Jagannath University Research Journal (JURJ) Volume No. -IV, Issue No.–II, November, 2023, ISSN: 2582-6263

CHANGING DIMENSION OF GLOBALIZATION IN INDIAN MARITIME TIME LAWS IN INDIA

Dr.Suman Paliwal[a]

Bobby George[b]

[a]Associate Professor, Faculty of Law, Jagan Nath University, Jaipur

[b]Research Scholar, Faculty of Law, Jagan NathUniversity,Jaipur

Abstract: Globalization has had a profound impact on Indian maritime laws, leading to the alignment of regulations with international standards and trade practices, improvements in maritime security, and the development of infrastructure to support increased global trade. These changes aim to enhance India's participation in the global maritime economy and ensure the efficient and secure movement of goods and services across its maritime borders.

Keywords: Maritime Time Laws, Arbitration, Privity of Contract, Globalization

1. INTRODUCTION:

The business community in India has traditionally chosen arbitration as a means of resolving disputes. Party autonomy is a significant factor in arbitration, as it allows a party to exercise its right to select its own arbitrator. An additional factor is the reduced level of procedural strictness and adherence obligation in contrast to the intricate and rigid protocols that are customary in legal proceedings.

A comprehensive analysis of diverse instances that have yielded disparate outcomes in the interpretation of the substantive clause employed in a maritime agreement.With regards to the matter of the parties' intentions during the drafting of contractual clauses, the court has established a fundamental principle that deems any information irrelevant to the interpretation of a contract unless it was known or could have been known by both parties at thetime of the contract's formation.

The principal area of contention among parties to a maritime agreement has been a recurring issue. An additional issue that arises from this type of integration is the potential infringement of third-party rights. As a negotiable instrument, a bill of lading can be readily transferred by the initial holder to a third party, who may subsequently reiterate the process. The incorporation of arbitration clauses introduces a third partyand undermines the constraints of privity of contract. Consequently, the interpretation of

these clauses has implications for the rights of third parties who were not initially involved in the contractual agreement.

Maritime law pertains to matters related to navalaffairsandtradethatoccuronthesea.Several authors have characterized it as a legal structure governing maritime transportation[1]Maritimelawhasbeendefinedby someasa collection of legal principles and regulations that pertain to the transportation of goods and individuals via water[2].

The field of maritime law can be further categorized into two distinct subsets. The first subset, known as private maritime law, pertainstocontractualagreementssuchascharter party contracts, contracts of affreightment, and salvage. The second subset,referredto aspublicmaritime law, is concernedwiththeregulationofoceansand theirresources,commonlyknownasthelaw of the sea.

The semantic discourse surrounding the distinctions between maritime law, shipping law, and admiralty law is a matter of negligible consequence. However, it is noteworthy that the concept of maritime history is tantamount to the coastal history of diverse nations. It is frequently asserted that the origins of maritime law are shrouded in antiquity, and this can be attributed to a straightforward explanation[3].The development of maritime law can be attributed to the customary practices and traditions of seafarers. The decisions made by sea merchants, in conjunction with these, were compiled into Ratio Scripta across different regions of the globe, ultimately evolving into formal legal statutes.

1.1. HistoricalBack Ground:

According to Lord Atkinson, the inclusion of arbitration clauses in the bill of lading ought to be accomplished through precise and explicit language, rather than through broad terminology.When determining the appropriate method for resolving disputes, namely arbitration or court proceedings, the inclusion of arbitration clauses is of utmost importance, particularly with regard to the language employed during incorporation. The study primarily centers on the various methods employed by judges or courts in the interpretationofarbitrationissues,withaspecific

[1]Guidelines forMaritime Legislation,(vol1,3rdedn, United Publication Economic and Social Commission for Asia and The Pacific) 1.

[2]Thomas J Schoenbaum and A N Yiannopoulos, Admiralty and Maritime Law Cases and Material (Charlottesville 1984) 1.

[3]Mukherjee P, 'Maritime Law and Admiralty Jurisdiction: Historical Evolution and Emerging Trends' in The Admiral. (Vol. VI, Ghana Shippers' Council) 1-42.

emphasis on maritime agreements. The study will additionally center on the efficacy of integrating the arbitration clause into the bill of lading as a means of eliminating the ambiguity that arises when the clauses referenced in the charter party are incorporated by reference into the clauses contained in the bills.

The Italian Supreme Court in the case of Miserocchi v. Agnesi[4] also espoused the aforementioned notion.The Supreme Court rejected the notion that the contract of sale, which did not explicitly include the arbitration clause, satisfied the written agreement requirement stipulated by the New York Convention for the resolution of related disputes.The divergent perspectives of courts across various jurisdictions regarding the matter at hand give rise to considerable ambiguity, particularly in relation to maritime contracts that frequently involve international implications beyond the confines of national court jurisdiction. Consequently, conducting comprehensive research on this topic is crucial to effectively address this global ambiguity with a certain degree of assurance. The matter of the finality and binding nature of arbitral awards is fundamentally challenged by this development.

In a more expansive framework, the term 'review' denotes the act of reconsidering or discussing a subject matter with the intention of effecting modifications or arriving at a conclusion[5].From a legal standpoint, a review refers to the process of scrutinizing a previously rendered decision, action, or award by a competent authority, with the ultimate outcome being either its affirmation or modification.

The judicial review process in the United Kingdom and India shares a similar conceptual framework. However, there is a divergence in terms of the applicability of legislative statutes. Despite the existence of Parliamentary Supremacy in India, the Judiciary maintains the authority to conduct judicial review of legislative Acts in order to evaluate their procedural and substantive validity.

The UK Judiciary is limited in its ability to conduct judicial review toexecutive and administrative legislationsand actions due to the principle of Parliamentary Sovereignty. Therefore, in order to comprehend the law

[4]Associateprofessor,Miserocchiv.SocietdAgnesi Judgement no. 3626 of 15 December 1971, 1971 ForoItalino,I,1616.

[5]Review,CAMBRIDGEDICTIONARY, https://dictionary.cambridge.org/dictionary/english/review (last visited June 24 2023)

accurately,the chapter denotes Judicial Review as "Judicial scrutiny". The concept of "Judicial Review" refers to the ultimate authority of the judiciary to assess and ascertain the legitimacy of a law or an order[6]. India,similar to several other common lawnations, adheres to the principle of the rule of law. This implies that the law of the country holds the highest authority over all state functions and individuals.

The judicial review is a mechanism that allows for the examination of any legislation or actions undertaken by the Legislature, Executive, and Judicial branches of the governmentthat are deemed to be in conflict with the provisions of the Constitution.

The aim of this study is to examine and compare the similarities and differences in howcontractualdisputesarehandledbythe courtsintwojurisdictions.Additionally,thestud y seeks to identify any gaps or shortcomingsinthecourt'sinterpretationof such disputes. To proceed, it is necessary to conduct a comparative examination of maritime cases that undergo arbitration and subsequently proceed to court.

Globalization has significantly impacted India's maritime laws and regulations over the years, leading to changes in various dimensions. These changes are driven by India's increasing integration into the global economy and its efforts to align with international maritime conventions and standards. The dimension of globalization in Indian maritime laws has undergone significant changes overthe years,reflecting the evolving nature of international trade, commerce,andmaritimeactivities.Hereare some key aspects of how globalization has influenced Indian maritime laws:

1.2. Adoption of International Maritime Conventions:

India has been an active participant in international maritime conventions and agreements. As globalization has intensified, India has increasingly adopted and implementedthese conventions to ensure compatibility with global standards. Examples include the International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL), and the International Convention on Maritime Search and Rescue (SAR).

[6]AshutoshKumarSrivastavaandPujaPaulSrivastava, 'Judicial Review in India an Analysis' (2014) SSRN 2705279.

1.3. Harmonization with International Trade Practices:

Globalization has led to a significant increase in maritime trade for India. To facilitate international trade, India has amended its maritime laws to align with international trade practices and conventions such as the United Nations Convention on Contracts for the InternationalSaleofGoods(CISG)andthe

RotterdamRules,whichdealwiththeinternation al carriage of goods by sea.

1.4. Maritime Security:

Globalization has brought about security challenges in the maritime domain. India has introduced measures to enhance maritime security in line with international protocols such as the International Ship and Port Facility Security (ISPS) Code to safeguard its ports and shipping routes from potential threats.

1.5. Economic Zones and Exclusive Economic Zones (EEZs):

India's EEZ extends into the Indian Ocean, making it crucial to establish and enforce maritime laws related to fisheries, mineral resources, and environmental protection. India's maritime laws have evolved to manage its resources within the framework of international agreements and negotiations.

1.6. Admiralty and Commercial Laws:

The Indian legal framework governing admiralty and commercial maritime matters has evolved to accommodate global trade practices and resolve international disputes efficiently. The enactment of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, was a significant step in this direction.

1.7. Environmental Regulations:

As environmental concerns have gained prominence globally, India has modified its maritime laws to align with international regulations addressing issues such as ballast water management, marine pollution, and ship recycling in accordance with international conventions and standards.

1.8. Port Development and Infrastructure:

To facilitate globalization and handle increased international trade, India has invested in expanding and modernizing its ports and port infrastructure, necessitating amendments to maritime laws governing port operations, concessions, and tariffs.

1.9. Trade Facilitation and E-commerce:

The growth of e-commerce and digital technologies in the maritime sector has led to the adoption of digital documentationand trade facilitation measures. India's maritime laws have adapted to accommodate electronic bills of lading, electronic data interchange (EDI), and block chain technologies for secure and efficient trade transactions.

1.10. Cross-Border Shipping and Sabotage Laws:

India has relaxed certain sabotage laws to promote international shipping lines and encourage foreign investment in shipping services, allowing greater connectivity to global markets.

According to legal discourse, the translation of a legally binding agreement must befirmly based on the text and interpreted in lightofthe entire agreement.Courtsarenot authorized to utilize general provisions to deviate from the text to the extent that a new interpretation is effectively created. Although the rationale behind the plain meaning rule is evident, it only brings us up tothispoint.Inparticular,whatmechanisms does the standard employ to advance its objective of enhancing objectivity. This inquiry poses a challenge in terms of providing a comprehensive answer, as the precise definition of the standard's content has not been fully established. The underlying concept of the standard is that the literal or customary significance of language cannot be disregarded. Nevertheless, an alternative concept reveals severalpossibleinterpretationsofthenorm. For example, what is the significance of departing from the literal meaning? Are there any circumstances in which the literal meaning can be unequivocally disregarded? Upon closer examination of the cases and scholarly analyses, it becomes apparent that there exist several variations of the plain meaning rule.These variations shall bereferred to as the "highly robust version," "strong version," and "weak version," respectively.

2. JudicialAspects

The case of I/S Stavborg v. National Metal Converters Inc.[7] pertains to the matter of scrutinizing arbitrator's awards. The Supreme Court has recently reiterated the notion that the federal courts are not authorized to scrutinize the legal interpretation rendered by arbitrators. According to David Frum, it is possible for courts to conduct periodic reviews of arbitrations, a practice that is

[7]I/SStavborgv.NationalMetalConvertersInc.,500 F.2d 424 (2d Cir. 1974).

currently followed in England. However, there is considerable uncertainty regarding the frequency of such reviews. Potential modifications to the Arbitration Act or contractual adjustments may be necessary to enable district courts to conduct reviews of arbitration awards pertaining to legal issues.

There is an absence of prescribedregulations dictating the procedures to be adheredtoduringtheprocessofarbitration. TheS.M.A.Rulesarecommonlyemployedin arbitration proceedings related to charter parties in the jurisdiction of New York. The courtinthecaseofArtie ShawPresents,Inc.v. Snyder[8], declined to annul a decision rendered by a third arbitrator who was designated by the initial two arbitrators.

Inrelationtothe implementation of awards, it is stipulated by the Arbitration Act that if thepartieshaveexplicitlymentionedintheir agreement that a court judgment shall be based on the award, then they may request the court for an order to validate the award withinaperiodofoneyear.Hence,itisevident that several issues are subject to arbitrationorlitigation.Theessentialinquiry at hand is to determine the prevailing tendency of the court to render a verdict in support of either arbitration or self- determination in cases where the clauses of a maritime contract are contested.

Luis conducts an analysis of diverse attributes pertaining to international commercial arbitration, including arbitral procedures, a range of arbitration clauses, flawed arbitration clauses, their underlying causes, as well as the extent andimplications of such issues. The author has provided a comprehensive analysis, encompassing all relevant topics pertaining to international commercial arbitration. According to Luis, international commercial arbitration can be delineated based on the typical features of commercial arbitration. The factors that contribute to the award's significanceareitsindependentprovenance, itsefficacyasdemonstratedbyitsobligatory adherence, and its near-universal adoption. Anotheraspecttoconsideristheconsensual nature of the procedure. Typically, the foundations of the arbitral procedure are located in either an arbitration clause contained within a contractual agreement between the involved parties, or in a submission agreement. Typically, it is customary for the involved parties to establish a provision in the contract or agreement at the outset of their engagement, stipulating that

[8]ArtieShawPresents,Inc.v.Snyder(46A.D.2d867) 362 N.Y.2d 158 (1974).

any potential disputes will be resolved throughharbitration.Thisprovision isimplemented as a precautionary measure, in anticipation of any future conflicts that may arise.

3. CriticalAnalysis

The crucial decision of choosing betweenad-hoc and institutional arbitration follows, and it is equally imperative to ascertain the procedurestobeemployedinresolving a dispute. Making incorrect choices in this regardmayhaveadverseconsequences.Itis imperative to exercise caution when employing different forms of arbitration mechanisms in the resolution of global commercial disputes. Luis provides a detailed explanation of the various types of arbitral procedures. Ad-hoc arbitration occurs when the original agreement between the parties includes a provision for arbitration, but does not specify any particular arbitral institution or set of institutional rules. In contrast to ad hoc arbitration, institutional arbitration refers to the process of arbitration that is managedbyaspecializedarbitralinstitutionaccording to its own set of arbitration regulations. The significance of an arbitration clause is emphasized in the context of commercial international business contracts. In the absence of a pre-dispute arbitration agreement or a mutually agreed-upon arbitration clause, parties cannot resort to arbitration to settle a dispute unless they agree to submit their existing disagreement to an arbitrational tribunal. This particular process is commonly referred to as a "submission agreement" in academic contexts. Under certain conditions, particularly in arbitrations governed by international treaties protecting capitalist interests, it is necessary for the State involved and the capitalist party to resolve their disputes through binding arbitration, evenintheabsenceofanexplicitarbitration clause or submission agreement. The drafting of international commercial arbitration clauses can be accomplished through various means, as parties are afforded significant latitude in the formulation of an arbitration agreement. Notwithstanding its benefits, recurrent disputes may ensue due to misinterpretations (whether cultural or linguistic in nature), unforeseeable events, or abrupt situations.

The individual holds the belief that determining the meaning of an oral agreement is a matter of factual inquiry, whereas determining the meaning of a written agreement is a matter of legal inquiry. The author argues that written contracts are frequently subject to misinterpretation, with

the primary reason being the lack of consideration given to the expertise and competency of the contract drafter. This point is particularly well- explained. In order to bolster the argument, the author proceeds to cite several statements from various cases. The second aspect that arises is the concept of consistency. It is commonly assumed that ifa word has been utilized by a contract drafter in a particular sense within a written document, it is to be understood that the same sense will be applied to it in all subsequent instances of its appearance.

Individuals who lack formal legal training, such as businessmen, may not be held tothe same standard of precision as legal professionals. Numerous printed forms of contracts, such as charter parties, have undergone modifications or additions by multiple individuals over time, rather than being drafted by a single person at a particular moment. The author supplements the enumeration by presenting evidence of the parties' intentions or beliefs regarding the meaning of the contract. It is commonly asserted that the responsibility of the Court is to determine the intent of the involved parties. The paramount objective is to ascertainthesharedintentionoftheparties, as discerned from the language employed in the contractual agreement

The mechanism of correction represents the primary exception to the focus officio doctrine.

Errors in clerical or trade-related matters withinthearbitrator'sdecisionarelikelytosignifi cantly influence the outcome of the award. One instance of a consequentialerror occurs when the arbitrator incorrectly computes the total amount of damages, resulting in a situation where one party is compelled to pay a greater or lesser sum than what the arbitral tribunal had intended to award. It is possible for national laws to presume the existence of standardized laws pertainingtothecorrection andrectification of awards. The legal framework for seeking correction of an award is encapsulated inthe UNCITRAL Model Law. Pursuant to this law,apartyorthetribunalitselfmayseekto rectify any errors in computation, clerical or typographical errors, or errors of a similar nature within the award. Such a request for correction must be made with due notice to theopposingparty.Despitetheabsenceofa specific legislation on the matter, the Swiss Confederation has established a precedent through case law that grants the authorityto correct mediation awards. In the landmark

case of Philipp Holtzmann Ag and Nord France SA v. L'Enterprise IndustrialsSA, Department El-Seitha, the Federal Court of Switzerland ruled that an arbitral tribunal possessesaninherentdiscretiontorectifyor construe an award in the absence of legislative or written agreement authority. Consequently, a specific timeline for submitting correction requests have not been established, but this is contingentupon the mutual consent of the involved parties.

While it is not a frequent occurrence for arbitral institutions to deviate from their established procedures and jurisdiction for the purpose of correcting awards, the LCIA allowsforcorrectionrequeststobemadeby the tribunal itself within a period of thirty days from the initial award. ICC Article 29 of the ICC Rules 1998 aligns the ICC with other significant arbitral rules and laws. This provisionestablishesalegalframeworkthatallows for the creation of corrections or interpretations without implicating the relevant law. The arbitral tribunal is empowered to undertake these corrections either on its own initiative or upon the request of a party to the arbitration. In contrast to matters falling under national laws, the International Chamber of Commerce (ICC) imposes restrictions on the jurisdiction of the arbitral tribunal to effectuate such corrections. This is achieved by mandating that any prospective rectifications must be submitted to the ICC Court for endorsement within a period of thirty days from the issuance of the initial award.

Itcanbearguedthatfinalityandfairnessare interdependent concepts, and neglecting one in favour of the other may result in an inequitable outcome that could potentially exceed the scope of international arbitration's current capabilities. It is imperative for the arbitration community to identify a compromise that allows for the relinquishment of bindingness to awards whilesimultaneouslyupholdingprinciplesof equity and impartiality.

4. Conclusion:

The dimension of globalization in Indian maritime laws has evolved to embrace international standards, facilitate trade, enhance security, address environmental concerns, and provide mechanisms for dispute resolution. This evolution reflects India's recognition of the interconnectedness of global maritime activities and the need to adapt its legal framework accordingly. These changes have not only promoted internationalcooperation

but have also positioned India as a key player in the global maritime industry.

This Article will employ a comparative methodology to analyze pertinent arbitral awards and court judgments in the United Kingdom and India pertaining to maritime arbitration cases. The objective is to identify similarities and differences in the decision-making processes of the courts and tribunals, with the ultimate aim of identifying any legal gaps and promoting consistency and harmonization of laws, therebyalleviatingtheburdenonthecourts. The literature review presented above suggests that the issue of finality and fairness in judicial scrutiny andinterpretative approaches by adjudicatorscan be addressed by emphasizing the importance of consistency and certainty as supporting pillars.

REFERENCES

1. Thomas J Schoenbaum and A N Yiannopoulos, Admiralty and Maritime Law Cases and Material (Charlottesville 1984) 1.
2. Mukherjee P, 'Maritime Law and Admiralty Jurisdiction: Historical Evolution and Emerging Trends' in The Admiral. (Vol. VI, Ghana Shippers' Council) 1-42.
3. Associateprofessor,Miserocchiv.SocietdAgnesi Judgement no. 3626 of 15 December 1971, 1971
4. ForoItalino,I,1616.
5. Review,CAMBRIDGEDICTIONARY ,
6. https://dictionary.cambridge.org/dictionary/english/r evie w (last visited June 24 2023)
7. AshutoshKumarSrivastavaandPujaPaulSrivastava, 'Judicial Review in India an Analysis' (2014) SSRN 2705279.
8. I/SStavborgv.NationalMetalConvertersInc.,500 F.2d 424 (2d Cir. 1974).
9. ArtieShawPresents,Inc.v.Snyder(46A.D.2d867) 362 N.Y.2d 158 (1974).
10. Insights Into The Indian MaritimeIndustry And Ports In India.
11. Guidelines forMaritime Legislation,(vol1,3rdedn, United Publication Economic and Social Commission for Asia and The Pacific)
12. OAPEN, https:/library.oapen.org>bit
13. unctad, https://unctad.org>files.rm
14. https://www.acdemia.edu>indian
15. https:/www.sciencedirect.com>pii
16. https://www.e-elgar.com>shop>gbp
17. https://www.mea.gov.in>distin>distinguis.

AUTHOR'SBIOGRAPHY

Dr Suman Paliwal is presently working as an Associate Professor in the Department of law, at Jagannath University. She has published morethan20papersinvariousInternational and National Journals. She has 14 years of teaching experience. She is alsothe Convener of the Women Development Cell, at Jagannath University. She has participated and conducted many social activities along with academics. Her area of specialization is criminal law.

CO-AUTHOR'SBIOGRAPHY

Bobby George is a research scholar (Ph.D., Law) at Jagannath University, Jaipur. Bobby George is a practicing lawyer in the Kerala High Court at Ernakulam. He is presently serving as the Standing Counsel for the Civil Supplies Corporation in the High Court of Kerla and as standing counsel for various nationalized banks and financial institutions. He has published three articles in the UGC-CARE List Group 1 and has participated in many national

seminars. He has conducted and participated in many social activities along with academics. His area of specialization is in Civil, Criminal, labor and consumer matters. He is appointed as the senior legal aid counsel in the High Court of Kerala. He has passed the Judicial Service Examination twice. He passed the District and Sessions Judge exam in the year 2015 by the Kerala High Court. Bobby George obtained LL.M, in Criminology from M G University, Kottayam and obtained LL.M Corporate from Jagannath University, Jaipur. Completed his law degree from I L S, Law College Pune. Diploma in Labor law and labor welfare from Symbiosis Law College, Pune.