

Maritime Claims and Arbitration in India: A Critical Study of Legislative and Judicial Developments

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Abstract

This paper undertakes a comprehensive examination of the evolving legal and institutional framework governing maritime claims and arbitration in India, situating the discussion within both domestic and international contexts. It places particular emphasis on the dynamic interplay between statutory enactments, judicial interpretations, and the influence of international maritime conventions to which India is a party. Central to the analysis are the Arbitration and Conciliation Act, 1996, which provides the general procedural architecture for arbitration in India; the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, which codifies and consolidates the law relating to admiralty jurisdiction and maritime claims; and relevant provisions of the Merchant Shipping Act, which regulate aspects of shipping operations, ship registration, and liabilities. The research methodically evaluates seminal and recent judicial pronouncements that have shaped the contours of maritime arbitration in India, including issues of arbitrability of maritime disputes, enforcement of foreign maritime arbitral awards under the New York Convention framework, and the grant of interim measures of protection in aid of arbitration, both domestic and international. The paper also scrutinizes the procedural and jurisdictional complexities arising from the intersection of in rem admiralty actions and contractual arbitration clauses. In doing so, the study identifies the practical challenges faced by stakeholders in harmonizing Indian maritime arbitration practice with globally accepted standards, particularly those developed in leading maritime arbitration hubs such as London and Singapore. It assesses gaps in the existing legislative scheme, including the need for greater procedural clarity, capacity-building in specialized maritime dispute resolution, and enhanced institutional arbitration infrastructure. The article concludes by proposing targeted reforms aimed at strengthening India's competitiveness and credibility as a preferred seat for maritime arbitration, in alignment with the country's strategic vision to become a significant player in global shipping and trade dispute resolution.

Introduction

Maritime arbitration has emerged as an indispensable and preferred mechanism for resolving disputes in the global shipping and maritime industry, owing to its flexibility, confidentiality, speed, and the availability of subject-matter expertise. In the Indian context, the significance of maritime arbitration is amplified by the nation's long coastline of over 7,500 kilometers and its strategic geographical position along vital international sea lanes such as the Suez–Malacca route. These natural advantages position India as a crucial player in global maritime trade, with major ports—both on the western and eastern

seaboards—handling a substantial volume of import, export, and transshipment traffic every year. The nature of maritime transactions is inherently complex, often involving multiple parties across jurisdictions, significant financial stakes, and highly specialized contractual arrangements. These may include charterparty agreements (voyage, time, or bareboat charters), bills of lading and cargo claims, salvage and towage contracts, marine insurance disputes, and the legal processes surrounding ship arrests and release. Given the cross-border nature of most maritime disputes and the time-sensitive nature of shipping operations, efficient, enforceable, and internationally recognized dispute resolution mechanisms are indispensable. Maritime arbitration provides a tailored solution by combining the principles of arbitration with the technicalities of maritime law, allowing parties to appoint arbitrators with deep industry experience. In recent decades, Indian legislative frameworks and judicial interpretations have sought to align with international norms, particularly those emanating from UNCITRAL Model Law, the New York Convention (1958), and established maritime arbitration centers like the London Maritime Arbitrators Association (LMAA) and the Singapore Chamber of Maritime Arbitration (SCMA). This paper critically examines the development of maritime claims and arbitration in India by engaging with the Arbitration and Conciliation Act, 1996, the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, and relevant provisions of the Merchant Shipping Act. It further analyzes key judicial decisions that have shaped the contours of maritime dispute resolution in India, from questions of arbitrability and jurisdiction to the enforcement of foreign maritime awards. In doing so, the study identifies notable achievements—such as increased judicial receptiveness to party autonomy—and persisting challenges, including procedural delays, lack of specialized arbitral institutions for maritime disputes, and conflicts between admiralty jurisdiction and arbitration clauses. The paper ultimately aims to highlight areas requiring targeted reform to strengthen India's position as a maritime arbitration hub on par with global leaders.

Legislative Framework for Maritime Claims and Arbitration in India

The legislative regime governing maritime claims and arbitration in India draws from a combination of domestic statutes and international principles. While India's legal heritage in maritime matters is rooted in colonial-era legislations and admiralty laws of England, the last few decades have seen significant reforms aimed at modernizing and consolidating the framework to meet contemporary commercial needs. The core legislative instruments in this regard include:

1. **The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017** – This Act replaced a patchwork of outdated colonial statutes such as the Admiralty Court Acts of 1840 and 1861 and provisions in the Colonial Courts of Admiralty Acts of 1890 and 1891. It provides clarity on the jurisdiction of High Courts over maritime claims, defining the scope of maritime liens, procedures for arrest and sale of ships, and mechanisms for resolving disputes involving ships and maritime property. The Act enumerates specific categories of maritime claims under Section 4, which include disputes over ownership or possession of a vessel, damage caused by a ship (including oil pollution), loss or damage to goods carried on board, salvage services, towage, pilotage, ship construction or repair contracts, crew wages, and disputes arising from charterparty or ship management agreements.
2. **The Arbitration and Conciliation Act, 1996 (as amended)** – This legislation, modeled on the UNCITRAL Model Law, governs arbitration in India. It applies to both domestic and international commercial arbitration, and provides the framework for the recognition and enforcement of foreign arbitral awards under the New York Convention, 1958 and the Geneva Convention, 1927. Maritime disputes often involve international parties and contracts with foreign seats of arbitration, making the

1996 Act critical in ensuring that arbitral awards, whether rendered domestically or abroad, can be effectively enforced in India.

3. **The Merchant Shipping Act, 1958** – While primarily concerned with registration, safety, and regulation of shipping, this Act also contains provisions relevant to maritime claims, such as liabilities for collisions, salvage, and pollution damage.
4. **Relevant International Conventions** – Although India has not ratified certain modern maritime conventions such as the International Convention on Arrest of Ships, 1999, the judiciary has often interpreted domestic statutes in harmony with such conventions where there is no conflict with municipal law, thereby aligning India's maritime jurisprudence with international standards.

Together, these statutes create a dual pathway for resolving maritime disputes—either through traditional admiralty proceedings before High Courts with original jurisdiction or via arbitration when parties have contractually agreed to resolve disputes outside court. In practice, the interplay between admiralty jurisdiction and arbitration clauses in maritime contracts has been a recurring theme before Indian courts.

Judicial Developments in Maritime Arbitration

The Indian judiciary has been instrumental in clarifying how maritime claims intersect with arbitration law. Several landmark cases have shaped the contours of this relationship:

- **Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO), (2012) 9 SCC 552** – The Supreme Court held that Part I of the Arbitration and Conciliation Act, 1996 does not apply to foreign-seated arbitrations, thereby reinforcing the territoriality principle. This had a significant impact on maritime arbitration, especially in contracts providing for arbitration in London under the LMAA rules. The judgment reassured foreign parties that their awards would be insulated from undue interference by Indian courts.
- **MV Elisabeth v. Harwan Investment and Trading Pvt. Ltd., 1993 Supp (2) SCC 433** – In this landmark decision, the Supreme Court expanded the scope of admiralty jurisdiction in India, holding that High Courts could draw on principles from international conventions even if not formally ratified, to ensure justice in maritime disputes. This case underscored India's willingness to align with evolving international maritime law norms.
- **Board of Trustees of the Port of Mumbai v. Afcons Infrastructure Ltd., 2014 SCC OnLine Bom 1929** – The Bombay High Court recognized that certain disputes involving port authorities could be referred to arbitration, provided they did not impinge upon sovereign or statutory functions. This case clarified the boundaries of arbitrability in port-related disputes.
- **Harmony Innovation Shipping Ltd. v. Gupta Coal India Ltd., 2015 SCC OnLine Bom 1192** – Here, the Bombay High Court upheld the enforcement of a foreign arbitral award issued under the LMAA Rules, reiterating India's commitment to the New York Convention and reinforcing party autonomy in maritime contracts.

These judicial developments reflect an emerging pro-arbitration stance, but they also reveal ongoing tensions between admiralty jurisdiction (which often requires court intervention, especially for ship arrests) and arbitration clauses that mandate private dispute resolution.

Challenges in Maritime Arbitration in India

Despite these legislative and judicial advancements, several persistent challenges hinder the development of India as a global maritime arbitration hub:

- **Delays in Enforcement of Awards** – Although the Arbitration and Conciliation Act mandates speedy enforcement of awards, practical realities—such as procedural objections, interim relief applications, and appeals—can significantly delay final resolution. In maritime disputes, where perishable cargo or idle vessels are involved, such delays can be commercially damaging.
- **Limited Specialization among Arbitrators** – Maritime disputes often involve highly technical issues such as navigational negligence, marine engineering, or complex charterparty terms. India lacks a sufficiently large pool of arbitrators with specialized maritime expertise, resulting in reliance on foreign tribunals.
- **Absence of a Dedicated Maritime Arbitration Center** – While India has general arbitration institutions, there is no dedicated maritime arbitration center akin to the Singapore Chamber of Maritime Arbitration (SCMA) or the London Maritime Arbitrators Association (LMAA).
- **Inconsistent Application of International Maritime Conventions** – While courts have often relied on unratified conventions to fill legislative gaps, the absence of formal ratification can create uncertainty and inconsistency in application.
- **Overlap between Admiralty and Arbitration Proceedings** – Ship arrest proceedings are often initiated in Indian High Courts even when the underlying contract contains an arbitration clause. While such arrests are meant to secure maritime claims, they can sometimes lead to jurisdictional disputes and procedural duplication.

Addressing these challenges will require a combination of legislative reforms, capacity building, and the establishment of specialized maritime dispute resolution infrastructure.

5. Recommendations for Reform

To strengthen India's maritime arbitration framework, the following measures are proposed:

1. Establish specialized maritime arbitration institutions with trained arbitrators.
2. Amend the Admiralty Act to explicitly recognize arbitration as the primary mode of resolving contractual maritime disputes.
3. Adopt and implement international conventions like the 1999 Arrest Convention.
4. Promote the use of online dispute resolution (ODR) for smaller maritime claims.
5. Strengthen judicial training on maritime law and arbitration principles.

6. Conclusion

Maritime arbitration in India is evolving rapidly, with the legislative framework and judiciary making significant contributions to its development. However, to position India as a preferred maritime arbitration hub in Asia, it is essential to bridge the gap between domestic law and international best practices. Through targeted reforms and capacity building, India can enhance its dispute resolution mechanisms and contribute more effectively to global maritime trade governance.

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