Maritime and Shipping Arbitration in India: Institutional Framework and Enforcement Challenges

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***Abstract*—The use of maritime arbitration has also been adopted as the most effective way of dispute resolution in shipping and trade in India due to its flexibility and confidentiality and the fact that it is internationally enforceable. This paper critically compares institutional and legal regimes that administer maritime arbitration in India with special reference to the Arbitration and Conciliations Act, 1996, the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 and the Merchant Shipping Act, 1958. It studies enforcement issues, such as judicial delay, the abuse of the public policy exception and the structural clash between admiralty and arbitration cases, in a doctrinal and comparative perspective. Such landmark cases as Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (2012), ONGC Ltd. v. Saw Pipes Ltd. (2003), Vijay Karia v. Prysmian Cavi e Sistemi SRL (2020) and Ssangyong Engineering v. NHAI (2019) are examined in order to track the Using the comparative analysis of the London Maritime Arbitrators Association (LMAA) and Singapore Chamber of Maritime Arbitration (SCMA), the article also pinpoints institutional gaps and provides the specific solution in the form of the targeted legislative, judicial, and policy change to enable India to become a reputable global maritime arbitration centre.**

***Index Terms*—Admiralty Jurisdiction, Arbitral Awards Enforcement, Arbitration and Conciliation Act, India, Institutional Maritime Arbitration, LMAA, Maritime Arbitration, New York Convention, Public Policy Exception, Shipping Disputes, SCMA**

I. INTRODUCTION

International trade in India is primarily based on maritime trade with nearly 90 percent of all trade carried out in India, as well as nearly 70 percent of all imports and exports, being transported by sea. The long coastline of India (more than 7,500 kilometres), 12 large ports and more than 200 minor and intermediate ports position India strategically in the world shipping system. The nature of maritime transactions including: charter parties, bills of lading, marine insurance, cargo claims, collisions and salvage operations create multi-jurisdictional dispute, which requires specialised system of dispute resolution [3]. In the past Indian maritime conflicts were mediated by admiralty courts. The shortcomings of litigation however; procedural stalling, excessive costs, lack of technical skills as well as lack of confidentiality are some elements which have compelled commercial interests to seek arbitration. Alternative dispute resolution The Arbitration and Conciliation Act, 1996 (ACA), which had the UNCITRAL Model Law on International Commercial Arbitration as its model, was the step towards transformation of the arbitration law in India as it harmonised the Indian arbitration law with the international one. The Admiralty (Jurisdiction and Settlement of Maritime claims) Act, 2017 further codified the maritime claims law and put a reinvested admiralty jurisdiction in the specified High Courts [4]. Though these have been the legislative efforts, India is yet to become a destination of choice in international maritime arbitration- something still controlled by London and Singapore. Ongoing enforcement delays, the absence of an effective resolution to the conflict between admiralty jurisdiction and arbitration, institutional flaws, and relative shortage of specialised maritime arbitrators remains a big drawback to the competitiveness of India. The paper will discuss the legal and institutional environment of maritime arbitration in India, pinpoint structural enforcement issues, study how the judiciary is evolving, and suggest specific change proposals.

II. CONCEPTUAL FRAMEWORK: MARITIME DISPUTES AND HOSTILE MECHANISM OF ARBITRATION.

A. Nature and Characteristics of Maritime Disputes

It involves nature and characteristics of maritime disputes. The maritime conflicts are characterized by international nature, technical sophistication and commercial imperative. Parties to a single maritime transaction shipowners, charterers, cargo owners, insurers, and port authorities -often cut across borders of jurisdictions and legal systems. Conflicts include contractual disputes involving charter parties, bills of lading, and shipbuilding contracts, and non-contractual disputes of collisions, salvage, oil spill and environmental pollution [5]. Monetary rewards are great, the mobile quality of the main resource (the vessel) poses a problem of complexity in enforcement, and the time-related nature of shipping implies that the failure to solve the problem immediately translates directly into financial loss.

B. Party Autonomy and Arbitration as the Preferred Forum

Party autonomy the freedom to select the seat, rules, arbitrators, and governing law is the cornerstone of arbitration. In maritime contracts, arbitration clauses are standard features of instruments like charter parties and bills of lading. Standard-form contracts developed by the Baltic and International Maritime Council (BIMCO) routinely designate London or Singapore as the arbitration seat, reflecting the industry's longstanding preference for expert-led, private dispute resolution [6]. The Section 7 recognition of arbitration agreements under the ACA, combined with the Supreme Court's affirmation of the territorial principle in Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO) [2012], has aligned Indian law with this global consensus.

C. Advantages of Maritime Arbitration over Litigation

Maritime arbitration offers several decisive advantages:
(i) Neutrality parties freely select a seat unconnected to either party's jurisdiction;
(ii) Expertise arbitrators with specialist knowledge in navigation, cargo handling, and marine insurance deliver technically sound awards;
(iii) Confidentiality protecting commercially sensitive information and preserving business relationships;
(iv) Speed streamlined procedure reduces demurrage, detention, and supply chain disruption; and
(v) Enforceability the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (to which India is a signatory) provides a multilateral framework for cross-border enforcement in over 170 countries [7].

III. MARITIME ARBITRATION & ITS STATUTORY FRAMEWORK AND INSTITUTIONAL FRAMEWORK IN INDIA

A. The Arbitration and Conciliation Act of 1996.

In India, the most important piece of legislation concerning maritime arbitration is the ACA, 1996. Significant provisions that apply to the maritime sector are: effect of arbitration agreement on shipping contracts (Section 7); appointment of arbitrators by the courts and tribunal by way of interim measures (Sections 9 and 17); and effect of awards as a decision of the court (Section 36). Section 5 of the Act explicitly limits judicial interference outside what is prescribed on grounds of finality and autonomy of parties [8].
Amendments have continued to empower the regime. The Amendment of 2015 removed the automatic stay against enforcement in case a set-aside application is made under section 34, a frequent feature that had been used extensively to postpone execution in maritime disputes. In the Amendment of 2019, institutional arbitration was encouraged by introducing the Arbitration Council of India (ACI). The 2021 Amendment was a response to enforcement issues in cases of fraud. Combined, these reforms indicate a long-term policy effort of effective and foreseeable dispute resolution.

B. The Admiralty (Jurisdiction and Settlement Maritime Claims) Act, 2017.

The 2017 Admiralty Act replaced the formerly piecemeal admiralty law of India, putting the jurisdiction to hear maritime claims and to order the arrest of vessels in security into the hands of specific, prescribed High Courts, covering Bombay, Calcutta, Madras, Gujarat, Andhra Pradesh, Kerala, and Karnataka. The Act lists a lengthy list of maritime claims as ownership and possession of vessels, breach of charter parties, damages of cargo, salvage, pollution, and seafarer salaries which present the substantive foundation of most arbitrated cases [9].

The Act complements but sometimes conflicts with arbitration. It was always the view of the courts that presence of arbitration agreement does not mean that admiralty jurisdiction cannot be exercised in some protective purpose. It was confirmed in World Tanker Carrier Corporation v. SNP Shipping Services Pvt. Ltd. (Bombay High Court) that vessel arrest is a protective and security action that is not considered an interference with arbitration. In M.V. Elisabeth v. Harwan Investment and Trading Pvt. Ltd. (1993) the Supreme Court highlighted the very wide scope of admiralty jurisdiction and the need to have viable remedies of maritime nature.

C. Indian Institutional Arbitration

The Indian institutional arbitration ecosystem is maturing, but does not have an internationally recognised specialised maritime arbitration centre. Major institutions contain the Mumbai Centre of International arbitration (MCIA) which was inaugurated in 2016 with updated rules and infrastructure that is up to the international standards and the Indian Council of Arbitration (ICA) one of the oldest arbitral councils in India. In 2020, the International Arbitration and Dispute Resolution Centre (IDAC) launched the first specialised maritime framework in India, the Maritime Arbitration Rules. Nevertheless, such regulations are yet to gain much publicity or acceptance among parties in the international maritime arena [10].

The most important institutional gap is the lack of a world recognised special maritime arbitration centre that is like London Maritime Arbitrators Association (LMAA) or Singapore Chamber of Maritime Arbitration (SCMA). This has led to an almost automatic choice of London arbitration on LMAA terms by Indian parties, mainly in high-value charter party conflicts, due to institutional reasons of reliability and certainty of enforcement. Maritime India Vision 2030 recognises the importance of dispute resolution infrastructure as a developmental priority but policy hopes turned into operational specialised institutions has not been fully realised.

D. Arbitration Enforcement: law and case law

a) The domestic award enforcement. in the dance of section 36 of the aca, the domestic arbitral awards are binding in the form of decrees of civil courts. before the 2015 amendment, any section 34 challenge stayed the enforcement per se, a procedure that had most commonly been used to further postpone execution in maritime cases. the amendment in 2015 fixed this provision by stating that a special court order is required to stop enforcement with the applicant needing to prove a prima facie case to do so [11]. The Domestic enforcement via judicial evolution has suffered a progressive constriction of grounds of intervention. in ONGC Ltd. v. Saw Pipes Ltd. (2003), the supreme court broadened the public policy basis to encompass a form of patent illegality, exposing domestic awards to further judicial examination- a decision that was lamented as leading to more confusion in maritime enforcement. the role was significantly affirmed in a case like Associate Builders v. Delhi Development Authority (2015) where the intervention of patent illegality was limited to inherent legal defects and reiterated in a case like SsangYong Engineering and Construction Co. Ltd. v. NHAI where the court reiterated that limited judicial review and arbitration finality goals.

b) The Recovery of foreign arbitral awards and New York Convention. part ii of the aca enforces the New York Convention which commits Indian courts to recognise and enforce foreign arbitral awards but on the limited basis found in section 48 - invalidity of the arbitration agreement, procedural irregularity, non-arbitrability and breach of public policy. the trend of the judicial process in India has increasingly shifted to deep pro-enforcement approach [12]. The supreme court in Renusagar Power Co. Ltd. v. General Electric Co. (1994) limited the public policy exception to foreign awards to fundamental policy of Indian law, interests of India and justice or morality. the case of Shri Lal Mahal Ltd. v. Progetto grano Spa (2014) affirmed that the more liberal saw pipes interpretation of patent illegality is not applicable to foreign awards. more recently, the court in Vijay Karia v. Prysmian Cavi e sistemi srl (2020) declared that only in truly exceptional case scenarios should foreign awards not be enforced and a pro-enforcement jurisprudence should be established within the best international practices.

c) The viable enforcement hurdles even with mandatory changes in the law and the judiciary, there are still real implementation obstacles. the most widespread issue is judicial backlog the enforcement proceedings take years to be completed because of very congested courts, and complex nature of the procedure. the policy exception remains a ratee device to fudge over high-value maritime disputes. burdening procedures i.e. documentary authentication requirements also create extra burdens. inter-jurisdiction conflict between admiralty and arbitration jurisdictions leads to parallel proceedings, strategic vessel arrests, and lack of uniformity of enforcement [13]. by contrast, Singapore and the UK resolve enforcement proceedings swiftly via specialised judicial benches and efficiency in their institutions.

V. THE ADMIRALTY-ARBITRATION CONFLICT

This is a unique issue in Indian maritime law, containing the intersection of admiralty jurisdiction with arbitration. Parties often seek vessel arrest action in admiralty courts and at the same time seek arbitration proceedings, in parallel procedures. Admiralty act, 2017 (ship arrest): Vessel arrest is a security measure force preventing a ship to leave the territory without judgment on a suit being given either through a court or arbitration. The dilemma then comes up and upon which the courts must tread carefully, is whether invoking admiralty jurisdiction violates an operative arbitration agreement [14]. A practical approach has been taken by Indian courts, which understand that vessel arrest is utilized as a protective and not adjudicatory role. World Tanker Carrier Corporation v. SNP Shipping Services Pvt. Ltd., the Bombay High Court determined that where there is an arbitration clause, admiralty jurisdiction over the arrest of a vessel is not barred. This stance is common to the practice in the United Kingdom and Singapore, where courts allow the vessel to be arrested as security in a dispute bound by arbitration where the substantive trial is done by the selected arbitral seat. Nonetheless, the lack of codified harmonisation of the two regimes in India, however, still creates the jurisdiction uncertainty and parallel proceedings as well as the tactical misuse of vessel arrest as a pressure tool.

VI. COMPARATIVE ANALYSIS: LONDON AND SINGAPORE MODELS

A. London maritime arbitration Model (LMAA)

The London Maritime Arbitrators Association (LMAA) is an ad hoc institution that operates on a flexible basis, it offers Terms and Procedure Rules, which offer structure whilst allowing party autonomy. The nearby prevalence of maritime arbitration in London is founded upon a big number of niche expert arbitrators, profound industry understanding, predictable and pro-arbitration legal structure under English Arbitration Act 1996, limited court attenuation by the English judiciary, and central credits of enforcement internationally. LMAA arbitration provisions are commonplace in most international charter parties and bills of lading- which can make London the de facto location of the seat of most global maritime arbitrations [15].

B. Singapore maritime arbitration Framework (SCMA)

The Singapore Chamber of Maritime Arbitration (SCMA) presents an institutional-ad hoc approach that includes specialised maritime arbitration regulations and a selective club of maritime arbiters. The factors that have helped develop Singapore to become an arbitration hub include favourable to arbitration International Arbitration Act, effective and reliable judicature system, modernized infrastructure, government encouragement and speed in enforcing foreign awards in Singapore by the courts. The strategic location of the SCMA in Asia and the fact that Singapore is a major port have enabled it to be the seat of choice in resolving the maritime disputes in the Asia-Pacific region [16].

C. Indian lessons

Comparative study indicates some lesson actions that can be learned. The first is: specialisation is essential--international credibility is based on special maritime institutions whose rules are industry-specific and which have panels of industry-experienced arbitrators. Second, judicial efficiency is imperative--it is as crucial as the institutional quality that predictable, timely enforcement by the judiciary is, and the pro-enforcement course which Indian courts follow needs to be fast-tracked. Third, government facilitation should be consistent and integrated policy alignment in terms of port development, dispute resolution infrastructure and legal reform are necessary. Fourth, competitiveness is enabled by technology use, i.e. virtual hearings, digital case management and online dispute resolution (ODR) platforms have become a matter of norm in LMAA and SCMA proceedings, but Indian institutions are at a lower level of integration.

VII. THE MARITIME ARBITRATION FRAMEWORK IN INDIA: CRITICAL ASSESSMENT.

A. Strengths of the Present Framework.

The maritime arbitration system of India has great prowess. The ACA, 1996 is based on UNCITRAL Model Law, and it offers a detailed legal framework. Institutional reform is seen in the judicial transformation adopted since BALCO (2012), Shri Lal Mahal (2014), SsangYong (2019), and Vijay Karia (2020) all show that there is a shift towards a more pro-enforcement approach instead of an interventionist one. The Admiralty Act, 2017 has updated the admiralty jurisdiction and offered explicit solutions. The fact that India is a member of the New York Convention and that the country is increasingly becoming institutionalized in terms of arbitration infrastructure, especially the MCIA, are additional resources [17].

B. Structural Deficiencies and Gaps

These strengths have major gaps against them. The most severe shortcoming is the lack of a single maritime arbitration institution located in the whole world. The narrowness of specialist maritime arbitrators whose skill is in the shipping law, oceanography, cargo management, and the marine insurance decreases the quality of the Indian process and global markets. Courts backlog and delays in enforcement are still endemic, especially when it comes to enforcing high-value awards in charter party and cargo cases. The admiralty-arbitration dispute is not resolved, thus providing procedure ambiguity. Inefficiency and accessibility is brought about by poor technology adoption relative to those in London and Singapore institutions. Lastly, no maritime-coordinated policy also presents a disjointed regulatory situation [18].

VIII. POLICY RECOMMENDATIONS

According to the above discussion, it is suggested to have the following targeted reforms to empower maritime arbitration in India: Dedicated Maritime Arbitration Centres. India must create specialised maritime arbitration centres, collocated with major port ecosystem in Mumbai, Chennai, and Kandla, which have rules specially designed to arbitrate maritime disputes, arbitrator panels with specialists and modern administrative facilities comparable to the LMAA and SCMA. Harmonisation of Admiralty and Arbitration Law by Legislation. Admiralty Act, 2017 and the ACA, 1996 ought to have an amendment that codifies rigid principles on how far admiralty remedies can go in the case of arbitration-related disputes without creating ambiguity in jurisdiction as to whether the arrest of a vessel and interim relief can be granted. Strengthening Enforcement Mechanisms. Special arbitration benches in High Courts, a time limit on the enforcement process, and cost sanctions on frivolous objections in proceedings brought under Section 34 and Section 48 would help to eliminate enforcement delays and discourage the use of Section 34 and Section 48 as tactics. Maritime Arbitration and Judges Capacity Building. Proper training programmes in international maritime law, UNCITRAL standards and comparative arbitration practice are necessary. Proceeding quality would be enhanced directly by development of a nationally accredited list of maritime arbitrators who has an interest in shipping, cargo, and marine insurance. Technology Integration. The money put in digital arbiter, virtual hearing, electronic filing, and cybersecurity will enhance efficiency and enable Indian arbitration centres to compete with others worldwide. Limiting the Public Policy Exception. Clarification in the parliament pursuant to Sections 34 and 48 of limiting public policy invocation to exceptional circumstances in line with the pro-enforcement jurisprudence of the Supreme Court itself would curb strategic abuse and increase predictability of enforcement of foreign maritime awards. International Recognition and Cooperation. The involvement of UNCITRAL, the LMAA and the SCMA to model Indian maritime arbitration rules along with bilateral protocol to expedite the enforcement of maritime awards would speed up the credibility of international arbitration in India.

IX. CONCLUSION

Maritime arbitration is an indivisible tool of international trade, and increased maritime presence of India needs a system of dispute resolution reflecting international standards. The legal background, including the ACA, 1996, the Admiralty Act, 2017 and the membership in the New York Convention, India, is substantively reasonable. Moving the judiciary, as represented by its course, towards a form of pro-enforcement activity, rather than a broad public policy one, is significant. The lack of specialised maritime arbitration institutions, a dearth of specialty maritime arbitrators, endemic enforcement delays, the still unresolved admiralty-arbitration war as well as poor adoption of technology all stifle the potential of India evolving into a global maritime arbitration centre. The fact that Indian maritime parties have chosen seats of foreign arbitration, but mostly London is a symptom and a gauge of these inadequacies. India can use its strategic maritime geography, economic development, and emerging legal frameworks with strategic institutional investment, legislative harmonisation, judicial efficiency reforms, and technology adoption, to become a credible and competitive global maritime arbitration centre.

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