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## **MARITIME LAWS CONCERNING CARRIAGE BY SEA**

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### **Abstract**

The maritime law has been subjected to a global reorganization that has inclusively been identical due to the sea affairs and matters concerning cargo industries have reached an exclusive range. The object of the following study is to understand the mechanism through which various maritime laws are applied for the proper carriage of goods and voyages from one destination to another by proper valid means of legal regulation that ensures the safety of the journey. Certain essential mechanisms are undertaken to ensure properly qualified carriage transportation these principles allow the assurance of a multitude of aspects concerning issues in relation to the subject matters and sea freight that manages the economical transaction. The maritime laws have an essential contributory outlook in the matters and aspects of this sea freight. The transportation journey is evidently based upon the appropriate contractual agreement and documentation which is undertaken between the consignor and carrier. The important aspects of laws concerning carriage by sea are that the volume of transportation from one place to another is more and substantially the goods or voyages can be done in a much larger quantity than other means of transportation of carriage. In today's world, four out of five international trade comprises sea transportation and is considered the cheapest in expenses. If proper examinations were done there are innumerable maritime laws that govern international trade that facilitate the proper channelization of these aspects. the concept contract of affreightment is the

idealized contract that enables the carriage of goods by sea for some charges.

In this study, we explore the development of cargo industries through the sea and various laws concerning such idealized transportation with participatory laws that regulates the perfect carriage by sea for sea freight globally as well as in India. It also delves into the evolution and growth of the cargo industry through sea transport, as well as the various regulations pertaining to such ideal conveyance.

**Keywords:** Maritime Laws, Carriage By Sea, Hague Rules 1924, Hague-Visby Rules 1968, Hamburg Rules 1978, Bill Of Lading, carriage of goods by sea act 1997.

### **INTRODUCTION**

Maritime industries have been expanding in vast in the recent period, and the science of buoyancy made an affordable passage through seas and oceans. The travel expenses of carriage by sea are much lesser often than any other means of transportation. The expansion of globalization has increased to a much greater extent so as the legal system around such development, the maritime laws concerning carriage by sea help efficiently in a vast international trade, import-export has significantly stabilized the essential statistics of feasibility during such consignment through different seas. The consignment process undergoes various assurance of law, for the benefit of the parties engaged in such maritime trade. Connectivity is the essence of proper coordination and exchange of diversified national changes that immensely affect the



economy of different international states for the welfare and availability of resources and accomplishment of such scarcity if arises in any country. Voyage during the ship deals with various uncertainty and dealing with such uncertainty through lawful means needs a proper guidebook or regulations that give ethical regulation during the period of necessity. The carrier of the ship must take necessary action for the redressal or confinement of such actions to overlook the proper management of both ship and cargo and restrain him from doing any negligent act that would amount to harm or breach to the contract of affreightment or any other ethical natural principles. Maritime carriage by sea has essential notions that channel documentation or legal paperwork for the commencement of such consignment or voyage by sea<sup>45</sup>. Meanwhile, it is basically important to understand that carriage by sea is a very hazardous job and could be very much prone to innumerable unforeseen accidents or the disastrous effect of climatic conditions or other contradictory factors. The carrier is typically held responsible for any unexpected damages that may arise during emergency situations or loss of goods with a certain exception. To seek protection from the latter consequences due to the danger entrusted in the work carried out by the carrier of carriage of goods by sea the carrier has certainly privileged entitlement by the way of performing a special contract which is termed as the contract of affreightment<sup>45</sup>. A contract of affreightment is an agreement between a ship owner and a party to lease their vessel, or a portion of it, for transporting goods. This type of contract is usually documented either through a charter party or a bill of lading<sup>46</sup>. This contract of affreightment is basically of two kinds one in the form of a charter party and the other in a bill of lading. A charter party is a contract by which a ship, or some principal part thereof, is let to a merchant for the conveyance of goods on a determined voyage to one or more places, the

entire system involves the basic outrageous action of hiring a ship for the voyage and in the bill of lading simply a documentation that represents the title of goods which is issued by the ship owner when he receives goods for carriage by seas. These two methods govern various rules and regulations for the contract of affreightment. The method of such transportation in international trade of freight involves two methods which are cargoes that are shipped by less cargo load or full container load. For sustainable global trade, which enables inventions and expansion of standardized containers is known as sea freight. Sea freight overall helps in the expansion of multicontinental supply chains which expands globalization. The principles of such trade involve very stringent rules regarding each attribute like material and structural worthiness of the ship, the proper despatch of such consignment, no deviation in between the voyage, and loading goods without any defect which may cause damage or delay of consignment.

In this study laws concerning the carriage of goods are briefly discussed through undertaking judgment of Indian and foreign courts which would help to understand the extent to which these legislations are applicable ensuring the various global consignment.

### **THE CARRIAGE OF GOODS BY SEAS: MARITIME LAWS**

International laws have made regulations, protocols, substantial conventions, and legislations for the proper smooth functioning of the consignment of goods from one state to another. International transportation is one of the safest and most affordable ones. Every country in the mater relation to global trade uses the sea routes for conveyance. The popularized notion of sea freight has enabled various innumerable outreach of common individual statistical extensions. The volatility that is deeply connected with trade by means of sea freight is considerably proven to be advantageous for the accommodation of big

<sup>46</sup> Black's Law Dictionary 4th Ed. Rev. 6-1971, Arg.Fr.Merc.Law, 543.



masses of goods of different kinds of shapes and volumes. India's ancient transportation method is maritime shipping. It has also a significantly higher level of exchange of goods and services. The sale of goods by water between a customer in one country and a seller in another is necessary for the development of global trade. Understanding the role of the carrier in the marine contract in terms of his obligations and privileges is crucial since the carrier plays a significant role in this contract. The sovereignty of the State having a sea coast is not conterminous with the shore but extends further and beyond up to a few miles of marginal belt generally prescribed by international conventions<sup>47</sup>. international unification and development of the "maritime laws" of the world should be regarded as the international common law or transnational law rooted in and evolved out of the general principles of national laws, which, in the absence of any specific statutory provisions can be adopted and adapted by courts to supplement and complement national statutes on this subject.<sup>48</sup>

In this article, we will be discussing a few important maritime laws that are conventions, protocols, and a few significant pieces of legislation that mainly play their role in expanding aspects concerning maritime industries. We would like to remind readers that there are many different laws governing shipping by sea; however, for the purposes of this article, we will focus on those which pertain specifically to the carriage of goods.

#### **INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW RELATING TO BILL OF LADING (THE HAGUE RULES, 1924)<sup>49</sup>**

These laws have been used for giving various judgments in relation to the disputes arising

from the consignment of the bill of lading. The International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, dated Brussels, August 25, 1924, as implemented in the nation flying the ship's flag, shall apply to this contract. When there is no such law in effect in the nation where the ship is flagged, the provisions of the Convention shall apply. Nothing in this bill of lading shall be construed as a surrender by the carrier of any privileges or immunities under the Rules or Acts or as an increase in the carrier's obligations under any other statutory safeguard or exemption<sup>50</sup>.

"The Hague Regulations of 1921, as amended by The Brussels Convention of 1924, are essentially exactly what the Act was demonstrated<sup>51</sup> after, according to its legislative history, which is documented in 51 Stat. 233. The Regulations aimed to provide uniform ocean bills of lading to regulate the rights and obligations of carriers and shippers among themselves in global trade." The Hague Rules of 1924 were the result of an international effort to unify the rules of law governing bills of lading.<sup>52</sup> In any case, a phrase in the bill cannot be contrary to any Hague Rules provision if the term in question constitutes a change of a Hague Rules clause accepted by the parties in utilizing their rights to agree on whatever they choose.<sup>53</sup> It would also be illogical to assume that article III rule 8 of the Provisions invalidates a clear contractual limitation agreed upon by the parties. Clause 6(B)(b)(i) incorporated the Hague Rules, and clause 8(2) nullified the limitation in that clause to the extent that it conflicted with the Hague Rules restriction provided by article IV rule 5 and article IX; the Hague Rules were given contractual primacy, and thus article III rule 8 nullified the constraints.<sup>54</sup>

The Supreme Court ruled in the case of Mayor (H.K) Ltd. v. Owners & Parties, Vessel M.V. Fortune

<sup>47</sup> A.M.S.S.V.M & Co. v. State of Madras 1953 2 M.L.J 587.,

<sup>48</sup> M.V. Elisabeth v. Harwan Investment and Trading (P) Ltd., 1993 Supp (2) SCC 433

<sup>49</sup> "Hague Rules 1924.pdf -GoogleDrive.  
<https://drive.google.com/file/d/0B9HH5kjCv8PaMmNhYTYyNGItNWMzOC00NjY5LWE1NzItN2QzODRiYTBMOTAy/view>.

<sup>50</sup> Jugolinija Raja Jugoslavija v Fab Leathers Ltd AIR 1985 Cal 193

<sup>51</sup> Herd Co. V. Krawill Machinery Corp 79 S.Ct. At 769

<sup>52</sup> Nippon Fire Marine Ins. Co. v. M.V. TOURCOING, 167 F.3d 99, 101-02 (2d Cir. 1999)

<sup>53</sup> De Maroussem & Ors V The Commissioner Of Income Tax (Mauritius) (2004) UPC 45

<sup>54</sup> Dairy Containers Ltd V Tasman Orient Line CV (New Zealand) [2004] UKPC 22





Express that Article 3(6) of the Hague Rules, 1924 absolved the carrier and the ship of all liability in respect of the loss or damage if the suit were not brought within one year after delivery of the goods or the date on which the goods should have been delivered. However, the cargo that was carried on deck would not fall under the definition of "goods," according to Article 1(c) of the Hague Regulations, 1924.<sup>55</sup>

These rules provide a comprehensive guide to maritime law, including definitions of key terms and explanations of the responsibilities and liabilities of each participant in a shipping transaction. The regulations cover subjects such as who is responsible for ensuring that the ship is properly equipped and registered, what happens if one party fails to meet their obligations under the contract, and how courts can provide proper redress when things go wrong. By insight these laws in detail, both parties will be better able to navigate through complex maritime transactions without any potential conflicts arising.

#### HAGUE-VISBY RULES 1968<sup>56</sup>

The Hague-Visby Rules are the product of a protocol revising the Hague Rules Convention produced by the Brussels Diplomatic Convention on Maritime Law and signed there in 1968, after which it has received widespread ratifications and accession. The 1971 Act replaced the 1924 Act as English law. It has two significant qualities for the sake of this discussion. For starters, it made its application a matter of law rather than contract, making the distinctively Anglo-Saxon contractual concerns entirely irrelevant. "The provisions of the Regulations, as set forth in the Schedule to this Act, shall have the effect of law," says Section 1(2) of the 1971 Act.<sup>57</sup>

the Protocol and the Hague-Visby Amendments, both of which were adopted in

<sup>55</sup> (Mayor (H.K) Ltd. V. Owners & Parties, Vessel M.V Fortune Express),(2006) 3 SCC 100

<sup>56</sup> "Hague-Visby Rules 1968.Pdf - Google Drive." <https://docs.google.com/file/d/0bwbypxqdcubhaudca2phbjbqmqjg/edit>

<sup>57</sup> Hollandia [1983] 1 AC 565 At 572, Per Lord Diplock.)

1968. In March 1982, the UK accepted the Hague-Visby Amendments, and in February 1984, it did the same for the Protocol. The Hague-Visby Amendments include a liability cap based on the Protocol, the gold standard, and the Special Drawing Right ("SDR") standard.<sup>58</sup>

The Hague-Visby Rules specify unequivocally that the Bill of Lading must include the cargo's value and description. Whilst the plaintiffs claimed that the Bill of Lading contained all the particulars and the invoice indicated the value of the items, this claim is unsustainable since the invoice is not part of the Bill of Lading.<sup>59</sup>

#### THE HAMBURG RULES, 1978<sup>60</sup>

These rules have been identified through general associative principles in relation to the conditional requisite to help the development of the previous rules. These rules are called the UN Convention on the carriage of goods by seas, which consists of 16 Articles. In order to correct the Hague Rules' imbalance in the advantage of the carriers, the Hamburg Rules establish the minimal liabilities of the carrier in a manner that is significantly more just and equitable. From the perspective of the cargo owners, the Hamburg Rules are widely acknowledged as being a significant advance over the Hague Rules.<sup>61</sup> The entitlement of freedom of initiating a special contract for remedial purposes and the idealization of freedom contract is essentially undertaken, to limit the liability and responsibility for the hardship faced by the carrier during the such difficult voyage.

#### INDIAN BILL OF LADING ACT 1856<sup>62</sup>

The English Bill of Lading Act, of 1856<sup>63</sup> served as the foundation for the Indian Bill of Lading Act, of

<sup>58</sup> Insurance Company Of North America V M/V Atlantic Corona, 704 F. Supp. 528, 530

<sup>59</sup> SHIPPING CORPORATION OF INDIA LTD. V. BHARAT EARTH MOVERS LTD., [(2008) 2 SCC 79]

<sup>60</sup> "(PDF) Hamburg Rules 1978 | Dũng Nguyễn Tuấn - Academia.edu." [https://www.academia.edu/18861739/Hamburg\\_Rules\\_1978](https://www.academia.edu/18861739/Hamburg_Rules_1978).

<sup>61</sup> M.V. Elisabeth And Ors Vs Harwan Investment And Trading, 1993 AIR 1014

<sup>62</sup> "THE INDIAN BILLS OF LADING ACT, 1856 ARRANGEMENT OF SECTIONS - Legislative." <https://legislative.gov.in/sites/default/files/A1856-09.Pdf>.

<sup>63</sup> (18 And 19 Vict. C. 111) (Act IX Of 1856



1856. According to Section 1 of the Indian Bills of Lading Act of 1856, every endorser of a bill of lading and every consignee of goods listed therein who receives the property in goods therein mentioned upon or by reason of such consignment or endorsement shall have transferred to and vested in him all rights of the suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself<sup>64</sup>. The Indian Bills of Lading Act, of 1856 does not define the word "bill of lading," but each instrument of title for commodities is not a bill of lading and cannot be used interchangeably with one for all purposes. For a few specific, restricted uses outlined under the Sale of Goods Act and the Indian Contract Act, and not for other reasons, such papers of title in relation to goods are assimilated to bills of lading<sup>65</sup>.

#### **CARRIAGE OF GOODS BY SEA ACT <sup>66</sup>**

The substantive regulations are included in the Merchant Shipping Acts and the Carriage of Goods by Sea Act, but the jurisdictional and other features of maritime claims must be attributed to various additional legislation and organizations. 'English Maritime Law is still formed of regulations with their roots in legislation, rules of court, and judicial theory of Admiralty, judicial interpretation, and equity,' according to the Oxford English Dictionary.<sup>67</sup>

The legislation governs the carriage of commodities by the sea in ships transporting goods from any port in India to any other port in or outside India. The port of origin must be an Indian port for the Rules to apply to a case. The Regulations are inapplicable unless the starting point or port of loading is non-India. When commodities are not brought from any Indian port, these Regulations do not apply. the

provisions of the Indian carriage of goods by sea act, 1925 are not applicable to the import of goods<sup>68</sup>.

#### **CONCLUSION**

In this generation of well-equipped advancement and modernization, the scenario regarding the overall change in the economy and global trade has reached its vivid level of attainment. Maritime law has far outreach which govern various substantial legal entities as the probable broad course of study, it is necessary to ensure that every individual gets proper knowledge considering the maritime laws. The laws concerning carriage by sea are just a small branch of the enormous study of maritime law. The maritime law helps us better understand the management of coastal rights and privileges without causing exploitation of such rights. Internationally the subject gets vast attention due to the major function of its import and export of goods. The supply chain through the sea is much more than any other form of inducive transportation that may tend to occur by reliable means. The procedure of sea freight takes many implied undertakings that check the reliability of such transportation; whether the ship is suitable for traveling across nations through seas and its capability of carrying the chunks of goods for the voyage. The competency of the crew is also determined before the possible determination of such conditional outreach and development as such that ensures the safety of the individual during the consignment. The nexus between maritime law and carriage by seas ensures well-equipped proper transportation and ensures the safety of the contract. These laws decrease the liability of a carrier as he is subjected to hazardous circumstances which could cause undeterminable loss or damages. The contract of affreightment acts as a guidebook for individuals during such unforeseen circumstances<sup>69</sup>. The entrusted role of industrial

<sup>64</sup> British India Steam Navigation Co. Ltd V. Shanmughavilas Cashew Industries (1990) 3 SCC 481

<sup>65</sup> Ramdas Vithaldas Darbar V. S. Amirchand & Co., 43 Ind App 164 : (AIR 1916 PC 7)

<sup>66</sup> "Carriage Of Goods By Sea - Legislation.Gov.Uk." [https://www.legislation.gov.uk/ukpga/1924/50/pdfs/ukpga\\_19240050\\_en.pdf](https://www.legislation.gov.uk/ukpga/1924/50/pdfs/ukpga_19240050_en.pdf)

<sup>67</sup> D.C. Jackson, Enforcement Of Maritime Claims, 1985, P.9

<sup>68</sup> Reliance Industries Ltd Vs. P&O Containers Ltd 2007 (210) E.L.T. 422

<sup>69</sup> "Contract Of Affreightment: Terms Of Delivery & Incoterms Standards." 27 Feb. 2022, <https://theintactone.com/2022/02/27/contract-of-affreightment-terms-of-delivery-incoterms-standards/>.



development may ensure the feasibility of the conditional appraisal of governance.

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