

# CMEC - Maritime Knowledge Lecture Series

## Maritime Dispute Resolution: India and Global Perspectives

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*09 July 2025, IHC, New Delhi*



### Background

1. India's geographical location naturally positions it as a maritime hub. As the country continues to invest in maritime infrastructure, its maritime industry continues to expand, requiring more services and leading to a multiplicity of disputes encompassing shipping contracts, insurance, cargo claims, vessel disputes, etc. The disputes are complicated by the multi-modal, multi-contract, multi-jurisdictional, and multi-national nature of maritime transactions.

2. This leads to a need for specialized maritime dispute resolution processes and frameworks which can resolve disputes in a speedy, informed, and efficient manner.
3. Considering India's unique position in the international community and its share in international maritime trade, there is considerable scope for developing India as a hub for maritime dispute resolution.
4. CMEC's recent lecture titled '*Maritime Dispute Resolution: India and Global Perspectives*' explored the existing state of maritime dispute resolution in India, examining the matter from academic as well as practical perspectives, and outlining global best practices in this area. It found that there is significant scope for improvement in India's maritime dispute resolution frameworks and processes, and made several recommendations on the issue.

### **Capability Enhancement**

5. The lecture noted that India currently has limited maritime dispute resolution capability vis-à-vis global centers such as London Maritime Arbitrators Association (LMAA), Singapore International Arbitration Centre (SIAC), Tokyo Maritime Arbitration Commission (TOMAC), etc. With increasing focus to develop India as a global maritime nation, it is essential to work towards establishing an international maritime dispute resolution centre and capture a share of the international maritime arbitration activity, especially when one or both the parties are Indians.
6. The lecture also emphasized the need to include legal academics, and non-legal professionals from the maritime industry, into the dispute resolution processes. Lawyers and judges alone may not have the specialized industry and domain knowledge required to effectively resolve complex disputes in the maritime domain. At the same time, industry professionals will also need to be trained for the writing of legal 'awards', because a poorly written award would be practically unenforceable.
7. Cross-examination was identified as a particularly important skill which needs to be imparted to maritime industry professionals to enable them to contribute effectively and meaningfully to maritime dispute resolution processes.

8. The lecture also noted that India needs structured training programs and accredited arbitrators as a part of building capacities in the area of maritime dispute resolution. Organizations like CMEC and the Centre for Maritime Dispute Resolution at Gujarat Maritime University can play role(s) in such training and accreditation.

### **Institutional vs Ad Hoc Arbitration**

9. The main difference between institutional and ad hoc arbitration lies in the level of administrative control and oversight. Institutional arbitration is conducted under the rules and procedures of a specific arbitral institution, while ad hoc arbitration is not. Ad hoc arbitration relies on the parties to agree on rules and procedures, and the process is managed directly by the parties or their appointed arbitrators, without the involvement of an institution.
10. The lecture highlighted the inherent flexibility of ad-hoc arbitration over institutional arbitration.

### **Importance of Soft Law**

11. The lecture also noted the importance of soft law like model laws and industry best practices, and their ability to supplement hard law like Acts, Conventions and Treaties.
12. There is thus a need to balance law with industry norms and practices. Efforts must also be made to diversify the composition of dispute resolution bodies through the inclusion of industry experts as technical arbitrators working alongside legal arbitrators.

### **Confidentiality**

13. Confidentiality in maritime dispute resolution is crucial for protecting sensitive information, maintaining business relationships, and avoiding reputational damage. It allows parties to openly discuss issues and potentially reach a settlement without fear of public disclosure, which could negatively impact their reputation and competitive position.
14. The speakers noted this importance of confidentiality to the maritime industry, and the consequent need to maintain it in dispute resolution proceedings. It was also pointed out that

court proceedings are generally open and held under the principle of ‘open justice’, and as such are not designed for maintaining confidentiality.

## **Q&A Session Highlights**

15. On Creating a Maritime Arbitration Hub: An audience member asked how India can become a maritime arbitration hub, noting that new government-backed centers lack independence and panels of accredited experts. Prof. Singh replied that government control is a major problem. A successful hub requires judicial support, independence from government, and global representation. He stressed that improving the quality of arbitral awards is the most critical step to building trust in the Indian system.
16. Appointments as Arbitrator: The question was raised that even with training and accreditation, it is difficult to get an appointment. The answer was implicitly tied to the first point: appointments will follow once a credible ecosystem of high-quality, accredited experts with domain knowledge is established.
17. On the rights of landlocked nations: In response to a question about Nepal and Bhutan's maritime rights. The panelists explained that their access to seaports is governed by international treaties for landlocked states and, more importantly, by bilateral agreements and regional forums like BIMSTEC.
18. On Mediation: A final question was asked about the courts' perspective on settlement. Prof. Singh clarified that courts do encourage mediation. However, the system is ineffective for commercial disputes because most mediators are trained only for family disputes. The key is to train and utilize mediators who have deep industry knowledge in the maritime sector.

## **Key Takeaways**

19. Alternative Dispute Resolution (ADR) should be seen not just as “Alternative”, but also as “Additional and Appropriate”.
20. Industry experts must be included into maritime dispute resolution as technical arbitrators and India should have a standard protocol for addressing maritime disputes.

21. India's courts are overburdened, and not necessarily equipped to adjudicate upon complex maritime issues.
22. There is a need to incorporate and adopt global best practices (like those of hubs like Singapore and London) into India's maritime dispute resolution frameworks and rules.
23. India's strategies for maritime dispute resolution should be aligned with the broader goals set out in the Maritime Amrit-Kaal Vision 2047 and Maritime India Vision 2030.

## **Recommendations**

24. **Development of a Protocol:** A Protocol on Maritime Dispute Resolution, outlining procedures and rules for maritime arbitrations, can greatly supplement India's existing Arbitration and Conciliation Act, 1996. Such a Protocol needs to be developed. Its development and issuance can be undertaken by one or more existing bodies dealing with maritime dispute resolution – the India International Maritime Dispute Resolution Centre (IIMDRC), Indian Council of Arbitration (ICA), International and Domestic Arbitration Centre (IDAC), and the Society for Affordable Redressal of Disputes (SAROD-Ports). Prof. Singh also pointed out that he has been working on developing a draft protocol, which could be a useful starting point for a formal Protocol for the maritime dispute resolution.
25. **Training and Accreditation:** India needs structured training programs and accredited arbitrators as a part of building capacities in the area of maritime dispute resolution. Organizations like SAROD, IIMDRC, ICA, Centre for Maritime Dispute Resolution at Gujarat Maritime University and GIMAC can play role(s) in such training and accreditation.