THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES, KOCHI

DISSERTATION

Submitted in partial fulfilment of the requirement for the award of thedegree of

MASTER OF LAW (LL.M.)

(2023-2024)

ON THE TOPIC

EXPLORING THE SCOPE OF ARBITRATION FOR INTERNATIONAL MARITIME DISPUTES IN INDIA

UNDER THE GUIDANCE AND SUPERVISION OF

DR. APARNA SREEKUMAR

THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES, KOCHI

SUBMITTED BY:

ABRAHAM J KANIYAMPADY

Register No: LM0223023

LL.M. (INTERNATIONAL TRADE LAW)

CERTIFICATE

This is to certify that **ABRAHAM J KANIYAMPADY Register No: 10597**, has submitted his Dissertation titled "**EXPLORING THE SCOPE OFARBITRATION FOR INTERNATIONAL MARITIME DISPUTES IN INDIA"**
in partial fulfilment of the requirement for the award of Degree of Master of Laws in International Trade Law to the National University of Advanced Legal Studies,Kochi, under my guidance and supervision. It is also affirmed that the dissertation submitted by his is original, bona fide and genuine.

Date: 16-06-2024

Place: Ernakulam

Dr. Aparna Sreekumar

Guide and Supervisor

NUALS, Kochi

DECLARATION

I declare that this Dissertation titled "**EXPLORING THE SCOPE OF ARBITRATION FOR INTERNATIONAL MARITIME DISPUTES IN INDIA"** is researched and submitted by me to the National University of Advanced Legal Studies, Kochi, in partial fulfilment of the requirement for the award of Degree of Master of Laws in International Trade Law, under the guidance and supervision of Dr. Aparna Sreekumar, Assistant Professor, NUALS, and is an original, bona fide and legitimate work and it has been pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this University or any other University.

Date: 16-06-2024

Place: Ernakulam

ABRAHAM J KANIYAMPADY

REG NO: 10597

LL.M., International Trade Law

NUALS, Kochi

ACKNOWLEDGEMENT

I take this opportunity to express my profound respect and deep sense of gratitude to **Dr. Aparna Sreekumar**, my guide and supervisor, for her support, guidance and encouragement during the course of my research work. She was always approachable, respected my ideas and gave me clear, cogent and meaningful suggestions, which has aided me profusely in completing this dissertation.

I would like to extend my sincere gratitude to the respected Acting Vice-Chancellor **Hon'ble Justice (Retd.) S. Siri Jagan,** for his constant encouragement and support. I would further extend my deep-felt gratitude to all the Professors, NUALS, for their guidance and support.

I would also like to convey my thanks to all the Library Staff and the Technical Staff for their timely assistance to carry out the work.

Words fall short of expressing love, appreciation and gratitude to my dear family and friends for their constant encouragement. With genuine humility, I am thankful to The Almighty for all his uncountable bounties and blessings.

ABRAHAM J KANIYAMPADY

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3.	Asset Reconstruction Company India Ltd v. ATS Infrastructure Limited
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10.	Konkan Railway Corpn. Ltd. v. Mehul Construction Co (2000) 7 SCC 201

11.	J S Ocean Liner v. M. V. Golden Progress , (2007) 2 ArbLR 104 (Bombay High Court).
12.	M/S. Crescent Petroleum Ltd. vs M.V. "Monchegorsk" & Another, (2000) 1 BOMLR 297
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18.	Saint Vincent and the Grenadines v Guinea, International Tribunal for the Law of the Sea., July 7, 1997.
19.	S.S. “Lotus”, PCIJ, Sept. 7, 1927 (The Hague).
20.	Arctic Sunrise Arbitration, PCA, July 10, 2017, 2014-02.
21.	Arctic Sunrise Arbitration, PCA, July 10, 2017, 2014-02.
22.	Saint Vincent and the Grenadines v Guinea, International Tribunal for the Law of the Sea., July 7, 1997.
23.	The Chong Bong *[1997] 3 HKC 570*

24.	Mareva Compania Naviera SA v. International Bulkcarriers SA the Mareva;

ABBREVIATIONS

1. UOI- Union of India
2. UNCITRAL- United Nations Commission on International Trade Law
3. IMO- International Maritime Organization
4. ADR- Alternative Dispute Resolution
5. UNCLOS- United Nations Convention on the Law of the Sea
6. SBT- Southern Bluefin Tuna
7. EEZ- exclusive economic zones
8. PCA- Permanent Court of Arbitration
9. ITLOS- International Tribunal for the Law of the Sea
10. SAIL- Steel Authority of India Limited
11. CPC- Civil Procedure Code
12. ICC- International Chamber of Commerce
13. GIMAC- Gujarat International Maritime Arbitration Centre
14. DG Shipping- Directorate General of Shipping
15. LCIA- London Court of International Arbitration
16. SIAC- Singapore International Arbitration Centre
17. ICCA- International Council for Commercial Arbitration
18. IMLA- International Maritime Law Association
19. MCIA- Mumbai Centre for International Arbitration
20. ICA- Indian Council of Arbitration

CHAPTER I

INTRODUCTION

1.1 INTRODUCTION TO MARITIME ARBITRATION

Arbitration is a form of alternative dispute resolution (ADR) where parties resolve their disputes outside of court. It is a consensual process, meaning both parties must agree to use arbitration to resolve their dispute. The Arbitration and Conciliation Act, 1996 defines arbitration as:

> *"Arbitration means any arbitration whether or not administered by permanent arbitral institution."*[1]

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 jurisdiction."*[2][3]

Arbitration typically involves the appointment of a neutral third party, known as an arbitrator or a panel of arbitrators, who hear the evidence and arguments from both parties and make a binding decision to resolve the dispute. The process is less formal than traditional litigation, and the rules and procedures are often more flexible, allowing parties to tailor the process to their specific needs.

"Maritime Arbitration" offers a thorough analysis of the function, difficulties, and use of arbitration in settling complicated issues in the maritime sector while deftly navigating the murky waters of international maritime disputes. This dissertation examines important case studies that have had a lasting impact on the field of maritime arbitration through a multi-part examination. It focus into the geopolitical dynamics between China and Southeast Asian countries, starting with a comprehensive examination of the South China Sea issue. It breaks down the legal aspects, with a central focus on the United Nations Convention on the Law of the

[1] Arbitration and Conciliation Act, 1996, §2(1)(a)
[2] Halsbury's law of England (4th Edition) Vol. II
[3] Jaiswal, Sneha, Arbitration Law in India – an Overview (May 11, 2024, 4:00 PM). Available at SSRN: https://ssrn.com/abstract=3788312 or http://dx.doi.org/10.2139/ssrn.3788312

Sea (UNCLOS). The research follows the arbitration between the Philippines and China, which resulted in a historic 2016 Permanent Court of Arbitration ruling and ensuing challenges to its enforcement. Moving on to the arbitration case involving Southern Bluefin Tuna (SBT), this emphasizes the commercial significance of SBT as well as the environmental issues that are at the heart of the disagreement. It examines the 1999 decision, highlighting a novel example of an arbitral tribunal deciding the interpretation and application of UNCLOS in fish resource protection, by drawing on UNCLOS provisions. The fatal shooting of Indian fishermen by Italian marines has given rise to a complex International legal controversy known as the Enrica Lexie case. The examination reveals the complex interplay between national sovereignty, immunity, and the use of force in international waters.

1.2 HISTORY

Arbitration is indeed older than the recollection of man.[4]. Arbitration (Protocol and Convention) Act 1937, the Arbitration Act 1940, and the Foreign Awards (Recognition and Enforcement) Act 1961 were the legislations which existed before the Arbitration and Conciliation Act. By the enactment of Arbitration and Conciliation Act, these laws were repealed.[56] In 1985, the United Nations Commission on International Trade Law (UNCITRAL), far back, enacted the UNCITRAL Model Law on International Commercial Arbitration. The Arbitration and Conciliation Act of 1996 (hereafter referred to as "the Act") was the result of the Indian Parliament's attempt to establish an arbitration-friendly framework based on the Model Law.[7] The Arbitration Act of 1940 was an outmoded law, according to the Act's Statement of Objects and Reasons. It goes on to say that without the formation of an environment that is supportive to arbitration, India's economic reforms will be ineffective.[8] In *Konkan Railway Corpn. Ltd. v. Mehul Construction Co*[9]., the Supreme Court noted that the new law was made in order to attract the "international mercantile community" and that in its interpretation, consideration must be given to

[4] 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) http://www.jstor.org/stable/1016251, p99.
[5] Arbitration and Conciliation Act, 1996, §85
[6] See Hay, David. Halsbury's Laws of India. Vol. 2, Butterworths India, 1999, p.175.
[7] Classification of an Arbitration as "International" under Indian Law, (2009) 4 SCC J-27
[8] Classification of an Arbitration as "International" under Indian Law, (2009) 4 SCC J-27
[9] Konkan Railway Corpn. Ltd. v. Mehul Construction Co, (2000) 7 SCC 201

the goals behind the enactment of the new law. The judiciary came out strongly in favor of Parliament's efforts.[10]

1.3 ADVANTAGES

Arbitration is a very effective technique for resolving disputes outside the courts. The dispute will be decided by one or more persons, who are referred to as “arbitrators”, “arbiters”, or “arbitral tribunal”, and renders the “arbitration award”. An arbitration award is legally binding on both sides and enforceable in the courts. Arbitration is often used for the resolution of commercial disputes, particularly in the context of international maritime disputes, and is advantageous in several ways.

Efficiency and Flexibility

One of the primary advantages of arbitration over court litigation is its efficiency. Arbitration can be faster than court due to more flexible rules of evidence and procedure.[11] This flexibility allows parties to tailor the proceedings to the specifics of their dispute. For instance, parties can agree on the language of the arbitration, the location of the hearings, and the rules of evidence, which can expedite the process and make it more convenient for all involved.

Expertise of Arbitrators

In arbitration, parties have the freedom to choose their arbitrator or arbitrators. This allows them to select individuals who have specific expertise in the subject matter of the dispute. This is particularly beneficial in disputes involving complex technical or commercial issues, where an arbitrator with relevant expertise can understand the intricacies of the matter more readily than a judge.[12]

[10] Classification of an Arbitration as “International” under Indian Law, (2009) 4 SCC J-27
[11] 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, 3:31 PM) http://www.jstor.org/stable/1016251, p98.
[12] Stern, Stephen R., and Sloan J. Zarkin. “Why Arbitration Beats Litigation for Commercial Disputes.” GPSolo 32, no. 1 (2015): 40–43. (May 11, 2024, 4:31 PM) http://www.jstor.org/stable/24632523, p40.

Confidentiality

Arbitration proceedings are private and confidential. This confidentiality can be beneficial for parties who do not want the details of their dispute to become public, which can be particularly important in commercial disputes where trade secrets or sensitive commercial information are involved.[13]

Finality of Decision

Arbitration awards are typically final and binding. This finality can provide certainty and allow for the swift resolution of disputes, as the opportunities for appeal are very limited.

International Recognition

Arbitration awards are more easily enforced in foreign jurisdictions than court judgments. Under the New York Convention 1958, to which over 150 countries are signatories, an arbitration award made in one signatory state is enforceable in any other signatory state, subject only to certain, limited defences.[14]

1.4 ARBITRABILITY

Arbitrability is a concept that determines whether a particular dispute can be submitted to arbitration for resolution. In India, arbitrability is governed by the Arbitration and Conciliation Act, 1996, which defines the scope of arbitrable disputes and sets out the conditions under which a dispute can be submitted to arbitration.

[13] Stern, Stephen R., and Sloan J. Zarkin. "Why Arbitration Beats Litigation for Commercial Disputes." GPSolo 32, no. 1 (2015): 40–43. (May 11, 2024, 4:31 PM) http://www.jstor.org/stable/24632523, p42.
[14] Stern, Stephen R., and Sloan J. Zarkin. "Why Arbitration Beats Litigation for Commercial Disputes." GPSolo 32, no. 1 (2015): 40–43. (May 11, 2024, 3:45 PM) http://www.jstor.org/stable/24632523, p43.

In India, the principle of party autonomy is a fundamental aspect of arbitrability. This means that parties are generally free to submit any dispute to arbitration, provided that it is capable of settlement by arbitration under the law[15]. However, there are certain types of disputes that are considered non-arbitrable, either because they involve matters that are beyond the jurisdiction of arbitrators or because they are considered contrary to public policy.

Representative suits under Order 1 Rule 8 CPC which involve public interest or interest of numerous persons who are not parties before the court. (In fact, even a compromise in such a suit is a difficult process requiring notice to the persons interested in the suit, before its acceptance)[16]. Disputes relating to election to public offices (as contrasted from disputes between two groups trying to get control over the management of societies, clubs, association, etc.). Cases involving grant of authority by the court after enquiry, as for example, suits for grant of probate or letters of administration. Cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion, etc. Cases requiring protection of courts, as for example, claims against minors, deities and mentally challenged and suits for declaration of title against the Government. Cases involving prosecution for criminal offences

All other suits and cases of civil nature in particular the following categories of cases (whether pending in civil courts or other special tribunals/forums) are normally suitable for ADR processes *ll cases relating to trade, commerce and contracts*, including disputes arising out of contracts (including all money claims); disputes relating to specific performance; disputes between suppliers and customers; disputes between bankers and customers; disputes between developers/builders and customers; disputes between landlords and tenants/licensor and licensees; disputes between insurer and insured; (*ii*) *All cases arising from strained or soured relationships*, including disputes relating to matrimonial causes, maintenance, custody of children; disputes relating to partition/division among family

[15] Bangladesh v. India – U.S.-Asia Law Institute (May 11, 2024, 3:31 PM) https://static1.squarespace.com/static/55d21ffee4b0d22e803fdca1/t/5ff4a9090c86035cd35810a7/1609869578607/Bangladesh_v_India.pdf)

[16] Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India) (June 10, 2024, 3:31 PM) https://jusmundi.com/en/document/decision/en-bay-of-bengal-maritime-boundary-arbitration-between-bangladesh-and-india-award-monday-7th-july-2014)

members/coparceners/co-owners; and disputes relating to partnership among partners. (*iii*) *All cases where there is a need for continuation of the pre-existing relationship in spite of the disputes*, including disputes between neighbours (relating to easementary rights, encroachments, nuisance, etc.); disputes between employers and employees; disputes among members of societies/associations/apartment owners' associations; (*iv*) *All cases relating to tortious liability*, including claims for compensation in motor accidents/other accidents; and (*v*) *All consumer disputes*, including disputes where a trader/supplier/manufacturer/service provider is keen to maintain his business/professional reputation and credibility or product popularity. The above enumeration of "suitable" and "unsuitable" categorisation of cases is not intended to be exhaustive or rigid. They are illustrative, which can be subjected to just exceptions or additions by the court/tribunal exercising its jurisdiction/discretion in referring a dispute/case to an ADR process."

Arbitrability in India is a complex and evolving concept that is influenced by a variety of factors, including statutory provisions, judicial decisions, and public policy considerations. While parties are generally free to submit any dispute to arbitration, there are certain types of disputes that are considered non-arbitrable, either because they involve matters that are beyond the jurisdiction of arbitrators or because they are considered contrary to public policy. As India continues to develop as a hub for international arbitration, it is likely that the concept of arbitrability will continue to evolve, with courts and legislatures grappling with new and complex issues in the years to come.

1.5 ARBITRATION FOR MARITIME DISPUTES

Commercial maritime disputes encompass a wide range of legal issues that arise in the context of commercial activities involving ships and the sea. These disputes can involve various aspects of maritime law, including contracts of carriage, charter parties, marine insurance, salvage, and collisions. Resolving commercial maritime disputes requires a thorough understanding of both maritime law and commercial practices in the shipping industry.

One common type of commercial maritime dispute involves disputes over contracts of carriage, which govern the transportation of goods by sea. These disputes can arise from issues such as delays, damage to cargo, or disputes over freight rates. Another common type of dispute involves charter parties, which are contracts for the hire of a ship. Disputes over charter parties can arise from issues such as breaches of contract, disputes over laytime and demurrage, or disputes over the condition of the ship.

The origins of maritime arbitration can be traced back to the concept of international commercial arbitration, with the only distinction being the approach taken by these two concepts. International commercial arbitration focuses on resolving disputes, primarily related to commercial transactions, between individuals who do not share a common citizenship, in order to avoid litigation. On the other hand, maritime arbitration involves parties from different countries who are involved in complex trade relationships governed by specific customs or conventions. Therefore, it is advantageous for these parties to reach an outcome that aligns with the maritime trade world they are familiar with and have some influence over. Furthermore, arbitration as a dispute resolution mechanism in maritime disputes has gained significant attention due to the problematic practice of forum law. In situations where specialized adjudicating authorities are lacking in a court of law, decisions may be based solely on domestic law, which may deviate from the customs and practices of the maritime sector that have international recognition. This issue is resolved through arbitration, which allows individuals to select arbitrators with expertise in the subject matter.[17]

Marine insurance is another area that frequently gives rise to commercial maritime disputes. Disputes over marine insurance can involve issues such as coverage disputes, claims for loss or damage to insured goods, or disputes over the interpretation of policy terms.

Salvage is another important aspect of commercial maritime law that can give rise to disputes. Salvage disputes often arise when a salvor recovers a ship or cargo in distress and seeks a reward for their efforts. These disputes can be complex, as they

[17] 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/>

often involve determining the value of the salvaged property and the extent of the salvor's efforts.

Collisions between ships are another common source of commercial maritime disputes. These disputes can involve issues such as liability for the collision, the extent of damages, and the apportionment of liability among the parties involved.

In resolving commercial maritime disputes, parties often turn to arbitration as a preferred method of dispute resolution. Arbitration offers a number of advantages, including flexibility, expertise, and confidentiality, which make it well-suited to resolving the complex and specialized disputes that arise in the maritime industry.

Arbitration has become a popular method for resolving commercial maritime disputes due to its efficiency, flexibility, and expertise in handling complex maritime issues. This essay explores the advantages of arbitration as a solution for commercial maritime disputes and discusses its effectiveness in resolving such disputes.

One of the key advantages of arbitration in commercial maritime disputes is its flexibility. Parties have the autonomy to choose the arbitrators, the rules governing the arbitration, and the procedural aspects of the process. This flexibility allows parties to tailor the arbitration to suit their specific needs and circumstances, which is particularly beneficial in the context of maritime disputes that often involve technical and specialized issues.

Arbitration also offers a more efficient and expedited process compared to traditional litigation. Arbitration proceedings are generally faster and more streamlined, leading to quicker resolutions. This is important in the maritime industry, where time is of the essence, and delays can have significant financial implications.

Another advantage of arbitration in commercial maritime disputes is the expertise of the arbitrators. Arbitrators with specialized knowledge and experience in maritime law and industry practices can provide a more informed and nuanced decision compared to judges who may not have the same level of expertise. This can lead to more equitable and well-reasoned outcomes in maritime disputes.

Confidentiality is also a key benefit of arbitration in commercial maritime disputes. Unlike court proceedings, which are generally open to the public, arbitration proceedings are private and confidential. This allows parties to protect sensitive

commercial information and maintain confidentiality, which is particularly important in the competitive maritime industry.

Despite these advantages, arbitration is not without its challenges. One of the main criticisms of arbitration is the potential for bias and lack of transparency. To address these concerns, it is important to ensure that arbitrators are impartial and that the arbitration process is conducted in a fair and transparent manner.

In conclusion, arbitration offers a number of advantages as a solution for commercial maritime disputes, including flexibility, efficiency, expertise, and confidentiality. While challenges remain, arbitration provides an effective and efficient means of resolving disputes in the complex and specialized field of maritime commerce.

Arbitration for International Maritime Disputes

The South China Sea dispute, which involves China and many Southeast Asian countries, including the Philippines, Vietnam, and Malaysia, is characterised by complex territorial and maritime conflicts[18].

In 2013, the Philippines took the lead in initiating arbitration proceedings against China. Obtaining legal clarity on important disagreement areas was the main goal. The United Nations Convention on the Law of the Sea (UNCLOS), a foundational agreement, is essential to understanding the legal aspects. Regarding territorial waters, exclusive economic zones (EEZs), and the right of innocent passage, UNCLOS outlines the obligations and rights of governments[19]. The UNCLOS's Article 287[20] provides a procedural framework for resolving disagreements on the interpretation and implementation of the convention. Furthermore, states may choose to declare exceptions and reservations about mandatory dispute resolution procedures under UNCLOS Article 298[21]. This gives them the ability to keep some types of conflicts out of the arbitration and court settlement processes. The Philippines began the arbitration procedure with the intention of challenging China's wide "Nine-Dash Line" claim, which infringed upon the EEZs of neighbouring

[18] United Nations Convention on the Law of the Sea (UNCLOS), 1982
[19] 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.
[20] United Nations Convention on the Law of the Sea, art. 287, 1833 U.N.T.S. 222 (1994)
[21] United Nations Convention on the Law of the Sea, art. 298, 1833 U.N.T.S. 222 (1994)

countries, and elucidating the legal status of features in the South China Sea. The tribunal determined its jurisdiction and the case's admissibility in the early phases of the arbitration, eventually asserting authority over a number of points brought up by the Philippines. The turning point was when the Permanent Court of Arbitration (PCA) in The Hague rendered a historic decision in support of the Philippines in July 2016[22]. Regarding the disputed "Nine-Dash Line," the panel ruled that UNCLOS did not provide it with any legal foundation. The tribunal decided that the Philippines' claims were admissible and would go to arbitration in spite of China's declaration made in accordance with Article 298. China was found to have interfered with fishing and petroleum exploration in the Philippines' Exclusive Economic Zone (EEZ), so violating the country's sovereign rights[23]. The South China Sea Arbitration has significant ramifications. Legal clarification was granted by the decision on important matters, including the legal standing of features and the invalidity of the "Nine-Dash Line. "China's rejection of the verdict, however, made enforcement difficult because UNCLOS depends on state cooperation and voluntary adherence to implement measures that are consistent with the convention rather than having a direct enforcement mechanism.

The huge commercial importance of Southern Bluefin Tuna (SBT), especially in the Asia-Pacific region, is at the center of the Southern Bluefin Tuna (SBT) Arbitration Case and has made it a major focus of commercial fishing operations[24]. Unsustainable fishing methods, however, have given rise to worries regarding the preservation of SBT supplies and possible long-term damage to the marine ecosystem. Several important clauses of the United Nations Convention on the Law of the Sea[25] (UNCLOS) are relevant in the context of this arbitration. In order to preserve and manage living resources in the exclusive economic zone (EEZ) and on the high seas, states must work together, as stated in UNCLOS Article 61, which lays forth basic guidelines. Furthermore, highly migratory species, such as SBT, are expressly covered by Article 64, which calls for nations to collaborate through regional or international organizations while being guided by the best available

[22] Permanent Court of Arbitration. "The South China Sea Arbitration (The Republic of the Philippines v. The People's Republic of China)." The Hague, (May 11, 2024, 10:00 AM), www.pcacases.com/web/sendAttach/1508
[23] Ibid
[24] Smith, J. et al. (2010). Sustainable Management of Southern Bluefin Tuna Stocks. Journal of Marine Conservation, 12(3), 45-60
[25] United Nations Convention on the Law of the Sea, art. 61, 1833 U.N.T.S. 222 (1994)

scientific data[26]. UNCLOS Article 287 offers states an arbitration procedure as well as a means of resolving disagreements over the interpretation and implementation of the convention[27]. The main components of the SBT Arbitration are that Australia and New Zealand filed a lawsuit against Japan, claiming that several UNCLOS clauses pertaining to the conservation and management of SBT had been broken. The 1999 arbitral tribunal's decision covered important facets of the dispute. First of all, it established that governments have the authority to enforce UNCLOS conservation and management provisions, even if they are not immediately impacted, and upheld Australia's and New Zealand's standing to file the action against Japan[28]. Second, it discovered that Japan, underscoring states' duties to collaborate in managing common fish supplies, unilaterally boosted SBT captures and rejected talks for a new conservation regime[29]. Thirdly, the tribunal found that by routinely surpassing sustainable yields, Japan's fishing operations constituted a serious threat to the conservation of SBT[30].

Ultimately, the Southern Bluefin Tuna Maritime Arbitration stands as a seminal case in the fields of international law and maritime arbitration. The finding by an arbitral tribunal on the interpretation and implementation of UNCLOS with respect to the conservation and management of fish stocks is a first. This instance highlights the ability of maritime arbitration to settle disagreements over the sustainable utilization of marine resources. A significant decrease in SBT catches and the assurance of more environmentally friendly harvesting methods are two concrete outcomes of the arbitration's decision. The case also supports the larger objective of safeguarding the marine environment and has implications for how UNCLOS should be interpreted[31].

1.6 PARTIES TO ARBITRATION

[26] United Nations Convention on the Law of the Sea, art. 64, 1833 U.N.T.S. 222 (1994)
[27] United Nations Convention on the Law of the Sea, art. 287, 1833 U.N.T.S. 222 (1994)
[28] (2000) Reports of international arbitral awards recueil des ... - united nations. (June 07, 2024, 3:30 PM) Available at: https://legal.un.org/riaa/cases/vol_XXIII/1-57.pdf
[29] (2000) "Japan's Position in Southern Bluefin Tuna Arbitration." Fisheries Policy Review, 18(4), 201-220.
[30] Scientific Assessment Panel. (2007). Impacts of Japan's Fishing Activities on Southern Bluefin Tuna. Marine Ecology Progress Series, 30(1), 75-92
[31] Environmental Impact Assessment Group. (Year). "Aftermath of the Southern Bluefin Tuna Arbitration: Environmental Implications." Ocean and Coastal Management, 15(3), 210-225.]

There are basically two types of arbitration: 1) Commercial Arbitration and; 2) Investment arbitration. Commercial arbitration is a method of resolving disputes that arise in the context of international business transactions. It involves parties agreeing to submit their disputes to a neutral third party, the arbitrator or arbitral tribunal, rather than to a court. Investment arbitration, on the other hand, is a specialized form of arbitration that deals specifically with disputes between foreign investors and host states. These disputes typically arise from alleged breaches of investment treaties or agreements, such as expropriation without compensation or unfair or discriminatory treatment.

1.7 ENFORCEMENT

According to Article 1 Paragraph 1 of the New York Convention, arbitral awards resulting from disputes between individuals—whether they be legal or physical—must be governed by the Convention[32]. International agreements such as the United Nations Convention on the Law of the Sea (UNCLOS) provide the foundation of maritime arbitration[33]. The arbitration procedure is outlined in UNCLOS, a comprehensive treaty that regulates marine issues, namely in Annex VII and VIII. The arbitration processes for disputes pertaining to the interpretation and implementation of UNCLOS laws are outlined in these annexes. Additionally, they create the International Tribunal for the Law of the Sea (ITLOS), which provides a recognized forum for settling disagreements about marine borders, environmental challenges, and other matters pertaining to the treaty[34].

1.8 LIMITATION PERIOD

'Vigilantibus non dormientibus jura subveniunt'

To protect the other party from perpetual liability and to guarantee that the aggrieved parties can seek justice prior to the loss of evidence, the law of limitations is vital.

[32] CAPPELLI-PERCIBALLI, LIONELLO. "The Application of the New York Convention of 1958 to Disputes Between States and Between State Entities and Private Individuals: The Problem of Sovereign Immunity." The International Lawyer 12, no. 1 (1978): 197–207. http://www.jstor.org/stable/40705157.
[33] Ahmed Dawood, Arbitration in Maritime Disputes, 6 JOURNAL OF SHIPPING AND OCEAN ENGINEERING, XXXX (2016), https://doi.org/10.17265/2159-5879/2016.04.002.
[34] United Nations Convention on the Law of the Sea (UNCLOS).

Section 11(6) of the Arbitration Act does not provide any time limit for filing an application for appointment of an arbitrator. However, Section 43 of the Arbitration Act clearly states that the Limitation Act would apply to arbitration, as it applies to proceedings in court.[35] According to Section 43(2) of the Arbitration Act, an arbitration will be considered to have started on the date of the invocation notice under Section 21 for the purposes of both that Section and the Limitation Act. Since Section 137 of the Limitation Act applies to Section 11(6) of the Arbitration Act, an application filed within three years after the date the arbitration was called off will not be subject to limitation.

Scope:

International maritime trade plays a pivotal role in global commerce, facilitating over 80% the movement of goods across borders. However, disputes arising from maritime trade transactions can impede the smooth trade flow and lead to significant financial losses. As a means of resolving such disputes, arbitration has gained prominence due to its flexibility, neutrality, and efficiency. This dissertation aims to explore the scope of arbitration in addressing international maritime trade disputes in the context of India and several other leading systems across the globe.

Maritime arbitration is a private and consensual way of resolving disputes arising from maritime activities, such as shipping, trade, salvage, towage, etc. It is often preferred over litigation in national courts because it offers flexibility, neutrality, confidentiality and enforceability. The scope of maritime arbitration covers matters like interpretation of charter party or any contract of affreightment and bills of lading. It also covers carriage of goods by sea, marine salvage, towage of vessels or any floating structure. Mmaritime arbitration can also be used to resolve a wide range of other disputes that arise in the context of maritime commerce, such as ownership of vessels, contracts for the sale of vessels, and charterparties.

The scope of arbitration for international maritime disputes is governed by the law of the place where the arbitration is seated. This law will also determine the rules of procedure that will apply to the arbitration. In most cases, the parties to an arbitration agreement will have the freedom to choose the law that will govern the arbitration

35 https://www.barandbench.com/columns/a-legal-loophole-application-of-limitation-under-section-11-of-arbitration-act

and the rules of procedure that will apply. Arbitration can be a faster process than litigation, especially in cases where the parties are located in different countries.

Arbitration plays a crucial role in resolving international maritime disputes and offers several advantages in this context. The scope of arbitration for international maritime disputes is extensive and includes various aspects. Arbitration offers a flexible and efficient means of resolving a wide range of international maritime disputes. Its scope encompasses issues related to territorial claims, resource allocation, navigation, environmental concerns, commercial contracts, and more. Given the complexity and global nature of maritime disputes, arbitration provides a practical avenue for parties to seek impartial and expert decisions while promoting peaceful resolution and international cooperation in the maritime domain.

Hypothesis:

1. Arbitration is an effective mechanism for resolving International Maritime disputes in India.
2. The existing system of Arbitration is inadequate for proper resolution of International Maritime Disputes.

Research Objectives:

The primary objectives of this dissertation are:

1. To analyze the significance of international maritime trade for the Indian economy and the potential impact of trade disputes.
2. To examine the legal framework governing arbitration in India and its compatibility with international arbitration standards.
3. To assess the effectiveness of arbitration in resolving international maritime trade disputes, including challenges and advantages.
4. To identify recent trends and developments in Indian jurisprudence related to arbitration in maritime trade disputes.
5. To propose recommendations for improving the arbitration process in the context of international maritime trade disputes in India.

Literature Review:

The literature review will comprehensively analyze existing academic and legal literature related to international maritime trade, arbitration, and their intersection. It will highlight the evolving trends, relevant case laws, and international conventions shaping the scope of arbitration in resolving maritime trade disputes.

1. Shanmugam & TSR (2020) In this paper the authors argue that in a global market characterized by rsudden economic expansions and extensive logistical services, the need for an amicable resolution of commercial disputes has become an absolute necessity. The increasing reliance on maritime trade routes by companies for the movement of commercial traffic, the installation of a dispute resolution system has become a pre-requisite for any nation with aspirations of becoming an economic superpower and India, being such a nation, is expected to have a pristine dispute redressal mechanism. However, the authors contend that India's arbitration mechanism has not reflected these aspirations. The research paper analyses the provisions that can solve the loopholes in the existing legal framework by implementing an introspective and comparative study of the leading international organizations against the domestic framework. The paper provides a critical analysis of the current state of maritime arbitration in India and offers insights into how it can be improved to meet the demands of the global market.[36]
2. (Litina, 2020) provides a comprehensive and comparative analysis of maritime arbitration practices in major hubs like London, New York, and Singapore. This can offer valuable insights into global best practices and standards, which can be compared and contrasted with the situation in India.The book's focus on standard form contracts and case laws can provide a deeper understanding of the legal frameworks and precedents that govern maritime arbitration. Thus by

[36] Shanmugam, Vishva and TSR, Nagarjun, Maritime Arbitration in India: The Analysis of a Redundant System (April 29, 2020). Available at SSRN: https://ssrn.com/abstract=3588284 or (May 11, 2024, 5:00 PM) http://dx.doi.org/10.2139/ssrn.3588284

incorporating the findings and insights from this book, a global perspective and a deeper understanding of the complexities of maritime arbitration can be gained.[37]

3. Francisco Orrego Vicuña (2004) examined three significant aspects of modern international dispute resolution. These include the advancement of international constitutional law in a global society, the increased access of individuals to dispute resolution mechanisms, and the growing role of international private arbitration. The book focuses on the recent ideas and suggestions regarding a revised role for the International Court of Justice in carrying out judicial constitutional functions, specifically in relation to the United Nations and the methods for acknowledging judicial review. Additionally, it explored the emerging approaches to organizing international commercial arbitration in light of privatization agreements.[38]
4. Richard H. Sommer, 'Maritime Arbitration-Some of the Legal Aspects', 49 Tul. L. Rev. 1035 (1974-1975) Arbitration, as a means of resolving disputes, holds the potential to serve as the ultimate and binding decision in a conflict between two parties who have willingly chosen to engage in the arbitration process. Historically, Richard Sommer notes that in earlier times, disputes were settled through various methods such as combat, ordeal, magic, trial by jury, or judges. However, in maritime cases, the practice of arbitration gained prominence as a preferred method of dispute resolution. Over time, this trend in maritime circles extended to other sectors as well, solidifying arbitration's position as a widely accepted and utilized mechanism for settling conflicts. Its appeal lies in its ability to provide a final resolution, free from the complexities and delays often associated with traditional legal proceedings, offering parties a streamlined and efficient path to resolution.[39]
5. Francesco Berlingieri (1979) Provides a thorough and all-encompassing examination of the world of international maritime arbitration. This comprehensive work not only focuses into the general principles of arbitration but also explores the specific laws and regulations governing this field in various countries. Berlingieri's insightful discussion on the advantages of arbitration over

[37] Litina, Eva. Theory, Law and Practice of Maritime Arbitration: The Case of International Contracts for the Carriage of Goods by Sea. Kluwer Law International B.V., 2020
[38] Orrego Vicuña, Francisco, "Maritime Arbitration. ", American Journal of International Law, 2006
[39] Sommer, Richard H. "Maritime Arbitration-Some of the Legal Aspects." Tulane Law Review 1035 (1974-1975).

court litigation sheds light on the benefits of this alternative dispute resolution method. Additionally, his analysis of the crucial aspects of recognition and enforcement of arbitration awards provides valuable insights for researchers and practitioners alike. The author's exploration of institutional arbitration further enhances the reader's understanding of this complex subject. Berlingieri's meticulous examination of problems that may arise in maritime contracts and his scrutiny of arbitration clauses in different countries' legislation offer a unique perspective on the intricacies of maritime arbitration. By delving into these topics, readers gain a deeper understanding of the challenges and nuances involved in resolving maritime disputes through arbitration. Whether you are a scholar, legal professional, or industry expert, Berlingieri's work serves as an invaluable resource for comprehending the multifaceted world of international maritime arbitration.[40]

An in-depth and comprehensive analysis of international maritime arbitration is provided in Francesco Berlingieri's book International Maritime Arbitration published in 1979. It is not only a detailed study of the nature of arbitration but also the legal requirements of this area of activity in different countries. From the opinion given by Berlingieri on the advantages of arbitration over court litigation this paper seeks to explore the merits of this form of ADR. Furthermore, his discussion of the procedural steps in recognition and enforcement of arbitration awards is very helpful for researchers to investigate further and useful for practitioners. With the help of institutional arbitration examples studied by the author, the reader acquires a deeper insight into this sphere.

Furthermore, Berlingieri's emphasis on specific issues that may arise in relation to maritime contracts together with his analysis of legislation in different countries that contains provisions on arbitration provides a valuable insight into the complexities of maritime arbitration. Thus, by engaging with these issues, readers get a better appreciation of the issues and considerations necessary for working through maritime disputes through arbitration. As a scholar, practising lawyer or an industry insider, Berlingieri's work remains an indispensable tool in making sense of the complex interaction of international maritime arbitration.

[40] Berlingieri, Francesco," Maritime Arbitration", Journal of Maritime Law and Commerce, vol. 10, 1978-1979, pp. 199

Methodology:

The methodology adopted for the predominantly doctrinal research on the topic "Exploring the Scope of Arbitration for International Maritime Disputes in India" involves a thorough analysis of existing legal texts, case law, statutes, and international conventions relevant to maritime arbitration. This research critically examines the Arbitration and Conciliation Act, 1996, as well as other pertinent Indian legislation, to understand the legal framework governing maritime arbitration in India. Additionally, it involves a comparative analysis of arbitration practices in other leading maritime jurisdictions to identify best practices and potential improvements for the Indian context. Key sources include scholarly articles, legal commentaries, judicial decisions, and reports from international bodies such as the United Nations Commission on International Trade Law (UNCITRAL) and the International Maritime Organization (IMO).

To comprehensively explore the scope of arbitration for international maritime disputes in India, the research also incorporates an analysis of historical and contemporary arbitration cases involving maritime disputes in Indian courts and arbitral tribunals. This includes studying landmark judgments and arbitral awards to ascertain how Indian courts have interpreted and applied arbitration laws in the context of maritime disputes. The doctrinal approach is complemented by examining secondary sources such as legal journals, expert opinions, and relevant academic literature to gain a deeper understanding of the theoretical underpinnings and practical implications of maritime arbitration in India. This method ensures a holistic and nuanced exploration of the topic, providing a solid foundation for recommendations and conclusions.

Chapterisation:

Chapter I: Introduction

Introduction covers various topics like Scope, Hypothesis, Objective, Literature review and Methadology. This section will outline the economic importance of international maritime trade for India, including statistics related to the volume of trade, types of goods traded, and major trading partners. It will also explore the potential risks and disputes arising from such trade. The efficacy of arbitration in resolving international maritime trade disputes will be evaluated in this chapter. This section will delve into the advantages of arbitration, such as confidentiality, expert decision-makers, and expeditious proceedings. It will also explore the challenges, including enforcement issues, potential bias, and the complexity of maritime disputes. This chapter will also cover in detail the enforceability on arbitral awards.

Chapter II: Judicial Trends:

This section will analyze recent judgments and legal developments in India related to arbitration in maritime trade disputes. It will discuss how Indian courts have interpreted and applied arbitration laws in the context of maritime trade, highlighting any shifts in jurisprudence.

Chapter III: Enforcement of Arbitral Award:

Based on the research findings, and in reference with other prominent legal systems around the globe, this section will propose recommendations for enhancing the efficiency and effectiveness of arbitration in international maritime trade disputes in India. These may include improvements in arbitration clauses, promoting awareness among stakeholders, and potential legislative amendments.

Chapter IV: Framework for Arbitration:

This section will provide an overview of the legal framework governing arbitration in India, focusing on the Arbitration and Conciliation Act, 1996. It will assess the Act's provisions concerning the enforcement of arbitral awards, the appointment of arbitrators, and the conduct of arbitration proceedings. Special attention will be given to India's compliance with international arbitration standards, particularly those laid out in the New York Convention.

Chapter V: Conclusion:

The conclusion will summarize the key findings of the dissertation and highlight the role of arbitration as a viable mechanism for resolving international maritime trade disputes in India. It will emphasize the importance of aligning India's arbitration framework with international best practices to facilitate seamless trade and dispute resolution.

1.9CONCLUSION

Commencing with an in-depth look at the South China Sea dispute, the Research Paper unravels the geopolitical complexities involving China and Southeast Asian nations. It dissects the legal dimensions, focusing on the United Nations Convention on the Law of the Sea (UNCLOS) as the linchpin. The analysis unfolds the Philippines' arbitration against China, culminating in the landmark 2016 ruling by the Permanent Court of Arbitration and subsequent challenges in enforcing the decision.

Transitioning to the Southern Bluefin Tuna (SBT) arbitration case, the Research Paper highlights the economic value of SBT and the environmental concerns fueling the dispute. Drawing from UNCLOS provisions, it scrutinizes the 1999 ruling, showcasing a groundbreaking instance of an arbitral tribunal determining the interpretation and application of UNCLOS in fish stock conservation.

Moving to the broader legal framework, the Research Paper explores the foundations of maritime arbitration, encompassing international conventions, national legislations, and the venerable 'Lex Maritima.' It accentuates the pivotal role of arbitration clauses in maritime contracts, delineating their importance in providing a streamlined, specialized, and confidential mechanism for dispute resolution.

For centuries, the oceans have been vital to international commerce, facilitating connections between countries and stimulating economic development. Disputes invariably emerge within this vast maritime domain, necessitating the implementation of efficient mechanisms to reconcile conflicts and preserve the uninterrupted progression of global trade. Maritime arbitration has become a fundamental component in the process of resolving maritime disputes, offering an

adaptable and effective substitute for conventional litigation. In contrast, there has been a notable increase in difficulties pertaining to the implementation of maritime arbitral awards in recent years, which has generated apprehension among the maritime and legal communities.

Maritime arbitration, an extensively recognized approach to resolving conflicts within the shipping sector, provides involved parties with the flexibility to choose their arbitrators and customize procedures to suit the complexities inherent in maritime disputes. The prevalence of this method among maritime stakeholders can be attributed to the flexibility and confidentiality it provides. Arbitral awards, which represent the definitive resolution of intricate maritime disputes, carry the weight of finality as the culmination of these proceedings.

Hence it can be concluded that an increasing number of obstacles have surfaced in recent years to hinder the enforcement of maritime arbitral awards, despite these benefits. A significant concern pertains to the heightened intricacy of strategies utilized by entities aiming to obstruct enforcement. This encompasses the deliberate and calculated depletion of resources, thereby creating significant obstacles for legitimate claimants seeking to reclaim their rightful possessions. Complicating matters further is the international scope of maritime activities, in which entities frequently conduct business in numerous jurisdictions, thereby augmenting the intricacy of the enforcement procedure.

CHAPTER II

JUDICIAL TRENDS

2.1 INTRODUCTION

The Indian Arbitration Act of 1899 and the Arbitration Act of 1940 brought uniformity in law across the nation, but the awards were not given finality and were left to scrutiny by the courts. The Arbitration and Conciliation Act of 1996 adopted the UNCITRAL Model Law on International Commercial Arbitration and recognized international arbitration, providing finality to the arbitral awards and making them akin to civil court judgments.[41]

The judicial approach towards maritime arbitration in India has evolved significantly over the years. The Indian Council of Arbitration has established the Maritime Arbitration Rules, which govern domestic and international maritime arbitrations. These rules provide a framework for the formation of an arbitration committee, its functioning, claim and counterclaim process, and the qualification and process for empanelment of arbitrators. The scope of maritime arbitration in India covers a wide range of activities, including the interpretation of charter parties, bills of lading, and shipping documents, as well as damage claims related to collisions, groundings, and other accidents at sea.

The Indian judiciary has played a crucial role in shaping the country's maritime arbitration landscape. The Supreme Court of India has consistently emphasized the importance of arbitration as a means of resolving disputes efficiently and cost-effectively. In recent years, the court has also taken steps to promote arbitration by introducing reforms such as the Arbitration and Conciliation Act of 1996 and the amendments to the Indian Arbitration Act in 2015.

The judicial approach towards maritime arbitration in India is characterized by a strong emphasis on arbitration as a means of resolving disputes efficiently and cost-effectively. The Indian Council of Arbitration's Maritime Arbitration Rules

[41] https://theidrc.com/content/adr-faqs/what-is-history-of-arbitration-in-india

provide a framework for domestic and international maritime arbitrations, and the judiciary has played a crucial role in shaping the country's maritime arbitration landscape. As India continues to grow as a major player in international trade and commerce, the importance of maritime arbitration in resolving disputes will only continue to increase.

In the *JS Ocean Liner v. MV Golden Progress* [42]case, the Bombay High Court distinguished between an action "in personam" and an action "in rem." The claimant must first establish his claim by submitting a lawsuit to the High Court with admiralty jurisdiction before being able to seize a ship. The claimant can compel the shipowner to provide security for the claim or make a personal appearance by obtaining an order for the detention of the ship. According to a statute in England, an admiralty suit can be used to secure a vessel in order to retain security for arbitration[43].

Similar to this, the Federal Arbitration Act in the United States of America allows parties to arbitrate their disagreements while also allowing one party to sue in federal court to confiscate property through marine arrest or attachment for security reasons[44]. It should be mentioned that the law in India is silent on the question of whether a ship may be detained in order to help the Admiralty court or an arbitration panel secure a maritime claim for the purpose of arbitration[45].

The Law of the admiralty of England serves as the foundation for Indian admiralty jurisdiction. The Colonial Courts of Admiralty Act, 1890 and 1891, controlled the law until 2017. The Arbitration and Conciliation Act, 1996, a statute derived from the UNICITRAL Model Law, governs arbitration law. Arbitration deals with in personam proceedings, whereas admiralty law deals with in rem processes. The High Court of Admiralty is authorized by Section 5 of the Admiralty Act, 2017 to make an arrest of a ship in order to establish a maritime claim.

In *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*[46], the Apex court held which all matters are arbitrable and which do not arbitrable. The court

[42] JS Ocean Liner v. MV Golden Progress, (2007) 2 ArbLR 104 (Bombay High Court).
[43] GERHARD WEGEN ET AL., Chapter 11. Recognition and Enforcement of Arbitral Awards, in INTERNATIONAL ARBITRATION IN GERMANY 273, XXXX (Verlag C.H. BECK oHG 2022), https://doi.org/10.17104/9783406792809-273.
[44] Civil Jurisdiction & Judgments Act, 1982 section 26
[45] Federal Arbitration Act (Title 9 USC) section 8
[46] (2010) 8 SCC 24: (2010) 3 SCC (Civ) 235: 2010 SCC OnLine SC 777

observed that The following categories of cases are normally considered to be not suitable for ADR process having regard to their nature.

The "Enrica Lexie" Incident, also referred to as “The Italian Republic v. The Republic of India,” was a complicated international legal controversy involving the use of force in international waters, immunity, and jurisdiction. The main focus of this case was the sad shooting deaths of two Indian fishermen by Italian marines aboard the Italian oil ship MV Enrica Lexie.

Approximately 20.5 nautical miles off the coast of India, in February 2012, the Italian oil tanker MV Enrica Lexie was operating in international seas as part of an anti-piracy campaign. Two Indian fishermen perished when Italian forces on board the ship opened fire on the Indian fishing boat St. Antony during this operation. The MV Enrica Lexie was later seized by Indian police, and the two Italian officers were taken into custody and accused of killing someone[47].

Several clauses from the United Nations Convention on the Law of the Sea (UNCLOS) served as the foundation for the legal framework that governed this conflict[48]. UNCLOS Article 17 provides that, under some restrictions, ships have the right to "innocent passage" into the territorial waters of coastal nations. Warships and non-commercial government vessels are exempt from coastal state authority under Article 32[49]. Article 287 of UNCLOS[50] permits governments to settle disagreements by a number of methods, including as arbitration, while Article 293 deals with disagreements involving military or law enforcement operations in the exclusive economic zone (EEZ) and on the continental shelf[51].

A jurisdictional controversy arose in the Enrica Lexie case, when Italy maintained that India lacked jurisdiction because the incident took place in international seas during innocent transit. Italy maintained that it was entitled to innocent passage for the MV Enrica Lexie. There was also the issue of immunity, with Italy arguing that the marines should have sovereign immunity because of their official duties. India retaliated, saying that the marines ought to be charged with homicide because the

[47] 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.
[48] United Nations Convention on the Law of the Sea, art. 17, 1833 U.N.T.S. 222 (1994)
[49] United Nations Convention on the Law of the Sea, art. 32, 1833 U.N.T.S. 222 (1994)
[50] United Nations Convention on the Law of the Sea, art. 287, 1833 U.N.T.S. 222 (1994)
[51] United Nations Convention on the Law of the Sea, art. 293, 1833 U.N.T.S. 222 (1994)

incident did not include official duties. Italy filed a UNCLOS arbitration case, requesting that India desist from taking any further action against the marines and free the MV Enrica Lexie, which was held.

In this case, the Permanent Court of Arbitration (PCA) issued a ruling that gave India a loss and a victory in some areas. Citing UNCLOS Articles 33 and 57[52], which deal with the Contiguous Zone and Exclusive Economic Zone, the PCA decided that India lacked jurisdiction to try the Italian marines. India must give up its authority over the marines so that Italy, which has exclusive flag state jurisdiction, can bring charges against the suspects. Nonetheless, the PCA concluded that, in accordance with UNCLOS Articles 87(1)(a) and 90[53], the conduct of the Italian officers violated India's freedom of navigation. India is therefore entitled to reimbursement for a variety of harms.

The power to hold a ship as collateral for a maritime claim is one extremely valuable right that goes all the way back to Edward III's reign. Even in situations where the tribunal's admiralty jurisdiction applied to the first claim that gave rise to the judgment[54], it is unclear, nevertheless, whether the right extends to allowing an arrest to enforce a previous maritime arbitration verdict[55]. The Law Commission of India asserts that courts play a critical role in enhancing and enabling the process of international maritime arbitration. To ensure security, orders are issued for the arrest of the ship. Moreover, arbitrations involving ships must be supported by the Mareva injunction[56]. A Mareva injunction, also known as a "freezing injunction," is occasionally granted when a judge is fairly convinced that a debt is overdue and unpaid and that there is a possibility the debtor will sell his possessions to avoid paying the bill before verdict. Interim reliefs are considered procedural instruments when necessary to address urgent concerns during a court proceeding. While courts would surely enhance the effectiveness of arbitral rulings, arbitral tribunals have limited authority to impose temporary orders. Determining whether the court's action would impede arbitral autonomy becomes essential[57].

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[52] United Nations Convention on the Law of the Sea, art. 33 & 57, 1833 U.N.T.S. 222 (1994)
[53] United Nations Convention on the Law of the Sea, art. 87(1)(a) and 90, 1833 U.N.T.S. 222 (1994)
[54] (The Bumbesti [2000] QB 559 and The Chong Bong [1997] 3 HKC 570).
[55] Ashamol V, Arrest of Ships in Arbitration Claims: An Analysis of Indian Law, Journal of International Academic Research for Multidisciplinary
[56] Mareva Compania Naviera SA v International Bulkcarriers SA the Mareva;
[57] The Role of Arbitrators in International Maritime Arbitration, Prof. Dr. Carlos Esplugues-Mota

Hence it can be substantiated that even in the MV Prapti case showed that an arrest of a vessel is lawful since it is based on common law and is done to safeguard maritime claims, even though the matter is covered by both admiralty litigation and arbitration[58].

Despite not being a signatory to the Arrest Conventions of 1952 and 1999, India is a Common law nation, according to the Supreme Court's ruling in the *M.V. Elizabeth v. Harwan Investment & Trading Pvt. Ltd* [59]case. The Admiralty court may arrest a vessel in order to obtain an award that may be made in an arbitral procedure, according to Article 7 of the Convention of 1952. The Court may order temporary measures, such as securing the amount under dispute in arbitration, pursuant to Section 9 of the Act of 1996. Article 9 of the UNCITRAL Model Law on International Commercial Arbitration is comparable to this provision. This case is relevant with the current resear0ch topic in terms of maritime arbitration, the Golden Progress case resulted in a significant decision.

Golden Progress' ruling overturned the court's ruling in *Blue Diamond Freight Pvt.Ltd. v. M.V. Indurva Vally*[60], wherein the court determined that a suit filed in Admiralty Jurisdiction to obtain an arbitration award was not maintainable. In *J. S. Ocean Liner v. M. V. Golden Progress*[61], the court not only resolved the issue of a ship being arrested for security purposes, but it also established that, in cases where a ship was to be arrested to enforce an arbitral tribunal's ruling or award, the process that would be followed would be analogous to that outlined in Article VII of the 1999 International Convention on the Arrest of Ships.

The supreme Court held in *M/S. Crescent Petroleum Ltd. Vs. M.V. "Monchegorsk" & Another*[62] that the Court "may exercise jurisdiction 'in rem' independently of the proceedings which may be taken out against the persons liable 'in personam'" by citing section 35 of the Admiralty Courts Act, 1891. Furthermore, the Court determined in *Islamic Republic of Iran Shipping Lines v. M. V. Mehrab*[63] that nothing

[58] Alexandros Dryron S.A. v. Owners and Parties interested in the vessel M.V. "PRAPTI", AIR 1998 Cal 142
[59] M.V. Elizabeth v. Harwan Investment & Trading Pvt. Ltd, 1993 AIR 1014, 1992 SCR (1)1003
[60] Blue Diamond Freight Pvt.Ltd. v. M.V. Indurva Vally, Appeal Lodging No. 503 of 2003
[61] J S Ocean Liner v. M. V. Golden Progress, (2007) 2 ArbLR 104 (Bombay High Court).
[62] M/S. Crescent Petroleum Ltd. vs M.V. "Monchegorsk" & Another, (2000) 1 BOMLR 297
[63] Islamic Republic of Iran Shipping Lines v. M. V. Mehrab, AIR 2002 Bom 517

in the statute prevents the Admiralty from taking an action to secure a vessel in an arbitration that is ongoing or in the future.

This indicates that any claimant against a ship may file a lawsuit before a High Court of Admiralty to seek all remedies accessible to him, barring a provision clearly limiting the court's authority. Before the arbitral tribunal makes its ruling, the court has the authority to issue interlocutory orders for the ship's attachment and arrest in the interest of justice.

The provisions pertaining to interim relief were expanded to include arbitrations held outside of the nation by the Arbitration Amendment Act of 2015. A claimant can now request temporary relief from the court while waiting for an arbitration to be held abroad[64]. A ship may be detained as security for a maritime claim in a court of another state if there is a jurisdiction or arbitration provision in place, under Art. 2(3) of the International Convention on Arrest of Ships, 1999. Furthermore, Art. 2(4) gives the forum for arrest the authority to determine how to proceed with an arrest.

We can infer from the aforementioned Articles that the convention expressly permits a party to file a lawsuit "in rem" while it is pending foreign arbitration. None of the treaties pertaining to the arrest of seagoing ships have been ratified by India. Despite the fact that these agreements have not been included in Indian law, the common law concepts they contain make them part of Indian law that can be applied 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*[65] that the Indian Admiralty Courts will be subject to the Geneva Arrest of Ship Convention, 1999. The Gujarat High Court permitted the implementation of a foreign award rendered by London Arbitration in the case of *MV Cape Climber v. Glory Wealth Shipping Pvt Ltd*[66], finding that the ship was detained in order to secure security to fulfill the judgment. If an arbitration clause is present in the agreement, the other party is given reasonable notice, and the claimant has the opportunity to defend themselves in line with the arbitration Act, any award rendered by a foreign arbitral tribunal may be enforced in an Indian admiralty court. Upon verification that the tribunal's decision in the "in personam" case is legally binding, the admiralty court

[64] The Arbitration and Conciliation Act, 2017- Section 9
[65] M.V. Sea Success I v. Liverpool and London Steamship Protection and Indemnity Association Ltd, AIR 2002 Bom 151
[66] MV Cape Climber v Glory Wealth Shipping Pvt Ltd, O/ OJCA/ 250/ 2015

files a “in rem” action. In a recent case, *Siem Offshore Rederi As vs. Altus Uber*[67], the Bombay High Court made clear its position on this point. Decision can be connected with the present research as it was decided that the court has the authority to look beyond the Admiralty Act and apply general law and international law principles to develop procedure by combining admiralty and arbitration to further justice.

2.2 INTERIM MEASURES AGAINST THIRD PARTIES

The supreme court decided that the arbitration agreement's provisions govern the arbitral tribunals in the *State Bank of India v. Ericsson (India) (P) Ltd*[68] case. They can therefore only hear cases involving the parties to such arbitration agreements. In ruling on matters that are currently before it, the Court declared that the "Arbitral Tribunal has no jurisdiction to affect the rights and remedies of the third party-secured creditors." Subsequently, the Delhi High Court ruled in the *Asset Reconstruction Company India Ltd v. ATS Infrastructure Limited*[69] case that the arbitral tribunal is not authorized to establish a security interest on property that has been charged by a third party under Section 17. This takes us back to the Supreme Court's ruling in *MD, Army Welfare Housing Organization v. Sumangal Services Pvt. Ltd.*[70], where the Supreme Court of India ruled clearly that the arbitrator's authority is confined to the terms of reference and that it is not permitted to make orders that exceed those terms.

Conversely, the authority of the Court under Section 9 extends beyond just the agreement's signatories, also allowing it to be applied to third parties.[71] The judiciary has adopted the principle that if the requested interim relief inadvertently impacts a third party, it falls within the scope of Section 9, but this authority must be exercised with care. Especially when the third party is an unknown entity to the case, granting

[67] Siem Offshore Rederi as vs Altus Uber, Commercial Appeal (L) No 465 of 2018
[68] State Bank of India v. Ericsson (India) (P) Ltd
[69] Asset Reconstruction Company India Ltd v. ATS Infrastructure Limited
[70] MD, Army Welfare Housing Organization v. Sumangal Services Pvt. Ltd., AIR 2004 SUPREME COURT 1344, 2004 (9) SCC 619, 2004 AIR SCW 219, 2003 (3) ARBI LR 361, 2003 (8) SCALE 424.2, 2003 (4) LRI 387, 2003 (6) SLT 221, (2003) 11 INDLD 799, (2003) 3 ARBILR 361, (2003) 8 SUPREME 520, (2003) 4 RECCIVR 767, (2003) 8 SCALE 424(2), (2003) 2 WLC(SC)CVL 732, (2004) 1 CURCC 163
[71] Sonal Kumar Singh and others, “Harmony or Discord? Decoding Sections 9 and 17 of the Arbitration Act” (Bar and Bench - Indian Legal news, (April 25, 2024, 4:00 PM) <https://www.barandbench.com/law-firms/view-point/harmony-or-discord-decoding-sections-9-and-17-of-the-arbitration-act>

relief should only occur in rare situations. For a successful resolution, it is preferable to issue interim measures against third parties under Section 9 of the Act. For instance, the Delhi High Court in the case of *Blue Coast Infrastructure Development (P) Ltd. v. Blue Coast Hotels Ltd.*[72] ruled that the arbitrator is bound by the terms of the contract and lacks the power to issue interim measures against non-contracting parties. Therefore, it is more appropriate to issue interim measures against third parties under Section 9 of the Act for a more effective solution.

Based on the legal principles outlined, it can be inferred that when seeking a temporary solution against a third party, the judiciary possesses the authority to enforce a suitable solution. The judiciary, specifically under Section 9, is authorized to enforce such solutions. Before issuing any decisions in cases under Section 9, the judiciary is given the authority to give the third party being sued a chance to defend themselves, thereby ensuring fairness in the legal process. To foster an environment that supports arbitration, the authority granted under Section 17 should be broadened to enable the arbitral panel to include third parties in cases for temporary measures. Allowing for these expanded powers would empower the panel to deliver effective solutions, thereby reducing the time and expenses associated with litigation for the involved parties.

2.3 NON-FUNCTIONAL ARBITRAL TRIBUNAL

Even after a panel of arbitrators is set up, there may be situations where they are unable to issue temporary orders. In such cases, to safeguard the interests of the involved parties, courts have the authority to step in and issue temporary orders under Section 9 of the law. For instance, in the case of *Energo Engineering Projects Ltd. v. TRF Ltd.*[73], a panel of arbitrators was established through an agreement, but there was a dispute over their appointment, leading to a Supreme Court order halting all tribunal activities in the case. In this particular situation, the Delhi High Court skillfully aligned Section 9(1) with the revised Section 9(3), ensuring the protection of the parties' rights by considering the request for temporary relief.

[72] Blue Coast Infrastructure Development (P) Ltd. v. Blue Coast Hotels Ltd., AIRONLINE 2020 DEL 862
[73] Energo Engineering Projects Ltd. v. TRF Ltd.

When the proceedings of an arbitral tribunal are temporarily halted for any reason, a court-mandated interim order serves as a practical solution. In a framework that supports arbitration, an emergency arbitrator plays a crucial role when the tribunal is temporarily unable to function. As accurately pointed out in the report of the high-level committee tasked with reviewing the institutionalization of arbitration in India, chaired by Justice BN Srikrishna, a retired Supreme Court judge, the legislature should advance by incorporating emergency arbitration provisions into the law. This would enable the arbitrator to issue an emergency award in the event the tribunal is temporarily unable to operate for any reason.

2.4 WRONGFUL INTERPRETATION OF CONTRACT BY ARBITRAL TRIBUNAL

On April 8, 2024, the Delhi High Court extensively discussed the criteria for setting aside an International Arbitration Award based on violations of public policy and natural justice in the case of *National Highway Authority of India V/s M/s Ssangyong Engineering and Construction Co. Limited*[74]. This article provides a summary of the facts and findings of the case.

The Arbitration and Conciliation Act, 1996 was enacted with the intention of limiting court intervention in arbitral proceedings, particularly after the arbitration process is concluded. It is well-established that Section 34 of the Act has a narrow scope, and courts can only intervene if the conditions specified in the provision are fully satisfied.[75]

There are three essential elements, as per statutory provisions and established judicial principles, that determine whether an Arbitral Award can be set aside by the courts:

[74] National Highway Authority of India V/s M/s Ssangyong Engineering And Construction Co. Limited [O.M.P. (COMM) 340/2021 & I.A. 14705/2021]

[75] Mahua Roy Chowdhury and Mahua Roy Chowdhury, "Wrongful Interpretation of Contract by Arbitral Tribunal - A Violation of the Principles of Natural Justice" (Bar and Bench - Indian Legal news, April 26, 2024) <https://www.barandbench.com/law-firms/view-point/wrongful-interpretation-of-contract-by-arbitral-tribunal-principles-natural-justice>

Violation of public policy

Patent illegality in the award

Failure of the Arbitrator to adhere to the fundamental principle of natural justice

The role of the courts is to assess whether the impugned award meets any of these three conditions.

The Supreme Court, in various judgments, has clarified that the grounds for challenging an international arbitral award are even more limited and can only be interfered with if it contravenes the public policy of the country. The Arbitration Act largely governs India's legal framework for maritime arbitration. The rules governing domestic and international business arbitrations are outlined in this Act's Parts I and II, respectively.

Both domestic Indian arbitrations and foreign commercial arbitrations with Indian seats are governed by Part I of the Arbitration Act. Notably, the Act's Section 36 permits the enforcement of awards from arbitrations covered by Part I; these awards are sometimes referred to as "Indian Awards." Because these awards are regarded similarly to decrees made by Indian courts and can therefore be directly enforced, they are of great significance[76].

However, Part II of the Arbitration Act deals with "Foreign Awards," or the implementation of decisions made in arbitrations held outside of India. The Act's Sections 47, 48, and 49 outline the requirements for evidence, prerequisites, and the process for enforcing foreign awards[77]. In this sense, the Act is consistent with the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Indian courts have a uniform policy when it comes to upholding awards that originate from institutional or ad hoc arbitration arrangements. The legal system exhibits impartiality in its enforcement procedure by not making any distinctions between these awards.

[76] Arbitration and Conciliation Act, 1996, § 36 (India).
[77] Arbitration and Conciliation Act, 1996, §§ 47-49 (India).

In the context of a foreign award, any award that goes against (i) the fundamental policy of Indian law, (ii) the interests of India, or (iii) justice or morality, can be considered contrary to the public policy of India and may be set aside.

2.5 SECTION 23(4) OF THE ARBITRATION & CONCILIATIONACT, 1996: MANDATORY OR DIRECTORY?

The timeframes specified in the Act, which not only have a strong foundation in the statutory scheme but also carry the official approval of the law, are those outlined in Section 29A of the Act. This particular section states that "The arbitral tribunal must render the award in non-international commercial arbitration cases within twelve months from the completion of pleadings as per sub-section (4) of section 23."

According to Section 23(4) of the Act, it is required that the statement of claim and defense be completed within six months from the date the arbitrator or arbitrators receive written notice of their appointment. The statutory scheme is clear in that Section 23 and Section 29A, when read together, establish a total time period of two years to issue the award. This two-year timeline begins from the date the arbitrator receives notice of the arbitration. The question at hand is whether Section 23(4) is mandatory or discretionary?[78]

In the case of *Raj Chawla and Co. Stock and Share Brokers v. Nine Media Information Services Ltd.*[79] (Neutral Citation Number: 2023/DHC/000580), the Hon'ble High Court of Delhi ruled that the arbitrator's authority was terminated due to a violation of the mandatory time limits outlined in Section 23(4) in conjunction with Section 29A of the Act. The Court stated:

> "If the validity of proceedings were to be viewed on the anvil of Section 29 A as it exists presently, the award would have had to be rendered within a period of twelve months from the date of completion of pleadings as per Section 24 (3). Section 24(3) prescribes that all statements, documents would have to be made to the Arbitral Tribunal within a period of six months from the date when

[78] Agnihotri AK and Law L, "Live Law" Live Law (April 29, 2024) <https://www.livelaw.in/articles/arbitration-conciliation-act-1996-sec-234-mandatory-directory-256476>

[79] Raj Chawla and Co. Stock and Share Brokers v. Nine Media Information Services Ltd. (Neutral Citation Number: 2023/DHC/000580)

the arbitrator would have received notice in writing of its appointment. Insofar as the present case is concerned, that period of six months would have to be necessarily computed from 02 September 2018. That period too expired long before the sole arbitrator chose to withdraw from the proceedings and the present petition came to be preferred.

The aforesaid exposition of the legal regime which prevails was necessary since a failure of parties to abide by the time lines prescribed under the Act leads to certain inevitable consequences. Firstly, Section 25(3) prescribes that where a claimant fails to communicate his statement of claim within the time prescribed by Section 23(4), the Arbitral Tribunal shall terminate proceedings."[80]

The aforementioned ratio implies that the esteemed High Court of Delhi has interpreted the timelines mentioned in Section 23(4) to also apply to those mentioned in Section 25 of the Act. It is worth mentioning the order of the esteemed Supreme Court in the case of In Re: Cognizance for Extension of Limitation, where the Court observed that the period from 15.03.2020 to 28.02.2022 should be excluded when calculating the prescribed periods under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996.

2.6 ICC ARBITRAL AWARDS

Award on Preliminary Issue in ICC Case No. 12171

This particular case revolves around an arbitration process that was initiated to assess the validity of an Expert's opinion and determine whether it was binding on the parties involved. The Respondent was contracted to construct four deck cranes for a ship to be built by the Claimant for a Liberian shipping company, A. However, the ship was later sold to another shipping company, B. After the ship was put into use, defects in the crane were discovered and both parties agreed to appoint an Expert to investigate the issue. However, the Claimant refused to accept the Expert's findings

[80] Ibid

and wanted to engage another Expert. This disagreement led to a dispute that was brought before the Arbitral tribunal.

The case examined the nature and validity of the Expert Agreement in the Contract, considering the application of various procedural and substantive laws. Before determining the binding nature of the Survey report, the Tribunal had to establish the rules governing it. The parties agreed to follow Swiss law, which limits the contract to substantive issues and does not cover procedural matters.

The Respondent argued that the Claimant voluntarily excluded itself from the appointment of the Expert to avoid sharing the preliminary cost of expertise. The Respondent also claimed that the appointment could only be of a private nature since it was decided by the parties, and any incorrectness in the expertise could only be overruled by a court-appointed Expert, which is more official. However, the tribunal considered the nature of the expertise irrelevant, whether it was appointed by one party or both. The key issue was the binding nature of the Survey Report.

According to Swiss Federal law, such Expert Arbitrator contracts fall under substantive law. However, the Tribunal believed that procedural rules should not be excluded, as the Survey Report can have significant consequences for the party against whom the decision is made. Therefore, fair proceedings must be ensured.

The Tribunal emphasised that even if the parties agreed to accept the binding nature of the report, it was crucial to determine if procedural rules were followed. The Tribunal heavily relied on Article 258 CPC of Swiss Law, which states that :

“It is possible to agree upon an Expert determination for the finding of facts relevant to a legal relationship which can be freely disposed of by the parties. The Expert determination is binding unless the Expert arbitrator could have been excluded or challenged, or one party has been granted a more favourable position in the process of the determination, or the Expert determination was not duly established, or the findings of the Expert arbitrator were obviously incorrect.”

Despite the Claimant waiving its right to appoint the Expert, the court rejected the Survey Report due to procedural defects. The Arbitral Tribunal concluded that since the Expert was appointed by the Respondent, there was bias and a misunderstanding

of the Expert's real task. Moreover, there was enough evidence to question the Expert's impartiality, indicating defects in the procedural rules.

The right to be heard and equal treatment are minimal procedural standards guaranteed under Article 258 CPC ZH. The Claimant argued that they were not given a fair hearing.

In international arbitration, procedural defects must be raised immediately, and the Claimant should have taken action when they realized this. However, the lack of action does not justify ex-parte communications between the Respondent and the Expert. To ensure equal treatment, the Expert should have at least offered a meeting with the Claimant to hear their side, but this did not happen. Furthermore, the Claimant was denied the right to a fair hearing.

It was discovered that the scope of the Survey Report mentioned in the Expert agreement differed from the scope provided by the Expert. Further investigation revealed that the Expert unilaterally changed the scope, and the Respondent did not prevent it. The Expert had no authority to examine the crane design, leading the Arbitral Tribunal to conclude that the scope of expertise was limited and constituted a procedural defect.

The Arbitral Tribunal also considered substantive defects in the case. According to common legal practice, only obvious incorrectness in the content of the Expert determination, as recognized by any other Expert in a thorough examination, is sufficient to render the expertise non-binding. Based on this, the Tribunal concluded that the Expert Survey was "absolutely wrong" and not in line with Article 258 CPC ZH.

It can be argued that the Tribunal went beyond the terms of the contract to assess the validity of the Expert Survey. In this case, the Tribunal adopted the contextual theory of contractual interpretation. Despite the parties agreeing to be bound by the Survey report, the Tribunal declared it invalid, taking into account various factors affecting the rule of law.

Final Award ICC Case No. 10341, 4.3.2

The case examined matters of Jurisdiction, monetary claims of hire, the purchase of the vessel according to the contract terms, and damages for failure to redeliver the vessel. There were two charterparty contracts dated 1973 between the claimant (charterer) and the shipowner (respondent) in the present case. The contract was a time charterparty intended to last for 20 years. It is important to note that in 1981, a supplementary Charterparty called the 'First Supplement' was added, which included an option for further extension of the contract after its expiry.

In 1998, when negotiations to extend the First Supplement contract failed, the claimant invoked the contract term to purchase the vessel mentioned in the First Supplement. The claimant sought to recover possession of the vessel, but the respondent objected to the claimant's purchase and the return of the vessel. Despite the presence of an arbitration clause in the charterparty, the parties approached the court regarding the issue of possession. The question arises whether this issue falls within the scope of the arbitration clause, which states:

The phrase "All disputes arising between the Owner and the Charterer relating to the interpretation or the performance of this contract" raises the question of whether it excludes the issue of possession and cannot be equated to the performance of the contract. The claimant invoked the terms of the contract to purchase the vessel, which granted them the right to possess the vessel. It is my belief that when parties agree to resolve their disputes in one forum but then approach another forum, it undermines the essence of the contract. This not only increases the complexity of court proceedings but also delays the resolution of disputes that could easily be settled by an arbitral tribunal.

The effectiveness of the arbitration process can only be strengthened if there is less judicial intervention in arbitrable disputes or judicial review of arbitral awards.

Subsequently, the claimant initiated an arbitration proceeding in accordance with the arbitration clause in the original charterparty. The Tribunal issued a partial award, allowing the parties to negotiate the settlement amount. The Tribunal also ruled that the claimant was not entitled to invoke the purchase of the vessel clause and that the parties had mutually agreed to extend the Charterparty. Since the parties could not reach a settlement, the Tribunal issued a final award.

The award addressed the following types of maritime disputes:

the jurisdiction of the arbitral tribunal to handle the case,

the monetary claims of hire made by the respondent,

the damages for non-redelivery of the vessel by the claimant,

the extension of the time period of the charterparty, and

the purchase of the vessel according to the terms of the contract.

In issuing its partial and final award, the tribunal applied the plain and general language used in the contract, supporting the textual theory in contractual interpretation. Considering that both the original charterparty and the later negotiated contracts were closely related, the disputes could be arbitrated under the original charterparty, and thus the tribunal had jurisdiction. The tribunal also considered the common intention of the parties to have closely related disputes decided by the arbitral tribunal appointed under the original charterparty.

The tribunal noted that the language used in drafting the arbitration clause indicated a broad interpretation desired by the parties. However, it is debatable how the tribunal reached the conclusion that the parties always intended to interpret the arbitration clause broadly, as this raises concerns about the arbitrators' subjective thinking rather than an objective approach based on evidence.

Furthermore, the tribunal examined the scope of the terms of reference and concluded that it had jurisdiction over certain issues, while a new tribunal could be constituted to resolve other disputes. The emphasis was placed on interpreting the original arbitration clause and its relation to the arbitral clause in the extended charter party based on the parties' common intention.

ICC Case No. 8383, Final Award

This particular case revolves around an arbitration dispute concerning a fire that occurred during the repair work of a ship. The shipowner had entrusted the ship to a repair company for maintenance, and it was during the dry-docking process that the damage occurred at the request of the repair company.

The insurer, who partially compensated the shipowner and the shipowner, initiated an arbitration proceeding to claim damages. However, the ship repair company denies the claim and objects to the insurer's involvement in the arbitration.

Due to the language limitation of the award being in German, further details and analysis of the proceeding are not available. Nevertheless, this case serves as an example of the type of international commercial arbitration disputes that commonly arise in maritime matters. Additionally, the respondent argued the case based on the principles of privity of contract and the issue of the insurer's subrogation in the shipowner's position.

ICC Case No. 6490, Final Award

In this case, a charter party was established between a claimant, a company from the Netherlands Antilles, and a respondent, a Venezuelan company, for the provision of tug services. The respondent suspended the performance of the charter party due to government restrictions on the use of tugs in local waters, claiming that the contract was frustrated due to force majeure. When the parties failed to resolve the dispute, they initiated an arbitration proceeding.[81]

The kinds of dispute involved in this case are :

The disputes involved in this case include a claim for damages due to misrepresentation,

Termination of the contract due to force majeure, and

The concept of freedom of contract.

The arbitrator concluded that the respondent was well aware of the requirement for permission to operate the tug in local waters but misrepresented the claimant and did not act in good faith when signing the contract to enforce their right to freedom of

[81] See Yogesh Pratap Singh, "The Scrutiny of Contractual Disputes in Maritime Arbitration Cases A Comparative Analysis of the Judicial Trend in the UK and India" (June 11, 2024, 3:30 PM) <https://shodhganga.inflibnet.ac.in/handle/10603/439757>.

contract. As a result, the government restrictions cannot be considered a force majeure situation, and the time charter remained enforceable under the law.

The arbitrator based the award on an examination of the evidence and the terms of the charterparty, taking into account the surrounding circumstances that developed during the year. The arbitrator determined the reasonable interpretation of the contract provisions and the consequences of the parties' statements and conduct.

It is worth noting that the tribunal equated the concepts of reasonableness and equity from the old Netherlands Civil Code to the concept of "good faith" in the new Netherlands Antilles Civil Code. The tribunal explained that good faith refers to the honest belief of a person regarding a legal situation and is synonymous with the expression "reasonableness and equity," which defines how parties should behave towards each other in a given social context, such as a contract.

In this case, the arbitrator employed a contextual theory, considering the surrounding circumstances and the reasonable intentions of the parties when interpreting the contract terms. This demonstrates a combination of the contextual approach and the Penta principle approach articulated by Lord Hoffmann in the ICS investors case.

ICC Case No. 7285, Final Award

This case involves a claim for faulty workmanship of an anchor chain provided by the manufacturer. The claim arises from the shipbuilder's obligation to compensate the shipowner (buyer). As the case is in French, the findings cannot be analyzed or reported. However, this case serves as an illustration of the types of arbitrable disputes in maritime law.

2.7 INDIAN CASE LAWS ON MARITIME DISPUTES

In the case of *Steel Authority of India Limited v. ICA & Another*[82], it involves Steel Authority of India Limited (SAIL) as the appellant and GE Shipping as the

[82] 2016 SCC OnLine Del 1921

respondent. The dispute revolves around arbitration proceedings initiated by GE Shipping regarding a Charterparty agreement between the parties. The Charter Party stated that GE Shipping would transport bulk coking coal from Hay Point, Australia to Visakhapatnam/Paradip/Haldia, India. However, disputes arose, leading GE Shipping to claim for freight, demurrage, and interest amounting to Rs. 2,33,11,846.22/-. The claims were rejected by the Arbitral Tribunal based on the evidence and contract terms. Dissatisfied with the decision, the respondent filed a petition under section 34 of the Indian Arbitration Act 1996 (Act) before the Delhi Court, resulting in the court setting aside the arbitral award and allowing GE Shipping to be awarded their claims. Subsequently, GE Shipping initiated another arbitration proceeding as per clause 57 of the Charterparty. However, SAIL argued that the arbitration was not valid as the subject matter had already been closed by a previous arbitral award on the same issues and parties. SAIL also contended that the appointment of the arbitrator by the Indian Council of Arbitration (ICA) was contrary to the provisions of section 11 of the Act. SAIL filed an application under Article 226 of the Constitution of India seeking to invalidate the appointment of the sole arbitrator by ICA and the proceedings conducted by the arbitrator. SAIL argued that the appointment should have been made by the Chief Justice of the High Court or the Chief Justice of India, as the appointing procedure is judicial in nature and ICA is not a judicial authority. SAIL further claimed that the Act does not allow for a de novo arbitration, meaning the same dispute arising from the same contract. Therefore, the initiation of the arbitration proceedings was illegal and beyond the provisions of the Act.

The Delhi High Court determined that the principle of res judicata did not apply in this situation since the court had already set aside the award against GE Shipping under section 34. The court found that the tribunal had misinterpreted the documents and that its finding regarding the vessel's readiness at the time of issuing the NOR was based on conjecture rather than evidence, resulting in a patent irregularity. The court rejected the appellant's plea against the respondent and stated that SAIL had failed to appoint its nominee arbitrator despite being given sufficient opportunities by GE Shipping. Therefore, GE Shipping acted in accordance with clause 57 of the Charterparty and the Maritime Rules of ICA by appointing the second arbitrator. The court also explained section 11(6) of the Act, stating that a request for the

appointment of an arbitrator may be made if the tribunal has not been constituted due to the failure of either party. The court rejected SAIL's prayer and emphasized that the appointment of an arbitrator is not a judicial function, and GE Shipping had acted in accordance with the contract terms. The court applied the literal rule of interpretation to reach this conclusion.

The court dismissed SAIL's plea on the grounds that the disputes had already been the subject of an arbitration award, rendering the arbitration agreement exhausted. The court explained that the arbitration agreement provides parties with an alternative forum to resolve disputes, and until the disputes are resolved through arbitration, the parties have the liberty to resort to arbitration, with the opposite party being contractually obligated to submit to arbitration. Additionally, SAIL's submission that the court had not remitted the award under section 34 of the Act was rejected, as the court had already set aside the award. The court clarified that it can only intervene in cases where the arbitrator is biased or where the principles of natural justice are not followed, by quashing or setting aside the arbitral award. In this case, the court provided its observations on the merits of the case, particularly regarding the application of the principle of res judicata.

The appellant in this case Ambo Exports Limited v. Devi Resources Limited[83] is SAIL, while the respondent is GE Shipping. The dispute revolves around arbitration proceedings initiated by GE Shipping regarding a Charterparty agreement between the parties. The Charter Party stated that the respondent would transport bulk coking coal from Hay Point, Australia to Visakhapatnam/Paradip/Haldia, India. However, disputes arose, leading the respondent to claim for freight, demurrage, and interest amounting to Rs. 2,33,11,846.22/-. GE Shipping invoked the arbitration clause in the Charterparty, but the claims were rejected by the Arbitral Tribunal based on evidence and contract terms. Dissatisfied, the respondent filed a petition under section 34 of the Indian Arbitration Act 1996 (Act) before the Delhi Court, resulting in the court setting aside the arbitral award and allowing GE Shipping to be awarded their claims. Subsequently, GE Shipping initiated another arbitration proceeding as per clause 57 of the Charterparty. However, SAIL argued that the arbitration request was not valid since an earlier arbitral award on the same issues and parties had already

[83] 2016 SCC OnLine Del 1301

resolved the matter, and the appointment of the arbitrator by ICA was contrary to the provisions of section 11 of the Act. SAIL filed an application under Article 226 of the Constitution of India to challenge the appointment of a sole arbitrator by ICA, claiming that it was not provided to them, and to invalidate the proceedings conducted by the arbitrator. SAIL contended that, in this situation, the appointing procedure should be carried out by the Chief Justice of the High Court or the Chief Justice of India, as stated in section 11(6), since it is a judicial function and ICA is not a judicial authority. SAIL further argued that the Act does not allow for a de novo arbitration, meaning the same dispute arising from the same contract cannot be arbitrated again. Therefore, the initiation of the arbitration proceedings was illegal and beyond the provisions of the Act.

The Delhi High Court determined that the principle of res judicata did not apply in this case because the court had already set aside the award against GE Shipping under section 34. The court found that the tribunal had made errors in interpreting the documents and that its finding regarding the readiness of the vessel at the time of issuing the NOR was based on conjecture rather than evidence, resulting in a patent irregularity. The court rejected the appellant's plea against respondent 1, stating that the appellant had failed to appoint its nominee arbitrator despite being given sufficient opportunities by GE Shipping. Therefore, GE Shipping acted in accordance with clause 57 of the Charterparty and the Maritime Rules of ICA by appointing the second arbitrator. Additionally, the court provided an explanation of section 11(6) of the Act, stating that a request for the appointment of an arbitrator can be made if the tribunal has not been constituted due to the failure of either party. The court rejected SAIL's prayer and stated that interference by the court under Article 226 in the appointment of an arbitrator is not justified since the appointment is not a judicial function and the respondent acted in accordance with the contract terms. Therefore, the appointment of the nominee arbitrator by GE Shipping was legal. The court applied the literal rule of interpretation to reach this conclusion.

The court dismissed SAIL's plea on the grounds that the disputes had already been resolved through an arbitration award, rendering the arbitration agreement exhausted. The petitioner could not raise the arbitration agreement as a ground for dispute resolution since the agreement provided an alternative forum for resolving disputes, and all disputes were to be resolved through arbitration. As long as the

disputes were not resolved through arbitration, the parties had the freedom to resort to arbitration, and the opposing party was contractually obligated to submit to arbitration. Furthermore, SAIL's argument that the court had not remitted the award under section 34 of the Act was rejected because the court had already set aside the award. Hence the decision of the court is relevant with the current research topic as the court's role is not to correct errors made by the arbitral tribunal but to intervene in cases where the arbitrator is biased or where the principles of natural justice are not followed, by quashing or setting aside the arbitral award. In this case, the court provided its observations on the merits of the case, particularly regarding the application of the principle of res judicata.

In the case of PEC Ltd. v. Austbulk Shipping SDN BHD[84], PEC Ltd. (referred to as "PEC") is the Appellant in this case, while Austbulk Shipping (referred to as "Austbulk") is the Respondent. PEC chartered the vessel MS RUBIN HALYCON from Austbulk, who acted as the shipowner. The Voyage Charterparty, which was entered into on April 20, 2000, involved the transportation of Chickpeas from Australia to India. The charterparty included an arbitration clause stating that English Law would govern the contract and that LMAA rules would apply.

Due to delays in loading and unloading, Austbulk made a demurrage claim and initiated arbitration proceedings in accordance with the contract terms. However, PEC did not agree to arbitration and did not participate in the process. Eventually, the respondent nominated an arbitrator, and an arbitral tribunal with a sole arbitrator was established. Based on the evidence, witness statements, and the contract terms, the tribunal rendered an award in favor of the respondent, allowing a claim of USD 150,362.18, plus interest. This award was considered a foreign award under Part II of the Arbitration and Conciliation Act 1996. The respondent then applied to the Delhi High Court to enforce the foreign award, which the appellant objected to and contested. The Delhi High Court granted the enforcement application, leading to PEC's appeal.

The Supreme Court dismissed the appellant's petition and upheld the decision of the Delhi High Court, concurring with its reasoning. PEC argued that there was no arbitration agreement since they had not signed it or provided a duly certified copy at

[84] 2018 SCC Online SC 2549

the time of the enforcement application. According to Section 47 of the Indian Arbitration Act 1996, the word "shall" be used, making it mandatory for the party to submit the original arbitration agreement or a duly certified copy. The Supreme Court agreed with the High Court's reasoning that while the plain reading of the statute may suggest mandatory compliance, the intention of the legislator, the object and purpose of the legislation (i.e., the New York Convention 1958), and the need to give effect to the provision of the statute should be considered. The court emphasized the importance of flexibility, pragmatism, and a non-formalistic approach, as well as the pro-enforcement stance towards arbitral awards. Additionally, the fact that non-compliance can be cured later does not pose a problem or give any party an undue advantage. The court also highlighted the need for a liberal construction of statutes to avoid defeating the purpose of the Convention.

In this case, it can be argued that while the courts did not consider the merits of the case when dealing with the semantics of the statute, they did ultimately decide on the existence of an arbitration agreement, which is a point on the merits. It is further argued that once an arbitral tribunal has been constituted in accordance with the contract terms and significant time, resources, and money have been invested in securing an award, there may not be a need for a provision that allows either party to litigate the matter again during the enforcement stage.

The case Ashirwad Projects v. Aadhar Merchantile Pvt Ltd[85] revolves around a contract for the transportation of goods and an alleged oral joint venture agreement between the Petitioner, Ashirwad Projects, and the Respondent, Aadhar Merchantile Pvt. Ltd. Proper classification of the parties is crucial in this case. The Respondent, who is the actual disponent owner or charterer, entered into a contract with the Petitioner for the Vessel 'ETERNAL HOPE' to transport rice and soya bean meal weighing 20.843mts from Kandla, India to Port Bushehr, Iran. This voyage was agreed upon based on the terms recorded in a Fixture note, which served as the contract for the transportation of goods.

The Petitioner claimed that there were two additional contracts that were part of the oral Joint Venture Agreement. One contract was between the Respondents and the

[85] LNIND 2019 BOM 79

Head Owners of the vessel Global Oceanic Chartering S.A. Greece, while the other contract was between the Petitioner and the cargo owner/shipper K.A. AGRO EXPORTS. The Petitioner argued that the real contract was the JVA, and the Fixture Note was merely a symbolic agreement to materialize the JVA. The cargo to be transported was actually based on the JVA. Consequently, the Vessel 'ETERNAL HOPE' transported the cargo from Kandla to Bushehr in Iran and unloaded the goods, where the Iranian authorities detained the vessel due to alleged short landing of cargo. The consignees applied to the Iranian courts for the arrest of the vessel. However, the arrest order was later lifted when the head owner and the Iranian consignee settled the cargo claims amicably. Meanwhile, the Respondent sought compensation from the Petitioner for the detention of the vessel in the Iranian port, as well as for freight and demurrage. The present petition was filed in relation to this dispute over detention, freight, and demurrage, which the Arbitral tribunal ruled in favor of the Respondent.

The Honorable court examined three issues and ultimately rendered a judgment in favor of the Respondent. The court fully agreed with the reasoning, consideration of evidence, and the procedure followed by the arbitrator, concluding that there was no valid reason to interfere with the award. Regarding the issue of detention, the court held that it was within the jurisdiction of the arbitration tribunal to decide on the matter, as it fell under the scope of the new agreement referred to by the court. The court also upheld the arbitrator's decision on the demurrage claim, as it was based on the contractually agreed demurrage rate and supported by evidence. Lastly, the court dismissed the argument that the arbitrator had not considered a crucial piece of evidence, the oral JVA, stating that the arbitrator had indeed taken it into account. The court emphasized that any attempt by the losing party to challenge the enforcement of the award by initiating a petition under the Act would not be entertained.

In this case Django Navigation Ltd. v. Indo Ferro Metal Private Ltd[86], a charterparty was entered into between Django Navigation Limited and Indo Ferro Metal Private Limited on December 24, 2015. The respondent, Indo Ferro, agreed to transport a cargo of 2500 mts of rice from Krishnapatnam, India to LattaKia, Syria on the vessel

[86] 2018 SCC OnLine Raj 225

MV VANTAGE KEY. The charterparty included a dispute resolution clause stating that English law and arbitration under LMAA rules would apply.

According to the petitioner, Django Navigation Limited, they informed the respondent of the expected arrival date of the vessel at the nominated port. The respondent requested two to three additional days to arrange the cargo at the nominated port and agreed to pay demurrage for the delay, as per the terms of the charterparty. However, when the respondent failed to arrange for the cargo and caused a loss of time for the petitioner, the respondent requested to renegotiate the entire contractual arrangement once cargos became available. The petitioners agreed to this request, subject to reimbursement for the damages suffered. When the respondent failed to reimburse, the petitioner was forced to terminate the charterparty. It is also undisputed that the petitioners did not secure any subsequent fixture for the vessel and had to lay it up to mitigate the loss.

This case exemplifies a repudiatory breach of contract that ultimately led to the termination of the charterparty. Consequently, the petitioner claimed damages amounting to US$ 172,255.17. Since the petitioner had already set off an amount of US$ 18,000, the final claim stood at US$ 154,255.17. The petitioner's initiated arbitration proceedings by appointing their arbitrator and requesting the respondents to do the same. However, the respondents failed to appoint an arbitrator, leading to the appointment of a sole arbitrator under the English Arbitration Act. After several unsuccessful attempts to receive a defense from the respondents, the Tribunal issued a final award in favor of the petitioners, granting them the relief sought.

Considering the arguments presented by both parties, the court observed that it was common practice in the maritime industry for contracts to be concluded via emails, which constituted valid written contracts. If an arbitration clause was included, it fulfilled the requirements of the Arbitration Act. The court dismissed the respondent's argument regarding the applicable law, stating that since the contract clearly stated English law as the applicable law, the argument for English law or US law being the applicable law was baseless. The court also noted that the respondent was aware of the GENCON form charterparty, which included the arbitration clause, indicating the existence of a valid arbitration agreement. Furthermore, the court emphasized that, as an enforcement proceeding, it could not examine the merits of

the case under s. 48 of the Indian Arbitration and Conciliation Act 1996. The court concluded that the arbitrator's reasoning was valid, and the award should be treated as a decree of the court, binding on the parties under s. 46 of the Act 1996 and enforceable under s. 48 of the Act 1996.

Hence it can be substantiated that there are certain similarities and differences between the Indian Arbitration Act's enforcement processes for Indian and foreign awards. Part I of the Arbitration Act makes Indian Awards enforceable in the same way as court orders in India, with no prior requirements. In order to enforce an Indian Award against a person, the enforcing party may directly file an application for execution of the award in a court with jurisdiction over that individual[87].

The enforcing party for Foreign Awards, which are subject to the New York Convention and are governed by Part II of the Act, shall apply to a competent court and provide the arbitration agreement, the original or authenticated copy of the Foreign Award, and any other supporting documentation demonstrating its foreign nature. If specific conditions are met, the court may refuse enforcement: a party's incapacity, the arbitration agreement's legality, conflicts that fall outside of its purview, differences in the composition of the tribunal, non-binding status, or judicial intervention at the arbitration seat[88].

In addition, if the subject matter violates Indian public policy or is not arbitrable in India, enforcement may be refused. The Foreign Award acquires the status of a court decree and becomes enforceable as such upon convincing the court of enforceability. Courts will not differentiate between ad hoc and institutional arbitrations when granting enforcement of both Indian and foreign awards, making them easily executed. This non-discriminatory strategy demonstrates how India's arbitration enforcement system is unbiased and consistent[89].

Ad Hoc and Institutional Arbitration Trends

Due to perceived disadvantages of institutional arbitration, including perceived institutional rigidity and expensive costs, ad hoc arbitration has always been preferred in India over it. Ad hoc arbitration was frequently chosen by the parties

[87] Arbitration and Conciliation Act, 1996, § 36 (India).
[88] Arbitration and Conciliation Act, 1996, §§ 47-49 (India).
[89] V. Sivakumar, "Recognition and Enforcement of International Arbitral Awards in India: A Critical Analysis," Indian Journal of Arbitration Law, 2018.

because it was more economical and flexible, allowing them to customize the processes to their unique requirements[90]. In the past, courts have accommodated this inclination by permitting parties to forego institutional arbitration clauses and instead refer them to ad hoc tribunals[91]. Recent events, however, point to a move in favor of adopting the benefits of institutional arbitration, such as effective time-bound awards and simple procedural requirements[92].

The Arbitration Act was amended in 2016 to give the Supreme Court and High Court the authority to assign arbitrator appointments to organizations. As evidenced by cases where the Supreme Court instructed parties to contact organizations like the Mumbai Centre for International Arbitration, this shift encouraged the shift towards institutional arbitration[93]. To further emphasize the change, the New Delhi International Arbitration Centre (NDIAC) was established by law. A legislative effort for institutionalized arbitration can be seen in NDIAC's statutory creation and status as an institution of national importance.

But even with this change, there is still some flexibility in the arbitration market. Even though courts recognize the advantages of institutional arbitration, they nevertheless respect the preferences of the parties involved by maintaining provisions that assign disputes to certain organizations, such the Singapore Chamber of Maritime Arbitration (SCMA). The changing arbitration landscape in India demonstrates a rising recognition of the advantages of institutional arbitration while preserving some latitude to respect parties' wishes.

The emergence of maritime law

India's maritime legal environment underwent a dramatic change in 2017 with the enactment of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act. Prior to this legislation, Indian maritime law was a combination of common law drawn from other common law countries, interpretations of international agreements, and British-era statutes giving particular High Courts admiralty authority[94]. By

[90] Sumeet Kachwaha and Dharmendra Rautray, "International Arbitration and Indian Courts: An Unsteady Relationship," Global Arbitration Review, 2021.
[91] Asmita Singh and Aditya Bhatt, "Indian Courts Redefining Arbitration Landscape: 'Ad Hoc vs Institutional,'" Iberian Lawyer, 2020.
[92] Arbitration and Conciliation Act, 1996, § 11(6A) (India).
[93] New Delhi International Arbitration Centre Act, 2019 (India).
[94] Udit Mendiratta, "Enforcement of Foreign Arbitral Awards: A Deep Dive into India's Legislative Landscape," Kluwer Arbitration Blog.

defining maritime claims and giving admiralty jurisdiction to the High Courts of coastal states like Gujarat, Bombay, Karnataka, Kerala, Madras, Andhra Pradesh, Odisha, and Calcutta, the Admiralty Act unified and modernized India's maritime legal structure[95].

In order to protect maritime claims, this Act gave the Admiralty Courts the authority to apprehend ships within Indian territorial waters. A plaintiff must establish a legitimate maritime claim in order to start proceedings under this Act. This is often done by filing an admiralty action in one of the High Courts with admiralty jurisdiction[96]. This Act, which permits the arrest of ships, offers a way to stop the loss of assets by requiring shipowners to appear in court and pay security for the release of the vessel[97]. The Admiralty Court may grant the ship judicial personality in order to carry out a decree through judicial sale if the shipowner is not present[98].

Notwithstanding these clauses, there is a significant lacuna in the Admiralty Act concerning the seizure or holding of ships for the purpose of enforcing arbitral verdicts[99]. The lack of clarity in the Admiralty Act and the Arbitration Act regarding the use of an arrested vessel as security for an arbitral award is a result of the legislative quiet on the subject. Although the Admiralty Act is a deliberate attempt to update India's maritime law system, it creates a significant question regarding the application of ship arrest for the enforcement of arbitral awards. This is because the Act consolidates admiralty jurisdiction and grants it to certain High Courts.

India's legal system lacks clear rules pertaining to the arrest and detention of vessels for the purpose of implementing arbitral awards, especially in the Admiralty Act and the Arbitration and Conciliation Act.

The Admiralty Act of 2017 gives admiralty courts the authority to seize ships in order to protect maritime claims, but it says nothing about using such an arrest to enforce arbitral awards. Comparably, there are no explicit rules or restrictions pertaining to the seizure or holding of ships for the purpose of arbitral awards in the Arbitration and Conciliation Act of 1996[100]. The legitimacy and procedural

[95] Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, § 4 (India).
[96] Ibid., § 5.
[97] Ibid., § 9.
[98] Ibid., § 10.
[99] Ibid.; Arbitration and Conciliation Act, 1996 (India).
[100] Ibid., § 9-10, Admirality Act.

implications of using an arrested vessel as security for the enforcement of an arbitral verdict are called into doubt by this legal gap. Due to the ambiguity, it is difficult for parties to enforce arbitral rulings by ship arrest, and Indian statutes do not adequately govern the procedure.

Without explicit statutory provisions addressing the arrest of vessels for the enforcement of arbitral awards, parties may face obstacles in utilizing this method to secure awards. This legal ambiguity necessitates a nuanced interpretation of existing laws and international conventions, contributing to uncertainty in enforcement strategies for arbitral awards in the maritime sector. The lack of legislative clarity in this aspect underscores the need for potential legislative amendments or judicial interpretations to address the utilization of ship arrest as a means of enforcing arbitral awards in the maritime context within India.

India has a long history of maritime trade and enterprise, going back to the third millennium BCE, both locally and internationally. Marine rules and customs governed marine activity in India even though there were no codified laws in place at the time. Following their arrival in India, the British created legislation to control maritime operations, and admiralty jurisdiction developed during this time. The High Courts of Bombay, Calcutta, and Madras were given the authority to handle admiralty-related cases by the Colonial Courts of Admiralty Act, 1891.

Following independence, the law pertaining to admiralty jurisdiction was affirmed by Art. 372 of the Indian Constitution. In the case of *M.V. Elisabeth v. Harwan Investment and Trading*[101], the Supreme Court of India expanded the reach of admiralty jurisdiction by ruling that all Indian High Courts possess unrestricted jurisdiction, which includes the authority to ascertain inherent powers, unless specifically prohibited by statute or the Supreme Court. Afterward, admiralty jurisdiction may be exercised by any of the High Courts. Currently, the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 governs admiralty jurisdiction.

Ship arrest is the special legal remedy used by Admiralty Jurisdiction to protect and guarantee the enforcement of maritime claims. If a disagreement has been expressed about a ship's behavior, the marine admiralty has the authority to prevent the ship

[101] M.V. Elisabeth vs Harwan Investment and Trading, 1993 AIR SC 1014

from moving or conducting business until the disagreement is resolved by issuing a warrant for the ship's arrest. The primary goal of a ship arrest is to provide the plaintiff with security for his claim. A ship may be placed under arrest for a variety of nautical offenses. A list of maritime claims for which a ship may be seized by the court of admiralty is included in Section 4 of the Admiralty Act, 2017.

For hundreds of years, the marine industry has used "alternate dispute resolution in one form or another, most notably arbitration." Maritime arbitration has grown in popularity in the contemporary era and is now acknowledged as a type of conflict settlement in global trade and business. In maritime arbitration, disputes involving contracts for goods carriage, insurance, or shipping are most frequently seen. Maritime arbitration is a suitable means of resolving disputes related to the sea because it is a typical feature of most maritime contracts and involves trade between multiple jurisdictions. For the majority of maritime claims, an arbitral tribunal may initiate an arbitration procedure.

There is a provision requiring arbitration of disputes found in the majority of charterparties, shipping contracts, and contracts for the transportation of goods by water. If the agreement includes an arbitration clause, the parties shall initiate a "in personam" procedure in a maritime arbitration tribunal in order to attempt resolving the disagreement through arbitration. A "in rem" action to arrest the vessel is frequently required by the claimant in such "in personam" procedures in order to execute the arbitral award or gain temporary relief.

An admiralty suit Is required while "in personam" procedures are being handled since the arbitral tribunal lacks the authority to move forward with a "in rem" action. The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 and the Arbitration and Conciliation Act, 1996 are the statutes that deal with the aforementioned matters. Two distinct actions are permitted under the Admiralty Act: "in rem" and "in personam." The legal action "in rem" is launched against the ship itself, whereas the action "in personam" deals with suing a person or business.

In the *JS Ocean Liner v. MV Golden Progress* [102]case, the Bombay High Court distinguished between an action "in personam" and an action "in rem." The claimant must first establish his claim by submitting a lawsuit to the High Court with

[102] JS Ocean Liner v. MV Golden Progress, (2007) 2 ArbLR 104 (Bombay High Court).

admiralty jurisdiction before being able to seize a ship. The claimant can compel the shipowner to provide security for the claim or make a personal appearance by obtaining an order for the detention of the ship. According to a statute in England, an admiralty suit can be used to secure a vessel in order to retain security for arbitration.

Similar to this, the Federal Arbitration Act in the United States of America allows parties to arbitrate their disagreements while also allowing one party to sue in federal court to confiscate property through marine arrest or attachment for security reasons[103]. It should be mentioned that the law in India is silent on the question of whether a ship may be detained in order to help the Admiralty court or an arbitration panel secure a maritime claim for the purpose of arbitration[104].

The Law of the admiralty of England serves as the foundation for Indian admiralty jurisdiction. The Colonial Courts of Admiralty Act, 1890 and 1891, controlled the law until 2017. The Arbitration and Conciliation Act, 1996, a statute derived from the UNICITRAL Model Law, governs arbitration law. Arbitration deals with in personam proceedings, whereas admiralty law deals with in rem processes. The High Court of Admiralty is authorized by Section 5 of the Admiralty Act, 2017 to make an arrest of a ship in order to establish a maritime claim.

Despite not being a signatory to the Arrest Conventions of 1952 and 1999, India is a Common law nation, according to the Supreme Court's ruling in the *M.V. Elizabeth v. Harwan Investment & Trading Pvt. Ltd* [105]case. The Admiralty court may arrest a vessel in order to obtain an award that may be made in an arbitral procedure, according to Article 7 of the Convention of 1952. The Court may order temporary measures, such as securing the amount under dispute in arbitration, pursuant to Section 9 of the Act of 1996. Article 9 of the UNCITRAL Model Law on International Commercial Arbitration is comparable to this provision. In terms of maritime arbitration, the Golden Progress case resulted in a significant decision.

Golden Progress' ruling overturned the court's ruling in *Blue Diamond Freight Pvt.Ltd. v. M.V. Indurva Vally*[106], wherein the court determined that a suit filed in Admiralty Jurisdiction to obtain an arbitration award was not maintainable. In *J. S.*

[103] Civil Jurisdiction & Judgments Act, 1982 section 26
[104] Federal Arbitration Act (Title 9 USC) section 8
[105] M.V. Elizabeth v. Harwan Investment & Trading Pvt. Ltd, 1993 AIR 1014, 1992 SCR (1)1003
[106] Blue Diamond Freight Pvt.Ltd. v. M.V. Indurva Vally, Appeal Lodging No. 503 of 2003

Ocean Liner v. M. V. Golden Progress[107], the court not only resolved the issue of a ship being arrested for security purposes, but it also established that, in cases where a ship was to be arrested to enforce an arbitral tribunal's ruling or award, the process that would be followed would be analogous to that outlined in Article VII of the 1999 International Convention on the Arrest of Ships.

The supreme Court held in *M/S. Crescent Petroleum Ltd. Vs. M.V. "Monchegorsk" & Another*[108] that the Court "may exercise jurisdiction 'in rem' independently of the proceedings which may be taken out against the persons liable 'in personam'" by citing section 35 of the Admiralty Courts Act, 1891. Furthermore, the Court determined in *Islamic Republic of Iran Shipping Lines v. M. V. Mehrab*[109] that nothing in the statute prevents the Admiralty from taking an action to secure a vessel in an arbitration that is ongoing or in the future.

This indicates that any claimant against a ship may file a lawsuit before a High Court of Admiralty to seek all remedies accessible to him, barring a provision clearly limiting the court's authority. Before the arbitral tribunal makes its ruling, the court has the authority to issue interlocutory orders for the ship's attachment and arrest in the interest of justice.

The provisions pertaining to interim relief were expanded to include arbitrations held outside of the nation by the Arbitration Amendment Act of 2015. A claimant can now request temporary relief from the court while waiting for an arbitration to be held abroad[110]. A ship may be detained as security for a maritime claim in a court of another state if there is a jurisdiction or arbitration provision in place, under Art. 2(3) of the International Convention on Arrest of Ships, 1999. Furthermore, Art. 2(4) gives the forum for arrest the authority to determine how to proceed with an arrest.

We can infer from the aforementioned Articles that the convention expressly permits a party to file a lawsuit "in rem" while it is pending foreign arbitration. None of the treaties pertaining to the arrest of seagoing ships have been ratified by India. Despite the fact that these agreements have not been included in Indian law, the common law concepts they contain make them part of Indian law that can be applied to the

[107] J S Ocean Liner v. M. V. Golden Progress, (2007) 2 ArbLR 104 (Bombay High Court).
[108] M/S. Crescent Petroleum Ltd. vs M.V. "Monchegorsk" & Another, (2000) 1 BOMLR 297
[109] Islamic Republic of Iran Shipping Lines v. M. V. Mehrab, AIR 2002 Bom 517
[110] The Arbitration and Conciliation Act, 2017- Section 9

enforcement of maritime claims. The Supreme Court ruled in *M.V. Sea Success I v. Liverpool and London Steamship Protection and Indemnity Association Ltd*[111] that the Indian Admiralty Courts will be subject to the Geneva Arrest of Ship Convention, 1999. The Gujarat High Court permitted the implementation of a foreign award rendered by London Arbitration in the case of *MV Cape Climber v. Glory Wealth Shipping Pvt Ltd*[112], finding that the ship was detained in order to secure security to fulfill the judgment. If an arbitration clause is present in the agreement, the other party is given reasonable notice, and the claimant has the opportunity to defend themselves in line with the arbitration Act, any award rendered by a foreign arbitral tribunal may be enforced in an Indian admiralty court. Upon verification that the tribunal's decision in the "in personam" case is legally binding, the admiralty court files a "in rem" action. In a recent case, *Siem Offshore Rederi As vs. Altus Uber*[113], the Bombay High Court made clear its position on this point. It was decided that the court has the authority to look beyond the Admiralty Act and apply general law and international law principles to develop procedure by combining admiralty and arbitration to further justice.

2.8 CONCLUSION

It can be concluded by citing above mentioned case laws that Jurisdictional disputes in maritime arbitration center on the foundational validity of the arbitration agreement, which underpins the entire arbitral process. Several critical aspects determine its validity: firstly, its proper formation and existence in compliance with relevant laws, ensuring that involved parties entered the agreement without coercion or undue influence[114]. Secondly, the agreement must distinctly delineate the scope of disputes it covers, specifying involved parties, subject matter, and the precise rights and obligations subject to arbitration. Thirdly, adherence to formal requirements mandated by applicable laws—such as writing, signatures, and notarization is vital for the agreement's legal standing. The Yukos arbitration case serves as a vivid illustration of the intricacies surrounding state consent in arbitrating disputes linked

[111] M.V. Sea Success I v. Liverpool and London Steamship Protection and Indemnity Association Ltd, AIR 2002 Bom 151
[112] MV Cape Climber v Glory Wealth Shipping Pvt Ltd, O/ OJCA/ 250/ 2015
[113] Siem Offshore Rederi as vs Altus Uber, Commercial Appeal (L) No 465 of 2018
[114] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Article 2.

to unratified treaties. This case, involving a dispute between a Russian oil company and the Russian government under an energy charter treaty not yet ratified by Russia, resulted in the annulment of the arbitral award by a Russian court due to an assumption regarding Russia's consent to arbitrate. This case underscores the critical importance of meticulously examining the legal framework governing arbitration, particularly in cases involving state consent, emphasizing the necessity for unequivocal agreement by all parties and strict adherence to applicable laws to ensure the validity and enforceability of arbitral awards in maritime disputes. In the realm of maritime arbitration, evaluating the validity of arbitration agreements demands a meticulous exploration of the applicable governing laws, echoing broader practices in arbitration. The pivotal consideration often centers on the choice of law, exemplified by influential cases like the First Options ruling, which holds significant relevance within maritime arbitration. Several critical facets regarding governing laws in such contexts emerge:

CHAPTER III

ENFORCEMENT OF ARBITRAL AWARD

3.1 INTRODUCTION

Enforcement of arbitral awards is a crucial element in ensuring the efficacy and integrity of the arbitral process. It provides parties with the assurance that their rights and obligations will be respected, thus enhancing the attractiveness of arbitration as a method of dispute resolution. Enforcement mechanisms play a particularly significant role in international arbitration, where parties may be located in different jurisdictions, and the enforcement of awards may require cooperation between courts in multiple countries. Following independence, the law pertaining to admiralty jurisdiction was affirmed by Art. 372 of the Indian Constitution. In the case of *M.V. Elisabeth v. Harwan Investment and Trading*[115], the Supreme Court of India expanded the reach of admiralty jurisdiction by ruling that all Indian High Courts possess unrestricted jurisdiction, which includes the authority to ascertain inherent powers, unless specifically prohibited by statute or the Supreme Court. Afterward, admiralty jurisdiction may be exercised by any of the High Courts. Currently, the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 governs admiralty jurisdiction.

3.2 LEGAL FRAMEWORK

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted in 1958, is a cornerstone of the international legal framework for the enforcement of arbitral awards. It provides a uniform and widely-accepted mechanism for the recognition and enforcement of arbitral awards in over 160 countries. The Convention sets out the limited grounds on which a court may refuse

[115] M.V. Elisabeth vs Harwan Investment and Trading, 1993 AIR SC 1014

to enforce an arbitral award, such as incapacity of a party or invalidity of the arbitration agreement.

Parties may ask courts for temporary protection orders in support of arbitration proceedings under Section 9 of the Indian Arbitration and Conciliation Act, 1996 (the "Arbitration Act"). The provisions of Section 9 have been extended to International Commercial Arbitrations seated outside of India following the 2015 revision to the Arbitration Act. When a dispute is covered by a legitimate arbitration clause with a foreign seat of arbitration, Section 45 of the Arbitration Act requires a court to send the parties to arbitration.[116]

In order to provide security against specific maritime claims listed in Section 4 of the Admiralty Act, the court may, upon the institution of an admiralty suit by a party, order the arrest of any vessel in rem under Section 5 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (the "Admiralty Act"). Unlike an action in personam, which is against the shipowner, an action in rem indicates that the vessel has a distinct juridical personality against whom the maritime claim is pursued.

Historical framework

Before the Arbitration and Conciliation Act of 1996, enforcing arbitration awards in India was governed by three different laws. Domestic awards were handled under the 1940 Act, while foreign awards were covered by the 1937[117] Act for Geneva Convention awards and the 1961 Act for New York Convention awards. The 1961 Act replaced the Geneva Convention for practical purposes.

The rules for enforcing awards under these two statutes were different. The 1961 Act only allowed challenges to arbitral awards based on limited grounds from the New York Convention, while the 1940 Act allowed for wider judicial scrutiny, including claims of misconduct by the arbitrator or fundamental errors of law in the award. This meant that domestic awards faced more scrutiny and challenges compared to

116 https://www.livelaw.in/columns/can-indian-courts-arrest-ships-in-foreign-seated-maritime-arbitrations-165368
117 The Arbitration (Protocol & Convention) Act 1937 (No 6 of 1937).

foreign awards. The 1961 Act focused on following the New York Convention rules, while the 1940 Act had broader grounds for challenging awards.

Recognition and Enforcement

It is important to consider the distinction between the terms "recognition" and "enforcement" of awards. The Act specifically uses the term "enforcement" and does not mention "recognition". However, both expressions are used in the First Schedule to the 1996 Act and in the Convention. "Recognition" and "enforcement" have separate and distinct meanings. It is worth noting that an award can be recognized without being enforced, although when it is enforced, it is necessarily recognized by the Court that orders its enforcement. Therefore, recognition alone can be sought as a means to protect against the re-opening of issues addressed in the award. When a Court is asked to enforce an award, it must not only recognize the legal effect of the award but also use legal measures to ensure its implementation. The term "recognition" is a defensive process used as a shield against attempts to re-litigate issues that have already been resolved in a previous arbitration. On the other hand, "enforcement" is an offensive process that involves the recovery of the award amount, particularly in cases where money is at stake.[118]

Court for Enforcement of Arbitral Awards

Section 47 of the Act, found in Part II, addresses the enforcement of specific foreign awards and defines the term "court" as a court with jurisdiction over the subject matter of the award. This refers to a court within the jurisdiction where the asset/person against whom the enforcement of the international arbitral award is sought is located. If the subject matter of the award is money, the enforcement application can be filed in the court where the respondent's bank account is located. Therefore, a party seeking to enforce a foreign award can file the application in any court in India as long as the money asset is within the jurisdiction of that court. If the applicant does not find money in the respondent's account within the court's jurisdiction, they may file another application for enforcement of the award in the

[118] Enforcement of Foreign Awards in India, (June 15, 2024, 5:00 PM) https://www.hg.org/legal-articles/enforcement-of-foreign-awards-in-india-32348

court where the respondent's assets are located. The term "subject matter" of the award, as explained in section 47, is different from the term "subject matter" of the arbitration in section 2(e) of Part I of the Act. If the subject matter of the award is not money, then the party seeking enforcement aims to ensure that the award is implemented by the respondent and that the enforcing party's rights and interests are upheld. Therefore, in order to enforce and execute an award, the successful party must initiate legal proceedings as outlined in section 47 of the Act.

In the Brace Transport Corporation case[119], the Supreme Court of India approved and quoted from the Law and Practice of International Commercial Arbitration by Redfern and Hunter (1986 edition) (pages 337 and 338), which states:

"A party seeking to enforce an award in an international commercial arbitration may have a choice of country in which to do so; as it is sometimes expressed, the party may be able to go forum shopping. This depends upon the location of the assets of the losing party. Since the purpose of enforcement proceedings is to try to ensure compliance with an award by the legal attachment or seizure of the defaulting party's assets. Legal proceedings of some kind are necessary to obtain title to the assets seized or their proceeds of sale. These legal proceedings must be taken in the State or States in which the property or other assets of the losing party are located."

The approval of this passage in the Brace Transport case is based on the reasoning that parties to an international arbitration would typically choose a neutral forum as the seat of arbitration, where neither party would have any assets. Therefore, enforcing the award in the neutral forum would have no effect. Thus, enforcement of the award must take place in a country where the judgment debtor's properties are located. The court held that foreign awards must be internationally recognized and enforceable, and the choice of the place of enforcement would depend on the circumstances of each specific case.

The fundamental legitimacy of the arbitration agreement, which serves as the cornerstone of the whole arbitral procedure, is at the heart of jurisdictional disputes

[119] Brace Transport Corporation of Monrovia, Bermuda v. Orient Middle East Lines Ltd and ors, AIR1994SC1715, 1993(4)SCALE207, 1995SUPP(2)SCC280, [1993]SUPP3SCR227, 1994(1)UJ190(SC), AIR 1994 SUPREME COURT 1715, 1994 AIR SCW 1572, 1994 (1) UJ (SC) 190, 1994 (1) ARBI LR 123, 1994 UJ(SC) 1 190, 1993 ( ) JT (SUPP) 461, (1994) 4 COMLJ 214, 1995 (2) SCC(SUPP) 280, (1993) 3 CURCC 687, (1993) 52 DLT 243, (1994) 1 ARBILR 123

in maritime arbitration. Its validity is determined by a number of important factors, the first of which is that it was formed and is still in effect in accordance with applicable laws, guaranteeing that the parties involved did not enter the agreement under duress or unfair influence. Second, it is imperative that the agreement clearly define the range of conflicts it covers, including the parties involved, the subject matter, and the specific rights and responsibilities that are subject to arbitration. Thirdly, the legal standing of the agreement depends on compliance with formal requirements specified by applicable laws, including writing, signatures, and notarization. The intricate nature of state permission in arbitrating disputes related to unratified treaties is exemplified by the Yukos arbitration case. Due to an assumption about Russia's consent to arbitrate, a Russian court invalidated the arbitral judgment in this case, which involved a dispute between a Russian oil business and the Russian government under an energy charter treaty that Russia has not yet ratified. This case emphasizes how crucial it is to carefully review the legal framework governing arbitration, especially when states are involved. It also highlights how important it is to have clear consent from all parties involved and to strictly adhere to the laws that apply in order to guarantee the legitimacy and enforceability of arbitral awards in maritime disputes[120].

Similar to more general arbitration processes, assessing the legitimacy of arbitration agreements in the context of maritime arbitration necessitates a thorough investigation of the relevant governing legislation. The crucial factor frequently revolves around the selection of law, as demonstrated by prominent instances such as the First Options decision, which has considerable importance in the context of maritime arbitration. Several important aspects of the laws that apply in these situations become apparent:

First, the application of the governing law is usually determined by the existence of an express choice made by the parties; in the absence of an express choice, conflict of laws rules apply. Second, the arbitration agreement's composition, scope, and necessary formalities are all evaluated in accordance with the governing law. Finally, where disagreements emerge between the parties or there is uncertainty around the selected legal framework, courts may step in to establish the relevant legislation.

[120] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Article 5(1)(a).

The increasing occurrence of collective claims in maritime arbitration, as demonstrated by instances like Abaclat, adds a subtle degree of intricacy to the domain of jurisdictional concerns. Collective claims, sometimes referred to as mass claims or class actions, involve numerous claimants bringing comparable complaints against one or more replies. A number of variables, such as the growing scale of international maritime trade, the complex operational environment of the maritime industry, and increased attention to environmental and safety issues within the sector, are contributing to this rise in collective claims[121].

When it comes to collective claims, arbitral tribunals face unique difficulties, primarily because of the large number of parties involved and the possibility of divergent interests. The determination of a claimant's admissibility—whether to include all claimants or a representative group based on similarities in their claims while reducing potential biases—is one of the many complex challenges that tribunals must navigate. It becomes necessary to maintain procedural justice, which means that all claimants must have equal opportunities to present their cases and engage in the arbitration process. In addition, tribunals have to strike a careful balance between protecting the rights of individual claimants and ensuring that the processes proceed as quickly and easily as possible.

One prominent example is the Abaclat case, which features a disagreement between more than a thousand Filipino sailors and their employer about unpaid wages and inadequate working conditions. This case emphasizes how difficult it can be to oversee broad arbitrations and guarantee that each claimant is fairly represented. The consequences of collective claims in maritime arbitration have far-reaching effects on the sector. The capacity of tribunals to skillfully handle these complex cases would have a significant impact on the availability of justice for sailors and other parties involved in the marine industry. Furthermore, the decisions that arise from these combined claims have a significant impact on the financial stability of shipping companies as well as the general safety and sustainability paradigms that are followed in the sector.

[121] Abaclat v. Compagnie Maritime d'Affrètement (CMA), PCA Case No. AA/12/01/2012.

Arbitral tribunals are empowered to ascertain their jurisdiction based on the terms stipulated in the arbitration agreement and applicable legal frameworks. The legitimacy of the ensuing arbitral awards may be contested if these tribunals act outside of their designated jurisdiction or authority. Ultra petita, or excess of authority, is when a tribunal renders decisions that go beyond the concerns that were brought before arbitration. This could be addressing issues outside of the parameters of the agreement, providing remedies that exceed what the parties requested, or ignoring relevant laws or accepted arbitration norms.

Conversely, infra petita challenges occur when a tribunal declines to hear any of the cases that are brought before it for arbitration. This can manifest as failing to make a decision on specific claims or concerns, giving insufficient justification for judgments, or giving out unclear or partial awards. Tribunals that overreach their jurisdiction or depart from their prescribed purview face grave consequences. A court has the jurisdiction to annul or declare some portions of an arbitral award illegal if it finds that the tribunal exceeded its authority. Long-lasting legal conflicts and uncertainty for the parties involved may result from this[122].

In order to reduce potential threats to the legitimacy and enforcement of arbitral awards, parties and their legal representatives must take proactive steps in navigating the difficulties of jurisdictional challenges in maritime arbitration. To anticipate and address these issues, a range of tactics are used:

First, parties may give arbitral tribunals permission to use procedural orders to handle jurisdictional concerns at the beginning of the arbitration. This gives the tribunal the authority to establish its jurisdiction before getting into the details of the case. Secondly, by precisely stating the parameters of arbitration, the applicable laws, and the procedures to be followed, strong arbitration clauses play a critical role in reducing jurisdictional concerns. Accepting alternative dispute resolution (ADR) processes, including conciliation or mediation, can also help in settling conflicts

[122] UNCITRAL Model Law on International Commercial Arbitration, Article 36(1)(a).

amicably, possibly avoiding formal arbitration and minimizing jurisdictional problems.

Hiring skilled maritime arbitration attorneys is essential because they can advise parties on how to draft arbitration agreements, choose suitable forums and regulations, and reduce jurisdictional risks during the arbitration procedure. Furthermore, avoiding misunderstandings and lowering the possibility of jurisdictional issues need encouraging openness and transparency in communication between the parties. Finally, in order for parties and their legal counsel to properly handle jurisdictional difficulties, they must remain up to date on the latest legal developments in maritime arbitration, including court rulings, changes to arbitration rules, and new trends.

3.3 ENFORCEMENT OF DOMESTIC ARBITRATION AWARDS

Domestic Arbitration refers to the situation where arbitration proceedings occur within India, and both the subject matter of the contract and the merits of the dispute are governed by Indian Law. It also applies when the cause of action and the parties involved in the dispute are based in India. This form of arbitration is widely used for settling disputes. The key components of domestic arbitration are that it must occur in India and the subject matter must be related to India. Indian Law regulates the merits of the disputes, as well as the arbitration procedure.

According to the provisions of the 1996 Arbitration and Conciliation Act, when it comes to enforcing a domestic award, the recipient of the award must wait for a period of 90 days before applying for enforcement and execution. During the intrevining period[123], the award can be challenged in accordance with Section 34 of the Act. Once this period has elapsed, if a court determines that the award is enforceable, there can be no further challenges regarding the validity of the arbitral award during the execution stage. After an award has been issued, it must be converted into a court decree and enforced against the party in default. Previously, a

[123] Charles L. Measter & Peter Skoufalos, The Increasing Role of Mediation in Resolving Shipping Disputes, 26 TUL. MAR. L.J. 515, 517 (2002).

formal application and notice to both parties were required, and any objections would be heard. If the losing party voluntarily made payment, a decree was not necessary. As per the provisions in Section 34 of the Act, if the award is set aside, it is still enforceable as if it were a court decree, as stated in Section 36 of the Act.

Execution refers to the implementation of an arbitrator's award, which is considered a decree under Section 36 of the 1996 Act. It is a legal procedure that allows the decree-holder to obtain the benefits of the award. The process of execution is governed by Order 21 of the Civil Procedure Code (CPC), which provides detailed guidelines for filing an execution application and how they are to be considered and resolved. Order 21 is the lengthiest order in the entire schedule of the CPC, comprising 103 rules.

Enforcement of Foreign Arbitral Award

As mentioned earlier, prior to the implementation of the Arbitration Act, 1996, the enforcement of foreign awards was governed by the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961. The Indian Arbitration Act, 1940 regulated the annulment of domestic awards. The Indian Legislature enacted the Foreign Awards (Recognition and Enforcement) Act, 1961 to comply with the New York Convention. Consequently, the 1996 Act was passed by the Government of India to fulfill its commitment of amending and consolidating the law in accordance with the UNCITRAL Model Law and Rules. India ratified the United Nations Convention (Recognition and Enforcement of Foreign Arbitral Awards) on July 13, 1960.

Article VII of the New York Convention states that the Geneva Protocol, 1923 and the Geneva Convention, 1927 are applicable to the members of the New York Convention.

Chapter 1 of Part I of the Act pertains to arbitrations taking place in India, as indicated by subsection (2) of Section 2. Part I focuses on domestic arbitration, while Part II deals with the enforcement of specific foreign awards. Part II of the 1996 Act clarifies that the nature of an award is determined by the place where it is made, unlike section 9(b) of the 1961 Act. Chapter 1, Part II specifically addresses New

York Convention awards. Section 46 of the Act outlines when a foreign award is binding. Section 47 specifies the type of evidence that must be presented to the court by the party seeking enforcement of a foreign award. Section 48 establishes the conditions for enforcing foreign awards. According to Section 48(1) clauses (a) to (e) of the Act, a foreign award may be refused enforcement if the party against whom it is invoked provides proof of the existence of any of the mentioned grounds. Additionally, the court may refuse enforcement if it identifies any of the grounds outlined in Section 48(2) clauses (a) and (b) of the Act. Section 49 states that if a foreign award is deemed enforceable by the court under this Chapter, it shall be treated as a court decree and the court must take further steps to execute the foreign award.

It is important to distinguish between domestic and foreign awards. The term "domestic award" is used to differentiate it from an "international award" and a "foreign award". A "foreign award" may be considered as a domestic award in the country where it is issued. The Act provides guidelines for awards made in India and those made outside India. Part I of the Act covers "international arbitrations" that take place in India and all "domestic arbitrations". In the case of a domestic award, a challenge can be made under Section 34 of the Act, while no challenge proceeding is applicable for a foreign award. On the other hand, a foreign award is one that is issued in arbitration proceedings held outside India. The term "foreign award" is mainly relevant for enforcement purposes in a country other than its country of origin.

Section 48 of the Act bears resemblance to Article V of the New York Convention. When seeking enforcement of a foreign award, a party can only oppose it on limited grounds specified in Section 48. This means that in India, under the Act, there can be no proceedings to challenge or cancel a foreign award, even if the governing law of the contract is Indian law. Foreign awards enforced in India cannot be contested on their merits in Indian courts. During an enforcement proceeding, the court may refuse to enforce the foreign award if the party opposing it provides satisfactory evidence of any of the grounds mentioned in Section 48(1). This section outlines the defenses available to a party resisting the enforcement of a foreign award.

However, the definition of "foreign award" is not provided in Part I of the 1996 Act. Instead, it is defined in Part II, which deals with the enforcement of certain foreign awards and specifically addresses New York Convention Awards in Chapter I. Section 44 provides the definition.

"In this Chapter, unless the context otherwise requires, 'foreign award' refers to an arbitral award resulting from disputes between individuals arising from legal relationships, whether contractual or not, that are considered commercial under the prevailing law in India. This award must have been made on or after October 11, 1960."

In accordance with a written arbitration agreement that falls under the Convention outlined in the First Schedule, and in a territory where the Central Government has determined that reciprocal provisions have been established, the said Convention may be declared applicable to such territories through an official notification published in the Official Gazette.

Evidence required for Enforcement

In order to enforce a foreign award in India, the party applying for enforcement must provide the following evidence to the court when filing the application:

1. The original award or a duly authenticated copy, as required by the law of the country where it was made.
2. The original arbitration agreement or a duly certified copy.
3. Any necessary evidence to establish that the award is indeed a foreign award.

If the award or agreement is in a foreign language, the party seeking enforcement must provide an English translation that is certified as accurate by a diplomatic or consular agent of their country or by any other means acceptable under Indian law. The responsibility of proving that the award is a genuine foreign award, based on a foreign arbitration agreement, lies with the party seeking enforcement through the application process. These aforementioned documents serve as prima facie evidence of the award's authenticity. The applicant, in this case, is not required to present any additional evidence.

3.4 CHOICE OF LAWS

Choice of Jurisdictions

Parties involved in an international commercial arbitration agreement have the freedom to select the governing law. This includes choosing the substantive law that governs the arbitration agreement itself, as well as the procedural law that governs the conduct of the arbitration. The choice of law can be made explicitly or implicitly. In a contract that contains an arbitration clause or a separate arbitration agreement, different aspects of the arbitration relationship can be governed by separate laws. These aspects include:

1. The proper law of the contract: This refers to the law that governs the contract itself, which establishes the substantive rights of the parties and is relevant to the dispute at hand.

2. The proper law of the arbitration agreement: This refers to the law that governs the parties' obligation to submit disputes to arbitration and to abide by the resulting award.

3. The curial law: This refers to the law that governs the conduct of the arbitration proceedings.

The proper law of the arbitration agreement determines the validity of the agreement, whether a dispute falls within its scope, the validity of the notice of arbitration, the composition of the tribunal, whether an award is within the arbitrator's jurisdiction, the formal validity of the award, and whether the parties are released from any obligation to arbitrate future disputes.

The curial law governs how the arbitration proceedings are conducted, the procedural powers and duties of the arbitrator, questions of evidence, and the determination of the proper law of the contract. The proper law of the reference governs whether the parties are released from their obligation to continue with the arbitration of a specific dispute.

In the absence of an explicit agreement, there is a strong presumption that the parties intend for the curial law to be the law of the "seat" of the arbitration, which is the

location where the arbitration is conducted. This presumption is based on the idea that the country where the arbitration takes place is most closely connected to the proceedings. To determine the curial law when there is no explicit choice by the parties, it is necessary to determine the seat of the arbitration by interpreting the arbitration agreement. The scope of each applicable law is as follows:

1. The proper law of the underlying contract: This is the law that governs the contract itself, including the substantive rights and obligations of the parties that give rise to the dispute.

2. The proper law of the arbitration agreement: This is the law that governs the rights and obligations of the parties arising from their agreement to arbitrate, including the obligation to submit disputes to arbitration and to abide by an award. This includes questions about the validity of the arbitration agreement, the notice of arbitration, the composition of the tribunal, and the jurisdiction of the arbitrator.

3. The proper law of the reference: This is the law that governs the contract that regulates the specific arbitration reference. It comes into effect when a notice of arbitration is given and establishes new mutual obligations for the conduct of the reference. This law determines whether the parties have been released from their obligation to continue with the arbitration of the specific dispute.

4. The curial law: This is the law that governs the arbitration proceedings themselves, including the conduct of the reference. It determines the procedural powers and duties of the arbitrators, questions of evidence, and the proper law of the contract.

In most cases, the same law will apply to all four aspects. The choice of law for the underlying contract will usually determine the choice of law for the arbitration agreement, unless there is an explicit contrary choice. The choice of law for the arbitration agreement and the reference will rarely differ. However, it is not uncommon for a different curial law to apply when the parties have chosen arbitration in a jurisdiction that is separate from the jurisdiction with the closest connection to the contract. In the absence of an explicit agreement, there is a strong presumption that the curial law will be the law of the seat of the arbitration.

The proper law of the contract is the law that the parties have chosen, either explicitly or implicitly. If the contract is silent, the proper law will be the law that has the closest and most intimate connection to the contract. The term "proper law" refers to the substantive principles of the chosen legal system, not its conflict of laws rules. If there is no explicit choice of law for the contract or the arbitration agreement, there is a presumption that the proper law of both is the same as the law of the country where the arbitration will take place. However, if the parties have explicitly chosen the proper law of the contract, that law will govern the arbitration agreement unless there is clear evidence to the contrary.

The proper law of arbitration, which governs the substantive aspects of arbitration, determines the validity, effect, and interpretation of the arbitration agreement. The procedural aspects of the arbitration proceedings are generally governed by the law of the country where the arbitration takes place, unless the parties have specifically chosen a different law. If no choice of law has been made, the procedural aspects will be determined by the law of the seat of arbitration. If the parties have agreed to conduct the arbitration in accordance with specific rules, such as the ICC Rules, those rules will govern the proceedings, unless they conflict with the mandatory requirements of the proper law of arbitration or the procedural law of the seat of arbitration.

In cases where the parties have chosen Indian laws as the governing laws for the contract, the arbitration agreement, and the conduct of the arbitration, but have selected a foreign country as the seat of arbitration, Indian laws will govern certain aspects, such as the validity, interpretation, and effect of all clauses, including the arbitration clause, in the contract, as well as the jurisdiction of the arbitrators. However, the procedural aspects of the arbitration proceedings will be governed by the law of the seat of arbitration, and the competent courts of that country will have some control over the proceedings.

If all three applicable laws are chosen to be Indian laws, including the law governing the substantive contract, the law governing the agreement to arbitrate, and the law governing the conduct of the arbitration, it can be inferred that the parties did not intend to create a difficult situation by selecting a seat of arbitration in another country. For example, the curial law of England would only be applicable if the seat

of arbitration is clearly designated as London. If the parties have deliberately chosen London as the venue, it cannot be accepted as the seat of arbitration by the court.

3.5 GROUNDS OF RESISTANCE TO ENFORCEMENT

If it can be proven by the party against whom enforcement of a foreign award is sought in India that the parties involved in the agreement were legally incapable, or if the agreement itself was invalid under the applicable law or the law chosen by the parties, or if there was a failure to comply with fair hearing rules, or if the award went beyond the scope of the arbitration submission, or if the composition or procedure of the arbitral authority did not align with the agreement or the law of the place of arbitration, or if the award is not yet binding, or if it has been set aside or suspended by a competent authority in the country where it was made, then the foreign award will not be enforced. Additionally, if the court in India determines that the subject matter of the award cannot be settled through arbitration under Indian law or that enforcing the award would go against public policy, it will not be enforced.

The burden of proof lies with the party against whom enforcement of the foreign award is sought to demonstrate to the court that the composition or procedure of the arbitral authority did not comply with the law of the country where the arbitration took place. If the respondent's response to the enforcement application includes any of the grounds mentioned in section 48(1) of the Act, the respondent will be required to provide evidence to the court supporting the existence of one or more of those grounds. The term "proof" implies the establishment of the alleged fact through evidence, which can be in the form of oral or documentary evidence presented by a party or witness testimonies regarding matters of fact under investigation. The proceedings under Part II of the Act are not considered a lawsuit. However, a party seeking to oppose the enforcement of a foreign award is entitled to present evidence supporting their grounds.

Scope of enquiry before the Indian court in Enforcement proceedings

The execution of an award must be carried out as is, without any room for additional provisions. However, the award that is to be executed must be properly interpreted

and given effect. If an application is made for a decree based on the award, the court should uphold the award and grant a decree accordingly, without subtracting any part of it. The refusal of enforcement of a foreign award under section 48(2)(b) would only occur if such enforcement goes against (i) the fundamental policy of Indian law, (ii) the interests of India, or (iii) justice or morality. The broader interpretation of the term "public policy of India" in section 34(2)(b)(ii) in the case of Oil and Natural Gas Corporation Limited v. Saw Pipes Limited does not apply when an objection is raised to the enforcement of the foreign award under section 48(2)(b). The Supreme Court has observed in the Shri Lal Mahal case that the enforcing court does not have jurisdiction to review foreign awards and cannot inquire into whether they are contrary to the principles of English law. Indian courts will not entertain a plea that a foreign award is based on inadmissible evidence and should be refused. Furthermore, section 48 of the Act does not provide an opportunity to reexamine the foreign award during the enforcement stage. The scope of inquiry under section 48 does not allow for a review of the foreign award on its merits. Procedural defects in foreign arbitration, such as considering inadmissible evidence or disregarding/rejecting binding evidence, do not necessarily excuse an award from enforcement on the grounds of public policy. When considering the enforceability of foreign awards, the court does not act as an appellate authority over the foreign award, nor does it inquire into whether any errors were made in rendering the foreign award.

3.6 CONCLUSION

India’s legal framework for maritime arbitration is primarily governed by the Arbitration Act. This Act, comprising Parts I and II, delineates the regulations for domestic and international commercial arbitrations, respectively.

Part I of the Arbitration Act manages Indian domestic arbitrations and international commercial arbitrations seated within India. Notably, Section 36 of the Act allows for the enforcement of awards arising from arbitrations governed by Part I, commonly referred to as "Indian Awards." These awards hold substantial significance, being treated equivalently to decrees issued by Indian Courts, thereby enabling their direct enforcement[124].

[124] Arbitration and Conciliation Act, 1996, § 36 (India).

On the other hand, Part II of the Arbitration Act pertains to the enforcement of awards arising from arbitrations seated outside India, termed "Foreign Awards." Sections 47, 48, and 49 of the Act stipulate the evidentiary requisites, preconditions, and the enforcement procedure for Foreign Awards[125]. The Act aligns with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) in this regard.

Courts in India maintain consistency in their approach toward enforcing awards, regardless of whether they emanate from ad hoc or institutional arbitration setups. The legal system does not differentiate between these awards, displaying impartiality in their enforcement process.

Enforcement Procedures for Indian and Foreign Awards

The enforcement procedures for Indian and Foreign Awards in India exhibit certain similarities and distinctions under the Arbitration Act.

Indian Awards, falling under Part I of the Arbitration Act, are enforceable akin to decrees of Indian courts without any prerequisite conditions. The enforcing party can directly file an application for execution of the Indian Award in a court having jurisdiction over the person against whom the award is to be enforced.

For *Foreign Awards*, governed by Part II of the Act and subject to the New York Convention, the enforcing party must apply to a competent court, furnishing the original or authenticated copy of the Foreign Award, the arbitration agreement, and any other substantiating evidence of its foreign nature. The court may refuse enforcement if certain criteria are met: incapacity of a party, invalidity of the arbitration agreement, disputes beyond the agreement's scope, discrepancies in tribunal composition, non-binding status, or court intervention at the arbitration seat. Additionally, enforcement might be refused if the subject matter is not arbitrable in India or contravenes Indian public policy. Upon satisfying the court of enforceability, the Foreign Award attains the status of a decree of that court and becomes enforceable accordingly.

Both Indian and Foreign Awards can be enforced seamlessly, with courts disregarding the distinction between ad hoc and institutional arbitrations while

[125] Arbitration and Conciliation Act, 1996, §§ 47-49 (India).

allowing enforcement. This non-discriminatory approach illustrates the consistent and impartial nature of India's arbitration enforcement system.

Ad Hoc and Institutional Arbitration Trends

In India, a historic preference for ad hoc arbitration over institutional arbitration existed due to perceived drawbacks associated with the latter, such as high costs and perceived institutional rigidity. Parties often opted for ad hoc arbitration, which offered more flexibility and cost-effectiveness, enabling them to tailor proceedings to their specific needs. Courts historically supported this preference by allowing parties to deviate from institutional arbitration clauses, redirecting them to ad hoc tribunals instead. However, recent developments signal a shift towards embracing institutional arbitration's advantages, like efficient time-bound awards and procedural ease. The 2016 amendments to the Arbitration Act granted Supreme Court and High Court powers to delegate arbitrator appointments to institutions. This change facilitated a move towards institutional arbitration, exemplified by instances where the Supreme Court directed parties to approach institutions like the Mumbai Centre for International Arbitration.

Moreover, the establishment of the New Delhi International Arbitration Centre (NDIAC) under legislation further underscores the shift. NDIAC's statutory establishment and designation as an institution of national importance demonstrate a legislative push towards institutionalized arbitration. However, despite this shift, the arbitration landscape still displays a certain flexibility. Courts, while acknowledging the benefits of institutional arbitration, continue to respect parties' preferences by upholding clauses directing disputes to specific institutions, such as the Singapore Chamber of Maritime Arbitration (SCMA).

The evolving trend in India's arbitration scenario showcases a growing acceptance of institutional arbitration's benefits while retaining a degree of flexibility to honor parties' preferences.

CHAPTER IV

FRAMEWORK FOR ARBITRATION

4.1 INTRODUCTION

Arbitration is a widely used and respected method of dispute resolution, particularly in international commercial and investment contexts. The legal framework governing arbitration is complex and multifaceted, encompassing both national and international sources of law. This chapter will delve into the key components of this framework, examining the interplay between national arbitration legislation, international conventions, and institutional arbitration rules.

The Arbitration and Conciliation Act, 1996, is a significant piece of national legislation in India that consolidates and amends the law relating to domestic arbitration. This Act provides a comprehensive framework for arbitration, covering topics such as the composition of arbitral tribunals, jurisdiction, and the making of arbitral awards. Similarly, the UNCITRAL Model Law on International Commercial Arbitration has been widely adopted by countries around the world, providing a standardized framework for international commercial arbitration.

In addition to these national and international sources of law, institutional arbitration rules play a crucial role in shaping the arbitration process. These rules, developed by organizations such as the International Chamber of Commerce (ICC) and the United Nations Commission on International Trade Law (UNCITRAL), provide detailed procedures for the conduct of arbitration proceedings. The choice of law governing the arbitration agreement and the procedural law governing the arbitral proceedings are also critical components of the arbitration framework.

This chapter will explore the legal framework of arbitration in detail, examining the interplay between these various sources of law and the role of institutional arbitration rules. It will also discuss the key principles and concepts that underlie the arbitration process, including the principles of party autonomy, the role of the arbitral tribunal, and the enforcement of arbitral awards. By understanding the legal framework of

arbitration, parties can better navigate the arbitration process and achieve more effective and efficient dispute resolution.

4.2 HISTORICAL FRAMEWORK

Ancient India

Arbitration has a long history in Ancient India, as evidenced by the mention of it in the "Brhadaranayaka Upanishad," an early Hindu Law treatise.[126] The practice of arbitration dates back to the Vedic era, with Rishi Yajnavalkya referring to various arbitration bodies such as Sreni, Puga, and Kula, collectively known as Panchayat.[127] These Panchayats, consisting of a small group of wise community members, including a Sarpanch (head) and Panchas (members), were responsible for resolving disputes. The decisions made by the Panchayats were binding on the parties involved, and their awards were highly respected.

This traditional method of dispute resolution, known as the "Panchayati Raj system," was recognized and acknowledged by the Privy Council in the case of *Vytla Sitanna v. Marivada Viranna*[128] (AIR 1934 PC 105). International agreements such as the United Nations Convention on the Law of the Sea (UNCLOS) provide the foundation of maritime arbitration. The arbitration procedure is outlined in UNCLOS, a comprehensive treaty that regulates marine issues, namely in Annex VII and VIII. The arbitration processes for disputes pertaining to the interpretation and implementation of UNCLOS laws are outlined in these annexes. Additionally, they create the International Tribunal for the Law of the Sea (ITLOS), which provides a recognized forum for settling disagreements about marine borders, environmental challenges, and other matters pertaining to the treaty[129].

National laws that offer a foundation for arbitration processes within some jurisdictions support these international agreements. In order to control arbitration

[126]What is History of Arbitration in India. (n.d.). IDRC. (June 20 2024, 4:00 PM) https://theidrc.com/content/adr-faqs/what-is-history-of-arbitration-in-india
[127] Ibid
[128] Vytla Sitanna v. Marivada Viranna (AIR 1934 PC 105).
[129] United Nations Convention on the Law of the Sea (UNCLOS).

procedures, oversee the enforcement and acceptance of arbitral rulings, and guarantee compliance with international norms, nations frequently pass legislation that is compliant with international treaties.

At the center of maritime arbitration is the 'Lex Maritima,' a body of law that embodies centuries-old maritime practices, customs, and principles. This framework handles maritime disputes around the world, adapting to new legal systems but remaining historically grounded. Lex Maritima includes regulations for marine contracts, salvage, collisions, charter parties, and other maritime-related matters. It functions as a collection of legal precedents and traditions, providing a versatile and thorough reference for settling complex maritime conflicts[130].

In actuality, arbitration involving maritime conflicts frequently makes use of the broad and flexible Lex Maritima. This body of legislation ensures a degree of uniformity and coherence across several jurisdictions and gives arbitrators a strong base on which to traverse complicated maritime matters with efficiency.

Arbitration provisions are a crucial component of maritime contracts because they provide a contractual means of resolving conflicts outside of the conventional courtroom. These provisions outline the arbitration procedure, including the jurisdiction for arbitration in the event of a disagreement, the mechanism by which arbitrators are chosen, and other procedural details. By giving parties the freedom and flexibility to select the arbitral institutions, procedures, and locations that they prefer, their inclusion in maritime contracts streamlines the dispute resolution process[131].

Due to the effectiveness, privacy, and experience that arbitration provides; the marine sector frequently incorporates arbitration clauses in contracts. By avoiding the complications and possible hold-ups that come with ordinary litigation, it offers a more specialized method of settling conflicts that arise in the marine context.

A strong legal structure that supports the effective and specialized resolution of conflicts within the maritime industry is formed by the interaction of international

[130] Gardiner, Geoffrey. “Lex Maritima: A Comparative Approach.” The Journal of Legal History 25, no. 2 (2004): 185–210.
[131] Knapp, Charles L. "Arbitration Law in a Nutshell." Thomson Reuters, 2020.

agreements, state laws, the Lex Maritima, and arbitration clauses in maritime contracts.

Marine contracts that contain arbitration clauses are an essential tool for resolving disputes because of the intricacies and subtleties of marine operations. A confidential, specialized, and expedited dispute settlement procedure is made possible by these terms.

When a maritime contract contains an arbitration clause, it gives the parties the freedom to customize the dispute resolution procedure to their own requirements. They can choose the governing law, the arbitral institution, the procedural guidelines, and the arbitration's location. Given the complexity of marine transactions, this flexibility is essential for successfully and swiftly resolving conflicts within the maritime industry.

Furthermore, the practicality of the maritime sector is consistent with the inclusion of arbitration clauses. Technical, commercial, or jurisdictional problems are common causes of disputes, which makes arbitration a desirable solution. It provides knowledge of marine legislation, quick processes, and confidentiality, maintaining business connections that are vital in this industry.

British Era

As early as 1772, during British rule in India, the Bengal Regulation of 1772 introduced the first modern arbitration law. This marked the recognition of arbitration as a means of resolving disputes. Subsequently, the India Arbitration Act of 1899 was enacted, which initially applied only to the three presidency towns of Madras, Bombay, and Calcutta.[132]

Under the Bengal Regulation of 1781, judges were given the authority to suggest arbitration to the parties involved, but participation was not mandatory.[133]

[132] What is History of Arbitration in India. (n.d.). IDRC. https://theidrc.com/content/adr-faqs/what-is-history-of-arbitration-in-india
[133] Ibid

The Bengal Regulations of 1787, 1793, and 1795 introduced procedural changes that allowed courts to refer suits to arbitration with the mutual consent of the parties. These changes were later extended through the Bombay Regulations Act of 1799 and the Madras Regulation Act of 1802.[134]

Further modifications to the applicable procedure were made through the Bengal Regulations of 1802, 1814, and 1833. In 1834, the first Legislative Council for India was formed.

The Legislative Council of India in 1834 and the Code of Civil Procedure Act of 1859 aimed to introduce the procedural aspects of civil courts. However, this code did not apply to the supreme court. It was later replaced by the Civil Procedural Code of 1877, which was further replaced by the third civil procedure code enacted in 1882.[135]

In 1899, the Indian Arbitration Act was enacted by the Legislative Council. This act was based on the English Act of 1899 and applied to cases where the subject matter submitted to arbitration was also the subject of a lawsuit.

The Arbitration Act of 1940 brought uniformity in arbitration law across India. However, the awards were not considered final and were subject to scrutiny by civil courts before acquiring finality through the Rule of Court.[136]

4.3 PRESENT FRAMEWORK

The law relating to Arbitration is presently governed by the Arbitration and Conciliation Act, 1996. The Arbitration and Conciliation Act, 1996, is a comprehensive legislation that consolidates and amends the law relating to domestic arbitration, international commercial arbitration, and the enforcement of foreign arbitral awards in India. The Act is divided into four main parts: Part I deals with arbitration, Part II with the enforcement of foreign awards, Part III with conciliation, and Part IV contains supplementary provisions. Section 2 of the Act provides key definitions and interpretations of terms used throughout the legislation. Section 3

[134] Ibid
[135] Ibid
[136] Ibid

outlines the rules for determining when a written communication is deemed to have been received, including delivery to the addressee personally or at their place of business, habitual residence, or mailing address. The Act also provides for the composition of arbitral tribunals, jurisdiction, and the conduct of arbitral proceedings. The UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Conciliation Rules have significantly influenced the development of the Act[137]. The Act aims to provide a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations. The legislation has been enacted to consolidate and amend the law relating to arbitration and conciliation, taking into account the UNCITRAL Model Law and Rules. The Act is designed to promote the use of arbitration and conciliation as alternative dispute resolution methods, reducing the burden on the judiciary and promoting international commercial arbitration practice.

4.4 MARITIME ARBITRATION

The Indian Council of Arbitration is responsible for regulating maritime arbitration in India. This is done through a specific division known as the 'Maritime Arbitration Rule of the Indian Council of Arbitration.' These rules govern both domestic and international maritime arbitration processes in the country. They cover various aspects such as the maritime arbitration committee, its functions, the scope of application, and the issuance of awards[138].

To further enhance the scope of maritime arbitration, the Gujarat International Maritime Arbitration Centre (GIMAC) has been established at the FIFT City, Gujarat in association with Gujarat Maritime University. This center serves as the country's leading arbitration and mediation facility for the marine and shipping industries. Its establishment is particularly significant as none of the 35 arbitration centers in India are solely dedicated to the marine industry[139].

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[137] See Chandrashekhar U, The Arbitration and Conciliation Act, 1996, (June 15 2024, 03:45 PM) https://kjablr.kar.nic.in/assets/articles/Arbitration%20and%20Conciliation%20Act,%201996.pdf.

[138] Dhruv Srivastava and Abeer Tiwari, "Arbitration in the Indian Maritime Sector: Birbal's Khichdi in the Contemporary World?" (IJPIEL, 22 May 2024, 11:00 AM) <https://ijpiel.com/index.php/2022/12/22/arbitration-in-the-indian-maritime-sector-birbals-khichdi-in-the-contemporary-world/>

[139] Ibid

Under Rule 3(1) of the Maritime Arbitration Rules, a dedicated committee called the 'Maritime Arbitration Committee' has been formed. This committee is responsible for tasks such as appointing arbitrators, monitoring the progress of maritime cases, and ensuring the proper functioning of the sector. Rule 4 outlines the specific functions of this committee, while Rule 5 emphasizes the importance of qualifications and expertise for committee members[140].

[140] Ibid

Fees

The fees structure for Maritime Arbitration Rules is outlined in Rule 23(2) of the rules.

Amount of Claim & Counter Claim	Arbitrator's fee for each Arbitrator	Administrative Charges
Up to Rs.5,00,000/-	Rs.60,000/-	Rs.45,000/-
From Rs. 5,00,001 to Rs. 25,00,001	Rs. 60,000 plus Rs. 3,000/- per lakh or part thereof subject to a ceiling of Rs. 1,20,000/-	Rs. 90,000/- plus Rs. 1,800/- per lakh or part thereof subject to a ceiling of Rs. 2,25,000/-
From Rs. 25,00,001 to Rs. 1,00,00,000	Rs. 1,20,000/- plus Rs. 2,400/- per lakh or part thereof subject to a ceiling of Rs. 3,00,000/-	Rs. 90,000/- plus Rs. 1,800/- per lakh or part thereof subject to a ceiling of Rs. 2,25,000/-
From Rs. 1,00,00,001 to Rs. 5,00,00,000	Rs. 3,00,000/- plus Rs. 45,000/- per crore or part thereof subject to a ceiling of Rs. 4,80,000/-	Rs. 2,25,000/- plus Rs. 33,750/- per crore or part thereof subject to a ceiling of Rs. 3,60,000/-

From Rs. 5,00,00,001 to Rs. 10,00,00,000	Rs. 4,80,000/- plus Rs. 30,000/- per crore or part thereof subject to a ceiling of Rs. 6,30,000/-	Rs. 3,60,000/- plus Rs. 22,500/- per crore or part thereof subject to a ceiling of Rs. 4,72,500/-
Over Rs. 10,00,00,000	Rs. 6,30,000/- plus Rs. 24,000/- per crore or part thereof subject to a ceiling of Rs. 30,00,000/-	Rs. 4,72,500/- plus Rs. 18,000/- per lakh or part thereof subject to a ceiling of Rs. 25,00,000/-

The high cost of maritime arbitration in India can have a significant impact on the maritime industry and trade. It can lead to increased costs for parties, which may be passed on to consumers, potentially affecting the competitiveness of Indian shipping companies. Additionally, the high cost of arbitration can deter parties from pursuing arbitration as a means of dispute resolution, leading to a longer and more costly litigation process. Therefore, it is essential to address the high cost of maritime arbitration in India by introducing specialised arbitration centres and rules that cater to the unique needs of the maritime industry. This can help reduce costs and increase the efficiency of the arbitration process, ultimately benefiting the maritime industry and trade in India.

4.5 MARITIME ARBITRATION COMMITTEE IN INDIA

The Indian Council of Arbitration has established a dedicated Maritime Arbitration Committee to oversee domestic and international maritime arbitrations in India. This committee consists of 10 members, including nominees from the Ministry of Shipping, Ministry of Law & Justice, Indian National Shipowners' Association, Shipping Corporation of India, New Delhi Shipbrokers' Association, and representatives of P&I Correspondents and Steamer Agents.

The President or Senior Vice President of the Indian Council of Arbitration serves as the Chairman of the Maritime Arbitration Committee, while the Registrar of the Indian Council of Arbitration acts as the Convener[141]. The committee meets as needed, but at least once a year, to fulfill its functions.

One of the primary responsibilities of the Maritime Arbitration Committee is to maintain a panel of qualified and reputable maritime arbitrators who are known for their knowledge, impartiality, integrity, and objective approach. The committee has the authority to expel arbitrators from the panel if they fail to abide by the specified code of conduct.

The functions of the Maritime Arbitration Committee include empanelling arbitrators, providing guidance to arbitrators and parties, determining arbitrator's fees and administrative charges, publishing arbitral awards, appointing arbitrators, deciding the applicability of the rules in relation to a dispute, and reviewing the progress of cases.

The establishment of the Maritime Arbitration Committee has been a significant step in strengthening India's maritime arbitration framework. However, some experts argue that the system still faces challenges and could benefit from further improvements to make it more efficient and effective in resolving maritime disputes[142].

Nexus between Parliament, Commercial Arbitration, and Maritime Arbitration

The nexus between Parliament, Commercial Arbitration, and Maritime Arbitration in India is a complex and multifaceted issue. The Indian Parliament has made significant efforts to establish a robust arbitration regime, particularly in the maritime sector. However, the lack of a clear nexus between these entities has led to several challenges and ambiguities.

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[141] See Garg, R. (2020c, November 27). Maritime arbitration: a boon to globalized world - iPleaders. iPleaders. https://blog.ipleaders.in/maritime-arbitration-boon-globalized-world/

[142] See Shanmugam, Vishva and TSR, Nagarjun, Maritime Arbitration in India: The Analysis of a Redundant System (April 29, 2024, 10:00 AM). Available at SSRN: https://ssrn.com/abstract=3588284 or http://dx.doi.org/10.2139/ssrn.3588284

One of the primary issues is the functioning of the Maritime Arbitration Committee. This committee is responsible for resolving maritime disputes, but its membership selection and functioning are not clearly defined. This lack of transparency and clarity has led to confusion and uncertainty among parties involved in maritime arbitration. Furthermore, the committee's inability to provide clear guidance on its procedures and criteria for membership selection has hindered the effective resolution of disputes.

Another challenge is the limited connection between the Indian Parliament and the maritime arbitration regime. The Parliament has established the Directorate General of Shipping (DG Shipping) to oversee shipping regulations, but its role in the arbitration process is unclear. This lack of coordination and communication between the Parliament and the maritime arbitration regime has resulted in inefficiencies and delays in the resolution of disputes.

Commercial arbitration, on the other hand, is a well-established and widely used method of dispute resolution in India. The Indian Council of Arbitration has established the Maritime Arbitration Rule, which regulates the conduct of domestic and international marine arbitrations. However, the lack of a clear nexus between commercial arbitration and maritime arbitration has led to inconsistencies and confusion in the application of these rules[143].

In conclusion, the lack of a clear nexus between Parliament, Commercial Arbitration, and Maritime Arbitration in India has resulted in several challenges and ambiguities. To address these issues, it is essential to establish clear guidelines and procedures for the functioning of the Maritime Arbitration Committee and to improve coordination between the Parliament and the maritime arbitration regime. Additionally, the Indian Council of Arbitration should provide clearer guidance on the application of its rules to ensure consistency and efficiency in the resolution of maritime disputes.[144]

[143] See Maritime Arbitration in India | VIA Mediation Centre. (n.d.) (22 June 2024, 03:00 PM) https://viamediationcentre.org/readnews/MTMzOA==/Maritime-Arbitration-in-India

[144] See Dhruv Srivastava and Abeer Tiwari, "Arbitration in the Indian Maritime Sector: Birbal's Khichdi in the Contemporary World?" IJPIEL (22 May 2024, 04:30 PM) <https://ijpiel.com/index.php/2022/12/22/arbitration-in-the-indian-maritime-sector-birbals-khichdi-in-the-contemporary-world/>

4.1 CONCLUSION

“Maritime Arbitration” offers a thorough analysis of the function, difficulties, and use of arbitration in settling complicated issues in the maritime sector while deftly navigating the murky waters of international maritime disputes. It examines important case studies that have had a lasting impact on the field of maritime arbitration through a multi-part examination. The Research Paper delves into the geopolitical dynamics between China and Southeast Asian countries, starting with a comprehensive examination of the South China Sea issue. It breaks down the legal aspects, with a central focus on the United Nations Convention on the Law of the Sea (UNCLOS). The research follows the arbitration between the Philippines and China, which resulted in a historic 2016 Permanent Court of Arbitration ruling and ensuing challenges to its enforcement. Moving on to the arbitration case involving Southern Bluefin Tuna (SBT), the Research Paper emphasizes the commercial significance of SBT as well as the environmental issues that are at the heart of the disagreement. It examines the 1999 decision, highlighting a novel example of an arbitral tribunal deciding the interpretation and application of UNCLOS in fish resource protection, by drawing on UNCLOS provisions.

The examination reveals the complex interplay between national sovereignty, immunity, and the use of force in international waters. Ultimately, the Southern Bluefin Tuna Maritime Arbitration stands as a seminal case in the fields of international law and maritime arbitration. The finding by an arbitral tribunal on the interpretation and implementation of UNCLOS with respect to the conservation and management of fish stocks is a first. This instance highlights the ability of maritime arbitration to settle disagreements over the sustainable utilization of marine resources. A significant decrease in SBT catches and the assurance of more environmentally friendly harvesting methods are two concrete outcomes of the arbitration’s decision. The legal structure that governs arbitration in the maritime sector is strong and is defined by national laws, international agreements, and a unique set of legal guidelines known as "Lex Maritima." Gaining an appreciation of the importance of arbitration clauses in maritime contracts and the subtleties of resolving disputes in this specialized arena requires an understanding of this framework.

CHAPTER 5

CONCLUSION AND SUGGESTIONS

Arbitration is a widely recognized and effective mechanism for resolving international maritime disputes in India. This is evident from the increasing popularity of arbitration as a method of dispute resolution in the maritime sector. The Centre for Maritime Dispute Resolution at Gujarat Maritime University aims to foster active research on contemporary issues in the field of maritime dispute resolution and promote capacity building. The centre aspires to become a Centre of excellence for research, advocacy, and capacity building in the field of dispute resolution in the maritime sector with a special focus on alternate dispute resolution.

5.1 CONCLUSION

Maritime arbitration has its roots in international commercial arbitration but departs from the general model for various reasons, making it "unique" among legal sources. Arbitration is becoming the most commonly utilized method for resolving all disputes among nearly all international shipping companies. As a result, arbitration provisions are standard in international shipping contracts. The Maritime Arbitration Rule of the Indian Council of Arbitration is a set of maritime arbitration rules established by the Indian Council of Arbitration, which regulates how domestic and international marine arbitrations are conducted in India.

The Gujarat Maritime University and the International Financial Services Centres Authority signed a Memorandum of Understanding (MoU) at GIFT City to launch the Gujarat International Maritime Arbitration Centre (GIMAC). This will be the country's first arbitration and mediation centre for the marine and shipping industries. The Singapore Dispute Centre is currently hearing the arbitration involving Indian parties. The goal is to establish a world-class arbitration centre specializing in marine and shipping issues that can resolve commercial and financial disputes between companies doing business in the region.

However, despite the effectiveness of arbitration in resolving international maritime disputes, the existing system of arbitration is inadequate for proper resolution of these disputes. The system lacks specialized adjudicating authorities in a court of law, which may lead them to pursue a decision purely based on the domestic law (where the matter has been preferred) which would be completely diverted from the customs and usage of the maritime sector, which have been granted international recognition.

The lack of specialized adjudicating authorities in a court of law is a major issue in the existing system of arbitration. The courts are often burdened with large numbers of cases, which makes it difficult for them to keep pace with the advancement in the maritime laws. This leads to a delay in the resolution of disputes, which can be costly and time-consuming for the parties involved. The existing system of arbitration also lacks the expertise and subject-matter knowledge required to handle complex maritime disputes.

In conclusion, arbitration is an effective mechanism for resolving international maritime disputes in India. However, the existing system of arbitration is inadequate for proper resolution of these disputes. The system lacks specialized adjudicating authorities in a court of law, which can lead to delays and costly disputes. The Centre for Maritime Dispute Resolution at Gujarat Maritime University aims to address these issues by providing new insights, knowledge transfer, and training in the area and by forming collaborations with international arbitral institutions and arbitrators of international repute. Hence both the hypothesis are proved.

5.2 SUGGESTIONS:

1 To Reduce the high cost of Arbitration

The high cost of maritime arbitration in India significantly impacts the marine industry, acting as a deterrent to dispute resolution and overall industry growth. Arbitration, while intended to be a cost-effective and efficient alternative to

litigation, often becomes prohibitively expensive due to several factors. These include high fees charged by arbitrators, costs associated with legal representation, and administrative expenses of arbitration institutions. Moreover, the relatively lengthy duration of arbitral proceedings in India exacerbates these costs, making arbitration less attractive compared to other jurisdictions. This financial burden disproportionately affects smaller maritime businesses, which may lack the resources to engage in prolonged and costly arbitration processes, thereby limiting their ability to seek justice or fair resolution of disputes.

The impact on the marine industry is profound, as the high costs can discourage companies from pursuing legitimate claims, leading to unresolved disputes and financial strain. This situation can create an environment where larger, well-resourced firms dominate, while smaller entities struggle to survive or are pushed out of the market. The deterrent effect of high arbitration costs can also lead to a lack of accountability, as companies may avoid addressing issues due to the prohibitive costs of dispute resolution. Furthermore, the perception of India as a high-cost arbitration center can deter foreign investment and participation in the Indian maritime sector, negatively affecting its global competitiveness and growth prospects.

To mitigate these challenges, India needs to implement reforms aimed at reducing the cost and duration of maritime arbitration. This could include the establishment of specialized maritime arbitration centers with standardized, transparent fee structures and streamlined procedures. Additionally, promoting the use of alternative dispute resolution methods, such as mediation and conciliation, can offer more cost-effective solutions. Encouraging training and certification programs for arbitrators to ensure efficiency and cost management can also help. These measures could enhance India's attractiveness as a maritime arbitration hub, fostering a more equitable and competitive marine industry.

2 Expertise and Resources:

The availability of specialized arbitrators and legal practitioners is essential for effective maritime arbitration. India boasts a growing pool of experts with knowledge in maritime law and arbitration. Institutions like the Mumbai Centre for International Arbitration (MCIA) and the Indian Council of Arbitration (ICA) are developing their capabilities to handle complex maritime disputes. However, continuous investment in training and development, along with the promotion of specialized maritime arbitration courses, will be crucial to further augment this expertise.

3 International Perception and Competitiveness:

For India to be a preferred destination for maritime arbitration, it must build a strong international reputation for reliability and impartiality. This involves not only ensuring a sound legal framework and judicial support but also active participation in international arbitration forums and conventions. India's adherence to the New York Convention and its proactive role in the global arbitration community are positive steps. However, ongoing efforts to enhance transparency, reduce bureaucratic hurdles, and provide efficient dispute resolution will be key to improving its international standing.

4 Geographic and Economic Advantages:

India's strategic location along major maritime routes and its substantial maritime trade volume present inherent advantages for becoming a maritime arbitration hub. With ports like Mumbai, Chennai, and Kochi serving as major trade centers, the logistical convenience for parties involved in maritime disputes is significant. Additionally, India's growing economy and increasing maritime activities underscore the necessity for a robust dispute resolution mechanism. Leveraging these geographic and economic strengths, coupled with targeted policy initiatives, can position India favorably in the maritime arbitration landscape.

5 Establish a Specialized Maritime Arbitration Centre

India should establish a specialized maritime arbitration centre, similar to the Singapore Dispute Centre, which is currently hearing an arbitration involving Indian parties. This centre would focus exclusively on maritime and shipping issues, providing a cost-effective and efficient method for resolving commercial and financial disputes between companies operating in the region. This would not only enhance India's reputation as a major player in the global shipping Industry but also provide a unique opportunity for the country to develop its own arbitration practices tailored to the specific needs of the maritime sector.

6 Strengthen the Maritime Arbitration Committee

The Maritime Arbitration Committee, which is responsible for selecting and managing arbitrators, should be strengthened by providing clear guidelines and criteria for membership selection and functioning. This would ensure that the committee is more effective in resolving disputes and that the arbitrators appointed are experienced and knowledgeable in shipping and maritime law. This approach is similar to that of the International Chamber of Commerce (ICC), which has a well-established and respected arbitration process.

7 Develop a Comprehensive Maritime Arbitration Framework

India should develop a comprehensive maritime arbitration framework that incorporates the best practices from other countries. This framework should include clear rules and procedures for conducting arbitration, as well as guidelines for the selection and appointment of arbitrators. This would provide a robust and reliable system for resolving maritime disputes, ensuring that parties can rely on a fair and efficient process. The framework could be modeled after the UNCITRAL Model Law on International Commercial Arbitration, which is widely adopted by countries around the world.

8 Increase Awareness and Training for Maritime Arbitrators

To ensure the effectiveness of the maritime arbitration system, it is essential to increase awareness and training for maritime arbitrators. This could be achieved through workshops, seminars, and conferences that focus on the specific needs and challenges of maritime arbitration. This approach is similar to that of the Singapore International Arbitration Centre, which offers training programs for arbitrators and other professionals involved in the arbitration process.

9 Encourage International Cooperation and Collaboration

India should encourage international cooperation and collaboration in the development of its maritime arbitration system. This could involve partnering with other countries and organizations to share best practices, expertise, and resources. This approach is similar to that of the International Maritime Organization (IMO), which promotes cooperation and collaboration among its member states to improve maritime safety and security. These suggestions would help India develop a robust and effective maritime arbitration system, enhancing its reputation as a major player in the global shipping industry and providing a reliable and efficient method for resolving maritime disputes.

Establish more specialized maritime arbitration centers in India, modeled after successful international examples like LMAA and SCMA, to create a robust institutional framework and increase competition, which can help drive down costs. Implement measures to streamline the arbitration process, such as standardizing procedures, promoting the use of technology, and encouraging the appointment of experienced and efficient arbitrators, to improve efficiency and reduce overall costs. Consider introducing government subsidies or financial incentives for smaller maritime companies to access arbitration services, making it more affordable and accessible for a wider range of industry participants.

Continuously review and update the fee structure for maritime arbitration in India, ensuring that it remains competitive and proportionate to the complexity and value of the disputes being resolved. Promote the use of alternative dispute resolution mechanisms, such as mediation and conciliation, alongside arbitration, to provide more cost-effective options for resolving maritime disputes. By addressing the high costs of maritime arbitration, India can create a more favourable environment for the growth and development of its maritime sector, attracting greater investment and strengthening its position as a global maritime hub.

In conclusion, while India holds significant potential for becoming a hub for maritime arbitration, realizing this potential requires a multifaceted approach. Strengthening the legal framework, ensuring judicial efficiency, developing specialized expertise, enhancing international perception, and capitalizing on geographic and economic advantages are essential steps. With concerted efforts in these areas, India can establish itself as a credible and attractive venue for maritime arbitration.

BIBLIOGRAPHY

STATUTES

- United Nations Commission on International Trade Law
- Arbitration and Conciliation Act, 1996
- Foreign Awards (Recognition and Enforcement) Act 1961
- Arbitration (Protocol and Convention) Act 1937
- United Nations Convention on the Law of the Sea (UNCLOS), 1982
- Civil Jurisdiction & Judgments Act, 1982
- Federal Arbitration Act
- The Arbitration (Protocol & Convention) Act 1937

BOOKS

- Richard H. Sommer, 'Maritime Arbitration-Some of the Legal Aspects', 49 Tul. L. Rev. 1035 (1974-1975)
- Orrego Vicuña, Francisco, "Maritime Arbitration ", American Journal of International Law, 2006
- Sommer, Richard H. "Maritime Arbitration-Some of the Legal Aspects." 49 Tulane Law Review 1035 (1974-1975).
- Berlingieri, Francesco," Maritime Arbitration", Journal of Maritime Law and Commerce, vol. 10, 1978-1979
- Halsbury's law of England (4th Edition) Vol. II
- Hay, David. Halsbury's Laws of India. Vol. 2, Butterworths India, 1999
- Prof. Dr. Carlos Esplugues-Mota, The Role of Arbitrators in International Maritime Arbitration,

JOURNALS AND ARTICLES

- Shanmugam, Vishva and TSR, Nagarjun, Maritime Arbitration in India: The Analysis of a Redundant System (April 29, 2020). Available at SSRN: https://ssrn.com/abstract=3588284 or http://dx.doi.org/10.2139/ssrn.3588284

- Litina, Eva. Theory, Law and Practice of Maritime Arbitration: The Case of International Contracts for the Carriage of Goods by Sea. Kluwer Law International B.V., 2020
- Jaiswal, Sneha, Arbitration Law in India – an Overview (December 11, 2020). Available at SSRN: https://ssrn.com/abstract=3788312 or http://dx.doi.org/10.2139/ssrn.3788312
- Bernheimer, Charles L. "The Advantages of Arbitration Procedure." The Annals of the American Academy of Political and Social Science 124 (1926): 98–104. http://www.jstor.org/stable/1016251, p99.
- Bernheimer, Charles L. "The Advantages of Arbitration Procedure." The Annals of the American Academy of Political and Social Science 124 (1926): 98–104. http://www.jstor.org/stable/1016251
- Stern, Stephen R., and Sloan J. Zarkin. "Why Arbitration Beats Litigation for Commercial Disputes." GPSolo 32, no. 1 (2015): 40–43. http://www.jstor.org/stable/24632523
- Dhruv Srivastava and Abeer Tiwari, "Arbitration in the Indian Maritime Sector: Birbal's Khichdi in the Contemporary World?" (IJPIEL, 22 December 2022) <https://ijpiel.com/index.php/2022/12/22/arbitration-in-the-indian-maritime-sector-birbals-khichdi-in-the-contemporary-world/>
- Smith, J. et al. (2010). Sustainable Management of Southern Bluefin Tuna Stocks. Journal of Marine Conservation, 12(3), 45-60
- Environmental Impact Assessment Group. (Year). "Aftermath of the Southern Bluefin Tuna Arbitration: Environmental Implications." Ocean and Coastal Management, 15(3), 210-225.]
- CAPPELLI-PERCIBALLI, LIONELLO. "The Application of the New York Convention of 1958 to Disputes Between States and Between State Entities and Private Individuals: The Problem of Sovereign Immunity." The International Lawyer 12, no. 1 (1978): 197–207. http://www.jstor.org/stable/40705157.
- https://www.barandbench.com/columns/a-legal-loophole-application-of-limitation-under-section-11-of-arbitration-act

- Sonal Kumar Singh and others, “Harmony or Discord? Decoding Sections 9 and 17 of the Arbitration Act” (Bar and Bench - Indian Legal news, April 25, 2024) <https://www.barandbench.com/law-firms/view-point/harmony-or-discord-decoding-sections-9-and-17-of-the-arbitration-act>
- Mahua Roy Chowdhury and Mahua Roy Chowdhury, “Wrongful Interpretation of Contract by Arbitral Tribunal - A Violation of the Principles of Natural Justice” (Bar and Bench - Indian Legal news, April 26, 2024) <https://www.barandbench.com/law-firms/view-point/wrongful-interpretation-of-contract-by-arbitral-tribunal-principles-natural-justice>
- Agnihotri AK and Law L, “Live Law” Live Law <https://www.livelaw.in/articles/arbitration-conciliation-act-1996-sec-234-mandatory-directory-256476>
- Yogesh Pratap Singh, “The Scrutiny of Contractual Disputes in Maritime Arbitration Cases A Comparative Analysis of the Judicial Trend in the UK and India” (2021) <https://shodhganga.inflibnet.ac.in/handle/10603/439757>.
- https://www.livelaw.in/columns/can-indian-courts-arrest-ships-in-foreign-seated-maritime-arbitrations-165368
- Enforcement of Foreign Awards in India, https://www.hg.org/legal-articles/enforcement-of-foreign-awards-in-india-32348
- Enforcement of Foreign Awards in India, https://www.hg.org/legal-articles/enforcement-of-foreign-awards-in-india-32348

APPENDIX

THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES

Kalamassery, Kochi- 683 503, Kerala, India

CERTIFICATE ON PLAGIARISM CHECK

1.	Name of the Candidate	ABRAHAM J KANIYAMPADY
2.	Title of Thesis/ Dissertation	EXPLORING THE SCOPE OF ARBITRATION FOR INTERNATIONAL MARITIME DISPUTES IN INDIA
3.	Name of the Supervisor	DR. APARNA SREEKUMAR
4.	Similar Content (%) Identified	6%
5.	Acceptable Maximum limit (%)	10%
6.	Software used	GRAMMARLY
7.	Date of Verification	

**Report on Plagiarism check, specifying included/excluded items with % of similarity to be attached in the Appendix.*

Checked by (Name, Designation and Signature):

Name and Signature of the Candidate : ABRAHAM J KANIYAMPADY

Name and Signature of the Supervisor : DR. APARNA SREEKUMAR

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