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Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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With this thought, we hereby present to you

“THE IMPLICATIONS OF INDIA’S NON-SIGNATORY STATUS TO THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (CISG) ON INTERNATIONAL TRADE CONTRACTS”

AUTHORED BY - DAMINI BISWAS

Abstract:

The Contracts for the International Sale of Goods (CISG) provides a harmonized legal framework for cross-border sales transactions, aiming to reduce trade barriers and establish consistency in international contract enforcement. As India continues to emerge as a key player in global trade, its absence from the CISG poses unique challenges in terms of enforceability and compatibility of legal frameworks. This non-participation impacts the negotiation of trade agreements, where additional effort is required to bridge gaps between domestic and international legal expectations. The paper examines how India’s status influences negotiation challenges and risk mitigation strategies, compelling Indian businesses to adopt customized terms or rely on alternate treaties, which may increase transaction costs and complexity. Furthermore, this study investigates the mechanisms for dispute resolution in international trade involving Indian parties. Without the CISG, India-based parties may lack access to the convention’s streamlined dispute resolution process, relying instead on a patchwork of local laws and arbitration agreements. This may affect the predictability and efficiency of resolving trade disputes. Lastly, the paper discusses potential opportunities for reform and alignment with international standards, evaluating the benefits of India’s possible accession to the CISG. Aligning with the CISG could enhance India's appeal as a reliable trade partner, reduce legal uncertainties, and support India’s continued growth in the global market.

Keywords: *CISG (United Nations Convention on Contracts for The International Sale of Goods), India, international trade contracts, dispute resolution mechanisms, legal framework harmonization*

1. INTRODUCTION

1.1. International Contracts

Since the early days of *lex mercatoria*, or "the law of merchants," commercial activity across borders has introduced unique complexities.¹ Merchants have long navigated the uncertainty of different legal systems, local customs, and variable enforcement standards when trading beyond their own jurisdictions. This framework, initially developed to facilitate trade between medieval merchants in foreign lands, has grown vastly more intricate as trade has expanded to a global scale.

In 2024, these complexities extend far beyond the traditional concerns of commerce. Today, international contracts are not confined to business transactions alone but are also pivotal in areas like technology, healthcare, environmental law, and intellectual property. Legal practitioners in many fields face cross-border issues that require them to understand both local laws and the diverse legal standards and procedures of foreign jurisdictions.² This global marketplace demands a robust understanding of international conventions, bilateral treaties, regulatory compliance, and conflict resolution mechanisms to manage risks associated with differing legal principles and jurisdictional constraints.

Modern international contracts also introduce complications around issues such as data privacy, cyber risks, environmental regulations, and trade restrictions, all of which must be addressed in legally binding agreements. Lawyers and business professionals alike must anticipate not only the legal enforceability of their agreements in multiple jurisdictions but also the broader implications on business continuity, reputation, and compliance.³ As a result, navigating this interconnected global landscape requires a sophisticated approach to cross-border obligations, one that is attuned to the risks and evolving regulatory landscapes of each jurisdiction involved.

1.2. United Nations Convention on Contracts for the International Sale of Goods (CISG)

The United Nations Commission on International Trade Law (UNCITRAL) is a legal entity within the United Nations dedicated to promoting the steady harmonization and unification of

¹ Ralf Michaels, *The True Lex Mercatoria: Private Law Beyond the State*, 14 *Indiana Journal of Global Legal Studies* 447-468 (2007).

² Friedrich K. Juenger, *The Lex Mercatoria and Private International Law*, 60 *La. L. Rev.* (2000).

³ Leon E. Trakman, *The Evolution of the Law Merchant: Our Commercial Heritage*, Part II, 12 *J. Mar. L. & Com.* 153 (1981).

trade laws worldwide.⁴ One of its most impactful accomplishments is the creation of the United Nations Convention on Contracts for the International Sale of Goods (CISG), a multilateral treaty that standardizes aspects of international sales transactions.⁵ Recognized as one of UNCITRAL's key legal instruments, the CISG automatically governs a significant portion of cross-border sales agreements, making it essential for establishing a consistent legal framework for global trade. Since its inception on January 1, 1988, the CISG has steadily expanded in influence, with new countries joining each year.

As additional nations ratify the CISG, its reach broadens, encompassing an increasing share of international transactions. In recent years, the treaty has seen notable membership growth from non-European and developing countries, extending its influence into emerging markets. For example, in 2017, Vietnam, Azerbaijan, Fiji, Costa Rica, Cameroon, and Palestine joined, bringing the total number of CISG parties to 89 by 2018.⁶ This consistent expansion demonstrates the treaty's capacity to unify global trade practices by lowering legal obstacles and facilitating international commerce.

The CISG's rising adoption is expected to bring even more transactions under its jurisdiction as outlined in Article 1(1), particularly as more developing countries become members.⁷ This growth aligns with the CISG's goals of reducing legal barriers and advancing international trade, both of which contribute to stronger, more amicable relations between countries. As the CISG's influence spreads, understanding its scope and impact becomes increasingly critical for legal professionals and policymakers, who must be equipped to manage the treaty's implications for the global trading landscape.

Though many countries have adopted the Convention on Contracts for the International Sale of Goods (CISG), India remains neither a signatory nor a participant. However, Indian courts have occasionally referred to the CISG in cases involving international parties. For instance, in *Bottero S.P.A. v. Euro Glass*⁸, the CISG was used as the governing rule in arbitration for a

⁴ UNCITRAL, Legal Guide on International Countertrade Transactions (1992).

⁵ United Nations Convention on Contracts for the International Sale of Goods, opened for signature April 11, 1980, 1489 U.N.T.S. 3, 19 J.L.M. 668 (entered into force Jan. 1, 1988) [hereinafter CISG].

⁶ Ferrari, *Contracts for the International Sale of Goods: Applicability and Application of the 1980 United Nations Convention* (Martinus Nijhoff, 2012) 99.

⁷ United Nations Convention on Contracts for the International Sale of Goods 1980.

⁸ 14-cv-02528-BLF.

contract dispute, and in *Sideralba S.P.A. v. Shree Precoated Steels Ltd*⁹, Articles 45¹⁰, 74¹¹, and 75¹² of the CISG were cited to enforce an arbitral award.

India's primary legislation for contracts and sales—the Sales of Goods Act, 1930¹³, and the Indian Contract Act, 1872¹⁴ are outdated and lack provisions for complex modern trade requirements, such as those seen in cross-border transactions. Adoption of the CISG would help bridge gaps in these domestic laws, offering India a more consistent and efficient framework for international sales.¹⁵

However, adopting the CISG also poses challenges. The convention's concept of "fundamental breach" is ambiguously defined as a breach depriving one party of the expected benefit of the contract.¹⁶ This could create uncertainty for Indian parties in determining what constitutes a fundamental breach. The Indian courts have addressed similar issues, as seen in *B.V. Nagaraju v. M/s. Oriental Insurance Co. Ltd.*¹⁷, where the Supreme Court held that an accident due to driver negligence did not constitute a fundamental breach under insurance law. Additionally, CISG's Article 7¹⁸ references "good faith" without defining it, leaving interpretation to courts. India's contract law does not formally recognize "good faith" in contract performance, though Indian courts, such as in *Association of Unified Telecom Service Providers of India v. Union of India*¹⁹, have acknowledged an implied covenant of good faith, although its application was rejected on appeal.

1.3. Conflict of Laws and Contracts

Party autonomy is a foundational principle in modern conflict of laws, allowing parties to choose the governing law in their transactions. This freedom is essential to a liberal regulatory model and serves as a private ordering tool that reduces international transaction risks. By letting parties select applicable laws, legal predictability is enhanced, minimizing uncertainty-

⁹ Arbitration Petition No. 84 of 2013.

¹⁰ United Nations Convention on Contracts for the International Sale of Goods 1980, art 45.

¹¹ United Nations Convention on Contracts for the International Sale of Goods 1980, art 74.

¹² United Nations Convention on Contracts for the International Sale of Goods 1980, art 75.

¹³ Sale of Goods Act 1979.

¹⁴ Indian Contract Act, 1872.

¹⁵ J.H. Baker, *The Law Merchant and the Common Law Before 1700*, 38 Cambridge L.J. 295, 299 (1979).

¹⁶ John O. Honnold, "Uniform Law for International Sales under the 1980 United Nations Convention", 4th ed., Wolters Kluwer Law & Business (July 2009) [edited and updated by Harry M. Fletcher].

¹⁷ 1996 SCC (5) 71 JT.

¹⁸ United Nations Convention on Contracts for the International Sale of Goods 1980.

¹⁹ 2019(14) SCALE513.

related costs and supporting commercial convenience.²⁰ This approach aligns with the expectation that participants act as rational agents with unique insights into their preferences, fostering a shift from a state-centered view of private international law to one that values individual choice and practical considerations in global commerce.

Party autonomy is widely regarded as fundamental to international cross-border contracts, closely tied to the principle of freedom of contract. Many national legal systems and regional frameworks, like the Rome I Regulation²¹ and the Mexico Convention²², support party autonomy in contractual obligations, and its significance in choice of law has been formally recognized by the Hague Principles on Choice of Law in International Commercial Contracts²³. This instrument, though non-binding, aims to expand the reach of the chosen law within clear boundaries. As a result, choice of law agreements are now central to transaction planning, commonly appearing in international sales contracts governed by the CISG. When evaluating such agreements to determine CISG applicability, a detailed examination of the choice of law clause is necessary, with private international law of the forum serving as the reference framework.

The United Nations Convention on International Sale of Goods (CISG), commonly known as the Vienna Convention, establishes a standardized framework for international trade and sales of goods. Effective since January 1, 1988, the CISG has been ratified by 94 countries, including the United States and Japan, making it a significant reference for international and domestic laws. Its provisions, which address contract formation, party obligations, applicable law, and remedies for breaches, aim to create consistency in international commercial contracts.²⁴ Although India has not ratified the CISG, its courts occasionally reference it in cases involving foreign parties. Indian contract law, governed by the Sales of Goods Act, 1930, and the Indian Contract Act, 1872, is considered outdated in comparison, lacking provisions for cross-border transactions and modern trade complexities.²⁵ Adoption of the CISG could bridge gaps in domestic law, promoting efficient and uniform handling of international sales contracts.

²⁰ Joseph Lookofsky, *Understanding the CISG*, 3rd (worldwide) ed. (Wolters Kluwer) (2008).

²¹ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

²² Inter-American Convention on the Law Applicable to International Contracts (Mexico City, 17 March 1994).

²³ Hague Principles on Choice of Law in International Commercial Contracts (Hague Conference on Private International Law, 2015).

²⁴ Dana Neacsu and Anamaria Corbescu, *Doing Legal Research in Romania*, NYU GLOBAL LAW (Feb. 2017).

²⁵ Michael Joachim Bonell, *The UNIDROIT Principles of International Commercial Contracts*, Transnational Law in Commercial Legal Practice (Centre for Transnational Law ed., 1999).

However, challenges exist, such as ambiguity in terms like "fundamental breach" and "good faith," which Indian courts might interpret differently.²⁶ The CISG's limited breach categories may also conflict with the Indian buyer's right to reject non-compliant goods, a protection expressly recognized under Indian law.

2. ENFORCEABILITY AND LEGAL FRAMEWORKS FOR INTERNATIONAL CONTRACTS

2.1. Legal Frameworks regulating International Contracts

The United Nations Convention on Contracts for the International Sale of Goods (CISG) is widely regarded as the most successful effort to harmonize international commercial law. Its goal is to reduce trade barriers, particularly those related to choice of law, by establishing balanced and modern rules for international sales contracts.²⁷ As of February 2009, the CISG has been adopted by over 70 countries, representing more than two-thirds of global trade in goods and a diverse range of economies and cultures.²⁸

The CISG applies to international sales contracts if either (1) both parties are in Contracting States, or (2) private international law determines the application of a Contracting State's law. However, some Contracting States have opted out of the latter condition under Article 95.²⁹ A key principle of the CISG is the autonomy of the parties, allowing them to modify or exclude most CISG rules by agreement, and instead apply other laws. While the CISG governs many aspects of international sales contracts, it does not cover every issue, such as the validity of the contract or ownership of the goods sold. These matters are governed by the applicable private international law.

For issues not explicitly addressed by the CISG, they should be resolved based on its general principles or, in the absence of such principles, according to the relevant private international law. Notable provisions of the CISG include those concerning the interpretation of the parties'

²⁶ Mohammed Bedjaoui, *International Law: Achievements and Prospects* (Martinus Nijhoff 1991).

²⁷ Ministry of Industry and Trade of the Czech Republic, 'United Nations Convention on Contracts for the International Sale of Goods' (<https://www.mpo.gov.cz/en/foreign-trade/international-organizations-and-trade/uncitral/cigs/united-nations-convention-on-contracts-for-the-international-sale-of-goods---279390/>) accessed 8 November 2024.

²⁸ CISG-Online, 'CISG Contracting States' (CISG-Online) <<https://ciscg-online.org/ciscg-contracting-states>> accessed 8 November 2024.

²⁹ United Nations Convention on Contracts for the International Sale of Goods 1980, art 95.

agreement and the role of established practices and international usages.³⁰

2.2. Effect of India's Non-Signatory Status to the CISG on Enforceability on International Contracts

India's decision to remain a non-signatory to the United Nations Convention on Contracts for the International Sale of Goods (CISG) has important implications for the enforceability of international contracts involving Indian entities. However, India's absence from this framework leaves Indian parties relying on the Indian Contract Act, 1872³¹, or other chosen national laws, which affects the predictability and uniformity of commercial transactions. This lack of alignment with the CISG can influence the enforceability of contracts and alter the legal dynamics in cross-border deals.

One immediate effect of India's non-signatory status is the reliance on contractual autonomy.³² In contracts where Indian parties are involved, the default applicability of the CISG is not an option, making it essential for parties to expressly stipulate the governing law.³³ This autonomy allows Indian parties to select Indian law, a neutral law, or even foreign law in their contracts. However, this flexibility requires careful drafting, as the absence of CISG's standardized rules means that parties must address key contract provisions on issues like offer and acceptance, obligations, and breach. For instance, under Indian law, certain principles on offer and acceptance differ from the CISG, which could lead to varied interpretations if disputes arise in non-CISG jurisdictions.³⁴

The Indian Contract Act, 1872, governs most commercial contracts within India, yet it differs in significant ways from the CISG. Although comprehensive, the ICA does not cover several issues the CISG addresses, such as seller obligations for non-conforming goods³⁵ and buyer rights in cases of partial delivery.³⁶ The ICA does not explicitly mandate conformity of goods; instead, it relies on the implied condition of "merchantable quality" under Section 16 of the

³⁰ 'CISG: Overview and Key Provisions' (Practical Law) <https://uk.practicallaw.thomsonreuters.com/6-503-3686> accessed 8 November 2024.

³¹ Indian Contract Act, 1872.

³² Hanoch Dagan & Michael A. Heller, *Autonomy for Contract, Refined*, Law & Philosophy, Vol. 40, p. 213, 2021; Columbia Public Law Research Paper No. 14-598 (2018).

³³ Arzandeh Ali, 'The Law Governing International Contractual Disputes in the Absence of Express Choice by the Parties' (2015) LMCLQ 525.

³⁴ Schwenger I, Ranetunge J and Tafur F, 'Service Contracts and the CISG' (2018) 10 Indian J Intl Econ L.

³⁵ United Nations Convention on Contracts for the International Sale of Goods 1980, art 35.

³⁶ United Nations Convention on Contracts for the International Sale of Goods 1980, art 51.

Sale of Goods Act, 1930, which is narrower than the CISG's provisions.³⁷ This discrepancy could lead to misunderstandings in international contracts with parties from CISG member states, who may assume the applicability of broader CISG rules. Moreover, without the CISG's standardized remedies, parties often have to negotiate alternative solutions in the contract, such as liquidated damages or specific warranties, which might not be as robust as those under the CISG.³⁸

The CISG's framework allows member countries to rely on common principles, fostering a predictable and efficient system for cross-border trade. India's absence from this structure can pose challenges, particularly when Indian entities engage with companies from CISG jurisdictions accustomed to the convention's provisions. For example, Article 7 of the CISG³⁹ encourages interpreting the Convention in a way that promotes uniformity, a principle that does not align fully with the ICA's approach. Consequently, Indian courts or arbitral tribunals may be called to reconcile CISG principles with the ICA, creating higher legal costs and uncertainty due to the diverging principles.

2.3. Legal frameworks that Indian businesses rely on for international trade contracts without the CISG

In the absence of the CISG, Indian businesses manage international trade contracts using a blend of domestic statutes, private international law, and international arbitration. The Indian Contract Act, 1872⁴⁰ and Sale of Goods Act, 1930⁴¹ provide the main legal structure. The ICA establishes general rules for contract formation and remedies, addressing legal enforceability⁴² and covering damages for breach⁴³. The SGA, especially imposes implied conditions like quality and fitness for purpose, which are crucial in international sales.⁴⁴

When parties choose a foreign law for their contract, Indian courts generally uphold this choice if it does not conflict with public policy, under Conflict of Laws principles⁴⁵, as demonstrated

³⁷ Sale of Goods Act 1930, s 16.

³⁸ KPMG, Global Construction Survey (2018) <www.upcounsel.com/liquidated-damages-construction> accessed [8 November, 2024]

³⁹ United Nations Convention on Contracts for the International Sale of Goods 1980, art 7.

⁴⁰ The Indian Contract Act, 1872.

⁴¹ Sale of Goods Act, 1930.

⁴² The Indian Contract Act, 1872, s 10.

⁴³ The Indian Contract Act, 1872, s 73.

⁴⁴ The Indian Contract Act, 1872, s 16.

⁴⁵ Adrian Briggs, *The Conflict of Laws* (4th edn, Oxford University Press 2019).

in *National Thermal Power Corporation v. Singer Company (1992)*⁴⁶. Additionally, the Arbitration and Conciliation Act, 1996⁴⁷ encourages arbitration for international disputes, following UNCITRAL Model Law⁴⁸ standards.

Moreover, Indian courts occasionally reference international principles, such as the UNIDROIT Principles⁴⁹, to interpret complex contractual terms when necessary. These combined frameworks offer Indian businesses a flexible, though sometimes intricate, approach to navigating international contracts outside of CISG provisions, allowing for customized solutions and support for cross-border transactions.

3. CHALLENGES IN NEGOTIATION AND RISK MITIGATION STRATEGIES

3.1. Operation of Alternative Dispute Resolution Mechanism for Indian Businesses engaged in International Contracts

The operation of Alternative Dispute Resolution (ADR) mechanisms for Indian businesses engaged in international contracts is intricately linked with the United Nations Convention on Contracts for the International Sale of Goods (CISG)⁵⁰, which governs international sales contracts. While the CISG primarily addresses substantive issues of international trade, such as contract formation, performance, and remedies for breach, its interaction with ADR mechanisms, particularly arbitration and mediation, significantly enhances the efficacy of resolving disputes arising under such contracts.

India's adoption of the Arbitration and Conciliation Act, 1996 (ACA)⁵¹, which incorporates the UNCITRAL Model Law on International Commercial Arbitration⁵², provides a framework that complements the CISG's objectives. Arbitration, as an ADR mechanism, is particularly relevant for disputes arising under international contracts governed by the CISG because it offers a neutral and efficient means of resolving disputes without the need for costly and time-consuming litigation in the courts of any one country. The New York Convention on the

⁴⁶ AIR 1993 SC 998.

⁴⁷ Arbitration and Conciliation Act, 1996.

⁴⁸ UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006).

⁴⁹ UNIDROIT Principles of International Commercial Contracts 2016 (International Institute for the Unification of Private Law 2016).

⁵⁰ United Nations Convention on Contracts for the International Sale of Goods 1980.

⁵¹ Arbitration and Conciliation Act, 1996.

⁵² UNCITRAL Model Law on International Commercial Arbitration (adopted 21 June 1985, amended 7 July 2006) UN Doc A/40/17.

Recognition and Enforcement of Foreign Arbitral Awards (1958)⁵³, to which India is a signatory, further aligns India with global trade norms, enabling the enforcement of arbitral awards across borders. This is crucial for disputes under the CISG, as businesses can resolve disputes through arbitration and have their awards recognized and enforced internationally.

Moreover, the Singapore Convention on Mediation (2019)⁵⁴, signed by India, strengthens the role of mediation in resolving international commercial disputes, including those governed by the CISG. As mediation is a non-binding process that promotes amicable settlement, it complements the CISG's goal of ensuring flexibility and efficiency in resolving international sales disputes. Indian businesses, particularly those engaged in cross-border trade, can increasingly rely on ADR mechanisms like mediation and arbitration to resolve conflicts related to the CISG's substantive provisions, such as breach of contract or non-performance, without resorting to national litigation systems.

The Amendment of the Arbitration and Conciliation Act (2015)⁵⁵ further improved the legal landscape for resolving international disputes, ensuring that arbitration processes for CISG contracts are efficient, enforceable, and aligned with international standards. This has solidified India's position as an attractive destination for resolving disputes in international sales contracts, in harmony with the CISG's objectives of providing a streamlined dispute resolution mechanism.

3.2. Practices Indian companies adopt to mitigate risks associated with the absence of the CISG in their international transactions

Indian companies engaged in international transactions face several challenges due to the absence of the United Nations Convention on Contracts for the International Sale of Goods (CISG)⁵⁶ in their domestic legal framework. The CISG aims to harmonize laws regarding international sales contracts, but it is not automatically applicable to transactions involving Indian companies unless both parties explicitly agree to its application. To mitigate the risks associated with this absence, Indian businesses typically adopt several strategic practices, including incorporating arbitration clauses, choice of law provisions, and international trade

⁵³ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention 1958).

⁵⁴ United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation 2019).

⁵⁵ Arbitration and Conciliation (Amendment) Act 2015 (India).

⁵⁶ United Nations Convention on Contracts for the International Sale of Goods 1980.

instruments in their contracts.

One of the primary ways Indian companies mitigate risks is by including arbitration clauses in their international contracts. The Arbitration and Conciliation Act, 1996⁵⁷ provides a robust legal framework for resolving disputes through arbitration, aligning with the UNCITRAL Model Law⁵⁸. This ensures that disputes arising from international sales contracts are resolved in a neutral forum, avoiding the unpredictability and potential bias of foreign courts. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)⁵⁹ further strengthens this practice by ensuring that arbitral awards can be enforced across signatory states, providing added security and predictability for Indian companies. Indian businesses also use choice of law and jurisdiction clauses to ensure clarity and legal certainty in the absence of the CISG. These clauses specify the governing law and the courts that will have jurisdiction over any disputes, allowing parties to avoid ambiguity in cross-border transactions.

Additionally, Indian companies frequently rely on international trade instruments such as Incoterms⁶⁰ to clarify responsibilities in international sales contracts. By specifying terms like FOB (Free on Board) or CIF (Cost, Insurance, and Freight), businesses can manage risks related to delivery, transportation, and insurance. These internationally recognized terms provide a clear framework for the performance of contracts and reduce the likelihood of disputes over the delivery of goods. Moreover, Indian businesses often incorporate mediation clauses or conciliation provisions as a first step before arbitration or litigation, aligning with India's commitment to Alternative Dispute Resolution mechanisms. The Singapore Convention on Mediation (2019)⁶¹, which India has ratified, further strengthens this approach by offering a global framework for the enforcement of mediated settlements.

In order to further manage jurisdictional risks, Indian companies also turn to the Hague Convention on Choice of Court Agreements (2005)⁶², which affirms the validity and

⁵⁷ Arbitration and Conciliation Act, 1996.

⁵⁸ UNCITRAL Model Law on International Commercial Arbitration (adopted 21 June 1985, amended 7 July 2006) UN Doc A/40/17.

⁵⁹ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention 1958).

⁶⁰ International Chamber of Commerce, Incoterms® 2020: ICC Rules for the Use of Domestic and International Trade Terms (ICC Publishing 2020).

⁶¹ United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation 2019).

⁶² Hague Convention on Choice of Court Agreements (2005).

enforcement of exclusive choice of court agreements in international contracts. By specifying these provisions, Indian companies ensure that they have a predictable legal environment in case of disputes, even without the CISG. The Make in India initiative (2014)⁶³ and ongoing judicial reforms, including the establishment of specialized arbitration centres, have also supported the adoption of such practices by enhancing India's ADR infrastructure.

4. DISPUTE RESOLUTION MECHANISMS IN INTERNATIONAL TRADE

The Indian Contract Act, 1872⁶⁴ provides the foundational principles for contract formation, enforceability, and remedies in India. Courts rely on specific ICA provisions for defining legally enforceable contracts⁶⁵, covering damages for breach⁶⁶, and dealing with liquidated damages and penalties to resolve international contract disputes⁶⁷. In cases such as *Govt. of India v. Taylor (1955)*⁶⁸, the Supreme Court upheld that the ICA provisions could be applied to cross-border contracts as long as jurisdiction and enforceability were established, affirming the ICA's flexibility in addressing both domestic and international disputes.

The Sale of Goods Act, 1930⁶⁹ governs sales transactions and is often applied in cross-border sales disputes. Indian courts interpret provisions regarding implied conditions and warranties⁷⁰ to address quality, fitness for purpose, and merchantability, which are critical considerations in international sales transactions. This provision is particularly important in the absence of CISG standards that cover similar territory. In *Satyabrata Ghose v. Mugneeram Bangur and Co. (1954)*⁷¹, the Supreme Court emphasized that statutory protections on quality and condition could be applicable even in cross-border sales, reinforcing the SGA's relevance to international disputes.

In contracts where a foreign law is specified, Indian courts defer to choice-of-law principles⁷² based on private international law. Courts honour the parties' autonomy to select a foreign

⁶³ Government of India, Make in India (2014).

⁶⁴ The Indian Contract Act, 1872.

⁶⁵ The Indian Contract Act, 1872, s 10.

⁶⁶ The Indian Contract Act, 1872, s 73.

⁶⁷ The Indian Contract Act, 1872, s 74 – 75.

⁶⁸ [1955] AC 491 (HL).

⁶⁹ Sale of Goods Act, 1930.

⁷⁰ Sale of Goods Act, 1930, s 16.

⁷¹ AIR 1954 SC 44.

⁷² Hague Conference on Private International Law, Hague Principles on Choice of Law in International Commercial Contracts (adopted 19 March 2015).

governing law, allowing Indian parties to adopt CISG standards or another jurisdiction's law if agreed upon in the contract. This approach aligns with the Conflict of Laws doctrine⁷³ in Indian jurisprudence, where foreign law is applied if chosen, as long as it does not conflict with public policy. The Supreme Court's decision in *National Thermal Power Corporation v. Singer Company (1992)*⁷⁴ affirmed the importance of party autonomy, indicating that foreign laws may govern contractual obligations in international transactions, thus providing flexibility.

The Arbitration and Conciliation Act, 1996⁷⁵ plays a significant role in promoting arbitration as a preferred dispute resolution method in cross-border contracts. This Act is based on the UNCITRAL Model Law⁷⁶, which enables Indian courts to support neutral arbitration mechanisms for international contracts. Arbitration reduces dependency on court intervention and aligns with global arbitration practices, making it an effective alternative to the CISG framework. In *Bhatia International v. Bulk Trading S.A. (2002)*⁷⁷, the Supreme Court ruled that the 1996 Act applies to both domestic and international arbitrations unless explicitly excluded, underscoring India's support for arbitration in international contracts and helping maintain predictability and neutrality.

Although India is not a CISG signatory, Indian courts sometimes refer to international instruments, such as the UNIDROIT Principles of International Commercial Contracts⁷⁸ and *lex mercatoria*⁷⁹, to guide decisions in cross-border cases. These principles serve as interpretative aids, particularly where they align with the ICA and SGA, offering a flexible yet internationally recognized framework. In *Centrotrade Minerals & Metal Inc. v. Hindustan Copper Ltd. (2017)*⁸⁰, the Supreme Court acknowledged UNIDROIT principles when interpreting complex contractual terms, showcasing a willingness to draw upon international norms for guidance in international cases.

⁷³ JG Collier, Conflict of Laws (3rd edn, CUP 2001).

⁷⁴ [1992] 3 SCC 551.

⁷⁵ Arbitration and Conciliation Act, 1996.

⁷⁶ UNCITRAL Model Law on International Commercial Arbitration (adopted 21 June 1985, amended 7 July 2006) UN Doc A/40/17.

⁷⁷ (2002) 4 SCC 105.

⁷⁸ UNIDROIT Principles of International Commercial Contracts 2016 (International Institute for the Unification of Private Law 2016).

⁷⁹ Roy Goode, Transnational Commercial Law: Text, Cases, and Materials (2nd edn, OUP 2015).

⁸⁰ (2017) 2 SCC 228.

Indian courts also facilitate enforcement of foreign judgments and arbitral awards in international contract cases under.⁸¹ This section outlines criteria for recognizing foreign judgments, which Indian courts can enforce as long as they meet standards of jurisdiction, fairness, and absence of fraud. In *International Woolen Mills v. Standard Wool (UK) Ltd. (2001)*⁸², the Supreme Court enforced a foreign judgment after evaluating its compliance with Section 13, indicating India's openness to honouring foreign judgments in international contract disputes.

Given India's non-signatory status to the CISG, Indian courts face certain challenges in bridging contractual gaps that would otherwise be uniformly addressed by the CISG's provisions. As a result, they rely heavily on detailed contract terms and, at times, foreign laws when appropriate. This reliance has led Indian courts to develop nuanced interpretations of domestic laws to address international contractual issues on a case-by-case basis. While this approach is effective in many respects, it may lack the predictability and consistency that CISG-aligned jurisdictions enjoy.

5. OPPORTUNITIES FOR REFORM AND INTERNATIONAL ALIGNMENT

5.1. Opportunities for India to reform its contract law to align with international standards and facilitate smoother trade

India has made significant strides in modernizing its legal framework to support business and trade. However, several areas still require reform to facilitate smoother trade and align the country's contract law with international standards. These reforms can help make India more attractive to foreign investors, enhance legal predictability, and improve the efficiency of business transactions.

- i. Adoption of the UN Convention on Contracts for the International Sale of Goods (CISG): India is not a signatory to the UN Convention on Contracts for the International Sale of Goods (CISG), which has become a global standard for international commercial contracts. By ratifying the CISG, India could make its laws more predictable and transparent for foreign investors, improving confidence

⁸¹ Code of Civil Procedure 1908, s 13.

⁸² [2001] 3 All ER 833 (HL).

in Indian markets.⁸³This would align India's contract law with global trade practices, making cross-border trade more streamlined.

- ii. Reform of the Indian Contract Act, 1872: The Indian Contract Act, 1872, is outdated and does not fully address modern business practices, particularly in sectors like e-commerce and technology. Reforming the Act to introduce clearer provisions on electronic contracts, smart contracts, and digital signatures would help create a legal environment more conducive to the modern economy.
- iii. Strengthening of Dispute Resolution Mechanisms: The time and cost of dispute resolution in India remain barriers to smooth trade. While India has made strides with the introduction of the Arbitration and Conciliation Act, 1996, and the establishment of commercial courts⁸⁴, there is still room for improvement. One area is improving the speed and effectiveness of the enforcement of foreign arbitral awards, which could make India more attractive for international business.⁸⁵ Many international firms avoid Indian courts due to delays in legal processes, despite India's participation in the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Encouraging Alternative Dispute Resolution (ADR) mechanisms like mediation and conciliation in commercial disputes, rather than litigation, would also help reduce the burden on courts and align India with global best practices in dispute resolution.
- iv. Simplification of Contract Formation and Performance: Simplifying the requirements for contract formation and performance would promote smoother trade. India's contract law currently requires consideration⁸⁶ for every contract, which is not always the case in international contracts (such as gift contracts)⁸⁷. Reviewing this doctrine and its application could help align Indian law more closely with international standards, where certain contractual arrangements like donations or non-compete clauses⁸⁸ may not require traditional consideration. Streamlining the conditions under which contracts are deemed enforceable and reducing bureaucratic formalities would further enhance India's business environment.

⁸³ Nishith Desai Associates, 'India: Anti-arbitration Injunctions and the Public Policy Conundrum' (Lexology, 15 September 2020) <https://www.lexology.com/library/detail.aspx?g=ce11acd1-a410-4638-b143-8fba7885765b> accessed 9 November 2024.

⁸⁴ Commercial Courts Act 2015 (India).

⁸⁵ Abhishek Negi, 'Dissecting the CISG Framework and the Indian Sale of Goods Regime in the Context of 'delivery', 'time' and 'risk': A Comparative Account, 3 (6) IJLSI Page 373 - 393 (2021).

⁸⁶ Indian Contract Act 1872, s 2(d).

⁸⁷ Indian Contract Act 1872, s 122.

⁸⁸ Indian Contract Act 1872, s 27.

- v. Contractual Privity and Third-Party Rights: India's contract law could benefit from reforms that recognize and enforce third-party rights⁸⁹ more clearly. International contract law increasingly recognizes third-party beneficiaries to contracts, allowing non-signatories to enforce contract terms in certain circumstances. Adopting a more flexible approach to the privity of contract⁹⁰, similar to that found in jurisdictions like the UK or the U.S., would provide additional clarity in cases where third-party interests are affected by a contract, enabling smoother execution of international trade.
- vi. Review of the Indian Partnership Act and LLP Act: The Indian Partnership Act, 1932⁹¹, and the Limited Liability Partnership (LLP) Act, 2008⁹², could be reformed to streamline business structures, making them more aligned with international practices. International standards tend to provide more flexibility in partnership structures, governance, and dispute resolution.⁹³ Reforming India's partnership laws to offer more flexibility in structuring business partnerships and limited liability entities would benefit both domestic and international businesses, encouraging investment and facilitating trade.

5.2. Influence of India's Participation in International Trade Agreements on Contract Law in the Absence of the CISG

India's participation in international trade agreements and conventions significantly influences its contract law, even in the absence of its membership in the UN Convention on Contracts for the International Sale of Goods (CISG)⁹⁴. While India has not ratified the CISG, it is a part of several global frameworks like the World Trade Organization (WTO)⁹⁵, bilateral trade agreements (BTAs), and regional trade agreements (RTAs), all of which shape its approach to international contracts. These agreements often include provisions regarding dispute resolution, contract enforcement, and compliance with global standards, which India has integrated into its domestic legal system. For example, under the WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPS)⁹⁶, India aligns its intellectual property laws with

⁸⁹ Indian Contract Act 1872, s 2.

⁹⁰ *Ibid.*

⁹¹ The Indian Partnership Act, 1932.

⁹² Limited Liability Partnership (LLP) Act, 2008.

⁹³ World Bank, Principles for Effective Contracting (World Bank 2007).

⁹⁴ United Nations Convention on Contracts for the International Sale of Goods 1980.

⁹⁵ World Trade Organization, Marrakesh Agreement Establishing the World Trade Organization (1994).

⁹⁶ World Trade Organization, Agreement on Trade-Related Aspects of Intellectual Property Rights (adopted 15 April 1994, entered into force 1 January 1995) 1869 UNTS 299.

international norms, impacting contract law in areas like licensing and technology transfer. Additionally, India's participation in international arbitration conventions like the New York Convention on Foreign Arbitral Awards⁹⁷ and the UNCITRAL Model Law⁹⁸ strengthens its legal framework for the recognition and enforcement of international contract disputes.

India's contract law is further influenced by its bilateral and regional trade agreements. Agreements like the India-ASEAN Free Trade Agreement (FTA)⁹⁹ and the Comprehensive Economic Partnership Agreement (CEPA)¹⁰⁰ with Japan influence how contract law is applied, especially in terms of dispute resolution and the recognition of third-party rights. These agreements often require India to adopt international commercial practices such as force majeure clauses, liquidated damages, and governing law provisions in contracts, which have gradually become integral parts of domestic law. Furthermore, India's foreign investment laws and efforts to improve the Ease of Doing Business also affect how international contracts are negotiated and enforced within the country. Reforms in areas like the Insolvency and Bankruptcy Code (IBC)¹⁰¹, which impact contract enforceability in financial distress situations, further align Indian law with global trade expectations.

On the national level, India's Indian Contract Act, 1872¹⁰², and the Sale of Goods Act, 1930¹⁰³, continue to serve as the foundational statutes governing contracts. While these laws have not adopted the CISG, their provisions are increasingly aligned with international standards due to global trade pressures. India's Foreign Exchange Management Act (FEMA)¹⁰⁴ also plays a crucial role in regulating foreign exchange transactions, which directly impact international contracts involving cross-border payments and financial arrangements. Additionally, India's growing participation in global supply chains means that many contracts follow international norms, such as Incoterms, to facilitate smoother transactions. Overall, India's contract law is evolving in response to international trade demands, fostering a legal environment that supports global business while balancing domestic legal traditions.

⁹⁷ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention 1958).

⁹⁸ UNCITRAL Model Law on International Commercial Arbitration (adopted 21 June 1985, as amended in 2006).

⁹⁹ Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation between India and the ASEAN (adopted 13 August 2009).

¹⁰⁰ Comprehensive Economic Partnership Agreement between the Republic of India and Japan (signed 16 February 2011, entered into force 1 August 2011).

¹⁰¹ Insolvency and Bankruptcy Code 2016 (India).

¹⁰² India's Indian Contract Act, 1872.

¹⁰³ Sale of Goods Act, 1930.

¹⁰⁴ Foreign Exchange Management Act 1999 (India).

6. CONCLUSION

India's non-signatory status to the CISG presents both challenges and unique opportunities in the context of international trade contracts. Without the CISG's uniform framework, Indian businesses rely heavily on domestic laws such as the Indian Contract Act, the Sale of Goods Act, and international principles like UNIDROIT, alongside selected foreign governing laws and arbitration agreements to bridge the legal gaps. These frameworks, however, lack the consistency and predictability offered by the CISG, often complicating negotiations and creating a reliance on meticulous contract drafting to manage the risks associated with cross-border transactions.

The absence of the CISG also leads Indian exporters and importers to face additional challenges in areas such as contract negotiation and dispute resolution, where they often have limited guidance on international standards. This is particularly significant in light of cultural factors unique to Indian business practices, which further differentiate contract enforcement strategies from those in CISG jurisdictions. Consequently, Indian companies must adopt best practices, including choosing appropriate dispute resolution mechanisms, integrating standard international terms like Incoterms, and specifying governing laws clearly within contracts to mitigate potential legal risks and enhance enforceability.

Despite these challenges, India's participation in various international trade agreements indicates a willingness to align with global standards, even without CISG membership. Such agreements contribute to creating a conducive environment for trade, but they remain insufficient in fully bridging the gap created by the CISG absence. Therefore, India has a distinct opportunity to reform its domestic contract law by incorporating elements that echo the predictability and uniformity of international frameworks like the CISG. Aligning contract law in this way could provide a boost to India's international trade relations and make Indian businesses more attractive to foreign partners by offering a more predictable and harmonized legal landscape.