



CHAPTER 1

INTRODUCTION



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INTRODUCTION

1.1 Importance, nature and scope of the study

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.

1.1.1 Trade and International 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.

Trade can be said to represent a transaction between two or more persons wherein the concerned parties enter into the relationship voluntarily believing that the proposed transaction is beneficial to them. This represents a win – win situation for the parties to the specific transaction, resulting in apparent gain and satisfaction for the concerned parties. If this above mentioned understanding is applied to numerous such transactions than we arrive at a trading system, which forms a major proportion of the economy to which it belongs. This results in gain and satisfaction for all the traders of that concerned economy. Thus it can be seen that better the trading system of an economy better are the prospects of the traders being prosperous and happy. This shows us the importance of Trade in any era or State.

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. Thus converting this knowledge and thirst for such newness into a global trading opportunity. This led to international trade flourishing throughout the world. The nations which could export more as compared to its imports gained and their economies grew very strong and very fast. This prompted other nations to follow suit which ensured a healthy competition amongst nations.

This whole process led to the origin and development of the word we call as Globalisation.

1.1.2 Globalisation and its Impact on International Trade:

Globalisation is the buzzword today. Every person in today's world is talking about Globalisation; and why not, International Trade is blossoming as never before. Globalisation and International Trade go hand in hand and these two factors complement the growth of each other. India is slowly but steadily going on the path of development and today it is felt that our Nation will become one of the Economic Superpowers of the world in time to come. The ever-expanding Corporate World of India has provided the impetus towards growth in all directions. The Information Technology industry, along with Pharma and other manufacturing companies are the true heroes of present corporate India. This has a lot to do with Globalisation. Corporate India has started looking competitive and a possible economic superpower of the world in the years to come, behind this, once again Globalisation is considered as an important phenomenon.

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. Along with the development of trade and international trade, the disputes shall 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.

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 are also studied in depth.

It shall be the endeavor to find the manner and path of the development of Globalisation. This will in turn show us the effects it has on International Trade and how Trade developed internationally, how development of Inter-country trade took place.

1.1.3 The Future 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 means, its advantages and dis-

advantages vis a vis the normal system of trading. This study also analyses the impact of globalisation on labour and environment in this study.

The other aspect of development of International Trade is the “costs” on the consumer as well as the manufacturers. Certain nations provide a tax structure, which is very conducive for the development of business. The cost of manufacturing goes pretty low in such countries as compared to other countries. At times the difference between the cost of production and the final cost at which the product reaches the consumer is very high. How tariffs act as barriers in development of trade and how globalisation and international trade flourish under a regime of non-trade barriers.

1.1.4 Governance and Regulation of Trade

The system of trade from the Indus Valley Civilization days till modern day systems has been analyzed in detail along with the governing legislations or bodies in such different times.

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.

Coming to today's world, 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.

1.1.5 Dispute Resolution Mechanism:

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.

1.2 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. What is 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. 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.

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.

1.3 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 tech 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. Plus 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 to the knowledge of others 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.

1.4 Hypotheses

This study analyses the impact of Globalisation on International Trade. An in-depth meaning of the term Globalisation itself shall be considered. 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 understood correctly.

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; whether such measures for the good of a country or not
- 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.

1.5 Methodology Adopted

- As this study is related to International Trade and the legal field, a purely doctrinal method has been adopted. 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.

1.6 Scheme of the Study

This study reviews the complexities and uncertainties surrounding and related to the provisions applicable in International Trade in different systems in the world. In the highly globalised world today where national boundaries are insignificant in the trading world there is a need to study in depth the provisions applicable to such trade and the dispute resolution mechanism available.

Different systems in the world as of today are analysed and compared with the Indian system of trade. The impact of different barriers or lack of barriers at various points in a given system are also analysed along with the impact of the same on consumers as well as manufacturers and effect of the same on trade as a whole.

Chapter 1 shows the need, the objectives, the rationale behind the study and the overall utility of the study in brief. It also touches upon the main topics on which the study is based.

Chapter 2 deals with the origin, growth and development of International Trade taking into consideration the historical aspects of the same.

Chapter 3 deals with the concept and meaning of Globalisation, Inter-country trade and its development,

International commercial contracts and the concept of trade without barriers.

Chapter 4 deals with the emergence of the latest concept of Free Trade Zones which are a kind of a boon to the international trade system in the world today.

Chapter 5 deals with the impact of Globalisation on different aspects of International Trade, it also touches upon the effect of Globalisation on different sectors of life today.

Chapter 6 deals with the statutory position related with International Trade with a special emphasis on UNCITRAL, taking into account the customary law as well as bilateral and multilateral agreements and treaties. It also touches upon the much required uniformity in International Trade Laws and the loopholes in today's prevailing system.

Chapter 7 deals with the dispute resolution in the present system in International Trade. It also touches upon the scenario prevailing in the developed countries and compares the same with the Indian scenario.

Chapter 8 is a humble effort to point out certain lacunae prevailing in the laws pertaining to International Trade and provide suggestions in the existing law.

Chapter 9 deals with the conclusions of this study providing a brief review of the matter and knowledge acquired from the concepts discussed in this effort.