

ISSN: 2583-8725

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Quarterly Online and Print Edition

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**LEX SCRIPTA MAGAZINE OF  
LAW AND POLICY (VOL-4, ISSUE-1)**

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ISSN-2583-8725

Vol - IV, Issue - I

Published by INTEGRITY EDUCATION INDIA

**New Delhi**

First Floor, 4598/12-B, 1st Floor,  
Padam Chand Marg, Daryaganj,  
New Delhi, Delhi 110002

Phone: +91 98 11 66 62 16 (M)

Phone: +91 70 11 60 56 18 (M)

**Bengaluru**

Jallahalli East

Bengaluru, Karnataka. India.

Phone: +91 98 11 66 62 16 (M)

Email: publisher.integrity@gmail.com

**USA**

New Jersey

14 Grandview Ave, Upper Saddle River,  
NJ-07458, USA

Phone: +14805226504 (M)

**London**

37 Degree Media

64, Hodder Drive, Perivale, London UB68LL.  
United Kingdom.

Phone: +44 7950 78 18 17 (M)

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Printed in India @ New Delhi

ISSN: 2583-8725

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## **The Carriage of Goods by Sea Act, 2025: A Contemporary Legal Framework for Maritime Trade**

Author  
Arjun Yadav



# The Carriage of Goods by Sea Act, 2025: A Contemporary Legal Framework for Maritime Trade

Arjun Yadav

BBA LLB(H)

Amity University, Noida

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## Abstract

*The maritime industry serves as a cornerstone of international trade and global commerce, making the legal regulation of carriage of goods by sea an essential component of commercial law. The proposed Carriage of Goods by Sea Act, 2025 represents a contemporary legislative initiative aimed at modernizing and strengthening the legal framework governing maritime transportation in light of evolving technological, commercial, and international trade practices. This research paper critically examines the emerging legal structure of the Act and evaluates its significance in addressing the complexities of modern maritime trade.*

*The study analyzes the historical evolution of carriage of goods by sea laws, including the influence of international conventions such as the Hague Rules, Hague-Visby Rules, Hamburg Rules, and Rotterdam Rules, while assessing their relevance to the Indian maritime legal system. It further explores the key provisions of the proposed framework relating to carrier liability, electronic documentation, multimodal transport, risk allocation, dispute resolution mechanisms, and the rights and obligations of shippers and carriers.*

*Using a doctrinal and analytical research methodology, the paper evaluates whether the contemporary framework adequately balances commercial efficiency with legal certainty and consumer protection. Special emphasis is placed on digital transformation in maritime commerce, including electronic bills of lading, smart contracts, and technological advancements affecting shipping operations. The study also examines challenges such as jurisdictional conflicts, environmental compliance, cargo security, and harmonization with international maritime standards.*

*The research concludes that the proposed Carriage of Goods by Sea Act, 2025 has the potential to modernize India's maritime legal regime by promoting transparency, efficiency, and global competitiveness. However, effective implementation, regulatory clarity, and alignment with international conventions remain essential for ensuring a robust and future-oriented maritime trade framework.*

**Keywords:** *Carriage of Goods by Sea; Maritime Law; International Trade; Maritime Commerce; Cargo Claims; Digital Shipping; Commercial Law; Marine Insurance; Dispute Resolution.*

## **Legislative Intent and Policy Objectives**

India's maritime law will change a lot with the Carriage of Goods by Sea Act, 2025. The proposed legislation modifies existing laws concerning the transportation of goods via sea routes due to difficulties arising from advancements in technology, emerging patterns within the global marketplace, and new trends in transporting goods internationally. The legislation aims to balance the rights & responsibilities between carriers (transporters) and cargo owners (shippers) by altering how risks are distributed amongst carriers. Specifically, cargo will be held liable when assuming risk at the shipper's direction; therefore, increased liability will discourage carriers from avoiding proper shipping practices.

Additionally, it will create an environment that allows exporters/importers to achieve a greater level of negotiating power when forming contracts with carriers. Whilst increasing the level of protection for all parties involved in shipping, this change will ultimately promote openness and fairness in international trade between exporters/importers and their respective carrier(s). They also need stronger legal protections against loss, damage, and delay.<sup>1</sup>

The law also has the important goal of making the rules more like how multimodal transportation works in the real world today. The New Zealand Transport Act 2025 will expand on previous transportation laws which only addressed sea transport from "dock to dock." As well as providing coverage whilst the goods are in the control of the carrier or their agents, the Act also includes the time period prior to loading, when the carrier or their agents are responsible for the goods.<sup>2</sup>

The comprehensive nature of the 2025 Act recognises that, with the development of the global logistics network, the risks involved in sea transport now include many factors beyond just the actual transport of the goods themselves.<sup>3</sup> To facilitate this approach, the 2025 Act also addresses a number of longstanding gaps and ambiguities in the law related to the legal liability of carriers operating in New Zealand, as well as consolidating into a single document the various codes and statutes governing liability for the carriage of goods.<sup>4</sup>

In addition to establishing a clear framework for carriers to follow, the 2025 Act also includes an explicit focus on the need for the law to keep pace with technological change. Accordingly, the 2025 Act seeks to formalise the

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<sup>1</sup> Reddy KVS. Developing Countries and the Hamburg Rules. (1984) 15 Journal of Maritime Law and Commerce 57.

<sup>2</sup> Glass D. Freight Forwarding and Multimodal Transport Contracts. Routledge, 2012.

<sup>3</sup> Loewe R. The Scope of Application of Multimodal Transport Conventions. (2009) 40 Journal of Maritime Law and Commerce 253.

<sup>4</sup> Thomas DR. Maritime Liabilities in a Global and Regional Context. Informa Law, 2009.

recognition and regulation of electronic bills of lading and other electronic records used in the international transport of goods as more and more businesses engage in electronic documentation of international trade.<sup>5</sup> This is part of a larger push to reduce the burden of doing business internationally, and improve the efficiency of international shipping. In keeping with worldwide trends, the 2025 Transport Act will explicitly provide legal recognition of electronic records, which will further assist in the movement of goods in a digital fashion.<sup>6</sup>

The purpose of the 2025 Act is to bring modern India into compliance with and in line with modern-day International Conventions and to harmonize Shipping Law in India as per the aforementioned convention to modernize the law, develop a new, modern legal regime in India that is consistent with best practices that are on par with other modern nations.<sup>7</sup> The Act does not follow or apply the rules set forth in any particular convention but will take parts of the Hamburg Rules, Hague-Visby Rules and amendments to International Maritime Law to develop a legal regime in India that has the best of International conventions as well as being adapted to the particular circumstances and conditions in India.<sup>8</sup>

In addition to harmonizing India with the rest of the world, the legislation is intended to improve clarity of Shipping Law, improve clarity and efficiency of dispute resolution, allow for the reduction in dispute resolution costs, and if so the reduction of the cost of addressing issues as required by law, including but not limited to, the creation of simpler and more understandable definitions, simplifying procedures, clarifying the burden of proof and creating clear and realistic expectations of what can reasonably be expected of a party who fails to comply with or does not perform as required.<sup>9</sup> It also wants to make sure that the time limits and standards for liability are what people expect them to be today. This will help settle claims quickly and in a way that people can believe. Certain factors are particularly significant in regard to international trade; when delays occur or there is uncertainty concerning deliveries, they may cause significant difficulties for the rented party.<sup>10</sup>

In addition to the above objectives, an additional goal of the Act is to protect the interests of cargo, especially for small- and medium-sized businesses. The Act attempts to rectify the historical imbalance that favoured vessels' owners by placing greater liability on carriers and limiting their ability to avoid or reduce

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<sup>5</sup> Aikens R, Lord R, Bools M. Bills of Lading. 3rd edn. Informa Law, 2016.

<sup>6</sup> UNCITRAL. Model Law on Electronic Transferable Records, 2017.

<sup>7</sup> Nikaki T. Harmonisation of International Maritime Law. (2013) 19 Journal of International Maritime Law 89.

<sup>8</sup> Karan HN. Reform of Maritime Law in Developing Jurisdictions. (2015) 21 Journal of Maritime Law and Commerce 201

<sup>9</sup> Force RC. Admiralty and Maritime Law. Federal Judicial Center, 2004.

<sup>10</sup> Colinvaux R. Carver on Charterparties and Bills of Lading. Sweet & Maxwell, 2017.

their liability.<sup>11</sup> The Act recognises, however, that there must also be an opportunity for carriers to earn profits, and accordingly provides caps on the amounts of their liability and on the use of certain defences, based on generally accepted business practices. In this way, the overall goal of promoting stability and competitiveness of the shipping industry has been addressed through a balanced approach.<sup>12</sup>

The 2025 Act is intended to provide a larger framework for India as a nation to provide a modern and efficient system of laws to improve its standing as a global economic power in terms of India's shipping and port infrastructure. The Act does not just govern business. It will provide economic growth through creating a safer environment for investment, allowing Indian ports and shipping companies to participate in the global supply chain.

The Carriage of Goods by Sea Act 2025 also serves as an indication that the government is trying to bring India up to date with modern and equitable and efficient maritime law. The Act will provide a more equitable and efficient legal framework for the carriage of goods by sea by also resolving the deficiencies of the previous systems and addressing the needs of contemporary trade in a manner consistent with international standards.

### **Key Features and Structural Changes**

The 2025 act has significantly increased carrier liability. Increasing the length of time a carrier is liable for an item during transit. Instead of the previous "tackle to tackle" limitation placed on carriers, the new law adopts a much broader port to port (or door to door) standard according to what type of contract exists between the parties, which makes it more consistent with the way that true multimodal transport and integrated logistics operations actually take place.<sup>13</sup> Courts had previously ruled on cases such as the *Kusum Enterprises v Union of India* case indicating that fragmented liability systems are not practical when an item moves through multiple stages of transport. This new law makes this broader approach official, which clears things up and makes it less likely that there will be problems with jurisdiction.<sup>14</sup>

The liability system itself has also been reset, which is a big change. The 2025 Act changes how liability works by making it based on fault and assuming that the carrier is at fault as soon as loss or damage is shown. Before, the framework allowed for wide immunities, such as the nautical fault defense. This is not the case anymore. This change is based on the Hamburg Rules and is a deliberate

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<sup>11</sup> Sturley MF, Fujita T, van der Ziel G. *The Rotterdam Rules*. Sweet & Maxwell, 2010.

<sup>12</sup> Griggs P. *Limitation of Liability in Maritime Law*. (2006) 12 *Journal of International Maritime Law* 211.

<sup>13</sup> Sturley MF, Fujita T, van der Ziel G. *The Rotterdam Rules*. Sweet & Maxwell, 2010.

<sup>14</sup> *Kusum Enterprises v Union of India* (2000) 3 SCC 254.

attempt to move away from the old rules that favored carriers.<sup>15</sup> The Supreme Court's reasoning in *East and West Steamship Co. v. S.K.*<sup>16</sup> The 2025 Act makes it even harder to limit liability in contracts, so *Ramalingam Chettiar* is important again in this case. The Act is also clear on rules concerning liability, which is for certain a shift from the previous mandate. It gets rid of old limits on money and replaces them with a system based on Special Drawing Rights that is considerably more flexible. The intention behind the 2021 Act is to establish equity of remuneration and align value of goods through currency used in all trade and to increase consistency and fairness among competing countries. The *River Gurara* case and its emphasis on limitation of damages is yet another example.<sup>17</sup>

The acceptance of Electronic transport documentation (electronic bills of lading) represents a major change from the use of traditional paper documentation. This creates a level of consistency with global business practices, as it promotes the convergence of Indian law with international law. The case of *Pyrene Co Ltd v Scindia Navigation Co Ltd* will help clarify the type of evidentiary documents that can be used as supporting documentation under the Act. Electronic documentation will now serve as an officially recognized legal form of evidence under the Act. This will improve efficiency and decrease transaction costs while advancing the digitalization of maritime commerce.

The 2025 Act facilitates addressing claims by providing greater clarity regarding the standard of proof required to establish whether a specific action or claim is defensible. Claimants are now required to establish a prima facie case of loss, damage, or delay, at which point carriers are put to the proof to establish whether they have a valid defence to the claimants' action. The effect of this new rule can be seen in the case of *Jindal Drugs Ltd v. Shipping Corp of India*, in which the burdens of proof have not been fairly apportioned as between businesses and their insurers, resulting in frequent disadvantages for cargo interests. The new provisions have also been included in the Act to promote efficiencies and fairness.<sup>18</sup>

Moreover, the Act now contains express rules dealing with late delivery as an independent type of liability. In the past, the existing standard of behaviour did not contemplate whether delays created a loss, so this is a major change. It is important to have this clarity because delivery timing is a critical element of business success, particularly in the operation of just-in-time supply chains.<sup>19</sup> The Court in *Heron II* has established a series of principles over a long period of time

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<sup>15</sup> United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules), 1978, Art 5.

<sup>16</sup> *East and West Steamship Co v S.K. Ramalingam Chettiar* AIR 1960 SC 1058.

<sup>17</sup> *River Gurara* [1998] 1 Lloyd's Rep 225.

<sup>18</sup> *Jindal Drugs Ltd v Shipping Corporation of India* (2003) 2 Lloyd's Rep 658.

<sup>19</sup> McKendrick E. *Contract Law: Text, Cases, and Materials*. 8th edn. Oxford University Press, 2020.

regarding how delays impact the economic wellbeing of businesses.<sup>20</sup> The 2025 version of the Act will provide for better articulation of such principles to effectively resolve disputes. The Act incorporates several of the best practices globally, while still being flexible enough to be applicable within the United States. The Act was created by combining aspects from both the Hamburg Rules and the Hague-Visby Rules to create a comprehensive and ample set of rules that will serve to benefit the Indian economy as well.<sup>21</sup> This approach allows for the avoidance of issues that arise once all of the rules have been fully implemented; additionally, it allows the laws to implement international standards, which is typically an issue when dealing with maritime disputes between countries.<sup>22</sup>

In addition, the Act will facilitate the enforcement of agreements and/or contracts that are comprised of a very large number of standardised bills of lading. The Act reduces the ability for one party to rely upon an exclusion or limitation of liability to hinder legal rights that would otherwise protect both parties to the contract. Finally, the emphasis placed on the duty of good faith and adherence to specified routes and conditions is addressed by the rulings of various courts, including *Leduc v. Ward & Hain Steamship Company Limited v. Tate & Lyle Limited* with respect to deviations from contract duties of care and diligence.<sup>23</sup>

In addition to the changes noted above, the 2025 Act will facilitate dispute resolution by introducing new institutions and processes for resolving disputes. The 2025 Act will facilitate the resort to arbitration and other forms of dispute resolution. It also makes it clear who is in charge so that people don't have to search for a forum. These changes are very important because India wants to be the centre of international arbitration.

### **Expansion of Carrier Liability and Obligations**

The Carriage of Goods by Sea Act 2025 represents a significant shift in how risk is allocated between carriers and their cargo-owners when a carrier fails. A large portion of this shift is because of the enhanced liability and accountability imposed upon carriers, as well as lawmakers' intent to disconnect themselves from the historically favourable allocation of risk towards carriers contained in the Hague Rules and in the Carriage of Goods by Sea Act 1925. The 2025 Act changes the way in which judges read the laws, and therefore changes how international laws function, creating a fairer and more responsible distribution of risk.

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<sup>20</sup> *The Heron II* [1969] 1 AC 350 (HL).

<sup>21</sup> Nikaki T. *The Rotterdam Rules in a Comparative Perspective*. (2011) 17 *Journal of International Maritime Law* 345.

<sup>22</sup> Goldby M. *Electronic Documents in Maritime Trade*. Oxford University Press, 2013.

<sup>23</sup> *Leduc v Ward* (1888) 20 QBD 475., *Hain Steamship Co Ltd v Tate & Lyle Ltd* [1936] 2 All ER 597 (HL).

A key element growing out of this older method of allocation is the difficulty the cargo-related owners had demonstrating that the carrier's reliance on any number of exceptions, such as “perils of the sea” or “errors in navigation,” was incorrect. With the introduction of the 2025 Act, carriers are now automatically liable for any loss, damage, or delay, unless the carriers can demonstrate that they were not at fault, or the loss falls within one of a strictly defined number of exceptions. This standard for the allocation of risk is considered to reflect the current widely accepted standard of care, i.e. the Hamburg Rules..<sup>24</sup>

Judicial precedent has long emphasized the significance of recalibration. In *Pyrene Co Ltd v Scindia Navigation Co Ltd*, the court highlighted the issue of how far a carrier's duty will extend, particularly if the goods are under their control before being loaded on board.<sup>25</sup> Further, in *Jindal Drugs Ltd v Shipping Corporation of India* it was demonstrated how difficult it was for cargo claimants to establish their claims under the old law when carriers still had access to critical information.<sup>26</sup> The 2025 Act addresses these difficulties by transferring responsibilities from cargo claimants to carriers so that they will know exactly what they are expected to do.

Another significant aspect of expanded liability is that it requires carriers to be liable for a longer period of time. Under the 2025 Act, liability for the goods begins before the actual loss of the goods occurs and continues until the goods are delivered to the consignee.<sup>27</sup> The change from the old “tackle-to-tackle” method to the new method of placing the carrier in charge of all aspects of transportation and being liable for all aspects of transportation is consistent with the way logistics function today because all carriers manage multiple facets of the transportation chain.

*Kusum Enterprises v. Union of India*, provides additional insight into the issue of expanding carrier liability in that the courts have found that liability systems do not effectively address issues relating to the liability of parties to transportation actions when transportation operations converge.<sup>28</sup> Under the 2025 Act, the obligations regarding the due diligence and seaworthiness of carriers are greater than they were under the previous version of liability.<sup>29</sup> Carriers are required to maintain their vessels in a seaworthy condition throughout the course of the voyage as opposed to only during commencement of the voyage. Under the 2025 Act, the standard for the care owed by the carrier to its customers will vary from

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<sup>24</sup> Ibid.

<sup>25</sup> *Jindal Drugs Ltd v Shipping Corporation of India* (2003) 2 Lloyd’s Rep 658.

<sup>26</sup> Ibid.

<sup>27</sup> van der Ziel G. The Carrier’s Period of Responsibility under Modern Conventions. (2012) 18 *Journal of International Maritime Law* 112.

<sup>28</sup> *Kusum Enterprises v Union of India* (2000) 3 SCC 254.

<sup>29</sup> *McFadden v Blue Star Line* [1905] 1 KB 697.

one voyage to another. In *McFadden v. Blue Star Line*, the court made it clear that seaworthiness is a basic duty by defining it as the ship's ability to handle the usual dangers of the sea.<sup>30</sup> The Act eliminates or severely limits the opportunity for carriers to rely on the nautical fault defence. Under the old Hague Rules, a carrier was not liable for loss or damage caused by negligence of its employees who were navigating or operating the ship. Recent views have suggested that this defence is unfair and needs to be changed. The Act either eliminates or severely restricts the opportunity for carriers to rely upon the nautical fault defence. This creates an increased level of liability consistent with principles of vicarious liability. It has always been unfair to require courts to determine how much reliance can be placed upon the nautical fault defence.

The Act makes it clear that a delay in delivering goods constitutes a form of liability distinct from either losing or damaging goods. This is a significant change for carriers and reflects the increasing value placed upon rapid trade. The *Heron II* case explains the consequences that delays have on the price of goods, in response to this the Act will ensure that carriers are liable for all economic losses attributable to their actions, including delays in delivery.

The Act also makes it more difficult to keep and share records, particularly regarding electronic records of transport and bills of lading. Carriers must keep accurate records concerning the condition and quantity of goods shipped, and they could be liable for any inaccuracies or omissions in their records. The evidentiary weight of these types of documents has long been a major issue in maritime law, as demonstrated by *Leduc v. Ward* where your liability was affected by whether or not you departed from the terms specified.<sup>31</sup> The 2025 Act has been drafted to govern more strictly preventing issues from occurring.

Changing how deviation and fundamental breach are handled is another means by which growth can occur. The Act is tougher on deviation that isn't justified. According to the company, the carrier's right to limit or eliminate liability has been violated, thus justifying the company's decision to terminate the carrier's ability to do so.<sup>32</sup> The carrier has abused its rights in a manner that deviates from the original contract, as explained in *Hain Steamship Co Ltd v. Tate & Lyle Ltd.*, and the Act reinforces this idea by promoting adherence to the terms of the contract to deter carriers from operating without fulfilling their obligations.<sup>33</sup>

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<sup>30</sup> Bennett HN. *The Law of Marine Insurance*. 2nd edn. Oxford University Press, 2006.

<sup>31</sup> *Leduc v Ward* (1888) 20 QBD 475.

<sup>32</sup> Cooke J et al. *Voyage Charters*. 4th edn. Informa Law, 2014.

<sup>33</sup> *Hain Steamship Co Ltd v Tate & Lyle Ltd* [1936] 2 All ER 597 (HL).

Lastly, the limits provided through SDRs will not allow liability to continue to increase exponentially and therefore will ensure that carriers do not become completely financially bankrupt as a result of the claims against them. In addition to this, the way liability works allows for accountability to be held for business actions while allowing them to remain in business.

The Carriage of Goods by Sea Act 2025 has increased the accountability and responsibility of carriers operating in India. The establishment of presumptive liability, the lengthening of time limits, the elimination of obsolete defenses and the recognition of responsibility for delays and documentation have resolved a number of existing issues that were previously the subject of long-lasting complaints in relation to the regulatory system, providing a fairer and more comprehensive regulatory scheme conducive to international trade in the present day. In addition, these reforms reflect and exemplify an evolution of international shipping law (i.e. maritime law) as it applies to the various countries and regions of the world.

### **Digitalisation and Recognition of Electronic Transport Records**

The Carriage of Goods by Sea Act, 2025 is a big step toward bringing Indian maritime law more in line with how online shopping works.<sup>34</sup> This is especially true because it makes it clear that electronic transport records are valid. This change is a big step away from the 1925 Carriage of Goods by Sea Act. The law was based on the idea that a bill of lading was a real piece of paper that showed the contract of carriage, receipt of goods, and document of title. Digitalization is just one part of a bigger shift in global trade. More and more, electronic documents are important for speed, efficiency, and safety.<sup>35</sup>

Historically, legal guidelines regarding electronic records used in maritime shipping were unclear. A traditional bill of lading has three primary functions, namely, to establish a contract for the transport of goods as a receipt covering those goods (which had already been transported) and to serve as a means of conveying the shipper's ownership over those goods.<sup>36</sup> Early courts traditionally distrust the validity of electronic representations of the documents because of concerns regarding transferability, authenticity and potential for duplication. Many of the early court decisions, including *Lickbarrow v. Mason*, emphasize that the paper bill of lading has historically been the most significant form of commercial documentation.<sup>37</sup> The 2025 Act addresses these concerns by giving the same legal status to electronic documents used for transport as a paper document would have as long as certain conditions are met (i.e., reliable,

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<sup>34</sup> Carriage of Goods by Sea Act 1925 (India).

<sup>35</sup> Goldby M. *Electronic Documents in Maritime Trade: Law and Practice*. Oxford University Press, 2013.

<sup>36</sup> Goode R. *Commercial Law*. 5th edn. Penguin, 2016.

<sup>37</sup> *Lickbarrow v Mason* (1794) 5 TR 683.

complete and accessible).<sup>38</sup> This development is consistent with trends that are occurring globally, including both UNCITRAL's Model Law on Electronic Transferable Records and the United Nations Convention on the Use of Electronic Communications in International Contracts.<sup>39</sup> Both of these papers try to make tools that work on paper and on computers work the same way. The law is not tied to any one platform or system because the Act's technology-neutral framework makes sure of that. This lets people be creative and flexible.

The "functional equivalence" principle is the main idea behind the Act. This means that electronic records have the same legal effect as paper records as long as they meet certain requirements.<sup>40</sup> The ability to verify record ownership is important; also, having a system to prevent multiple owners from claiming the same goods and/or providing a secure place to store can help establish whether or not there is a legal right or ownership of goods through electronic transport records (ETR's). An example of this importance of the establishment and evidentiary value of transportation documentation can be found in the case of *Glencore International AG v. MSC Mediterranean Shipping Co SA* in which evidence and authentication of transportation documentation were critically essential to determining the outcome of the matter.<sup>41</sup>

Additionally, the Act outlines how ETR's may be used as evidence in a court of law, as opposed to the ordinary evidential difficulties faced (with regards to establishing the authenticity of electronic records) specifically as a result of many courts requiring significant other evidence in order to establish the authenticity of electronically stored records before receiving them into evidence.<sup>42</sup> The 2025 Act addresses many of the issues associated with the ability of a party relying upon electronic records to establish ownership and/or rights in such records by providing various legislative criteria establishing "the rule of evidence" regarding ETR's as "shall be accepted as original and authentic" if created and maintained according to prescribed legal standards. The reasoning, as relied upon in the *State of Delhi v. Mohd Afzal*, that ETR's may only be relied upon if created and maintained per statutory requirements supports this approach to addressing evidential issues associated with electronic records.<sup>43</sup>

The Electronic Commerce (EC) Act provides that electronic bills of lading can now be evidence of sufficient proof to allow you to move or negotiate those bills of lading, as well as provide an alternative to the traditional methods of transferring or negotiating physical bills of lading through signed, physical

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<sup>38</sup> UNCITRAL. Model Law on Electronic Transferable Records, 2017.

<sup>39</sup> United Nations Convention on the Use of Electronic Communications in International Contracts, 2005.

<sup>40</sup> UNCITRAL. Model Law on Electronic Commerce, 1996.

<sup>41</sup> *Glencore International AG v MSC Mediterranean Shipping Co SA* [2017] EWCA Civ 365.

<sup>42</sup> Information Technology Act 2000 (India), ss 65A–65B (Indian Evidence Act as amended).

<sup>43</sup> *State (NCT of Delhi) v Navjot Sandhu* (2005) 11 SCC 600.

delivery.<sup>44</sup> One of the most significant obstacles in converting from paper to digital is that the system in which you used to execute and transfer (non-electronic) documents cannot be easily duplicated with digital (or electronic) versions of those same documents because they can only be created by signing with a physical signature. The 2025 Act rectifies this issue by creating a context for legal execution of document transfers (or transfers of constructive possession) using electronic systems that only allow one individual to control and/or move an electronic record of possession.<sup>45</sup>

If the mere existence of a bill of lading is corrupted or the digital equivalent of being unable to transfer legal possession of a bill, this could add significant liability for a carrier - the 2025 Act will create greater responsibility for carriers to utilize digital technology, including responsible utilization of digital technology by carriers.<sup>46</sup>

The carrier must also make sure that the electronic records associated with an electronic bill of lading are accurate, secure and error-free to the extent that if the electronic system in which you created, stored or transmitted the electronic record of such bill fails, is accessed by an unauthorized party or is corrupted, the carrier could be held liable for any loss or damage that results from that failure, access or corruption.<sup>47</sup> This expands the traditional notions of liability and was influenced by the same types of risk-sharing arrangements that applied in *The Starsin*, where the party having the right to possession of the bill of lading at the time of loading played a significant role in determining the ultimate liability for loss or damage.<sup>48</sup>

Countries around the world have been working on improving their systems for electronic commerce, and the 2025 Act is an integral part of this effort. Transportation records and shipping documents are key elements of the seamless international transfer of goods, and therefore should also be recognized as valuable for electronic transactions. In addition to facilitating the movement of cargo internationally, transportation records establish the terms of use of electronic documents and will help to promote greater acceptance of electronic documents in most parts of the world. The 2025 Act improves the usability of electronic documents from India in international commerce by harmonizing Indian regulations with those in other countries. This will help address the issues raised by the Hamburg Rules and other international agreements that have not

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<sup>44</sup> Electronic Transactions Act 1999 (Cth, Australia).

<sup>45</sup> Bridge M. *The International Sale of Goods*. 4th edn. Oxford University Press, 2017.

<sup>46</sup> *The Starsin* [2003] UKHL 12.

<sup>47</sup> Aikens R, Lord R, Bools M. *Bills of Lading*. 3rd edn. Informa Law, 2016.

<sup>48</sup> *The Starsin* [2003] UKHL 12.

been accepted in many countries.<sup>49</sup> Digital transportation documents will also alter how disputes are resolved. Electronic documents can provide comprehensive and straightforward evidentiary material which, in turn, decreases the likelihood of disagreement about the factual issues and accelerates decision making.<sup>50</sup> At the same time, digital transportation documents create new issues, including cybersecurity, data privacy, and the governance of digital platforms. The 2025 Act helps to clarify these laws as they relate to electronic transactions between countries and establish rules for the protection of data.

India's goal is to facilitate business and participate in global supply chains. Recognizing electronic transport records will be a significant step towards that end. The Act helps with efficiency, it lowers costs, and enhances efficiency by minimizing reliance on the use of paper records. This is important today in logistics where shipments must arrive promptly and just-in-time inventory requires rapid and accurate documentation.

However, going digital presents challenges. The new government needs access to substantial technological support, standard platforms and businesses willing to adopt electronic systems to succeed. Additionally, there is a high level of concern with the digital divide; in particular, there is a question about small businesses' ability to purchase up-to-date technology. This Act also recognizes these limitations and permits electronic and paper-based systems to coexist as the transition progresses.<sup>51</sup>

### **Critical Evaluation: Strengths and Emerging Concerns**

The Carriage of Goods by Sea Act, 2025 is a big improvement for India's maritime law. The Act improves the Carriage of Goods by Sea Act of 1925 and the Hague Rules, but it also creates new doctrinal, practical, and institutional problems.<sup>52</sup> One of the best things about the 2025 Act is that it gives the cargo more rights than the carrier. The Act changes the historical bias in favor of carriers by moving toward a system of presumed liability and limiting the use of broad immunities like the nautical fault defense. In cases like *Jindal Drugs Ltd v. Shipping Corporation of India*, judges have said that cargo claimants had to prove too much.<sup>53</sup> This change fits with that. The way the Act works is more in line with how people today think about fairness and responsibility. It makes it easier to connect fault to liability.<sup>54</sup>

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<sup>49</sup> van der Ziel G. Electronic Transport Records and International Trade. (2019) 25 *Journal of International Maritime Law* 77.

<sup>50</sup> Svantesson D. *Cybersecurity and the Law*. Edward Elgar, 2020.

<sup>51</sup> UNCITRAL. *Explanatory Note on Electronic Transferable Records*, 2017.

<sup>52</sup> *Carriage of Goods by Sea Act 1925 (India)*.

<sup>53</sup> *Jindal Drugs Ltd v Shipping Corporation of India* (2003) 2 *Lloyd's Rep* 658.

<sup>54</sup> *United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules)*, 1978, Art 5.

The liability scope under the Act is broader than previously seen, and therefore applies to many more activities and the timeframe across which liability can attach to these activities. The Act indicates that multimodal transport does indeed take place in 'real life' as opposed to just 'from tackle to tackle'. As such, there has been clarification through case law (e.g. *Pyrene Co Ltd v. Scindia Navigation Co Ltd*) that carrier liability can extend beyond just during the time of the ocean journey.

The broad definition of the law gives more certainty and stability for the longer term, particularly when multiple parties and multiple steps are involved in the logistics chain. As an example, it will have a major impact on the digitalisation of transport as it expressly allows for electronic records for transport. This will enhance the effectiveness and stability of all transactions due to the use of the concept of functional equivalence and adherence to international standards for electronic records.

Furthermore, India will have a clearer framework regarding various issues involving transport documents (e.g. *The Rafaela S.*), which have been long debated issues in many instances before now. Therefore, India has become a progressive jurisdiction for maritime commerce and will keep up with the advances in technology. It is also a good idea to hold people accountable for delays. Most traditional legal systems only held people responsible for damage or loss of property, not for the money they lost because of late delivery.<sup>55</sup> The Act meets the needs of time-sensitive commerce by making delay a separate type of liability. *The Heron II* explains how important foreseeability is in these claims, which is why this growth is legal.<sup>56</sup>

But these strengths also make me worry about a lot of new things. One worry is that the broader range of liability could lead to more lawsuits. The Act's goal is to make things clearer, but the longer time frame and the chance of a delay could mean that people understand it in different ways.<sup>57</sup> This is even more apparent when it comes to identifying who is liable for certain things in multimodal transport. For example, *The Starsin* did not make it clear who the contractual carrier was; therefore, it has been difficult to ascertain who was at fault.<sup>58</sup>

You must also consider the trade-off between the ability to be sued and the opportunity to earn revenue. The Act is designed to benefit cargo interests, however, by creating strict rules with high potential liabilities carriers will find it

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<sup>55</sup> Tetley W. *Marine Cargo Claims*. 4th edn. Thomson Reuters, 2008.

<sup>56</sup> *The Heron II* [1969] 1 AC 350 (HL).

<sup>57</sup> Baatz Y. *Carrier Liability and Modern Challenges*. (2014) *Lloyd's Maritime and Commercial Law Quarterly* 345.

<sup>58</sup> *The Starsin* [2003] UKHL 12.

more difficult to operate.<sup>59</sup> As a consequence, shipping rates may change and Indian shipping may become less competitive moving forward. Additionally, it is important to recognize that the conflict between liability and limitation has been an ongoing issue in the field of maritime law since the case, *East and West Steamship Co. v. S.K. Ramalingam Chettiar*.<sup>60</sup> If the Act enacted in 2025 is to be successful it will need to achieve this balance without discouraging individuals and businesses from investing into maritime businesses.

Digitalization is a good beginning; however, like with any law, it poses difficulties while also violating the law at times (cyber security, data integrity and system interoperability continue to create difficulties within the environment).<sup>61</sup> Novel obligations arise from potential fraud or unauthorized access of the electronic transport record system (which is something not fully understood). The *State of Delhi v. Mohd Afzal* decision demonstrates that strong protections must be in place in order to ensure access to electronic evidence.<sup>62</sup> If there is a lack of infrastructure and standardization, we may not be able to reap all of the benefits of digitalization.

While the statutory mix created by utilizing international conventions such as the Hamburg and Hague-Visby Rules may create problems for the viability of the global legal system, it also provides for helpful solutions; however, the resulting lack of cohesion among the various international systems could lead to an increase in complexity in conducting cross-border transactions.<sup>63</sup> This is because the two sides have to follow different rules. Maritime law has had this problem of inconsistency for a long time, and even after changes are made in the US, it might still be a problem.

Another doctrinal issue is how to handle a deviation and a serious breach. The penalties for an unjustified deviation will now be more severe under the Act, but courts should explain what this means more fully. *Hain Steamship Co Ltd v Tate & Lyle Ltd* and *Leduc v Ward* are examples of how difficult it can be to find out whether a change renders a contract invalid.<sup>64</sup> The Act has made some aspects of the law; but, people have different views on what is acceptable.<sup>65</sup>

The effectiveness of the Act will depend on whether or not courts and arbitration bodies can properly handle maritime disputes which are increasingly complex. To properly combine electronic records to assign liability using various methods

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<sup>59</sup> Griggs P, Williams R, Farr J. *Limitation of Liability for Maritime Claims*. 4th edn. LLP, 2005.

<sup>60</sup> *East and West Steamship Co v S.K. Ramalingam Chettiar* AIR 1960 SC 1058.

<sup>61</sup> Svantesson D. *Cybersecurity and the Law*. Edward Elgar, 2020.

<sup>62</sup> *State (NCT of Delhi) v Navjot Sandhu* (2005) 11 SCC 600.

<sup>63</sup> Hoeks M. *Multimodal Transport Law*. Kluwer Law International, 2010.

<sup>64</sup> *Hain Steamship Co Ltd v Tate & Lyle Ltd* [1936] 2 All ER 597 (HL).

<sup>65</sup> *Leduc v Ward* (1888) 20 QBD 475.

of assignment, courts and arbitration will require a great deal of knowledge related to international rules. If the agency does not provide its employees with adequate training and/or support, the Act's goals may not be met in practice.<sup>66</sup>

In conclusion, switching from a less stringent liability system to a more stringent liability system will create a greater impact on small carriers and logistics service providers. They may not have the money or the ability to meet new requirements or take on more risks. This makes us think about how the reform will affect different parts of the maritime industry and how open it is to everyone.

The Carriage of Goods by Sea Act, 2025 is a brave and important step toward making India's maritime laws more modern. It has the following strengths: it redistributes liability, broadens its scope, welcomes digitalization, and is in line with how business is done today. The Act also makes us think about how it will be used, how people will understand it, and how it will work with other countries. The law will only work if it is both easy to use and based on sound principles, and if everyone who has a stake in it can understand how it works. The 2025 Act is the end of a long history of changes in maritime commerce law and the start of new ones.

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<sup>66</sup> Thomas DR. *Maritime Liabilities in a Global and Regional Context*. 2nd edn. Informa Law, 2015.

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