of public policy is at times not truly fair.

Following issues arise keeping India into the perspective over and above the issues mentioned above:

- No limitation period is fixed for enforcement of foreign awards
- In order to be considered as a foreign award, (for the purposes of the Act) the same must fulfill two requirements. First it must deal with differences arising out of a legal relationship (whether contractual or not) considered as commercial under the laws in force in India. The second requirement is more significant and that is that the country where the award has been issued must be a country notified by the Indian Government to be a country to which the New York Convention applies. Only a few countries have been notified so far and only awards rendered therein are recognised as foreign awards and enforceable as such in India.
- The other difference between the domestic and foreign award is that (unlike for domestic awards) there is no provision to set aside a foreign award. In relation to a foreign award, the Indian Courts may only enforce it or refuse to enforce it - they cannot set it aside. However the Supreme Court in the recent decision of *Venture Global Engineering v. Satyam Computer Services* held that it is permissible to set aside a foreign award in India applying the provisions of Section 34 of Part I of the Act.

To sum up there is an idea of a different type of trade zone like the free trade zones in existence but with certain improvements to the issues brought out hereinabove, which would work as an ideal trade zone and make the relationship of trade a happy experience.

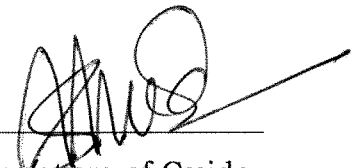
- There is a need of a system like that of “Incentive Compatibility” wherein the States which comply with the international trade law are given special status and benefits
- A law (may be on the line of the Model Law) applicable to all international trade throughout the world needs to be in force which also clarifies the above mentioned issues
 - Ambiguity in any provision needs to be clarified
 - International Trade transactions must mandatorily follow this new law and domestic laws must be used only for domestic purposes
 - Awards declared by the international bodies must be honoured and enforced unless there is a real issue with the public policy of any specific nation, which should be brought in to the international forum which awarded on the dispute and that forum should have the right to modify its award if it deems fit
- Implementation of such a law needs to be done by a task force comprising of a number of appointees from each member State

Free Trade Zones, the “in-thing” today in the commercial world, are a new development hence the insight provided by this study for the Indian free trade zone i.e. special economic zone could be pretty helpful. Improvements on the same can be assessed by comparison with the Chinese Free Trade Zone model, as China has benefited

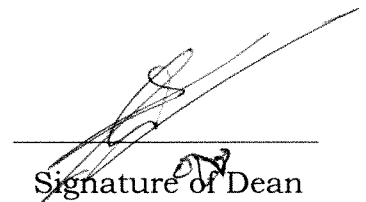
immensely from this model. Hence, a study of this comparison will be of interest and use in the present context. This study will be helpful in assessing our position vis-à-vis other countries and the system of **“Incentive Compatibility: A New World Order”** could become a reality and solve the present issues regarding international trade.



Signature of Student



Signature of Guide



Signature of Dean