**The Harmonization of International Trade Laws: An Analysis of CISG and Breach of Contract**

**INTRODUCTION**

For any case study or research assessing critical constructs of the research background and allied discussion including research variables, critical literature about the current study, research gap and motivations, research objectives, etc. often play a decisive role in accomplishing more informative and constructive outcomes, considering the current research work where the focus is made on assessing international trade laws with particular reference to the fundamental breach of contract and remedies. This chapter puts snippets of the concept of international trade laws, varied characteristics of the international trade laws, the concept of contracts and breach of contract, different positions of breach of contract under international laws, etc. Besides, the discussion of the difference between the breach and the fundamental breach, etc. are also presented in this chapter. Several significant kinds of literature about the above-stated research variables are discussed in this section of the present thesis. The predominant objectives of this chapter are to provide optimal knowledge transfer about the current study and allied variables so that a constructive knowledge base could be built to perform "Analytical study of the international trade laws with special reference to the fundamental breach of contracts and remedies."

The detailed discussion of the above-stated attributes is given in the subsequent sections.

This section primarily discusses some of the critical research attributes about trade, international trade, international trade laws, and a breach in international trade laws, etc. The motive of the current discussion is to provide an optimal introductory about the current research or study to make it more informative.

Trade can be described as an international or national exchange of articles, technologies, things, etc. which enables the welfare in two primary ways. Firstly, it widens the horizons of the market of a country's output and promises to bring better prices through exports. Secondly, through imports, it allows or enables customers to enjoy the articles, technology, etc. which are otherwise available at higher prices and thus fostering a higher level of satisfaction among the customers. It is of extraordinary to mention here that the essential principle of trade, i.e., the Law of comparative costs, explains that whatever a country exports or imports is not only dependent upon its character alone but is associated with its relations with its partners in trade.

Considering the views of Samuelson, it can be affirmed that, "enabling foreign trade can facilitate a consumption possibility frontier which can provide us access to more of all goods than can be achieved through domestic production possibility frontier." Also, the widening of the concept of foreign trade "will very effectively exhibit its contribution towards the increase of the number of articles, objects, etc. and hence the total enjoyments or pleasures associated with it." This can be asserted true for all the nations involved in trading. Undeniably, the underdeveloped countries are most concerned with their places in international trade because, for all of them, their position in international trade, international trade-how, skills, machinery, investment, etc. are of paramount significance for fostering economic development.

Undeniably, it can be agreed that trade is essential for the countries in order to demonstrate their abilities and specialization in manufacturing various things. Also, they must compensate for the articles they do not manufacture. For example, the countries not having appropriate oil resources import oil from the other oil-producing countries. On the other hand, these oil-producing countries import finished goods from other countries since they do not produce enough. Hence, it can be asserted that in this modern era, no country is self-sufficient in its own, signifying the significance of International Trade for all the countries of the world. However, it is also noteworthy that the escalation in international trade is entirely supported by the pillars of laws, i.e., international trade laws. Deprival of this support cannot only lead to chaos and confusion but even develop the state of war among the nations.

The exponentially rising globalization and allied socio-economic connectivity across the globe have revitalized industries to explore opportunities beyond the natural geographical boundaries. Such revitalizing motives motivate industries to identify suitable foreign economies to penetrate their businesses to gain better growth and market share. The process of performing certain business activities beyond natural geographical boundaries (say, own country) is often stated as an International business. International trade can be interpreted as "the exchange of goods [or] services "between the nations"(Supreme People's Court, People's Republic of China (2014). As discussed, international trade is not only limited to the trade between the countries but is somewhat concerned about the distribution of resources among the countries. Such distribution of resources is achieved in the international markets through international trade under the concept of free trade, the quality products are manufactured and then put for sale in the market, and advantages of such as lower prices and quality products are made available to everyone in the world. The basic principle of international trade is to buy commodities etc. from one country, selling it at the lowest price and then sell the same to the country which has the highest price. This benefits the sellers as well as buyers and even provides an opportunity for developed nations to accelerate their pace of economic development. It enables the nations to import the latest machines, technologies, etc. and even allow them to send their scholars and technocrats to the other countries to acquire knowledge and skills required for the growth of their developing economies.

To summarize, it can be asserted that no country in the world can be economically independent or, in other words, even the wealthiest countries of the world need the help of the poorest countries for getting different services such as buying raw material, etc. This also explains that if all the countries are concerned about their needs and produce goods for themselves only, the consumption of goods would be limited, consequently leading to a decline in economic progress. Additionally, there would also not be observed any changes or improvements in the standard of living of the people of the world. It is due to international trade that economically active people, as well as countries, can import goods and services from other nations, thus maximizing the satisfaction of customers.

## Review of Literature

**Solene Rowan (2012), in her book "Remedies for Breach of Contract,"** compares the remedies available in English Common law with French civil law remedies. She explains the definition of "contract" in French law as an earnest duty of obligations and binds them into a relationship. Therefore, the breach is an act of betrayal, and it is unacceptable. The contract involves a loyal relationship and not merely a legal creation. This explanation is noteworthy in understanding the relationship between the parties in a contract. She explains that under French Law, the court has to decide the issue of terminating the contract, and not by the party, with few examples and citations. In conclusion, she opines that the functions of the contract are the base for remedies for breach of contract, and cause for the different approaches of English and French Law. This book contributed significantly to understand the remedial measures towards the breach in European laws and English law.

**Ndubuisi Nwafor (2013), in his article “Comparative Evaluation of the Doctrine of Fundamental Breach under the CISG, UNDROIT Principles, and the English Law,"** emphasizes that **‘**fundamental breach’ is a potent commercial doctrine, and it is the gateway for soliciting remedies. He reiterates the importance of the analysis because of the role of theory in the above laws. He traces the background of Article 25 of CISG from Article 10 of the ULIS and acknowledges the role and contribution of Ernst Rebel in ULIS. In analyzing the Article 10 of ULIS and Article 25 of CISG, he states that Article 25 is a better version of the Article 10 and it is categorical in defining the breach as fundamental when the breach has resulted in damage and such damage result in depriving the expectations of the aggrieved party. Further, the author explains that in English law, the concept of fundamental breach is not clear. Due to pushing it into side by the advent of statues, its relevance is confined to academic discussion and explains with few citations. Analyzing its role in UNIDROIT principles, he concludes that fundamental breach is applicable only while considering the termination of the contract. It is vital in CISG. His arguments are noteworthy and give the researcher ample scope for further analysis.

**Juana Coetzee (2017), in his article "A Pluralist Approach to the Law of International Sales,"** reviewed the application of CISG in International Sales transactions of the member countries. The title itself says that his approach is practical or liberal. In the introductory part, he is skeptical about the application of the CISG by all the member countries. He opines that several ratifications itself be cannot be taken for granted, that there is a practical unification of sales law, or CISG has provided an effective regulatory platform. Commenting on the present status of international law, the author states that new *lexmercatoria* has been created due to the participation of various organizations and the involvement of countless of rules and classifies the International conventions or National laws as hard law and general principles of law, model laws, standard form of contracts, trade customs as soft law. Authors stated that the Swiss proposal for Global contract rules or Global contract code has its origin from *lexmercatoria*, and its essentiality is not favored across the globe. He seriously contemplates the need for a useful framework for international sales law and affirms that law becomes effective only when it serves the purpose of its users. The derived economic value and the passage created for economic exchange is the tool to measure its effectiveness. Authors concluded that the existing CISG is a hybrid or pluralist model need not any revision and should be supported. Global legal pluralism is a middle path, and to be viewed as an opportunity.

**John E. Stannard and David Capper (2014), in their article “Termination for breach of contract**," put forth their arguments by supporting a maximum number of case laws. Conclusions are all based on the case laws. First, they discuss the Termination. Termination for breach involves elements like the existence of the breach; in response to it, the injured opts for termination. The authors view the consequence of termination through the eyes of the injured and the party in default and view the termination as a remedy and a process. They have attempted to show the difference between the discharge of contract and termination of the contract. The confusion between the two issues is due to a lack of consistent or agreed terminology. They take the view that the termination for breach is discussed under the broader heading of performance and breach in Textbooks and attempts to clarify the difference between discharge by performance and discharge by the breach. However, they conclude the article without putting their strong views on the topic and its relevance. Instead, they take the support of various case laws. They do not take the readers to the crux of the issue.

**Definitions**

**International Trade**

International trade is the exchange of goods, services, and capital across national borders. It includes imports and exports, as well as foreign direct investments.

**CISG**

CISG stands for United Nations Convention on Contracts for the International Sale of Goods. It's a treaty adopted by the United Nations in 1980 to establish a uniform legal regime for international sales of goods. The CISG applies to contracts between private businesses and between parties whose places of business are in different Contracting States.

**Breach of Contract**

A breach of contract occurs when one party fails to fulfill their obligations under a contract.

## Statement of Problems

Undeniably, international trade has emerged as one of the predominant activities to meet the demands of the current globalized community and has become an inevitable need for economies. Though, international trade is not coined in the last few decades but has been in continuation since 100s of years, making it more reliable and widespread day by day. On the other hand, contemporary conditions, socio-economic, and political conditions have always been the driving forces influencing international trade. Interestingly, these trio (Socio-Economic-Political) factors have been playing as catalytic as well as barriers controlling international trade globally. To ensure optimal international trade activities across global economies, numerous set of rules, often called trade laws, were framed; however, there have been multiple breaches of such trade laws over the years. Different nations have been making international trade laws as per their interest and benefits; however, the breach of contracts or trade laws has not been rare events. However, it is hypothesized to follow specific international trade laws by the stakeholders.

Amongst the significant universal trade laws, CISG has broadened relevance. Unfortunately, dynamic international relations, socio-economic-political factors, market conditions, ethnocentrism, and numerous local, as well as international factors, have been influencing the international trading process and causing the breach of trade laws. On the other hand, countless remedial measures and allied regulations have been proposed to deal with international trade laws; however, their efficacy and applicability with different cases have not been found universally applicable. The complexity of trade laws, an agreement made between the economies, and other above-stated factors often cause a breach of contract and fundamental breach of contracts. Unfortunately, global dynamism, self-centred policies, and changing economic polarity has been the driving force behind the significant breach of contract, and hence universalizing a common international trade law in all circumstances seems confined. In such cases, exploring or understanding different international trade laws, breach events, etc. allied remedial can help to identify particular potential formulation towards globally suitable trade laws.

## Significance of the Research

* The dynamic international relations, socio-economic-political factors, market conditions, ethnocentrism, and numerous local as well as global factors have been influencing the international trading process and causing the breach of trade laws.
* On the other hand, countless remedial measures and allied regulations have been proposed to deal with international trade laws; however, their efficacy and applicability with different cases have not been found universally applicable.
* The complexity of trade laws, an agreement made between the economies, and other above-stated factors often cause a breach of contract and fundamental breach of contracts. Unfortunately, global dynamism, self-centered policies, and changing economic polarity have been the driving force behind the significant breach of contract, and hence universalizing a common international trade law in all circumstances seems confined.
* In such cases, exploring or understanding different international trade laws, breach events, etc. allied remedial can help to identify specific potential formulation towards globally suitable trade laws.
* With this motive, this research work predominantly intends to explore different breaches of contracts under international trade scenarios. It intends to identify appropriate remedial measures to assist both stakeholders in resolving the issues.

## Scope of Study

* Undeniably, international trade has emerged as one of the predominant activities to meet the demands of the current globalized community and has become an inevitable need for economies.
* On the other hand, contemporary conditions, socio-economic, and political conditions have always been the driving forces influencing international trade.
* Interestingly, these trio (Socio-Economic-Political) factors have been playing as catalytic as well as barriers controlling international trade globally.
* To ensure optimal international trade activities across global economies, numerous set of rules, often called trade laws, were framed; however, there have been numerous breaches of such trade laws over the years.
* Different nations have been making international trade laws as per their interest and benefits; however, the breach of contracts or trade laws has not been a rare event. However, it is hypothesized to follow specific international trade laws by the stakeholders.
* Amongst the significant universal trade laws, CISG has broadened relevance. Unfortunately, dynamic international relations, socio-economic- political factors, market conditions, ethnocentrism, and numerous local as well as international factors have been influencing the international trading process and causing the breach of trade laws.
* On the other hand, countless remedial measures and allied regulations have been proposed to deal with international trade laws; however, their efficacy and applicability with different cases have not been found universally applicable.
* The complexity of trade laws, the agreement made between the economies, and other above-stated factors often cause a breach of contract and fundamental breach of contracts.

## Research Hypotheses

There is a significant distinction between the breach of contract and the fundamental breach of contract, calling for different remedial measures for damage compensation in each case Article 25 of the CISG can be used as generally recognized rules to address problems associated with any fundamental breach of contracts. Articles 46 - 52 of the CISG can help buyers call for damage compensation in the International trade, especially in cases where the incurred damages or losses arising from non-performance of the seller. Article 74-77 of the CISG enables buyers to call for damage compensation in International trade, especially in cases where a fundamental breach of contract has occurred Article 79 of CISG can facilitate compensation claims (by buyer) in cases where all losses and damages are covered.

## Research Objectives

The following objectives are defined concerning the critical research goals and allied constructs:

* Study and assessment of “breach of contracts” and its fundamentals in International Trade.
* Study the impact of the fundamental breach of contracts on the International trade.
* Review different International Trade Laws and allied remedial measures to address the issues associated with the breach of contract in International Trade.
* To delve into CISG and recognize optimal remedial convention as a globally acceptable solution for addressing breach of contracts or the fundamental breach of contracts.
* To take effective and globally acceptable remedial measures for dealing with breach of contract and the fundamental breach of contracts in international trade.

## Research Methodology

The study is based on international treaties, International statements, and conventions, specially CISG -related standards Trade literature and commentaries as well as associated literature.

So in this manner, The Doctrinal Method was adopted In this study. It is a doctrinal method, incorporating critical, descriptive, historical, and methodological or analytical approaches. In this study, a qualitative assessment paradigm has been taken into consideration that exploits secondary data for assessing different research attributes and allied objectives. Since the research topic involves the more of theoretical analysis of case laws, doctrines, textbook, journals, conventions, notable rulings, critical review of the legal and academic luminaries, rather than field study, in the present research work, the revies of the apex court decisions, and its impact on the States policy will also provide insight about the analytical study of the topic.

Source of data for this research is from the secondary data collected from sources like different legislation, judicial decisions of different courts of the various countries, online literature, thesis, publications, magazine, books/eBooks, etc. Furthermore, the secondary source might constitute information from Textbooks, Commentaries, scholarly Articles published in national and international journals, and additional inputs available on the internet.

**Chapterization**

### Chapter-1 Introduction

### Chapter-2 Historical Evolution of International Trade Laws in the light of CISG and Breach of Contract

### Chapter-3 Concept of the Fundamental Breach under International Trade laws

### Chapter-4 Judicial Approach

### Chapter-5 Remedies for breach of contract under international trade law

### Chapter-6 Conclusion and Recommendation