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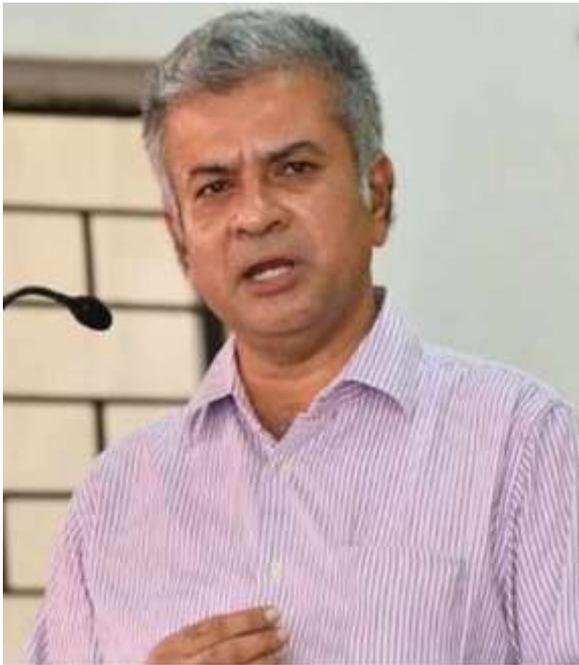
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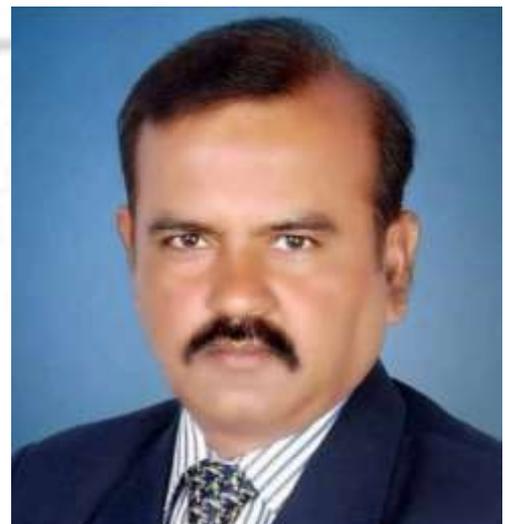
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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

MARITIME ARBITRATION AND CASE LAWS **DEVELOPMENTS IN INDIA¹**

AUTHORED BY - DR. SHAJI. M

Abstract

Nautical arbitration in India is rapidly becoming an efficient and specialized method of resolving nautical disputes arising from contracts, marine insurance, and international trade. The Arbitration and Conciliation Act of 1996 forms the base of India's structure of arbitration, embracing standards of UNCITRAL, and has established an arbitration-friendly atmosphere. Major cases have been decided by the judiciary to determine the process of maritime arbitration, like M.V. Elizabeth v. Harwan Investment and Enrica Lexie. The legislative efforts recently include, inter alia, the Merchant Shipping Bill, 2024 and the Coastal Shipping Bill, 2024 that aims at reforming the country's marine legislation to develop India's blue economy. The Gujarat International Maritime Arbitration Centre clearly represents a watershed moment in India's progress toward becoming a global maritime arbitration power. Improved infrastructure, good arbitrators, and convergence with international rules are the foundations upon which India's maritime arbitration sector has significant potential to enhance trade growth, cut litigation costs, and strengthen the country's maritime economy.

Keywords: *Maritime Arbitration, Legislative Reforms, Dispute Resolution, case laws*

Abbreviations and Acronyms

- UNCLOS - United Nations Convention on the Law of the Sea
- UNCITRAL - United Nations Commission on International Trade Law
- ICA - Indian Council of Arbitration
- MoU - Memorandum of Understanding
- PCA - Permanent Court of Arbitration
- SBT - Southern Bluefin Tuna

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- EEZ - Exclusive Economic Zone
- GMU - Gujarat Maritime University
- GISMARC - Gujarat International Maritime Arbitration Centre

Introduction

According to Halsbury, Arbitration means:

"Arbitration is the reference of dispute between not less than two parties, for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction²."

Maritime arbitration is the most commonly adopted method of dispute resolution in international trade and business resulting from diverse operations including ship financing, building, sale, purchase, employment, transporting commodities along sea, insurance, and other cargo transports. Indian Council of Arbitration came up with Maritime Arbitration Rule which is governing local and international marine arbitration in India³.

On June 21, the Gujarat Maritime University signed a Memorandum of Understanding (MoU) with International Financial Services Centers Authority to set up the first arbitration and mediation center in India, known as the Gujarat International Maritime Arbitration Centre, which is for the marine industry. There are already 35 arbitration centers in India, however none of them specifically service the marine industry. The Singapore Dispute Centre is currently considering arbitration cases involving Indian parties with the objective of establishing a world-class arbitration center specialized in marine and shipping issues to resolve commercial and financial disputes between regional businesses.

In short, maritime arbitration is a unique and cost-effective method for settling business disputes in a world that is characterized by rapid economic growth and complete logistical services⁴. The proposed maritime center in India will facilitate regional arbitration and dispute settlement and thereby make it easier for parties to navigate.

History of Indian Maritime Arbitration

Arbitration, indeed, predates human memory. The Arbitration (Protocol and Convention) Act

² Halsbury Laws of England, 2022, 47A, 16.

³ Indian-Express, 'Explained: India's First Maritime Arbitration Centre, Coming Up in Gandhinagar' (Indian Express, 29 June 2021) <https://indianexpress.com/article/explained/indias-maritime-arbitration-centre-gujarat-gandhinagar-7373894/> accessed 10 December 2024.

⁴ LexisNexis, 'Maritime Arbitration—An Introduction' (LexisNexis, 2024) <https://www.lexisnexis.co.uk/legal/guidance/maritime-arbitration-an-introduction> accessed 10 December 2024.

1937, Arbitration Act 1940, and Foreign Awards (Recognition and Enforcement) Act 1961 were the ones that existed before the Arbitration and Conciliation Act⁵. The Arbitration and Conciliation Act abolished these provisions. In 1985, the United Nations Commission on International Trade Law (UNCITRAL) created the UNCITRAL Model Law on International Commercial Arbitration⁶⁷. The Arbitration and Conciliation Act of 1996 (hereinafter referred to as "the Act") was the result of the Indian Parliament's effort to build an arbitration-friendly framework using the Model Law⁸. The Arbitration Act of 1940 was outdated, according to its Statement of Objects and Reasons. India's economic reforms will be futile without a favorable climate for arbitration, according to the report⁹. In *Konkan Railway Corpn. Ltd. v. Mehul Construction Co.*, the Supreme Court remarked that the new law was a move to attract international focus¹⁰. The judiciary generally favored the efforts of Parliament to uphold mercantile community, "and its interpretation has to consider all the¹¹.

Identify Indian Maritime Economy in Modern Time

The central government of India has proposed two steps to make the marine scene more modernized and boost domestic waterway trade. The Merchant Shipping Bill, 2024, and the Coastal Shipping Bill, 2024, are two such measures¹². The Coastal Shipping Bill of 2024 is one of a cluster of steps aimed at encouraging domestic shipping operators through reduction of regulatory hurdles and increased involvement in coastal and international trades. It would eliminate the need for Indian-flagged vessels to obtain trading permissions for coastal activities while simplifying regulatory procedures and encouraging local enterprises to expand their services.

It also attempts to align Indian trade vessel regulations with global norms, allowing Indian ships to compete in global maritime markets. The bill suggests the creation of a National

⁵ Bernheimer, Charles L. "The Advantages of Arbitration Procedure." *The Annals of the American Academy of Political and Social Science* 124 (1926): 98–104. (May 11, 2024, 3:30 PM)

⁶ Arbitration and Conciliation Act, 1996, §85

⁷ See Hay, David. *Halsbury's Laws of India*. Vol. 2, Butterworths India, 1999, p.175.

⁸ Classification of an Arbitration as "International" under Indian Law, (2009) 4 SCC J-27

⁹ Classification of an Arbitration as "International" under Indian Law, (2009) 4 SCC J-27

¹⁰ *Konkan Railway Corpn. Ltd. v. Mehul Construction Co.*, (2000) 7 SCC 201

¹¹ Classification of an Arbitration as "International" under Indian Law, (2009) 4 SCC J-27

¹² India-Briefing, 'Modernizing India's Maritime Economy: 2 Bills Tabled in Parliament' (India Briefing, 2024) <https://www.india-briefing.com/news/modernizing-indias-maritime-economy-2-bills-tabled-parliament-35359.html/#:~:text=The%20Merchant%20Shipping%20Bill%2C%202024%2C%20aims%20to%20modernize%20India's%20maritime,standards%20and%20addresses%20emerging%20challenges> accessed 10 December 2024.

Database of Coastal Shipping to increase transparency and ensure effective information exchange across the sector.

The Coastal Shipping Bill of 2024 is going to utilize India's 7,500-kilometer coastline and 14,500 kilometers of navigable waterways to boost domestic trade and connectivity¹³. It would replace the ancient Coasting Vessels Act of 1838 by providing financial and operational incentives to vessel operators, hence increasing private sector participation and trade volumes. It also promotes indigenous shipbuilding by encouraging the use of Indian-built vessels and assisting domestic shipbuilding and repair firms, hence enhancing self-reliance in marine infrastructure.

The Merchant Shipping Bill 2024 aims to replace the Merchant Shipping Act of 1958 and better India's maritime legislation¹⁴. It simplifies and harmonizes the form by combining provisions from the previous act, eliminating unnecessary procedures, and reducing bureaucratic obstacles. It pays particular attention to accelerating ship registration procedures, enhancing the welfare of seafarers, strengthening marine safety and accident management, and environmental sustainability through strict emission and pollution restrictions and promotion of green technologies.

The reforms in these aspects always have all the potential to properly increase maritime logistics efficiency, lower shipping costs, strengthen supply chain reliability, for further create investment opportunities in India. It will benefit the environment structures of the country, make it more sustainable, and assist this nation in meeting its climate goals by moving freight away from congested road and rail networks toward coastal shipping. Regionally, marine reforms would spur the development of India's "blue economy" by catalyzing economic activity across coastal districts.

The last two are the Merchant Shipping Bill, 2024, and the Coastal Shipping Bill, 2024. These are major reforms in India's maritime scene looking forward to making a sustainable, efficient,

¹³The Hindu, 'Coastal Shipping Bill Introduced in Lok Sabha Amid Din' (The Hindu, 2024) <https://www.thehindu.com/news/national/coastal-shipping-bill-introduced-in-lok-sabha-amid-din/article68938025.ece> accessed 10 December 2024.

¹⁴ Rexlegalis, 'Indian Merchant Shipping Bill, 2024: A Landmark Reform to Boost Indian Shipping Industry' (Rex Legalis, 2024) <https://rexlegalis.com/2024/12/indian-merchant-shipping-bill-2024-a-landmark-reform-to-boost-indian-shipping-industry/> accessed 10 December 2024.

and competitive maritime sector.

Arbitration for Maritime Disputes (Globally and Domestically)

Economic maritime conflicts are a very complex and specialized area of law that emanates from commercial activities involving ships and the sea. Examples of maritime law concerns that may be involved in such disputes include carriage contracts, charter parties, marine insurance, salvage, and collisions. Such challenges would require a good understanding of both maritime law and shipping industry commercial operations to be solved.

Arbitration has become the popular way of resolving commercial marine disputes because of its efficiency, flexibility, and experience in handling complex maritime issues. It offers flexibility, efficiency, competence, and anonymity. The parties are able to choose the arbitrators, the arbitration rules, and procedural parts of the procedure. This allows parties to adapt the arbitration to their needs and circumstances, which is particularly useful in maritime disputes that sometimes involve technical specialist issues.

Arbitration proceedings generally take less time and are smoother than regular litigation, which shortens the time to resolution. This is very important in the marine business, where timing is crucial and wrong decisions lead to huge financial losses. Arbitrators who have hands-on knowledge and experience in maritime law and industry procedures are likely to produce informed and sophisticated decisions than judges who do not have the necessary skills.

Commercial marine arbitration has confidentiality as another major advantage. Arbitration processes are private and secret, unlike the court proceedings, which usually attract public occurrence. This ensures parties guard sensitive information from certain instances of delays, damaged cargo, and freight rate disputes.

Maritime arbitration has been in the spotlight because of a defective process called forum law, where the considerations are purely based on the domestic law itself, and which sometimes conflicts with international customs and traditions. However, arbitration comes with several benefits in terms of flexibility, efficiency, expertise, and confidentiality¹⁵.

¹⁵ See Dhruv Srivastava and Abeer Tiwari, "Arbitration in the Indian Maritime Sector: Birbal's Khichdi in the Contemporary World?" (May 15, 2024, 4:30 PM) <https://ijpiel.com/index.php/2022/12/22/arbitration-in-the-indian-maritime-sector-birbals-khichdi-in-the-contemporary-world/>

The South China Sea dispute is a territorial and maritime conflict between China and Southeast Asian countries like the Philippines, Vietnam, and Malaysia¹⁶. In 2013, the Philippines filed arbitration proceedings against China in order to obtain legal clarification on several important grounds of contention. The United Nations Convention on the Law of the Sea is the essential document in the understanding of legal aspects of the conflict as it lays down the obligation and rights of states toward territorial seas, exclusive economic zones, and the right of innocent passage.

In July 2016, the Permanent Court of Arbitration in The Hague made a landmark decision in favor of the Philippines, declaring that there was no legal basis for its claims under UNCLOS. Although China had declared its objections under Article 298, the tribunal ruled that the Philippines' claims were valid and would go to arbitration¹⁷. China was held to have interfered with fishing and petroleum exploration in the EEZ of the Philippines, violating its sovereign rights¹⁸.

The South China Sea Arbitration has significant implications, one of which is the legal clarifications on key issues relating to the legal status of features and the validity of the "Nine-Dash Line." However, with China dismissing the ruling, enforcement was made cumbersome because UNCLOS relies on state cooperation through voluntary adherence to implementation procedures in conformance with the convention instead of a direct mechanism for its enforcement.

The Southern Bluefin Tuna (SBT) is the subject of the SBT Arbitration Case, which has made it a primary focus of commercial fishing operations¹⁹. Unsustainable fishing practices have prompted worries regarding the maintenance of SBT supplies, as well as potential long-term damage to the marine ecology.

Many other UNCLOS clauses of high importance apply to this arbitration, including Article 61, which outlines basic principles on how states should cooperate with one another, and

¹⁶ United Nations Convention on the Law of the Sea (UNCLOS), 1982

¹⁷ United Nations Convention on the Law of the Sea, art. 298, 1833 U.N.T.S. 222 (1994)

¹⁸ UNCLOS - United Nations Convention on the Law of the Sea." United Nations, (June 15, 2024, 3:31 PM) www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

¹⁹ Smith J et al, 'Sustainable Management of Southern Bluefin Tuna Stocks' (2010) 12 Journal of Marine Conservation 45.

Article 64, which encourages states to cooperate with regional or international organizations while being guided by the best available scientific information²⁰. UNCLOS Article 287 outlines the arbitration procedure available to states if concerns exist regarding the interpretation and application of the convention²¹. This final case is that of Southern Bluefin Tuna Maritime Arbitration, which falls within international law and maritime arbitration as the means in which to resolve disputes upon sustainable use of marine resources²².

Case Laws

Indian Arbitration Act 1899 and Arbitration Act 1940 achieved uniformity of law throughout India, although the decisions made under this act were not final decisions, but were sent for judicial scrutiny. The Arbitration and Conciliation Act, 1996 embraced UNCITRAL Model Law on International Commercial Arbitration and recognised the concept of international arbitration, arbitral award were made final and were compared with judgments of civil courts²³. The Indian Council of Arbitration came out with the rules of marine Arbitration, which govern both local as well as international marine arbitrations. These regulations deal with the formation and working of an arbitration committee, the procedure for claim and counterclaim, and the qualifications and empanelment of arbitrators.

The Indian judiciary has played a vital role in developing the country's maritime arbitration scene, and the Supreme Court of India has constantly highlighted the importance of arbitration as a speedy and cost-effective way of dispute resolution. The Indian Council of Arbitration's Maritime Arbitration Rules are the guidelines for domestic and international maritime arbitrations, and the court has played an important role in developing the country's marine arbitration scene. Maritime arbitration will rise in importance as India grows as a key role in international trade and business.

The Enrica Lexie incident, also called "The Italian Republic v. The Republic of India," is an extraordinarily intricate case of international legal contention involving issues of the use of

²⁰ United Nations Convention on the Law of the Sea, art. 61, 1833 U.N.T.S. 222 (1994)

²¹ United Nations Convention on the Law of the Sea, art. 287, 1833 U.N.T.S. 222 (1994)

²² Environmental Impact Assessment Group. (Year). "Aftermath of the Southern Bluefin Tuna Arbitration: Environmental Implications." *Ocean and Coastal Management*, 15(3), 210-225.]

²³ Theidrc, 'What is History of Arbitration in India' (Theidrc, 2024) <https://theidrc.com/content/adr-faqs/what-is-history-of-arbitration-in-india> accessed 10 December 2024.

force in international waters, immunity, and jurisdiction²⁴. The case was that two Indian fishermen were shot murdered by Italian marines onboard an Italian oil ship called MV Enrica Lexie²⁵. The killings happened in February 2012 when Italian soldiers fired into the Indian fishing boat called St. Antony. The Indians impounded the ship, and the two Italian officers who were on board were arrested and charged with murder. The legal foundation of the dispute was provided by the United Nations Convention on the Law of the Sea (UNCLOS), which under Articles 17 and 287 provides for "innocent passage" into coastal states, and allows governments to refer disputes to arbitration²⁶. Italy argued that India did not have jurisdiction, and India responded that the marines should be indicted for murder. The PCA found that India had no jurisdiction to try the Italian marines and that India must devolve power over the marines so that Italy can prosecute the suspects. However, the PCA found that the acts of the Italian officers infringed India's freedom of navigation, and India is entitled to compensation for a variety of losses.

This is a right that dates back to the reign of Edward III, to use a ship as collateral for a maritime claim. Courts have a role in improving and supporting the process of international maritime arbitration, and they do this through orders made to arrest the ship to ensure security. Arbitrations pertaining to ships must be based on the Mareva injunction, which is usually granted whenever a judge is reasonably satisfied that a debt is overdue and unpaid, and that the debtor may liquidate his property to avoid paying the bill before the verdict. Interim reliefs are viewed as procedural tools used to solve critical issues during a trial case.

The Supreme Court's ruling in the case of *M.V. Elizabeth v. Harwan Investment & Trading Pvt. Ltd* case established India as a common law country²⁷. Article 7 of the 1952 Convention allows the Admiralty Court to seize a vessel for the purpose of obtaining an award which can be issued by way of an arbitral proceeding. Section 9 of the Act of 1996 states that the Court may order provisional measures, for instance secure the amount in dispute in arbitration. This case is relevant to the present research concern in maritime arbitration in that the *Golden Progress* case led to a landmark judgment that overruled the judgment of the court in *Blue*

²⁴ The 'Enrica Lexie' Incident (Italy v India) (PCA, 26 June 2015) <https://pca-cpa.org/en/cases/117/> accessed 10 December 2024.

²⁵ UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (1958), <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/new-york-convention-e.pdf>.

²⁶ United Nations Convention on the Law of the Sea, art. 17, 1833 U.N.T.S. 222 (1994)

²⁷ *MV Elizabeth v Harwan Investment & Trading Pvt Ltd* [1993] AIR 1014, [1992] SCR (1) 1003.

Diamond Freight Pvt. Ltd. V. M.V. Indurva Vally²⁸.

The Supreme Court held in *M/S. Crescent Petroleum Ltd. V. M.V. "Monchegorsk" & Others* that the Court "may exercise jurisdiction 'in rem' independently of the proceedings which may be taken out against the persons liable 'in personam'" by referring to section 35 of the Admiralty Courts Act, 1891²⁹. That implies that any party aggrieved against any ship can initiate action against a High Court of Admiralty and recover as many remedies that he is or may be legally entitled as possible, absent an outright prohibition on jurisdiction.

The Arbitration Amendment Act of 2015 strengthened procedures for interim relief and extended them to arbitrations that took place abroad. If a jurisdiction or arbitration clause exists, a ship may be detained as security for a maritime claim in the courts of another state. The International Convention on the Arrest of Ships, 1999 permits a party to bring a suit "in rem" during the pendency of foreign arbitration. Although not ratified by India, common law concepts place them within Indian law and are applicable to the enforcement of maritime claims. The Supreme Court ruled in *M.V. Sea Success I v. Liverpool and London Steamship Protection and Indemnity Association Ltd* the Indian Admiralty Courts would be bound by the Geneva Arrest of Ship Convention of 1999³⁰. If an arbitration clause is part of the contract, the other party is provided with reasonable notice, and the claimant is entitled to defend themselves under the Arbitration Act. If the judgment of the tribunal is binding, the admiralty court will bring an "in rem" case.

Results

Indian marine arbitration has developed a lot on account of the Arbitration and Conciliation Act of 1996, which is drafted based on UNCITRAL rules. This is highly important for India because such an exercise will help fulfill the goals of India pertaining to marine arbitration. Case laws like *M.V. The Elizabeth v. Harwan Investment* and the present scenario of *Enrica Lexie* show that courts support this kind of arbitration, which has earned India its reputation over the years as a jurisdiction friendly to arbitration. There is scope for using reforms like the Merchant Shipping Bill, 2024, and the Coastal Shipping Bill, 2024. The bills are mostly about amending maritime rules to enable the growth of the country's business. Reform measures always demonstrate that India supports a structure for effective

²⁸ *Blue Diamond Freight Pvt Ltd v MV Indurva Vally* Appeal Lodging No 503 of 2003.

²⁹ *M/S. Crescent Petroleum Ltd. vs M.V. "Monchegorsk" & Another*, (2000) 1 BOMLR 297

³⁰ *M.V. Sea Success I v Liverpool and London Steamship Protection and Indemnity Association Ltd* [2002] AIR Bom 151.

settlement of disputes, something that could boost world trade and make the country's maritime sector more competitive.

Future Prospects

The article goes into deep coverage of the South China Sea issue, focusing on the UNCLOS, or United Nations Convention on the Law of the Sea. There was an arbitration case between the Philippines and China, the SBT arbitration case, and a decision made by the UNCLOS in 1999. The article also explores maritime arbitration, underlining its significance in providing a streamlined, specialized, and confidential mechanism for dispute resolution. Despite its advantages, there has been an upsurge in the difficulties of enforcing maritime arbitral awards, creating anxiety within the maritime and legal communities. The article also shows how the strategies adopted by entities to frustrate enforcement are complex, such as resource depletion and the international nature of maritime activities.

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