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(ADVANCED MARITIME LAWS)

1.2.4. MARITIME LAWS IN INDIA

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DOMESTIC IMPLEMENTATION OF INTERNATIONAL MARITIME LAW IN INDIA

INTRODUCTION

Law, as an instrument of orderliness in the society, cannot keep itself confined to private individuals and intra national affairs. The ever increasing interactions between people and states have contributed to making the world, in the words of Marshall McLuhan, "A Global Village". A legal system impervious to these changes would find itself hopelessly out of sync in tune with the changing times and consequently irrelevant. Therefore the field of International Law has come into its own in order to take on these challenges. It must be emphasized however that International Law does not exist for its own sake. The same developments as mentioned above cannot hope to sustain themselves if there is no order in their conduct. The globalized world needs international law as badly as, if not more than, law itself does!

International Law, in the present context, is considered as one of the most significant concepts, which has been gaining momentum at a fast pace in the world community. There has been several occasions, since the evolution of human civilization, where efforts have been put by mankind throughout the world in order to legitimize the concept of International Law in a broader perspective, with the sole objective of maintain universal brotherhood and keeping international war and conflicts at bay. Since the formation of the world community, especially after the Second World War (1939-44), inferences of International Law can be found quite frequently. The presence of International Law has increased by leaps and bounds which is quite evident from the fact that almost all the sovereign nations of the world, irrespective of their political, social, economic, religious or geographical background, have voluntarily accepted the authority of International Law.

Modern technology, communications and trade have made states more interdependent than ever before, and more willing to accept International rules on a vast range of problems of common concerns. Many of the structural changes that have taken place in the world economy since the early 1980s originated in technological progress. The technological innovation, triggered by the deregulation trends of the 1970s, facilitated the emergence of a huge global market for funds and financial instruments. This globalization process, as the phenomenon came to be described, made innovation, together with flexibility in the location of production, distributions and service facilities, even more crucial for profitability. The interplay between trade, investment, technology, and services, as well as their financial underpinning, has accordingly increased in density, giving additional impetus to the growth of interdependence.

The practice of States regarding the relationship of International Law and Municipal Law is divergent. Application of International Law depends largely upon the Legislature as well as the Judiciary of a State. They are expected to take cognizance and endeavor to honor the international obligations of the State. It has to be realized by them that neither Municipal Law nor International Law is supreme, but they are concordant to each other. They both have been made to solve the problems of human beings in different areas. If they refuse to accept the rules of International Law, relations between the States would obviously become tense and the high ideals of 'maintaining international peace and security' will be at peril.

Issues and Perspectives on International Law :

The approach of a particular states municipal courts to international law will be characterized by that states attitude to and reception of international law—an attitude which may and does differ according to the type of international law question involved—treaty or customary international law. Before discussing what happens in practice in India a brief mention must be made of the theories which have evolved on the relationship of municipal law to international law. These are traditionally divided into two principal schools—Monism and Dualism. To put simply, a state is monistic if it accepts international law automatically as part of its municipal law and does not demand an express act of the legislature, whereas if a state is dualistic, international law will only become part of its municipal law if it has been expressly adopted as such by way of a legislative act. India, as well as most of the world, falls within the dualistic school, which is made clear on perusal of Article 253 of the Constitution.

Relation between International Law and Domestic Law:

International law is generally defined as the body of rules and regulations which determines the conduct of sovereign states. According to traditionalists' view International law regulates the relations between or among sovereign states. This view was opposed by modern jurists who have opined that international law not only regulates the relations between or among states alone, but also regulates the conduct of International Institutions, individuals and non-state entities to a certain extent. International law is essentially comprised of two bodies of law: Conventional International Law (treaty based law) and Customary International Law (law based upon state practice).

Implementation is the very object for which any law is formulated; same is the case with international law. But in case of international law, direct implementation is not possible as the states do not surrender their sovereignty to any external force. The other impediments to implement international law is that the we have different legal systems around the world such as Civil Law, Common Law, Islamic Law, Socialist Law, Sub- Saharan Law, African Law and Law in East- Africa all having different adjudication mechanisms, which evidently show a lack of uniformity in the application of international law in the domestic sphere.

The relationship between the municipal and international law is made clear in the landmark case of Alabama Claims Arbitration4 wherein it was concluded that neither municipal legislative provisions, nor the absence of them, could be pleaded as a defense for non-compliance with international obligations. This view was by endorsed by the Permanent Court of International Justice in an advisory opinion to hold that"…a State which has contracted valid international obligations is bound to make in its legislations such modifications as may be necessary to endure fulfillment of the obligations undertaken." This view was thus incorporated in Article 13 of the Draft Declaration on the Rights and Duties of the States 1949 and more authoritatively in Article 27 of the Vienna Convention of the Law of Treaties, 1969. While the general rule regarding third party states is contained in Article 34 of VCLT, the obligations of State Parties who have signed the treaty but not ratified it are enunciated in Article 18, which is relevant to us for the present purposes. This means that even though India may have signed the treaty, till its ratification, it cannot by its commissions or omissions derogate from the spirit of the treaty. The implementation of international law at the domestic level is based on various theories adopted by nations:

a) Monistic Theory
b) Dualistic Theory
c) Transformation Theory
d) Specific Adoption Theory
e) Delegation Theory

At this juncture certain questions do arise such as:

Why do states feel compelled to abide by international law? Is legislation the only way of incorporating international law principles into domestic law? If an inconsistent domestic law can prevail over the international law in the domestic arena, does this negate any usefulness a customary international law may provide? What needs to be looked into is can individuals invoke international law before domestic courts? More importantly, can they gain rights under international law, which they can enforce within the municipal legal system? Also, what needs to be examined is the extent to which municipal courts will give effect within the domestic system to rules of international law that is contrary or not contrary to domestic law? The approach of a particular state's municipal courts to international law will be characterized by that state's attitude to and reception of international law- an attitude which may and does differ according to the type of international law in question- treaty law or customary international law. The role of the domestic courts in the application, enforcement and development of international law has been inconsistent. The practice of domestic law is that it deals with issues between the individuals, and between the individual and the administrative apparatus of the government whereas international law on the other hand deals basically between two states, though it includes non-state entities, multinational corporations and individual in their modern definition.

India and International Law:

In 1947 India joined the family of Sovereign Nations. Under British rule her external relations with other nations had been part of British foreign policy. Internal relations between Indian rulers had been reduced to a quasi-international character in the last century. British rule brought India in the nineteenth century into the framework of a new empire and her external relations were henceforward conducted from London. In spite of the existence of over 600 Princely States side by side with the provinces of British India their mutual relations did not call for a solution of legal problems on the basis of international law proper, as the rulers of the native States did not possess external sovereignty. These relations were a matter of co-ordination of all parts of the Indian Empire under British rule and amounted to wide control of the provinces and to the suzerainty or paramount of the Crown over the surviving vassal States. However, as the Indian rulers enjoyed internal independence, the various legal systems in force in their States, together with the private law of British India, occupied English and Indian lawyers with numerous problems of private international law. Indian courts as well as the Judicial Committee of the Privy Council had to tackle these problems continually and their solution was pre-dominantly determined by rules of private international law as evolved in England.

Independent India was faced with new legal problems. She acquired full international personality with its international rights and duties, and her external relations were conducted from New Delhi. She absorbed, together with the provinces of British India, all the native States, and became a Federal State with a written Constitution. A new internal law of inter-State relations, both public and private, needed to be evolved within the Federal framework. The distinction between these two branches of law which, in the view of generations of English lawyers, was of an academic character, assumed practical importance in India. Embodying the structure of a State in a written Constitution means the adoption of a system of public law near to American constitutional law and practice, as it provided the only worthwhile precedent on the subject within the Common Law community. Apart from problems of government and administration constant changes in Indian private law called for the revision of certain provisions of the private international law of India.

In this age of globalization and interdependence, principles of international law affect all states, small and large, rich and poor, weak and powerful alike. Many of the structural changes that have taken place in the world economy since the early 1980s has resulted in liberalizing capital, Labour, services, IPRs etc. which in turn has increased the interdependence. Hitherto, we were only dealing with the national issues, which came before the Various Indian Courts including the Supreme Court along with the High Courts and District Courts. But hereafter, the comfort of dealing with only Municipal Laws is fast dwindling for our Courts, since now we have to deal with the conflicts which have international dimensions.

International Law has come to impinge on core aspects of national life-economic, social, and cultural. India's interest in international law has always been profound with the progress and development of international relations in various parts of the world. This is *inter alia* reflected in a number of recent decisions of the Supreme Court of India in which it has been compelled to refer to developments in international law. The fact that successive governments have been vigorously pursuing policies of liberalization, calling for greater integration into the world economy, is only going to increase the intervention of international law in the national life. It is, therefore, imperative that not only the lawyers, policymakers, bureaucrats and academicians need to have a sound understanding of the subject but it is more important that the Judiciary become aware of the interface between international law and municipal law and harmonize the implementation of both laws.

The Indian Constitution and International Law

India's Constitution is among the longest and most detailed in the world. It was therefore natural that the important subject of International Law's application in the India should be covered therein. A brief summary of the relevant provisions is made below: Article 51 (c), a part of the Directive Principles of State Policy (DPSPs), is the first express mention of International Law in the Constitution. It reads: (The State shall endeavor to)…foster respect for international law and treaty obligations in the dealings of organized peoples with one another. Plenty of questions have been raised about the value and efficacy of this Article, considering it forms part of the DPSPs and have been held to be unenforceable by the Courts. However this argument is flawed as it does not take into account the persuasive value of the DPSPs and the many decisions of the Supreme Court that have upheld their importance in the governance of the country and the determination of government policy. Article 73 of the Constitution deals with the extent of Executive power of the Union i.e. the Central Government. International relations, which are a Union function, also find mention. The Article reads: Subject to the provisions of this Constitution, the executive power of the Union shall extend... (b) To the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement. Article 246 bestows the Parliament with the power to legislate on Entry 14 of List I. Since that has not been done till now, the President's treaty making powers remain wide ranging and free of any restrictions. Hence, the Executive will be very much within its power to bind India internationally under a valid treaty, without referring to the Parliament, or require legislation sanctioning money expenditure, or require a change in existing laws for implementation of the treaty obligations of the Union. Further power on the Parliament to make laws as regarding International law is bestowed by Article 248. A rather general provision, it states that Parliament has exclusive power to make laws with respect to any matter not contained in the State or Concurrent List.

Direct reference to the same is made in Article 253. It reads: Legislation for giving effect to international agreements- Notwithstanding anything in the foregoing provisions of this chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

The subjects of exercise of this power under Article 253 are enunciated in Entries 10 to 21 of List I of the Seventh Schedule which pertain to International Law. In making any law under any of these entries, Parliament is required to keep Article 51 in mind.9 Entry 1410 of the Union List confers on the Union Parliament exclusive power to make laws with respect to "entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries". Also Entry 10 of that List provides for „Foreign affairs; all matters which bring the Union into relation with any Foreign Country". For quite some time after the commencement of the Constitution not much use was made of these provisions. But now it almost all legislations on environment since mid-1970s have been enacted under this provision. Legislations relating to TRIPS, ensuring India's conformity with WTO membership, are also being enacted under this provision.

The relevance of Article 253 cannot be overstated. While India is a signatory to various international treaties and covenants and being a party to WTO and GATT, it is obligated to fulfill its trans-national obligations. While doing so, the Legislature should give effect to the will of the makers of the Constitution and not act contrary thereto or inconsistent thereto. The *State of West Bengal v. Kesoram Industries Ltd,*[1] para 239 10 seventh Schedule: List I - Union List: 14 stipulates for: "Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries." *Maganbhai Ishwarbhai Patel v. Union of India,*[2] India's implementation of international law principles can be traced back to even the pre- independence era. The British India during the colonial period was treated as a separate state, with an international legal personality of its own. It was a member of League of Nations. It was a party to statute of Permanent Court of Justice and General Act on the Pacific Settlement of Disputes, 1928. It entered into treaties and ratified them. It has a dubious distinction of ratifying the 1937 Geneva Convention for the Prevention and Punishment of Terrorism, which the UK and other nations did not ratify. British India was also a participated in the San Francisco conference which led to establishment of the United Nations.

After independence, the most specific article dealing with international law in the Indian Constitution is Art. 51 of the Directive Principles. It says: The State shall endeavor to promote international peace and security; maintain just and honorable relations with nations; foster respect for international law and treaty obligations in dealings of organized people with one another; and encourage settlement of international dispute by arbitration. Now the

[1] (2004) 10 SCC 201,
[2] (1970) 3 S.C.C. 400: A.I.R. 1969 SC 783

immense growth of international law, and shift in India's economic policy approach has changed the situation in fact to be more relevant to the growth of India as a nation.

Other relevant provisions of the Indian constitution are:

a) The Preamble, recognizing and declaring the Sovereignty of India;
b) Fundamental Rights, Part-II of the Indian Constitution treads on the path laid down by the International Covenant of Civil and Political Rights.
c) Directive Principles of State Policy (Part IV), have been interpreted by the courts keeping in mind the international conventions, e.g. they have been described as forerunner of the UN convention on right to development as inalienable human rights[3];
d) Article 73, extent of executive power of Union over the matters within the jurisdiction of Parliament of India;
e) Article 245 (2) providing for extra territorial jurisdiction to the laws made by the Parliament of India,
f) Article 246, parliament's exclusive power to make law on the matters enumerated in Schedule VII, List I;
g) Article 248 read with entry 97 of the List I, Schedule VII, rests the residuary powers with the Union of India;
h) Article 253 read with entry 14 of the Union List in Schedule VII, Parliament's exclusive power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other county or countries or any decision made at any international conference, association or body.
i) Art. 260 recognizes the Central Government's competence to act in legislative, executive, judicial capacity for any territory which is not part of India by agreement with the government of that territory, subject to any law relating to foreign jurisdiction for the time being in force;
j) Art. 363, bars the jurisdiction of Indian Courts except the Advisory jurisdiction (Art. 143) in any dispute arising out of any provision of a treaty, agreement, covenant, engagements and or other similar agreement entered into before commencement of Constitution of India;
k) Art.372, pre- constitution laws to be continued in force unless repealed, altered or amended by a legislature or competent authority.

Treaty making and implementation in India

India is a party to most of the international treaties, which forms part of international law. It is the general proposition of law that once consent has been given, the Consenter is estopped from going back on the same. India is under a duty to carry out in good faith, its obligations arising out of these treaties. This imposes on it a positive duty to implement and enforce the

[3]Air India statutory Corporation v. United labor Union, AIR 1997 SC 645

same in its municipal legal system. Moreover, since international law is a result of the consent given by states in the first place, they are under solemn obligations to give effect to those rules in their respective jurisdictions.

Entering into treaties and agreements with foreign powers is one of the attributes of State Sovereignty. Now, the concept of State Sovereignty has changed the command of sovereign to science of social adjustment. The advent of globalization and the enormous advances made in communication and information technology have rendered independent states interdependent. Every state has entered into and is entering into treaties –be it multi-lateral or bilateral- which has a serious impact upon the economy and the social and political life of its society. In spite of the fundamental importance of the treaty-making power, it has unfortunately received very little attention in our country, though in many other countries, good amount of research and debate has gone into it. We in India cannot afford to ignore this subject any longer, particularly because of the experience of WTO treaties signed by India without consulting or without taking into confidence either the parliament or people which is likely to affect us adversely.

Since, India does not follow the concept of separation of powers strictly, in the field of treaty- making it often gives rise to a debate as to whether one organ overrides the authority of another. The core issue in our system of government, as on today, is not whether the state sovereignty is restricted by such treaties, but whether the exercise of state sovereignty (i.e. treaty making) by the executive government restricts the parliamentary sovereignty to an unacceptable extent. To elaborate the core issue, the several questions that arise in this behalf are: (1) which treaties are deemed to be insufficiently important to be referred to the parliament? (2) Who is determining the importance of a particular treaty for being referred to the parliament? (3) At what stage should the parliament come into the picture- whether before entering into the treaty or after it is signed but before it is ratified and only when legislation is required to be made to give effect to the treaty? (4) what form should be the reference to Parliament be-should it be subjected to a positive resolution of approval or should the reference to parliament be subject to a positive resolution of approval or should it be provided that the treaty be laid before the House for a particular period, on the expiry of which the parliament must be deemed to have approved it by default and so on?

Indian Judiciary and International Law

An analysis of the above mentioned provisions and the related case law on the subject helps us pinpoint the place of International Law in India. International law has no supremacy over municipal law in the Indian Constitution.

It was first held in *Birma v. State of Rajasthan* by the Supreme Court that certain treaties such as those affecting private rights must be legislated by Parliament to become enforceable.13 This was reiterated in *Ajaib Singh v. State of Punjab* that an International law principle is not part of the law of the land unless it is adopted as such by an Act of Parliament. Furthermore like all Acts, it too must be tested on the anvil of Article 13 of the Constitution.14 It rejected the contention of the Government that as a consequence of an agreement between India and a foreign country (Pakistan), the Abducted Persons (Recovery and Restoration) Act of 1949 should be deemed to be valid. The Court stated that it has been held that the Supreme Court of the US that it had the power to set aside treaties, inspite of clear provisions in the US Constitution that declared the same to be the Law of the Land. It quoted *Ware v. Hyloon* and State of *Missouri v. Holland*[4] to buttress its point. There is no provision in the Constitution of India which declares that all treaties to which the Government of India is a party shall be vested with statutory authority. Article 51 declares the directive principle that the State shall foster respect for every international law and treaty obligations and Article 253 empowers Parliament to make any law for the purpose of implementing the treaty obligations of India, but neither of these two Articles empowers Parliament to make a law which can deprive a citizen of India of the fundamental rights conferred upon him.

In *Shri Krishna Sharma v. State of West Bengal*[5], it was held that the provisions of the Anglo Tibet Trade Regulations of 1914 that were apparently in conflict with statutory law would have to give way to the latter. *In Re Berubari Union*[6], the Supreme Court exercising its advisory opinion under Article 143 of the Constitution held that any matter relating to the cession of territory should certainly involve a legislative enactment. This was in reference to the situation in West Bengal/East Pakistan where a number of enclaves and exclaves were formed due to old agreements. This had made the task of administration very difficult.

In *Maganlal Ishwarbhai Patel v. Union of India*[7], it was prayed by the petitioner that the Government of India be restrained from ceding without approval of Parliament areas in the Rann of Kutch to Pakistan. The question before the Court was whether the Award in relation to the ceding territories needed to be implemented in the form of a binding legislation. The Apex Court observed that boundary between two States was indefinite and only by the Award of the International Tribunal could the true boundary of India and Pakistan be determined. However, the award does not give rise to obligation to cede Indian Territory and it did no more than define on surface of earth a boundary. In the light of this, it was held the Award itself was the operative treaty. It is relevant to note that the Hon"ble Court held that though in this case the Award need not be implemented through a domestic legislation, yet, in cases where citizen's right are involved, legislation to that effect is unavoidable.

[4] [252 U.S. 416, 424]
[5] AIR 1954 Cal 591
[6] AIR 1960 SC 845
[7] 1969 AIR 783

In the landmark case of *Vishakha v. State of Rajasthan*[8] that dealt with the sexual harassment of women at the workplace, the Supreme Court held that the international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them… to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee..”

It is significant to examine the basis of the Hon’ble Court’s decision. It was to recognize the doctrine of Legitimate Expectation even in cases of unimplemented international instruments. Therefore, it was held that in the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant. This was done to uphold the guarantee of gender equality, right to work with human dignity as found in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. It is also significant to note that the Court observed the executive power of the Union is, to be available till the Parliament enacts legislation to expressly provide measures needed to curb the evil. This balanced opinion, did not in any way undermine the relevance of Article 253 nor did it leave the field exclusively for the Executive.

In the case of *Nilabati Behera v. State of Orissa*[9], a provision in the ICCPR was referred to support the view taken that „an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right‟, as a public law remedy under Article 32, distinct from the private law remedy in torts. Similarly, in *Arnit Das v. State of Bihar*[10] the Court construed U.N. Standard Minimum Rules for the Administration of Juvenile Justice as providing a suitable backdrop for the Juvenile Justice Act, 2000.

There are no express provisions contained in the Constitution directly dealing with the relationship of international law and municipal law. Interestingly though, the courts have applied rules of customary international law in the cases of sovereign immunity and more recently in environmental litigation. There is no support in the Constitution for upholding the doctrine of incorporation.[11] This has led to imposition of regulations and guidelines on the Executive in the name of “well-established principles”, as was seen in *Vellore Citizens Welfare Forum v. Union of India*[12], in a manner oblivious to the various developmental concerns that have to be factored in while accepting such principles as a part of our domestic legal regime.

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[8] AIR 1997 SUPREME COURT 3011
[9] AIR 1993 SC 1960
[10] AIR 2001 SC 3575
[11]Nishant Kumar Singh, “The Indian Constitution and Customary International Law: Problems and Perspectives”, *The Student Advocate* Vo. 12 (2000) 81, 95.
[12](1996) 5 SCC 647.

When it comes to treaties, the approach has been better in terms of development of principles of incorporation as well as interpretation of treaties. The probable reason for this could be the indicators and direction offered by the Constitution itself. The Indian Constitution empowers the Parliament to make treaties under Article 253[13] of the Constitution. Hence, as mentioned earlier the treaty making power will have to be exercised in the manner contemplated by the Constitution and subject to the limitations imposed upon it. The executive authorities at the center are empowered to make any kind of treaty, convention or agreement and such treaties for its effective implementation are legislated by the parliament[14]. This scheme under the Indian Constitution thus resembles that of the dualistic system in international law.

As mentioned earlier, the Indian practice of implementation of international law is by adopting both customary and conventional practice. Regarding the enforcement of customary international law in India, the Supreme Court in Peoples' Union for Civil Rights v. Union of India[15], held that it is an accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall be deemed to be incorporated in the domestic law. In other cases beginning *with In re Berubari*[16] *, MaganBhai v. U.O.I*[17], *Keshavanada Bharati v. State of Kerala*[18], *Vishakha v. State of Rajasthan*[19], the Supreme court re-iterated that various international covenants, particularly to which India is a signatory or party, becomes part of national law, in so far as there is no conflict between the two.

Summary

What comes through from these judgments is that the Supreme Court has been relying on the Treaties/Conventions, for example, those pertaining to human rights and environment, which elucidate and effectuate the people's fundamental rights, in particular, Article 21 of the Constitution. Any beneficial international law instruments are necessarily taken into consideration while considering a violation of rights. For instance, the Supreme Court has relied on international conventions in analyzing the right to maternity benefits under India's Maternity Benefit Act 1961. However, many instruments have not been incorporated as part of Article 21 of the Constitution. Yet the courts enforce these obligations leave apart construing it in consonance with municipal law. Such obligations are only those within the corpus of customary international law. A relevant example of this is the 1951 Convention on the Status of Refugees and its Protocol of 1967, to which India is not a party, yet certain protections are afforded to refugees in India based on provisions which incorporate norms of customary practice. However, one legitimate exception to this is, being a persistent objector

[13]Article 253.Legislation for giving effect to international agreements.
[1414]*In Re: The Berubari Union*, AIR 1960 SC 845.
[15] AIR 1997 SC 568
[16] AIR 1960 SC 845
[17] AIR 1969 SC 783
[18] AIR 1973 SC 1461
[19] (1997) 3 SCC 433

to a practice; in which case, the norm will not be binding on India. However, it must be made clear that this is hardly the case with India.

HISTORY AND DEVELOPMENT OF INTERNATIONAL MARITIME LAWS

Life itself arose from the oceans. The ocean is vast and covers 140 million square miles, some 72 per cent of the Earth's surface. The ocean has always been an important source of food for the life it helped generate, and from earliest recorded history it has also served trade and commerce, adventure and discovery. It has separated and brought people together.

Even now, when the continents have been mapped and their interiors made accessible by road, river and air, most of the world's people live no more than 200 miles from the sea and relate closely to it.

The origins of maritime law go back to antiquity. Because no country has jurisdiction over the seas, it has been necessary for nations to reach agreements regarding ways of dealing with ships, crews, and cargoes when disputes arise. The earliest agreements were probably based on a body of ancient customs that had developed as practical solutions to common problems. Many of these customs became part of Roman civil law. After the fall of the Roman Empire, maritime commerce was disrupted for about 500 years.

After maritime activity was resumed in the Middle Ages, various disputes arose and laws were formulated to deal with them. Gradually the laws of the sea were compiled; among the best-known collections of early maritime law are the Laws of Oleron and the Black Book of the Admiralty, an English compilation prepared during the 14th and 15th centuries. Special courts to administer sea laws were set up in some countries. In Britain today, maritime law is administered by courts of the admiralty."

The Admiralty law of England

The Admiralty law of England, was received into the general maritime law of the United States at the time of the American Revolution and was confirmed by the Constitution and a statute of the first Congress in 1789.

It was the law adjudged in the Admiralty Court, (Doctors' Commons), where only Doctors of Civil Law could plead and take part. Theirs was the law found in the Blacke Booke of Admiralty, as it was ruled on in subsequent recorded judgments and in the occasional laws adopted by Parliament. There is an excellent new text of the Selden Society which has collected and commented on those decisions (Hale and Fleetwood on Admiralty Jurisdiction, vol. CVIII of the Selden Society, London, 1992).

Thus the general maritime law advanced and evolved in England in the civilian court based on the early civilian admiralty codes.

The Influence of The Common Law On Maritime Law

Although Doctors' Commons was civilian in origin, structure and style, the common law had very considerable influence on the law of the Admiralty Court. This was because the common law courts, although younger than the commercial, admiralty, probate and church courts, were very jealous of their jurisdiction, and wished to restrict it. The courts of common law fought even with Chancery (the court of equity). In particular, Sir Edward Coke, the Lord Chief Justice of Common Pleas, used his great authority and prestige to limit Admiralty jurisdiction. His principal weapon was the writ of prohibition, which took away considerable jurisdiction from the Admiralty Court. As time passed, the Court even lost the right to issue writs of attachment. Thus much maritime law was practised in the common law courts by common lawyers, particulary in respect of matters arising ashore (and not outside the sight of land), such as marine insurance, stevedoring and chartering.

Other examples of the common law influence are the ship mortgage, the maritime tort lien, the writ in rem and the "no cure/ no pay" principle in salvage.

Freedom of the Sea

The oceans had long been subject to the freedom of-the-seas doctrine - a principle put forth in the 17th century, essentially limiting national rights and jurisdiction over the oceans to a narrow sea belt surrounding a nation's coastline. The rest of the seas were declared free for all and belonged to none. While this situation lasted into the twentieth century, by mid-century there was an impetus to extend national claims over offshore resources.

There was a growing concern over the toll taken on coastal fish stocks by long-distance fishing fleets and over the threat of pollution and wastes from transport vessels and oil tankers carrying noxious cargoes that plied sea routes across the globe. The threat of pollution was always present for coastal resorts and all forms of ocean life. The navies of the maritime powers were competing for a worldwide presence in surface waters and even under the sea.

United Nations Law of the Sea Convention (UNCLOS):

The United Nations is working to ensure the peaceful, cooperative, legally defined uses of the seas and oceans for the individual and common benefit of humankind. Urgent calls for an effective international regime over the seabed and the ocean floor beyond a clearly defined national jurisdiction set in motion a process that spanned 15 years and saw the creation of the United Nations Seabed Committee, the signing of a treaty banning nuclear weapons on the seabed, the adoption of the General Assembly's declaration that all seabed resources beyond the limits of national jurisdiction are the common heritage of mankind, and the convening of the Stockholm Conference on the Human Environment.

The UN’s groundbreaking work in adopting the 1982 Law of the Sea Convention stands as a defining moment in the extension of international law to the vast, shared water resources of our planet. The convention has resolved several important issues related to ocean usage and sovereignty, such as:

- Established freedom-of-navigation rights
- Set territorial sea boundaries 12 miles offshore
- Set exclusive economic zones up to 200 miles offshore
- Set rules for extending continental shelf rights up to 350 miles offshore
- Created the International Seabed Authority
- Created other conflict-resolution mechanisms (e.g., the UN Commission on the Limits of the Continental Shelf)

Protection of marine environment and biodiversity

The United Nations Environment Programme (UN Environment), particularly through its Regional Seas Programme, acts to protect oceans and seas and promote the sustainable use of marine resources. The Regional Seas Conventions and Action Plans is the world's only legal framework for protecting the oceans and seas at the regional level. UNEP also created The Global Programme of Action for the Protection of the Marine Environment from Land-based Activities. It is the only global intergovernmental mechanism directly addressing the link between terrestrial, freshwater, coastal and marine ecosystems.

The United Nations Educational, Scientific and Cultural Organization (UNESCO), through its Intergovernmental Oceanographic Commission, coordinates programmes in marine research, observation systems, hazard mitigation and better managing ocean and coastal areas.

The International Maritime Organization (IMO) is the key United Nations institution for the development of international maritime law. Its main task is to create a fair and effective, generally accepted and implemented legal framework for the shipping industry.

Marine shipping and pollution

To ensure that shipping is cleaner and greener, IMO has adopted regulations to address the emission of air pollutants from ships and has adopted binding energy-efficiency measures to reduce greenhouse gas emissions from international shipping. These include the landmark International Convention for the Prevention of Pollution from Ships of 1973, as modified by a 1978 Protocol (MARPOL), and the 1954 International Convention for the Prevention of Pollution of the Sea by Oil.

Polar Code:

In 2017, the International Code for Ships Operating in Polar Waters (Polar Code) entered into force. The Polar Code covers the full range of design, construction, equipment, operational, training, search and rescue and environmental protection matters relevant to ships operating in the inhospitable waters surrounding the two poles. It was an important regulatory development in the field of transport and trade facilitation, alongside a range of regulatory developments relating to maritime and supply chain security and environmental issues.

Piracy

In recent years there has been a surge in piracy off the coast of Somalia and in the Gulf of Guinea. Pirate attacks are a danger to the welfare of seafarers and the security of navigation and commerce. These criminal acts may result in the loss of life, physical harm or hostage-taking of seafarers, significant disruptions to commerce and navigation, financial losses to shipowners, increased insurance premiums and security costs, increased costs to consumers and producers, and damage to the marine environment.

Pirate attacks can have widespread ramifications, including preventing humanitarian assistance and increasing the costs of future shipments to the affected areas. The IMO and UN have adopted additional resolutions to complement the rules in the Law of the Sea Convention for dealing with piracy.

HISTORICAL EVOLUTION OF MARITIME LAWS IN INDIA

Maritime law or shipping law in India, as elsewhere, is a wide ranging branch of the law which has within its' boundaries, carriage of goods by sea; marine insurance; laws of ownership and registration of ships; ship sale and building contracts, ship financing, ship mortgages; manning of ships; the law of collisions, limitation of liability, salvage, towage and pilotage; maritime liens, claims and priority of the same; the law of marine pollution, as well as the Customs and Port laws. All these various aspects are covered by various legislations in India, which are founded on colonial British legislations on the subjects, as made applicable in India and as amended from time to time by the Indian Parliament. This chapter aims to provide a general overview of the shipping laws in India and the highlights or peculiarities of the same, as developed over time. Prior to delving into the subject of maritime law in India, it is pertinent to trace its origins in the English statutes on admiralty jurisdiction and the power exercised by the English Courts over foreign ships. The consolidation of the courts of common law and equity took place with the enactment of the

Supreme Court of Judicature Act, 1873. The English Courts' wide jurisdictional powers can be attributed to the ancient principles of maritime law developed by custom and practice in addition to subsequent statutes. Many of the statutes have incorporated provisions of International Conventions providing a synthesis with the several maritime countries. The international character of maritime law, although heavily indebted to general principles of international law is subject to local laws. This is true in India as well.

<u>Origins:</u>

The modern maritime law of India has developed over a century, from colonial times, vide the Admiralty Offences (Colonial) Act, 1849, the Inland Steam vessels Act, 1917; the Coasting Vessels Act, 1838; the Indian Registration of Ships Act, 1841; the Indian Registration of Ships Act (1841) Amendment Act, 1850; Indian Ports Act, 1908; Indian Merchant Shipping Act, 1923; the Merchant Seamen (Litigation) Act, 1946; the Control of Shipping Act, 1947; and the Merchant Shipping Laws (Extension to Acceding States and Amendment) Act, 1949, Territorial Waters Jurisdiction Act, 1878 etc. In addition to these, a series of legislative Acts of British Parliament, promulgated between 1823 and 1940, governed various aspects of Indian shipping, including ship owners' liability, salvage, certification of seafarers, safety and load line conventions. By Clause 32 of the Letters Patent, 1862, the High Courts of Judicature at Madras, Bombay and Fort William in Bengal, were declared as Courts of Admiralty or of Vice Admiralty, and vested with jurisdiction for trial and adjudication of maritime questions arising in India, which was confirmed by the Colonial Courts of Admiralty (India) Act, 1891. By the Colonial Courts of Admiralty Act, 1890, the provisions of the Admiralty Court Act, 1840, and the Admiralty Court Act, 1861, were made applicable to courts in British India, as they were courts of law in British possession. By Section 22 of the Supreme Court of Judicature (Consolidation) Act, 1925, the questions or claims in relation to which the aforesaid High Courts shall have admiralty jurisdiction, were listed out, and those were the claims for which a claimant could approach the Admiralty Courts in India for reliefs.

The Supreme Court of India is the highest Court in India and it's decisions are binding upon all courts and tribunals in India. Up till the time of the Supreme Court of India's decision in the ***m. v. Elisabeth's case***, in 1993, the jurisdiction of Admiralty Courts in India, were restricted to the claims as enumerated in the aforestated British legislations. Vide the said decision, the Supreme Court of India, interalia, laid down that there is no reason to think that the jurisdiction of the Indian High Courts have stood frozen and atrophied on the date of the Colonial Courts of Admiralty Act, 1890, and that the High Courts in India are superior courts of records with unlimited jurisdiction with inherent and plenary powers to decide on their own jurisdiction to redress grievances according to what is perceived to be principles of justice, equity and good conscience, where statute is silent and judicial intervention is required. Accordingly, in view of there being no Indian Statute governing the Court's jurisdiction in regard to maritime claims, the Supreme Court made the principles of

International Conventions on Maritime laws, applicable in India as part of India's common law.

The Government of India has circulated a draft bill for an Admiralty Act, 2005, seeking to repeal all of the aforementioned obsolete legislations and instead and in their place, to bring into existence a comprehensive law to regulate the claims, jurisdiction, procedure, etc. in Admiralty in India. This bill when passed by the Indian Parliament, would bring in a new comprehensive legislation in India in relation to maritime law. In addition to the above, there are other legislations applicable in India in relation to maritime law, and they are the (Indian) Merchant Shipping Act, 1958, the (Indian) Carriage of Goods by Sea Act, 1925, the (Indian) Bills of Lading Act, 1856, the Multimodal Transportation of Goods Act, 1993, and the Major Port Trusts Act, 1963. There are further general statutes, like the Marine Insurance Act, 1963, the Contract Act, 1872, the Sale of Goods Act, 1930, the Evidence Act, 1872, the Indian Penal Code, 1860, the Transfer of Property Act, 1882, the Civil Procedure Code, 1908, the Criminal Procedure Code, 1973, the Limitation Act, 1963, the Companies Act, 1956, the Arbitration and Conciliation Act, 1996, the Maritime Zone of India Act, 1981, Territorial Waters Continental Shelf – Exclusive Economic Zone and Other Maritime Zones Act, 1976, etc.

It is relevant to point out that the Indian Ports Act, 1908 and the Major Port Trusts Act, 1963 deal with the administration of the ports and the jurisdiction over ships in ports. The Customs Act, 1962, contains various regulatory measures in relation to ships, goods and persons, in connection with importation or exportation, clearance of goods for home consumption, exports, dutiability of goods, prohibitions, etc. In addition thereto, there are certain laws in relation to employment of labour and payment of compensation to seafarers, officers and crew in cases of death or disability etc., all of which would also be relevant in the context of the Indian maritime law. Apart from these legislations, there are judgments of various courts in India, which has laid down general principles of maritime law as is recognised and practiced in India. We will now examine some of the various domestic Indian statutes governing maritime law in India. This presentation is an attempt to provide a brief yet cohesive look at the significant statutes and their scope illustrated by landmark cases as well as how the law in India has developed by virtue of court decisions.

Merchant Shipping Act, 1958:

The present Merchant Shipping Act (hereafter, 'MSA') was adopted in 1958, repealing most of the earlier statutes in toto, and the Coasting Vessels Act, 1838, insofar as it applied to seagoing ships fitted with mechanical means of propulsion and to sailing vessels. The Inland Steam-vessels Act continues to be in force, with amendments, and is now called the Inland Vessels Act, 1917. Similarly, the Indian Ports Act, 1908 also continues to be in force. In addition to the MSA, the Indian Ports Act, 1908, the Major Ports Act, 1963, and the various State statutes governing minor and intermediate ports, together form the body of Indian maritime law as on date. The MSA itself underwent several amendments, the last one being in 2007. The MSA also provided for a Shipping Development Fund, but the same was abolished in 1986. Currently there are moves in India to get in a new M.S. Act to substitute the MSA. It is believed that the new Act, as and when passed by the Parliament, will update the Indian law to bring it in line with all the applicable International Conventions.

Limitation of Liability:

An important aspect of maritime law is the nature and extent of a limitation action. With several leading nations adopting the International Convention for the Unification of certain Rules relating to limited liability of owners of sea-going vessels in 1924 (commonly referred to as the Brussels Convention of 1924), an attempt to clarify and codify the principle were initiated. In 1957, a new convention on Limitation of Liability of Sea Going Vessels was drafted to replace the Brussels Convention of 1924. The new convention, commonly referred to as the Brussels Limitation Convention of 1957 was signed by many leading maritime states of the world, including India. The Convention fixes the limit of liability of an owner of a sea-going vessel on the basis of the tonnage of the vessel without regard to the vessel's value. It was to incorporate this Convention in the Indian statute law that Part X A was inserted in the Merchant Shipping Act, 1958. Part X A governs the right of an owner to bring a limitation action under the Merchant Shipping Act, 1958. The purpose of limitation of liability is founded on providing protection to an owner against large claims, far exceeding the value of the ship and cargo, which can be made against him all over the world in case his ship meets with an accident causing damage to cargo, property, to another vessel or loss of personal life or personal injury. By the Merchant Shipping (Amendment) Act, 2002, inter alia, Part X A of the MSA was amended by the Indian Government, to implement the provisions of the LLMC, 1976, and thus make the provisions of the said Convention as part of Indian Law. Pursuant to the said amendment, India is now a 1976 Convention country in respect of limitation of liability for maritime claims. The amended Part X A of the MSA is important to the 1976 Convention. However, there is one omission in the Indian MSA, when compared to the Convention. Article 4 of the 1976 Convention provides for a person liable not to be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such laws would probably result. This Article 4 of the Convention does not find a place in the amended Part X A of the Indian MSA, which would lead one to believe that under Indian Law, the right to limit liability is absolute and therefore, it would be very difficult to break limitation in India. Prior to the amendment, it was fairly easy, depending upon the facts and circumstances of the case, to break limitation, if it could be demonstrated that the owner's actual fault and privity led to the incident in connection with which the owner seeks to limit liability. Further, the burden was on the owner i.e. the person seeking to limit liability, to demonstrate that the incident arose without his actual fault and privity.

The Supreme Court of India, in a case reported in AIR 1998 Supreme Court 34, *World Tanker Carrier Corporation V/s SNP Shipping Services Pvt. Ltd.* and others, had an opportunity to deal with the issue of limitation of liability and the jurisdiction of Indian Courts to entertain such actions. It may be borne in mind that this case was heard and decided under the old limitation regime, prior to the 2002 amendment to the Act. In the said judgment, the Supreme Court of India has inter alia held, “a limitation action, though it is normally filed in the admiralty jurisdiction of a court, is slightly different from an ordinary admiralty action which normally begins with the arrest of the defaulting vessel. The vessel itself, through it’s master, is a party in the admiralty suit, and the plaintiff must have claims provable in admiralty against the vessel. In the case of an action for limitation of liability, it is the personal right of the owner of the vessel to file a limitation action or to use it as a defence to an action against him for liability. It is a “defensive” action against claims in admiralty filed by various claimants against the owner of the vessel and the vessel. A limitation action need not be filed in the same forum as a liability action. However, it must be a forum having jurisdiction to limit the extent of such claims and whose decree in the form of a limitation fund will bind all the claimants.”

After recording the history of limitation actions and the applicable provisions in relation to jurisdiction under Indian procedural laws, the Supreme Court has held, “a limitation action in admiralty jurisdiction cannot be filed in a Court where a part of the cause of action of arises when all claimants who are defendants to the action are foreigners who reside outside India, who do not carry on business in India and who have not submitted to the jurisdiction of any Court in India, and have not filed a liability action in India and are not likely to do so.” The Supreme Court, in the facts of that case, went on to hold that the concerned Indian High Court did not have jurisdiction to receive, entertain and try that limitation action inter alia on the ground that there was no likelihood of any claims being filed before the Courts in India. Carriage of Goods by Sea Act, 1925 The Act applies to carriage of goods by sea under bills of lading or similar documents of title from a port in India, to any other port whether in or outside India (Section 2). The Act imposes responsibilities and liabilities and confers rights and immunities upon the carrier. The important point to note is that the substantive rights recognised by the statute are of equal application to foreign merchant ships as they are to Indian merchant ships. The Indian Carriage of Goods by Sea Act, 1925, is the substantive law in India on the subject of carriage of goods by sea where bills of lading or such document of title is issued. The enforcement of the rights of cargo interests for recovery of their claims including by arrest of foreign vessels found in Indian waters, is governed by the provisions of the Admiralty Courts Act, read with the judgment of the Supreme Court of India in the Elisabeth’s case. Recourse can also be taken under the Merchant Shipping Act. That Act, as stated earlier, confers a right to arrest a vessel in respect of any damage by a ship. This expression, if understood in a broader sense, effectively enables jurisdiction over a foreign ship for the enforcement of a substantive right recognized by law, would be no hindrance in finding a remedy for the right that law has conferred on the cargo owner. This would also be true in cases of charter party disputes. Multimodal Transportation of Goods Act, 1993

In recognition of the increasing technological advancements in transportation systems and the rampant advent of containerization in maritime transport and the use of more than one mode of transport for the carriage of goods within the country as well as to international destinations, the Multimodal Transportation of Goods Act was introduced in India in 1993. This Act applies to all cases where two or more than two modes of transport are used in the course of transportation. The Act recognises multimodal transportation of goods being done under a single transport document which covers all the modes of transport and the multimodal transport operator remains liable and responsible to the cargo owner.

The MTOGA provides for the multimodal transport operator to be liable when the goods are damaged when they are in his charge. However, an MTO will not be liable under the Act unless action against him is brought within 9 months of – the date of delivery of the goods; the date when the goods should have been delivered; or the date on and from which the party entitled to delivery of the goods has the right to treat the goods as lost. Multimodal transportation of goods is now standard practice in many parts of the developed world and is gradually spreading over to developing nations.

In order to ease control, simplify procedures and facilitate smooth flow of international trade and promotion of exports, the Government of India promulgated this Act, which has also amended the Carriage of Goods by Sea Act, 1925. The important changes to the COGSA brought about by the MTOGA, are : (a) it provides for parties to agree on the extension of the one year period to bring suit for cargo claims; (b) it has increased the per package limitation to bring the Indian COGSA in line with the Hamburg Rules, i.e. the package limitation under Indian law is now 666.66 SDR per package or unit or 2 SDR per kilogram of gross weight of the goods lost or damaged, whichever is higher; and (c) the Indian law now expressly provides that neither the carrier nor the ship shall be entitled to the benefit of the package limitation of liability if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

The Supreme Court of India, whilst dealing with the one year period to bring Suits in connection with loss/damage to cargo under bills of lading, has held that the one year period provided by COGSA and the Bill of Lading is not a period of limitation, but the right to sue the carrier itself stands extinguished on the expiry of one year after delivery of the goods or from the date when the goods ought to have been delivered in *The East And West Steamship vs. S. K. Ramalingam Chettiar*[20], which was followed and applied in American *Export*

[20] The East And West Steamship vs S. K. Ramalingam Chettiar, AIR 1960 SC 1058

Isbrandtsen vs. Joe Lopez And Anr,[21] and recently in a case decided by the Madras High Court.

Admiralty jurisdiction:

Now we will be discussing the Admiralty jurisdiction exercised by the courts in India. In rather simplistic terms, this can be stated as being the jurisdiction of courts over maritime claims, and the procedures relating thereto. This includes the arrest of ship; determination of claims and priorities; and of liabilities. The modern admiralty law of India can be traced to developments between the late 1700s, when the Royal Charters established what are now the High Courts of Bombay, Calcutta and Madras, and the early 1900s. The Admiralty Court Act, 1861, read with the Colonial Courts of Admiralty Act, 1890 and the Colonial Courts of Admiralty (India) Act, 1891, all Acts of British Parliament, conferred the same admiralty jurisdiction on the above mentioned Presidency High Courts of Calcutta (which was then Fort William), Madras and Bombay, as was vested in the High Court of England. These High Courts were by Letters Patent conferred ordinary, original and civil jurisdiction. The Government of India Act, 1915, declared these Courts to be courts of record and confirmed the jurisdiction vested in them by the Letters Patent and the above mentioned Acts. The Colonial Courts of Admiralty in India also had criminal jurisdiction, under the Admiralty Offences (Colonial) Act, 1849, read with the Admiralty Jurisdiction (India) Act, 1860, over "admiralty offences".

In India, it is only the High Courts of Bombay, Madras and Calcutta that exercise and/or have admiralty jurisdiction. By virtue of the State Re-organisation Act, the High Courts of the States carved out of the original Bombay, Madras and Bengal States/Presidencies, also have Admiralty jurisdiction, and accordingly, the High Courts of Gujarat, Andhra Pradesh, and Orissa also exercise Admiralty Jurisdiction. Further, these High Courts (Bombay, Madras, Calcutta, Gujarat, Andhra Pradesh, & Orissa) exercise admiralty jurisdiction concurrently over vessels found in the territorial waters of India. In India, to enable a Claimant to approach the Admiralty Court for an arrest of the Defendant vessel in respect of a maritime claim, all that he has to do is to file a substantive Suit to the concerned Admiralty Court when the Defendant vessel is within the territorial waters of India, and make out a prima facie case and the arrest of the vessel would follow. Once the vessel is arrested, the owner or any party interested in the vessel can approach the Court and put up security for the release of the vessel in terms of the Warrant of Arrest issued by the Court and have the vessel released. Thereafter, the Suit in due course would be tried and decided by the Court.

The High Courts vested and exercising Admiralty jurisdiction have framed rules in respect of various procedures, filing of caveats against arrest/release/payment out, for sale of the vessel, determination of priorities, etc. The recognised security to be furnished by the defendant for

[21] AIR 1972 SC 1405

the release of the vessel, would either be by way of cash deposited in the registry of the concerned Admiralty Court or by way of a Bank Guarantee issued by a nationalised bank in favour of the Admiralty Registrar of the concerned Court. The quantum of such security would be in accordance with the Warrant of Arrest issued by the Court in the matter. P & I Club letter of guarantee, as security, is not recognised or accepted by the courts. Club Letter of Guarantee can be used as security only if the plaintiff agrees to accept the same as security for his claim in the suit.

In a case involving the vessel, *m.v. Kapitan Kud*[22], the Supreme Court has inter alia held that to enable a claimant to seek and get a vessel arrested in respect of any maritime claim, all that he has to do is to make out a prima facie case, and the arrest of the vessel shall be granted. At the time of the application for arrest, the Court will not go into the evidence in the matter and/or the probability of the Plaintiff succeeding in the Suit. The traditional understanding of admiralty jurisdiction, insofar as it relates to claims arising out of the carriage of goods by sea, is illustrated in section 6 of the Admiralty Court Act, 1861, which reads: "As to claims for damage to cargo imported:- The High Court of Admiralty shall have jurisdiction over any Claim by the Owner or Consignee or Assignee of any Bill of Lading of any Goods carried into any Port in England or Wales in any Ship, for damage done to the Goods or any Part thereof by the Negligence or Misconduct of or for any Breach of Duty or Breach of Contact on the Part of the Owner, Master, or Crew of the Ship, unless it is shown to the satisfaction of the Court that at the time of institution of the cause any owner or Part Owner of the Ship is domiciled in England or Wales…" After Indian Independence, the Act mentioned above continued to remain in force, and do so even today, save and except the words "England or Wales" to be read as "India".

For a long time, Courts in India considered the above statutes as being definitive in terms of the nature of admiralty jurisdiction and of the Courts which exercised the same. Therefore, the traditional understanding prevailed till recently, notwithstanding tremendous progress internationally. The Calcutta High Court, in *Jayaswal Shipping Company v S.S. Leelavati*[23], (now overruled) had held, ".. Courts of Admiralty are Courts of specific jurisdiction and if a controversy does not come within their specific jurisdiction, they cannot entertain it, and in that respect are unlike the Courts of residuary jurisdiction such as the Common Law Courts or in India the Courts of ordinary civil jurisdiction." The High Court reiterated its view in *National Co Ltd. Vs. Asia Mariner*,[24] (now overruled), wherein it held, "The High Court at Calcutta as a Court of Admiralty is… a Court of prescribed jurisdiction. Its jurisdiction is prescribed by clause 26 of the Charter of 1774 and by Section 2(2) of the Colonial Courts of Admiralty Act, 1890. The jurisdiction has not been extended or modified by any statue. None

[22] AIR 1996 SC 516
[23] AIR 1954 Cal 415
[24] (1968) 72 Cal WN 635

of the subsequent British statutes by which the Admiralty jurisdiction of the High Court in England has been extended or affected have been made applicable in India."

The Bombay High Court, in *Kamalakar Bhaga v. Scindia Steam Shipping Navigation Co Ltd*[25]., (now overruled), held "… the High Court of Judicature at Bombay in particular being one of the Colonial Courts of Admiralty under Act 16 of 1891 today exercises the same admiralty jurisdiction as was exercised by the High Court of Admiralty in England in 1890 when the Colonial Courts of Admiralty Act was passed by the British Parliament. We have, therefore, to examine and ascertain as to what was the scope and nature of jurisdiction of the High Court of Admiralty in England either under any stature or otherwise in the year 1890, because, it would be just that jurisdiction which is exercisable by the High Court of Judicature at Bombay down to date." The effect of these observations was to limit the jurisdiction of Indian Courts, and resulted in the Courts refusing to exercise jurisdiction over disputes arising out of charter parties (section 6 of the Admiralty Court Act, 1861, only referred to claims arising out of Bills of Lading); disputes arising in connection with outbound carriage of goods by sea (since the above referred section 6 only referred to goods carried into England or Wales, now read India, in any Ship); etc.

It was perhaps inevitable that such a restrictive scheme of things would not continue forever, and eventually, the Supreme Court of India was approached for its pronouncement on the issue of admiralty jurisdiction, in the landmark case of *MV. Elisabeth v. Harwan Investment and Trading Pvt Ltd.*,[26]. The Indian Supreme Court's decision/ judgment in the Elisabeth case, has specifically overruled all of the aforesaid three decisions. The Elisabeth case arose from a dispute in connection with an outbound carriage of goods by sea from a port in India. The *m.v.Elisabeth*, the foreign vessel in this case, left the Port of Marmagoa without issuing bills of lading or other documents for the goods shipped. The shipper instituted a suit in the High Court of Andhra Pradesh, invoking its admiralty jurisdiction, by means of an action in rem. Pursuant to this, the vessel was arrested when it entered the Port of Visakhapatnam. The Defendants moved an application in the High Court raising a preliminary objection to the jurisdiction of the Hon'ble Court. The contention in the objection was that no Court in India had admiralty jurisdiction to proceed in rem against the ship when the cause of action related to outbound carriage of goods from an Indian port to a foreign port. The said objection was dismissed by the High Court, and the owner appealed to the Supreme Court of India, vide a Special Leave Petition. The Hon'ble Supreme Court in admitting the Petition, found the opportunity to lay down the position of law in India relating to admiralty jurisdiction in finality. Counsel for the Appellant Defendants pointed to a catena of case law from the High Courts in India to support his argument that the jurisdiction of the Admiralty Courts in India, stood frozen as of 1861. Counsel for the Respondent-Plaintiffs, on the other hand, argued that the judgment of the High Court was sound and correct, as it was "based on a realistic

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[25] AIR 1961 Bom 186
[26] AIR 1993 SC 1014

appreciation of the need for liberal construction of statues so as to support an assumption of jurisdiction to render justice rather than resorting to a technical or narrow or pedantic construction resulting in a state of helplessness.". In the said case of Elisabeth, the Supreme Court of India, after a comprehensive examination of the statutory position, as well as the position taken by the High Courts of Bombay and Calcutta, accepted the argument of the Plaintiff's Counsel, in what is considered a veritable thesis on the subject, which judgment paved the way for subsequent decisions of the High Courts which would appear to expand the admiralty jurisdiction exercised by the Admiralty High Courts in India in respect of a plethora of maritime claims and questions. The Supreme Court, in the *Elisabeth's case* had held that the continued existence of the colonial statutes cannot be read to "stultify the growth of law".

The Hon'ble Court observed, "(t)here is … neither reason nor logic in imposing a fetter on the jurisdiction of these High Courts by limiting (the same) to the provisions of an Imperial Statue of 1861 and freezing any further growth of jurisdiction". Thus, the Hon'ble Court went on to extend admiralty jurisdiction also to claims arising out of outbound carriage of goods by sea. The Court, in reaching its conclusions, took into account the progress of admiralty jurisdiction the world over both in terms of legislation as well as International Conventions. This decision resulted in the application of the principles of various International Conventions in the maritime arena by Indian courts in exercising admiralty jurisdiction in respect of maritime claims.

The most serious difficulty in deciding the case, as the Hon'ble Court noted, was the lack of modern statutes and statutory definitions in India, in respect of 'maritime claim(s)'. As a result, the Court had to rely on International Conventions and foreign statues (for eg., the English Supreme Court Act, 1981) on various points; and while doing so, "expressed the hope that the unfortunate state of affairs shall be brought to an end at the earliest".

Therefore, while successive judgments have followed the Elisabeth's case, the Court's cautionary words regarding "the urgency of enacting up-to-date law on Admiralty" in India, still rings true, and there is much expectation that the bill for the new Admiralty Act, referred to earlier, will soon be passed by the Indian parliament. In India, a ship can be arrested for a variety of claims including claims for necessaries supplied to any foreign ship or sea-going vessel; any claim for the building, equipping, or repairing of any ship; any claim for damage to cargo; any claim for damage done by any ship; for claims/questions arising in connection with the ownership, possession, employment and earnings of any ship; for claims arising out of or in connection with the use and hire of a ship, salvage services rendered to a ship, collision claims, etc. In view of the dicta of the Supreme Court in the Elisabeth case, that "principles of International Conventions are applicable as part of the Indian common law in maritime cases", in India, vessels can also be arrested in admiralty actions for any and all claims enumerated in the Arrest Conventions.

The argument that a ship cannot be arrested for realising unpaid P & I calls was based on the view that such unpaid insurance premiums or P & I calls are not "necessaries" supplied to a ship. English courts have consistently held for long that unpaid insurance premium are not "necessaries" within the conventional sense of the term, 'necessaries'. The English view is also followed in Australia, South Africa, Singapore and other common law countries. From this point of view, unpaid insurance premium would not be either a "necessary" or a "disbursement made on account of the ship". This was the issue in the case of *Liverpool & London Steamship Protection & Indemnity Association Ltd. v. m.v. Sea Success*[27].

The Supreme Court of India has held that unpaid P & I Club calls would come within the purview of the expression "necessaries supplied to any ship" and thus, is a maritime claim enforceable in admiralty in India. A ship can now be arrested in India for recovery of unpaid P & I calls. With this decision of the Supreme Court of India, India too joins the list of jurisdictions where a ship may be arrested for non-payment of P & I calls and the recovery thereof. In the judgment, the Court examined the history of the admiralty jurisdiction of the High Courts in India as well as the history in respect of "necessaries" as a maritime claim. The Court acknowledged the fact that the English courts never considered arrears of insurance premiums or P & I calls as a 'necessary', and also that courts in England maintained a distinction between maritime claims and maritime liens.

However, the Court said, "the question as to whether unpaid insurance is a commercial necessity should be decided having regard to the changed scenario". The changing scenario, according to the Court, is evidenced by the publication of the 1999 Arrest Convention. In the absence of Indian statutory law in the area, following its own earlier decision in the m. v Elisabeth case, the Court reaffirmed that interpretative changes must be made having regard to the ever changing global scenario. The Court also noted that the supply of necessaries is a maritime lien in the United States and that unpaid insurance premium was a "necessary" there, which principle if in consonance with Indian law, could be applied here.

The Court examined the circulars issued by the various Indian Ports pursuant to a directive from the Mercantile Marine Department, making P & I cover mandatory, and followed the American decision in *Equilease Corporation v. m.v. Sampson* [793 F. 2d 598], in holding that because insurance is essential to keep the vessel in commerce, insurance is a "necessary". Since a compulsory insurance regime has come into being in India as regards P & I cover, unpaid P & I calls would now come within the purview of the term "necessaries supplied to the ship." Therefore, unpaid insurance premiums give rise to a maritime claim rendering ships liable to arrest for recovery thereof, and a claim for unpaid insurance premium is now enforceable in India as a maritime claim. The Court, in this case, has used the term "insurance premium" to mean a P & I call, and at the same time, specifically refused to express a view on whether types of insurance other than P & I insurance would also

[27] JT 2003 (9) SC 218.

amount to "necessities". Till such time as the issue comes up before the Courts, it remains to be seen whether the non-payment of premium for hull and machinery insurance would also render a ship liable to arrest. Following the dicta in the Elisabeth's case, the Admiralty Courts in India, are now arresting 'sister ships' in respect of maritime claims.

In a case Islamic Republic of *Iran Vs. m.v. Mehrab and Others*[28], a Division Bench of the Bombay High Court has held that the High Court hasthe power to arrest a vessel simplicitor for security only to secure a claim in pending or future arbitration between the parties. Prior to this decision, in accordance with the procedural laws in India, no Suit purely for security would lie and such Admiralty Suit had to be a substantive Suit. However, with the above decision, even in cases where there is an agreement between the parties for referring disputes to arbitration or other dispute resolution forum, a party could approach the Admiralty Court for arrest of a vessel as security for their claim in such arbitration. Likewise, vessels can be arrested in execution of decrees and/or for payments under any award, etc. Courts in India are also now granting injunctions described as *'mareva' injunctions,* as would be seen from cases reported in *Mahadeo Savlaram Shelke And Ors. vs Puna Municipal Corporation*[29], *Claim Of vs Rep. By Mr.T.S.Baskar*[30]and *Liverpool and London Steamship Protection and Indemnity Association Ltd. Vs. M.T. Symphony and others* [31]. Thus, it would be noted that maritime law in India is not static and continuously developing; and the Supreme Court of India and the High Courts are very active and responsible for this continued development of the law in this area.

Sale deficit suits:

A peculiar type of claim and suits are faced by vessel/carrier's agents in India, from the major ports. These claims or suits are filed by the major ports, against the consignee/receiver of the cargo; the agents who enter vessels at the ports; as well as the slot charterers' agents; for recovery of the deficit in the sale proceeds of uncleared cargoes. These cases relate to unclaimed and/or uncleared cargoes, the accrual of the ports' charges thereon, and their sale/disposal by the port trusts and the subsequent demand for payment of the deficit in the sale proceeds made by the Port Trusts; and on non-payment thereof, suits for recovery of the deficit in the sale proceeds are filed by the Port Trusts. Port Trusts file these suits for the recovery of the shortfall of their charges. Cargo landed and uncleared, is subject to port charges by way of ground rent (in case of containerized cargo), demurrage, etc. Section 61 of the Major Port Trusts Act provides that if goods landed into the ports' custody are not cleared, the Port Trusts are entitled to sell such goods or so much thereof as is necessary, inter alia, for recovery of the rates and rents payable to the Port Trusts. The said provision

[28] AIR 2002 BOMBAY 517,
[29] (1995) 3 SCC 33
[30] (2000) 8 SCC 278
[31] AIR2003, BOM 417

also describes the procedure to be adopted by the Port Trusts for this purpose. Though the provision provides for the Port Trusts to sell cargoes which remains uncleared in excess of two months from their respective arrivals and moving into the ports' custody, the Port Trusts take their own time and follow their own procedures which are fraught with delays and laches, in selling such uncleared cargoes.

There are several reasons for the delays that occur, but, predominantly, the reason is that the ports list the cargo for auction sale and when the port does not receive the minimum bids, the cargoes are not sold and put up for re-auction and it is eventually sold for only a minimum price. However, the ports continue to charge ground rent, demurrage, etc., throughout these periods and eventually, after the cargoes are sold, the sale proceeds are utilised first, to defray the cost of sale; thereafter, the Customs duty payable on the cargo; and the balance, if any, is used towards recovery of the port charges accrued on the cargo.

In the event of any deficit therein, the ports file suits for recovery of the deficit, against the consignee/receivers as also against the agents of the line. The Port Trusts seek to align the agents in the array of defendants in such suits on the ports' contention in such suits that all these defendants including the agents, fall within the definition of "owners", as defined by the Major Port Trusts Act, and consequently, the agents also, as such owners of the cargo, are liable for the payment of the deficit. Section 2(o) of the Major Port Trusts Act, 1963, defines "owner", "(i) in relation to goods, includes any consignor, consignee, shipper or agent for the sale, custody, loading or unloading of such goods; (ii) in relation to any vessel or any aircraft making use of any port, includes any part owner, charterer, consignee, or mortgagee in possession thereof."

What the major Ports rely on in such suits, is the definition given under section 2 (o)(i), to contend that the vessels'/lines' agents are agents for the custody, loading or unloading of the goods and therefore, "owner" and consequently, liable. A clear and meaningful reading of the aforementioned definition would indicate that the Port Trusts' said submission is incorrect in that a vessel's agent does not fall within the said definition, inasmuch as he is not the agent for the sale, custody, loading or unloading of the goods that the vessels carry. It is submitted that the aforementioned definition would only refer to a Customs Clearing House Agent (CHA) who acts for and on behalf of the consignees/receivers (importers) of the goods, in relation to complying with all the formalities in relation to the import of the goods by the importers.

In cases reported in *Trustees of the Port of Madras vs. K.P.V Sheik Mohd Rowther and Co. Pvt. Ltd.*[32] ,*Sun Export Corp. and other vs. Board of Trustees of the Port of Bombay* [33], the Supreme Court of India has inter alia observed that demurrage has to be recovered from the consignee and not from the steamer agents in cases where the steamer agents have issued

[32] AIR 1995 SC 1922
[33] AIR 1998 SC 92, AIR 1999 SC 2947

‘delivery orders’; and that the consignee, and not the steamer agent, is liable for the port charges. However, it may noted that this issue is presently before the Supreme Court of India, which has referred this issue for decision to a larger Bench and pending decision. The Supreme Court’s verdict in this matter in due course in respect of Agent’s liability for the Port’s such claims, would finally put this issue to rest.

The Supreme Court in reported decision in *Luga Bay Shipping Corp. vs. Board of Trustees of the Port of Cochin*[34] has also held that ports in India are entitled to demand and obtain unconditional security before allowing a foreign vessel that has caused damage to port property from sailing out of the port, and such security would be based on the ports’ estimates of the damage as well as costs of repairs/replacement; and as per the wordings, i.e., unconditional security, as may be insisted by the ports. However, the quantum of the liability could be challenged by the owner by a civil suit subsequently. Under the Admiralty Offences (Colonial) Act, 1849, recently, the Court of Sessions of Greater Mumbai, India, convicted 17 pirates who pirated a cargo vessel flying the Japanese flag, m.v. Alondra Rainbow, in the Indian Ocean. Upon receipt of information regarding the piracy of their vessel from the Japanese owners of the vessel, two vessels of the Indian Coast Guard intercepted the pirated vessel and apprehended the 17 pirates and escorted the vessel to the Mumbai port. On arrival at Mumbai, all the 17 pirates of Indonesian origin, were arrested and charged. The prosecution was successful in getting a conviction of the pirates inter alia under the provisions of the aforesaid Act. This was the first time in relation to piracy in the world that the pirates were not only arrested but were also successfully convicted.

<u>Codification- A Necessity:</u>

"The law of admiralty or maritime law is the corpus of rules, concepts, and legal practices governing the business of carrying goods and passengers by water". Admiralty law in the Indian context has seen renewed vigor for a strict amalgamation from all sectors of the society at large, except the parliamentarians. In *M.V. Elisabeth and Others* case, it also took note of the various enactments which deal with various aspects of the law of admiralty in India. The Supreme Court has held that “Indian legislation has not progressed in tune with the various international conventions, but declared that these conventions though not incorporated into Indian law, embodied the felt necessities of international trade and are as such part of the common law of India". It also held that “the judicial power of this country, which is an aspect of national sovereignty, is vested in the people and is articulated in the provisions of the Constitution and its laws and is exercised by Courts empowered to exercise it. It is absurd to confine that power to the provisions of imperial statutes of a bygone age. Access to court which is an important right vested in every citizen implies the existence of the power of the court to render justice according to law. Where statute is silent and judicial

[34] AIR 1997 SC 544

intervention is required, Courts strive to redress grievances according to what is perceived to be principles of justice, equity and good conscience."

As per principles customary practices of International Maritime Law, the power to arrest a foreign ship is a manifestation of the territorial sovereignty of coastal nations. Once a foreign ship is arrested in Indian waters by an order of the High Court, wherever the cause of action may have arisen, and whether or not the ship is subsequently released by the owner furnishing security, proceedings must continue against the owner as in any other suit. The arrest of the vessel while in Indian waters by an order of the High Court concerned, as defined under the Merchant Shipping Act, 1958 attracts the jurisdiction of the competent court to proceed with the trial, as in the case of any other suit, as an action against the owner, and any decree obtained by the plaintiff is executable against any property of the owner available within jurisdiction, including the security furnished by him for release of the vessel.

Today, Admiralty law is a body of both domestic law governing maritime activities, and private international law governing relationships between private entities which operate ships on the oceans. It is no longer merely the domain of the State and is open to everybody out there who has a right to do so. With huge investments pouring in the maritime sector, the legal system in India finds itself ill-equipped to deal with the prowess displayed by the other sea faring nations and their courts. The courts should be able to protect ship owners from unlawful claims and even in case of an arrest, the proceedings need to be wound up as soon as possible.

The Law Commission of India in its 151st report in 1994 had suggested a uniform admiralty law in India. However, nothing has been done so far, except for few amendments in existing laws The *Enrica Lexie* Incident for example not only caused confusion to the courts in India but also resulted in a diplomatic spat between the governments of India and Italy. The sabre rattling between the two governments eventually resulted in the matter of jurisdiction getting further diluting and confusing with the formation of a special court to try the matter. The matter is also placed before the ITLOS. It was visible that the domestic legal system was unprepared for such an event such as the *Enrica lexie*. Though this incident is first of its kind in India, but having a closer look at the existing laws concerning admiralty law in India, and its archaic colonial statutes, stresses the need for codifying and reforming maritime laws in India.

Some of the out-dated admiralty laws, still existent in India are the Admiralty Jurisdiction (India) Act, 1860, The Admiralty Court Act, 1861, Colonial Courts of Admiralty Act, 1890, Colonial Courts of Admiralty (India) Act, 1891. These laws derive their legitimacy from Art.372, Constitution of India, which states that "all the laws in force in the territory of India immediately before the commencement of the Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority." Increasing investments and cargo traffic point towards a positive outlook for the

Indian Maritime Industry, particularly those involving port constructions and lading services Non major ports are expected to generate over 50 per cent of this capacity. A Country in itself has a unique universal feature depending on its admiralty laws, and such features have to be given serious deliberations by admiralty courts throughout the world while considering any matter. Admiralty jurisdiction as a concept has been difficult to incorporate on a varying international basis, but is just as important too. The need of the hour is a proper dedicated piece of legislation that caters to the needs of the public.

An Admiralty Bill was introduced in 2005 in the Parliament which was seen as a way of reunification of all solutions to the India’s Maritime Law Dilemma, but it lapsed subsequently, and hasn’t been re-introduced as of yet. The proposed bill aimed to consolidate and amend the laws relating to admiralty jurisdiction of courts, vesting of civil jurisdiction in respect of various maritime claims in high courts, power of the supreme court to transfer any proceedings from one high court to another, power of the high court to confer admiralty jurisdiction in consultation with the Chief Justice of India on any civil court of the state, legal proceedings in connection with ships, their arrest, detention, sale and other related matters. But, this faced a lot of opposition from various sectors of the society, terming it a regressive piece of legislation. Shipping Industries feared that the proposed Admiralty Bill, 2005 would open up a plethora frivolous of litigations. There were repeated calls especially by those involved in ship breaking too amend various clauses, will be adversely affected by this new legislation if passed in the present form.

An Act called the Admiralty (Jurisdiction and Settlement of Maritime Claims has passed in 2017 which aims at clarifying the admiralty jurisdiction of Indian courts and codifies in a single statute much of what was previously only stated in court judgments." have not been launched and naval or other non-commercial government vessels and repeal the old laws relating to the jurisdictions of the Court relating to maritime laws.

MODULE-II

MARITIME GOVERNANCE IN INDIA

MARITIME GOVERNANCE IN INDIA

Governance of Ports, Shipping and Waterways:

Maritime Transport is a critical infrastructure for the social and economic development of a country. It influences the pace, structure and pattern of development. The Ministry of Ports,Shipping and Waterways encompasses within its fold ports, shipping and waterways sectors which include Shipbuilding and Ship-repair, Major Ports, National Waterways, and Inland Water Transport.

Ministry of Ports,Shipping and Waterways has been entrusted with the responsibility to formulate policies and programmes on these subjects and their implementation. A comprehensive policy package is necessary to address the diverse issues facing the Maritime transport sector.

The capacity of the ports in terms of their berths and cargo handling equipment needs to be vastly improved to cater to the growing requirements of the overseas trade.The Ports,Shipping and Waterways industry needs to be enabled to carry higher shares of the sea-borne trade in indigenous bottoms. Historically, investment in the transport sector, particularly in the ports, have been made by the States mainly because of the large volume of resources required, long gestation periods, uncertain returns and various externalities, both positive and negative, associated with this infrastructure.

However, the galloping resource requirements and the concern for managerial efficiency and consumer responsiveness have led to the active involvement of the private sector in infrastructure services in recent times. To encourage private participation, Ministry of Ports,Shipping and Waterways has laid down comprehensive policy guidelines for private sector participation in the Ports sector. An Information Facilitation counter of Ministry of Ports,Shipping and Waterways is functioning at the ground floor of Transport Bhavan 1, Parliament Street, New Delhi (110001).

Organisation History:

Date of Creation of the Department:

The Department of War Transport was formed in July, 1942, by the bifurcation of the then Department of Communications into two Departments Viz.

- Department of Posts
- Department of War Transport.

Functions Allocated to it at the time of its creation:

The functions allocated to the Department of War Transport including Major Ports, Railways Priorities, utilization of road and water transport, Petrol rationing and Producer Gas. Broadly speaking, the functions of the War Transport Department were to coordinate the demands for transport in war time, Coastal Shipping and the administration and development of major ports. Later, the planning of export was undertaken as a corollary to the Departments control of transport priorities.

Subsequent changes made in the organisational structure:

- During the year 1957 the Department of War Transport was renamed as Ministry of Transport & Communications and Department of Transport was placed under it.
- In the President’s order of January 25, 1966, Ministry of Transport was renamed in the Department of Transport, Shipping & Tourism in the Ministry of Transport and Aviation.
- The former Ministry of Transport and Aviation was bifurcated into the Ministry of Ports,Shipping and Waterways and Transport, and the Ministry of Tourism and Civil Aviation with effect from 13.03.1967.
- On re-organisation of Ministries/Departments, the erstwhile Ministry of Transport and Ports,Shipping and Waterways became the Department of Surface Transport under the Ministry of Transport with effect from 25.09.1985.
- On further re-organisation of Ministries/Department, the Department of Surface Transport under Ministry of Transport was renamed as Ministry of Surface Transport with effect from 22.10.1986.
- The Ministry of Surface Transport was subsequently re-organized into departments, namely Department of Shipping and Department of Road Transport and Highways vide notification dated 15.10.1999.
- Further vide notification dated 17.11.2000 the Ministry of Surface Transport has been bifurcated into two Ministries namely Ministry of Road Transport and Highways and Ministry of Ports,Shipping and Waterways.
- Ministry of Ports,Shipping and Waterways and Ministry of Road Transport has again been merged and renamed as Ministry of Shipping, Road Transport and Highways vide notification dated 2.9.2004. There are two Department viz. Department of Shipping and Department of Road Transport & Highways.
- on 17th November, 2000, The "Ministry of Surface Transport" was bifurcated into two different Ministries as "Ministry of Ports,Shipping and Waterways and "Ministry of Road Transport & Highways" and in October, 2004, both these Ministries again

merged and renamed as "Ministry of Ports,Shipping and Waterways, Road Transport & Highways" with two different Departments i.e. "Department of Shipping" and "Department of Road Transport & Highways". In 2009, "Ministry of Shipping" was again formed by bifurcating these two Ministries into separate Ministry.

- Further vide notification dated 10.11.2020 the "Ministry of Ports,Shipping and WaterwaysPorts,Shipping and Waterways" has been renamed as "Ministry of Ports,Shipping and Waterways" .

Allocation and re-allocation of functions with reasons for such changes:

In view of the imperative need for close coordination of effort between the authorities concerned with Railway Development and those concerned with the development road communications and transport, the heading of post-war road planning including 'Central Road Fund 'and the administration of 'Motor Vehicles Act 'were transferred from the Department of Posts and Air to the Department of War Transport on 15th July, 1944.

Consequent on passing the Section 27-A of the Indian Railways Act, the work pertaining to Railways Priorities was transferred to Ministry of Railways with effect from. 1st April, 1951.

The heading Maritime Shipping & Navigation and Lighthouses and Lightships were transferred from Ministry of Commerce to the Ministry of Transport with effect from 1st February, 1951.

From the year 1952 to 1957 the Ministry of Transport was responsible for general transport, coordination and the administration and development of major ports, maritime shipping and lighthouses, inland water transport.

Organisation Setup:

Secretary (Ports,Shipping and Waterways) is assisted by an Additional Secretary, Senior Economic Adviser, Joint Secretaries Adviser (Satistics), Development Adviser (Ports), and other officers at the level of Directors, Deputy Secretaries, Under Secretaries, other Secretariat/Officers and staff.

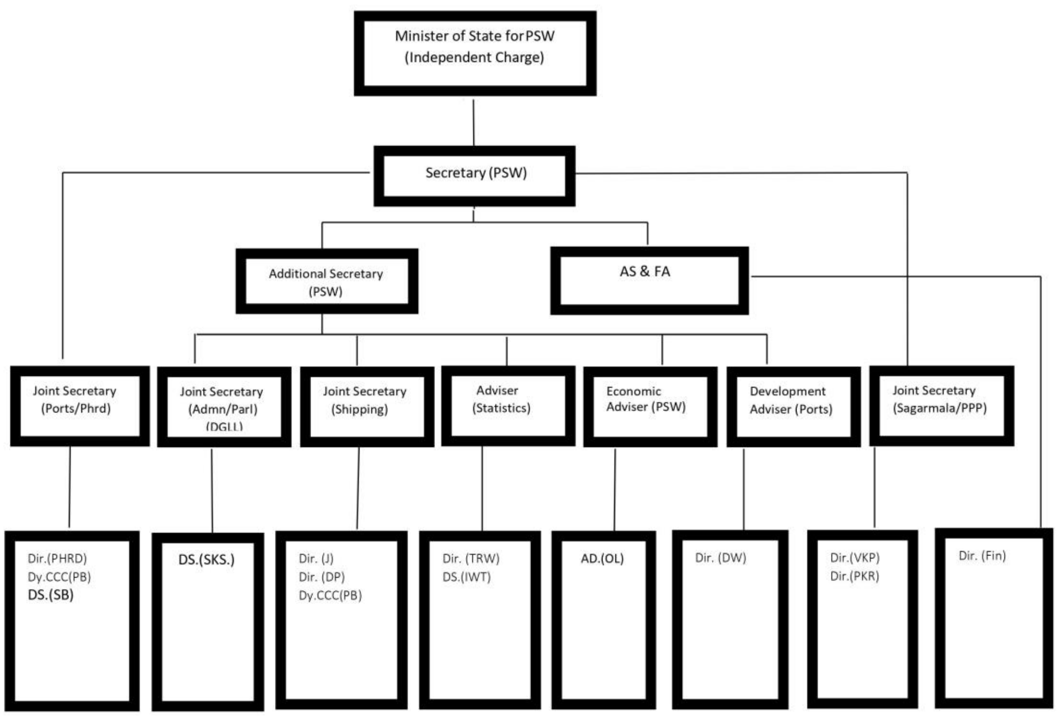
The Finance Wing is headed by Special Secretary & Financial Adviser who assists in formulating and processing all policies and other proposals having financial implications. The Special Secretary & Financial Adviser is assisted by a Deputy Secretary (Fin.), one Assistant Financial Adviser/ Under Secretary(Fin.), one Under Secretary (Budget), other Secretariat officers and Staff.

The Accounts side of the Ministry is headed by a Pr. Chief Controller of Accounts who is inter alia responsible for accounting, payment, budget, internal audit and cash management.

Adviser (Satistics) renders necessary data support to various Wings of the Ministry for policy planning, transport coordination, economic & Satistical analysis on various modes of transport with which the Ministry of Ports,Shipping and Waterways is concerned.

The following Subordinate/Attached officers, Autonomous Bodies, Societies/Association and Public Sector Undertakings are functioning under the administrative control of the Ministry of Ports,Shipping and Waterways.

ORGANIZATION CHART



<u>**Subordinate/Attached Offices:**</u>

1. *Directorate General of Shipping, Mumbai:*

The Directorate General of Shipping is an attached office of the Ministry of Ports, Shipping and waterways, Govt. of India and deals with all executive matters, relating to merchant shipping. Indian shipping remained a deferred subject till independence. It was only there after, the development of shipping attracted the state policy. The subject of Shipping was, in the beginning, dealt with by the Ministry of Commerce, till 1949 and subsequently, in 1951, it was shifted to the Ministry of Transport and Shipping. In 1947, the Government of India announced the National Policy on Shipping, aiming at the total development of the industry. In order to accelerate the developmental efforts, the necessity for a centralized Administrative organization was felt and accordingly, it was in September 1949, the Directorate General of Shipping with its Headquarters at Bombay was established.

This Directorate deals with all matters concerning the Maritime Administration, Maritime Education and Training, development of Shipping Industry and other related subjects.

The initial objectives of the Directorate General of Shipping were :

- Matters affecting Merchant Shipping & navigation and administration of the Merchant Shipping Law ;
- Measures to ensure safety of life and ships at sea;
- Development of Indian Shipping;
- International Conventions relating to Maritime matters;
- Provision of facilities for training of Officers and ratings for Merchant Navy;
- Regulation of Employment of Seamen and there welfare;
- Development of Sailing Vessel Industry and
- Regulation of Ocean fright rates in overseas trades.

The Directorate deals with implementation of shipping policy and legislation so as to ensure the safety of life and ships at sea, prevention of marine pollution, promotion of maritime education and training in co-ordination with the International Maritime Organisation, regulation of employment and welfare of seamen, development of coastal shipping, augmentation of shipping tonnage, examination and certification of Merchant Navy Officers, Supervision and Control of the allied departments and officer under its administrative jurisdiction.

The Director General of Shipping is vested with statutory powers under Section 7 of the Merchant Shipping Act, 1958. He is assisted, on the administrative side, by the Addl. Director General of Shipping, Dy. Directors General of Shipping, Asstt. Directors General of Shipping and Executive Officers whereas on the Technical side, by the Nautical Advisor, supported by Dy. Nautical Advisors and Nautical Surveyors; on the Engineering side by the

Chief Surveyor, supported by Dy. Chief Surveyors, Dy. Chief Ship Surveyor, Engineer & Ship Surveyors and Ship Surveyor and also with supporting staff. The Nautical Advisor and the Chief Surveyor are also the Chief Examiners of Masters/Mates and Engineers respectively on behalf of the Director General Of Shipping.

2. Andaman & Lakshadweep Harbour Works, Port Blair:

The Andaman Lakshadweep Harbour Works (ALHW) was set up by the Ministry of Surface transport in October 1965 and entrusted with the responsibility of formulating and implementing the programmes of the Government for providing Ports and Harbour structures including allied facilities in the Andaman and Nicobar Islands an Lakshadweep. A well-knit and coordinated Port/ Shipping system plays an important role in the sustained growth of the Islands. The need for Ports became more pronounced in these Islands in view of the accelerated development programs proposed by the Government during the sixties .The infrastructure, therefore, had to be fully planned properly and in advance. The history of Port development in these Islands dates back as early as 1956 when experts have laid the foundation for development of Port facilities by the Andaman Lakshadweep Harbour works in later dates.

The ALHW has been implementing Port Development schemes from the Third Five Year Plan onwards. All the works taken up under these plans have been completed in time and being maintained and operated successfully. Reviewing the Port Development Schemes implemented in A & N Islands so far, this department has created artificial harbours at Hut Bay of Little Andaman, Campbell Bay of Great Nicobar and Rangat Bay of Middle Andaman by construction of Rubble Mound breakwater with jetties and allied facilities. Further, in the other natural harbours of the Islands, a number of inter-island jetties and innumerable ferry jetties have also been completed in addition to the New Dry Dock / Slip way Complex at Port Blair for repairs of Inter Island ships In respect of Lakshadweep, jetties have been constructed in all the 10 in habitat islands and the approach channels dredging and navigational aids provided. A sheltered harbour basin was created at And roth island with a Breakwater and wharf for berthing passenger ships and cargo barges having upto 4m draughts.

The ALHW since 1965 has constructed various harbour facilities in the major islands as per the requirements in a phase the manner after conducting detailed hydrographic surveys at site, model studies & experiments at Central Water and Power Research Station, Pune and other consultants such as Indian Institute of Technology, National Institute of Ocean Technology, Chennai, NEERI Nagpur, NIO Goa etc.

Apart from construction of port and harbour facilities, the ALHW is attending to the maintenance of the harbour facilities and also the operation and maintenance of Cargo Handling Equipments, Ship Repair facilities etc. The ALHW executed these major projects in the islands for which the funds were provided directly by the Ministry of Shipping under Central Sector Plan. The Andaman & Nicobar Administration have also provided the required funds under the State Sector plans for improvements to the harbour facilities, for creation of minor port development schemes, and also for the maintenance of the Port facilities and operation of Cargo handling equipments etc.

The ALHW takes special care in protecting the ecology of this sensitive A&N Islands during planning, execution and maintenance of the harbour facilities. The required Environmental Management Plans are prepared in consultation with expert organisations in the field and the clearance of the Ministry of Environment & Forests are obtained for all the Projects.

3. Directorate General of Lighthouses & Lightships, New Delhi:

The Directorate General of Lighthouses and Lightships is a subordinate office under the Ministry of Ports, Shipping and Waterways. It provides General Aids to Marine Navigation along the Indian coast. The Headquarters of the Directorate is at Noida.(U.P.) For administrative control the entire coastline has been divided into Nine Districts having their regional headquarters at Gandhidham, Jamnagar, Mumbai, Goa, Cochin, Chennai, Visakhapatnam , Kolkata and Port Blair. Our motto is to provide safe and secure navigation in the Indian waters.

Aids Provided:

For the safe voyage in Indian waters, the Directorate has provided aids to marine navigation. They can be categorized as visual and radio Aids. The visual aids are lighthouses, light vessels, buoys and beacons. The radio aids are DGPS, RACONs etc. All these aids are passive in nature and not user interactive. The Directorate has entered into the interactive field of Aids to Navigation i.e. Vessel Traffic Service. For the control of jurisdiction the aids to marine navigation are categorized as General Aids and Local Aids. The upkeep and maintenance of general aids to marine navigation is the responsibility of the Directorate as per the LH Act 1927. The upkeep and maintenance of local aids is the responsibility of various Maritime State Government organizations like Ports, State Maritime Boards etc. However the directorates are extending all technical support for maintenance of the local lights. In case the local lights are not maintained to the international standard due to financial constraints and lack of proper technical personnel, the Directorate on acceptance of the local bodies is taking over the those local lights.

Revenue Generation:

For providing these aids, the Directorate collects lightdues in 30 days at the rate of Rs.8/- per ton NT basis from all foreign going vessels calling at/departing from Indian ports. Customs Department collects light dues behalf of the Directorate.

Autonomous Bodies:

The following are the Autonomous bodies Under the ministry -

- Kolkata Port Trust
- Paradip Port Trust
- Visakhapatnam Port Trust
- Chennai Port Trust
- V.O.Chidambarnar Port trust
- Cochin Port Trust
- New Mangalore Port Trust
- Mormugao Port Trust
- Mumbai Port Trust
- Jawaharlal Nehru Port Trust
- Deendayal Port Trust
- Inland Waterways Authority of India, Noida.
- Tariff Authority for Major Ports,Mumbai
- Indian Maritime University

Societies/Association:

Indian Ports Association:

Indian Ports Association (IPA) was established in 1966 with the goal of fostering growth and development of all major ports, which are under the supervisory control of the Ministry of Shipping. Over the years, IPA has become a major think tank for Indian ports. with the ultimate goal of integrating the maritime sector.

The IPA's goals are to undertake and promote technical and economic research into matters pertaining to the IPA's Planning Organization; offer complete technological solutions to Port Management; promote a culture of Uniformity and standardisation in the functioning of various Indian port; provide analysis of Port Performance Indicators, Equipment Utilization and other productivity parameters, and monitor shipping and traffic-related activities of all major Indian ports.

Public Sector Undertakings

The following are the Public sector undertakings under the ministry -

- Shipping Corporation of India, Mumbai.
- Cochin Shipyard Limited, Cochin.
- Central Inland Water Transport Corporation Limited.
- Hooghly Dock & Ports Engineers Limited.
- Kamarajar Port Limited.
- Sethusamudram Corporation Limited

Divisions under the ministry:

1. Accounts

The payment, budget, accounting, cash management and internal audit functions of the Ministry of Ports,Shipping and Waterways is with the Principal Chief Controller of Accounts. The organization comprises of the Principal Chief Controller of Accounts, Controller of Accounts, Deputy Controller of Accounts, Under Secretary (Budget), Section Officer (Budget), Principal Accounts Office, Pay and Accounts Offices located at Delhi, Noida, Mumbai, Kolkata and Port Blair

The organizational setup of the Principal Chief Controller of Accounts is responsible for the following major tasks:-

- Making payments to the Ministry and Subordinate/Attached Offices, Public Sector Undertakings, State Governments, Autonomous Bodies, Societies and Associations.
- Collection, accounting and budgeting the receipts of the Ministry of Ports,Shipping and Waterways.
- Preparation of monthly accounts , Annual Appropriation Accounts, Statement of Central Transactions and their submission to the Controller General of Accounts, Department of Expenditure, Ministry of Finance. Preparation of Annual Budget including the

Performance Budget and Coordination with the Ministry of Finance in the budget process during the year.

- Monitoring/disposal of all the audit paras and observations made by the Comptroller and Auditor General (C&AG) of India in its annual reports (civil and commercial) and in the general inspection reports.

- Coordination with Monitoring Cell, Department of Expenditure, Ministry of Finance for the 'Action Taken Note'.

- Monitoring disposal of all the audit paras and observations coming under the purview of the Public Accounts Committee and other Parliamentary Committees.

- Internal Audit/Inspection of the accounts of all the wings of this Ministry.

- Preparation of Management Information System (MIS) Reports based on accounting, budget and audit for submission to various authorities.

- Rendition of advice on financial and accounting matters to various units of the Ministry.

- Implementation of Voucher- Level- Computerization in the Pay and Accounts Offices.

- Implementation of PFMS for compilation of accounts in the Principal Accounts Office.

The "Annual Accounts" of the Ministry of Ports,Shipping and Waterways in the shape of the Statement of Central Transactions, the Appropriation Accounts, and the Finance Accounts are complied and rendered to the Controller General of Accounts, (Department of Expenditure), Ministry of Finance. Computer generated monthly expenditure figures are also furnished to all the divisions of the Ministry to facilitate monitoring the pace of expenditure on various programmes and schemes. The monthly compilation of accounts has already been computerized in a phased manner, while other items of work like payments etc. are also at the advanced stage of computerization.

The Budget Division under the Principal Chief Controller of Accounts is involved with preparation of the detailed Demands for Grants relating to the Demands of the Ministry and preparation of the Performance Budget. It also coordinates the preparation of replies to the observations of the Comptroller and Auditor General of India (C & AG), the Public Accounts Committee (PAC) and the Inspection Reports.

2. Administration

Administration Wing is headed by Joint Secretary Administration who is assisted by Deputy Secretary Administration and Under Secretary Administration.They supervise four Sections viz. Establishment, General Administration, Cash and Parliament.

The Establishment Section is entrusted with the service and administrative matters of 299 regular employees of (Group A, B, and C) of the Ministry of Ports,Shipping and Waterways. It implements all administrative orders issued by Department of Personnel & Training, Department of Pension & Pensioners 'Welfare, Ministry of Finance, Union Public Service Commission, Central Information Commission, Central Vigilance Commission etc. It also handles the Internal Complaints Committee on sexual harassment, grievances of women employees relating to sexual/ gender based harassment. Under its RTI Cell, Ministry of Ports,Shipping and Waterways has appointed/designated CPIOs & Appellate Authorities in the rank of Under Secretary and Deputy Secretary/Director and equivalent respectively.

General Administration of Ministry of Ports,Shipping and Waterways handles seating arrangements of the Officers/ Staff, providing office equipment, furniture, telephone facility, photocopier machines, computers, air conditioning systems etc. It arranges vehicles, newspapers, cleaning of Office areas and the Departmental Canteen.

Cash Section

Functions:-

1. Preparation of Salary Bills including DA arrear, Leave Encashment, Tuition Fee, HBA advance, OTA and Salary Arrears bill through PFMS and E-payment of all bills.

2. Maintenance of Pay Bill registers (PBR) and other Accounts Registers relating to Receipts and payments.

3. Receipt of Cheques from other PAOs regarding transfer of GPF, processing of GPF Advances/withdrawals bills thereof and maintenance of GPF accounts. Preparation of Annual GPF statements

4. Processing of various bills regarding procurement through GEM/offline bills and processing of e-payment. Making cash payment to officers/staff from imprest Money.

5. Preparation of TA Bills (Domestic/Foreign) and processing for e-payment.

6. Preparation of Leave Travel Concession (LTC (Home Town/All India) for advance and final settlement through e- payment.

7. Issue of Last Pay Certificate (LPC) in respect of staff transferred/on retirement. Preparation of DCRG, Leave Encashment, Group Insurance Scheme and Commutation of Pension bill on superannuation/voluntary retirement.

8. Recovery and online submission of Licence Fee, and sending of Licence fee and Correspondence with the Dte of Estates, Nirman Bhavan.

9. Preparation of Medical reimbursement bills and RTI application fee, TA contingent bills various Heads of accounts.

10. Calculation of Income Tax, filling returns and issue of Form 16 to Officers/staff

11. Disposal of RTI related matters and Audit and settlement of audit objections.

Parliamentary Section:

1. Parliamentary work pertaining to receipt and distribution of notices of Parliament Questions, list of Starred/Unstarred/Short Notice Questions etc., preparation of sets of answers to Parliament Questions and delivering them to Lok Sabha and Rajya Sabha Sectt.

2. Monitoring of Parliament Assurances received from Ministry of Parliamentary Affairs. Uploading of IR/extension of time of Assurances on Online Assurance Monitoring System (OAMS). Matters raised under Rule 377 of Lok Sabha, Special Mentions in Rajya Sabha – compilation and updating thereof.

3. Work relating to various Parliament Committees/ Parliamentary Standing Committees.

4. Distribution of list of business pertaining to Ministry of Ports,Shipping and Waterways in the Lok Sabha/Rajya Sabha during the Session period to the O/o Hon'ble Minister/Higher Officers on daily basis.

5. To convene meetings of the Consultative Committee attached to this Ministry and Coordination of the work connected therewith.

6. To keep track of Legislative Proposals (Bills), their compilation pertaining to this Ministry.

7. Work relating to various types of statements by Hon'ble Minister in the Parliament pertaining to this Ministry.

8. Arranging Sessional Passes for officers for Parliament. Arrangement for Passes officers for the various meetings of Parliament.

9. To deal with Parliamentary matters other than above received from Lok Sabha/Rajya Sabha Sectt. and Min. of Parliamentary Affairs.

3. Budget

The Budget Division under the Principal Chief Controller of Accounts is involved in preparation of Annual Budget in

Coordination with the Ministry of Finance. The budget process during the year includes preparation of the detailed Demands for Grants(DDG) relating to the Demands of the Ministry, preparation of Statement of Budget Estimates, Compilation of Medium Term Expenditure Framework, all re-appropriation proposals, supplementary proposals in coordination with Ministry of Finance, Compilation of Action Taken Reports in respect of Parliamentary Standing Committee, and action for laying of six monthly Statement by the Hon'ble Minister in both houses of Parliament. The Output Outcome Framework is also compiled by Budget Division in consultation with all Divisions and sent to NITI Aayog for inclusion in the Budget documents of Ministry of Finance.

4. Development

The Development Wing which is functioning under Development Advisor (Ports) is an Apex Technical Organisation dealing with the subjects of port development and renders technical advice on matters relating to the development of Major Port Projects, Inland waterways project, Sagarmala projects, Andaman & Lakshadweep Harbour Works (ALHW) and the Dredging Corporation of India, etc. This Wing also renders technical advice to other Ministries in the case of Fishing Harbours and also Maritime State Governments as and when requested regarding Minor Ports.

5. Finance

Finance Division tenders advise on policy matters involving government expenditure, duly factoring in the sectoral priorities/ goals/ objectives and also keeping in view all facets of expenditure management and financial prudence within the overall macro-framework laid down by Ministry of Finance.

6. Shipping

The Shipping Wing formulates policies and programmes for shipping, marine development, Ship Building, Ship Repair and Ship Breaking Industry. Indian Shipping Industry has over the years played a crucial role in the transport sector of India's economy, providing an essential means of transport for crude oil, petroleum products and other cargos. Approximately 95% of the country's trade by volume and 68% by value are moved through Maritime Transport.

The Shipping Wing comprises following Sections:-

- Ship Building, Ship Repair and Ship Breaking
- Marine Administration
- Marine General

- Marine Training
- Marine Development
- Light Houses
- Public Sector Undertaking

7. IWT

IWT Wing is responsible for development, management, implementation of capacity building and institutional strengthening initiatives in the National Waterways (NWs). The Wing is headed by Senior Economic Advisor, who is supported by Director (IWT), two Under Secretaries and IWT Section.

India has an extensive network of inland waterways in the form of rivers, canals, backwaters and creeks. Freight transportation by waterways is highly underutilized in the country as compared to developed countries. India's hinterland connectivity is mainly based on road and rail with domestic waterways— both coastal shipping and inland waterways—playing a limited role. Waterways are found to be cost effective as well as an environmentally friendly means of transporting freight. In India, Inland Water Transport (IWT) has the potential to supplement the over-burdened railways and congested roadways. In addition to cargo movement, IWT sector also provide a convenient function in related activities such as carriage of vehicles {on Roll-on-Roll-off (Ro-Ro) mode of cross ferry} and tourism.

The National Waterways Act, 2016 has declared 111 inland waterways as 'National Waterways '(NWs) in the country to promote shipping and navigation on them. The total length of NWs is 20,275 kms spread across 24 States in the country.

Inland Waterways Authority of India (IWAI), is an autonomous organization constituted on 27th October, 1986 under the Inland Waterways Authority of India Act, 1985. IWAI is primarily responsible for development, maintenance and regulation of those waterways which have been declared as NWs under National Waterways Act, 2016. The head office of IWAI is at Noida, UP. The policy guidelines and directions issued by IWT Wing are implemented by IWAI.

8. International Cooperation

International Cooperation Division of the Ministry of Ports,Shipping and Waterways deals with maritime engagements with foreign maritime nations, including signing of Agreements/ MoUfor bilateral cooperation in the Maritime sector, holding of regular Joint Working Group meetings andnegotiations with ASEAN, EU, BIMSTEC and EFTA for Maritime Transport Agreement. All matter related to International Maritime Organization (IMO), the primer regulatory UN body, in which India is a member, is also dealt in this Division, including deputation of officers for attending the IMO meetings and finalizing India's stand on various agenda for discussion during the meetings of IMO. Further, this Division compiles inputs on issues relating to shipping sector for high- level officials meetings with foreign countries at Ministry of External Affairs and Ministry of Commerce and Industry.

A. Cooperation with Multilateral Organizations

India became a member of the International Maritime Organization (IMO) in 1959, which is the global standard setting authority for the safety, security and environmental performance of shipping and ensures that such standards are fair and effective and are universally adopted and implemented. India has been an active participant at the IMO. In fact, participation of India in the functioning of IMO has helped India to voice its developmental concerns to the international maritime community. India has been a member of the IMO Council and has got re-elected as Member of the IMO Council under Category 'B', representing nations with the largest interest in international seaborne trade, for biennial 2018-19 by securing second highest number of votes during the IMO Council election held on December 2, 2017. IMO adopts and implements various treaties in the form of conventions/protocols. From time to time, keeping in mind our national interests and the international standards evolved by IMO through its treaties, India has been becoming a party to the treaties adopted by IMO. As on date IMO has adopted 67 treaties, which are open for countries to become parties. Out of these 67 treaties, India is a party to 33 treaties (conventions/protocols), which have been suitably incorporated into the Indian domestic legislation i.e. the Merchant Shipping Act, 1958.

Currently, there are three IMO Conventions namely,

(a) International Convention on Civil Liability for Bunker Oil Pollution Damage 2001;

(b) International Convention for the Control and management of Ships 'Ballast Water and Sediments, 2004; and

(c) the Hong Kong Convention for Safe and Environmentally Sound Recycling of Ships 2009, which have been taken up by the Ministry for India becoming a party to The legislative proposals incorporating the provisions of these Conventions are in progress and upon enactment of these legislations, India's accession/ratification to these conventions will be communicated to the IMO.

Besides this, India is also a party to two important Conventions of the International Labour Organisation (ILO), meant for welfare of seafarers, namely the Maritime Labour Convention and the Seafarer's Identity Document Convention. India contributes approximately 6 to 7 percent of the total workforce in the shipping industry. India is home to the second largest number of seafarers after the Philippines. ILO too has mandated standards for the maritime industry. The Maritime Labour Convention is a single, coherent instrument which replaces and consolidates 37 separate ILO maritime labour conventions adopted since 1920.

Apart from IMO, India has been contributing significantly to the other multilateral organizations/agreements such as ASEAN (Association of South East Asia Nations); Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC); Indian Ocean Rim-Association for Regional Cooperation(IORA); International North South Transport Corridor (INSTC), etc.

B. Maritime Transport Cooperation Instruments/Arrangements

Bilateral cooperation arrangements

India has entered into cooperation instruments/arrangements with other maritime countries and regional groupings by way of Agreements or MoUs to foster growth of Indian maritime sector as well as to safeguard India's maritime interests. Following is a list and status of these cooperation arrangements:

S.No.	Name of the Country (year of signing)	Areas of co-operation
1	Maldives (08 June, 2019)	MoU between India and Maldives for establishment of passenger and cargo services by sea between the two countries to promote people to people contact and boost bilateral trade between the two countries.
2	Denmark (18 January, 2019)	MoU on Maritime Issues between Ministry of Ports,Shipping and Waterwaysof the Republic of India and the Ministry of Industry, Business and Financial Affairs of the Kingdom of Denmark envisages cooperation between the two countries through a Joint Working Group on Shipping for cooperation in the field of merchant shipping and maritime transport related matters, exchange of experiences and information on the rules, regulations and enforcement of the Port State Controls carried out in India and Denmark, cooperation on training and education in the maritime industry, cooperation on granting the Indian Register of Shipping (IRS) the status of Recognized Organization (RO) and to strengthen the cooperation in green maritime technology and shipbuilding to address the issues of maritime environmental degradation, climate changes and biodiversity loss.

3	Malta (September 17, 2018)	Memorandum of Understanding between India and Malta for bilateral cooperation in the fields of maritime and port administration, maritime safety, vessel monitoring and marine pollution prevention, maritime training, education, research and innovation and cooperation in matters related to International Maritime Organization (IMO).
4	Republic of Korea (April 10,2018)	Undertaking on Mutual Recognition of Certificates of Competency of Seafarers, as per requirements of the International Convention on Standards of Training, Certification and Watch keeping for Seafarers (STCW), 1978 as amended in 2010 (Manila Amendments) between India and Republic of Korea was signed on April 10, 2018. Both India and Republic of Korea have agreed on the recognition of maritime education and training, certificates of competency, endorsements, training documentary evidence and medical fitness certificates for seafarers (hereinafter referred to as "certificates") issued by the Government of the other Party in accordance with the provisions of regulation I/10 of the STCW Convention, and cooperation between the two Parties in the training, certification and management of seafarers.
5	Cyprus (April 28, 2017)	Agreement between India and Cyrus on Merchant Shipping for technical assistance in developing merchant fleets, including training of seafarers and also assistance in commercial matters support and facilitate cooperation between training institutions and maritime organizations; establishment of functioning representations of shipping organizations and enterprises in other countries; allow Govt. representatives or diplomatic and consular missions of other country as well as representative of shipping enterprises register in other country to enter its ports and board vessels sailing under the flag or chartered by enterprises of the other country.
6	Bangladesh (April 8, 2017)	MoU between the Directorate General of Lighthouses and Lightships (DGLL), Ministry of Shipping, Government of India and the Department of Shipping (DoS), Ministry of Shipping, Government of People’s Republic of Bangladesh concerning cooperation on Aids to Navigation.

7	Bangladesh (April 8, 2017)	MoU Between India And Bangladesh on Development of Fairway from Sirajganj to Daikhowa And Ashuganj to Zakiganj on Indo-Bangladesh Protocol Route.
8	Bangladesh (April 8, 2017)	MoU Between India And Bangladesh on Passenger and Cruise Services on the Coastal and Protocol Routes.
9	United Arab Emirates (January 25, 2017)	Recognition and acknowledgement of the certificates issued by the issuing party after meeting the conditions pertaining to: a) Training, qualifying and evaluating seafarers as per the provisions of Section 6/1 of the STCW convention. b) Registering the issued certificates in a special record. c) Upon its request, the Department shall be allowed to visit the facilities of certificates to make sure of the relevant procedures as per the provisions of the Regulation No. 60/1 of the STCW Convention in order to check:- • Standards of competency. • Registering certificates of competency. • Issuing, renewing and cancelling certificates of competency. • Standards of physical fitness for the certificates of competency holders. • Applied methods of sharing details about the validation of certificates. d) The quality standards shall be in accordance with the provisions of Regulations No. 8/1 of the STCW Convention.
10	United Arab Emirates (January 25, 2017)	Institutional Cooperation on Maritime Transport which would facilitate and promote Seaborne transport to avoid any unnecessary prolongation of lay times, and simplify and expedite wherever possible customs and other formalities to be observed in ports as well as facilitate the use of existing installation for the disposal of wastes.

11	Egypt (September 02, 2016)	Agreement between India and Egypt for cooperation to develop relationship in the field of International Maritime Transport on the basis of equity and mutual benefits; exchange information between the competent authorities of both the parties on maritime transport; provision of technical assistance for the development of maritime transport by promoting and encouraging the cooperation between the Maritime shipping companies of both the countries; cooperation for developing training programs in institutes of either of the counties in the fields of the marine environment and prevention of the marine pollution and Promotion of Electronic Data Interchange between the two countries with regard to vessels and ports security procedures according to ISPS code requirements.
12	Spain (July 05, 2016)	MoU between India and Spain for cooperation in port matters for conduct of studies on port traffic demand between the two countries; commercial promotion of maritime transport between the two countries; promotion of the making of agreements on ports and terminals in the network of both countries; promotion of commercial exchange in the context of port activity and transport by sea; planning, management and exploitation of port infrastructures, development of intermodals and port logistics; modernization of existing ports and development of new world class ports; development of Information and Communication Technologies, establishment of one-step shops and other fields improving the simplification of processes and benefit the competitiveness of all operators of the logistics chain; cooperation in the fields of environment and green port initiative; cruise shipping, sea plane and ferry services in Major ports; and promotion of business development in the port context and of the setting up of Indian port enterprises in Spain and of Spanish port enterprises in India.
13	India, Afghanistan and Iran (May 23, 2016)	Agreement on the establishment of International transport and transit corridor among the Governments of the Republic of India, the Islamic Republic of Afghanistan and the Islamic Republic of Iran (Chabahar Agreement).

14	Belgium (May 2, 2016)	Letter of Intent on the implementation of the MoU between India and Belgium relating to Maritime Transport.
15	Republic of Korea (April 13, 2016)	MoU between India and Republic of Korea to cooperate for strengthening administrative, technical and human resources though exchanges to promote mutual benefits in the fields of port development and operation.
16	Hashemite Kingdom of Jordan (October 11, 2015)	Agreement between India and Jordan on Maritime Transport for cooperation between the shipping organizations and enterprises; exchange and training of staff and students; exchange of information to expedite transportation of commercial goods at sea and at ports; joint ventures in the fields of maritime transportation, shipbuilding and ship repairs, maritime training, maritime information technology including development of simulators, port facilities and related maritime activities.
17	Bangladesh (June 6, 2015)	MoU relating to use of Chittagong and Mongla Port for Movement of goods to and from India.
18	Bangladesh (June 6, 2015)	Agreement on Coastal Shipping between the Government of the People's Republic of Bangladesh and the Government of the Republic of India.
19	Republic of Korea (May 18, 2015)	MoU between India and Republic of Korea for cooperation in maritime transport and logistics, including training of seafarers; joint ventures in the fields of maritime transport and logistics; construction of logistics infrastructure linking land-based transport with maritime transport; utilization, development and management of domestic and overseas ports.
20	Iran (May 6, 2015)	Memorandum of understanding between the Government of the Republic of India and the Government of the Islamic Republic of Iran over Partnership of India in Development Plan of Chabahar Port.

21	Vietnam (May 24, 2013)	Agreement between India and Vietnam for cooperation between the shipping organizations and enterprises; exchange and training of staff and students; exchange of information to expedite transportation of commercial goods at sea and at ports; joint ventures in the fields of maritime transportation, shipbuilding and ship repairs, maritime training, maritime information technology including development of simulators, port facilities and related maritime activities.
22	Austria (October 3, 2012)	MoU between India and Austria for cooperation on shipping infrastructure in particular by promoting safe, efficient and cost effective shipping and ports infrastructure development as well as operation and maintenance; exchange of information concerning shipping and ports infrastructure as well as benefits from the opportunities offered in the shipping and ports infrastructure sector; expansion of plans in the shipping and ports infrastructure sector and realization of special projects in this area; recognition of the projects in the field of “Maritime Communication Solutions”.
23	Sri Lanka (January 7, 2011)	MoU between India and Sri Lanka for Passenger services between the ports of Tuticorin and Colombo and between Rameshwaram and Thalaimannar.
24	IBSA (Trilateral agreement between India, Brazil and South Africa) (September 13, 2006)	Trilateral Agreement between India, Brazil and South Africa to promote transportation of goods and passengers along the International “North-South” Transport corridor, and, access to the international market through rail, road, sea, river and air transport; assistance in increasing the volume of international transport of passenger and goods; security of travel, safety of goods as well as environmental protection according to the international standards; harmonization of transport policies as well as legal and legislative frameworks.
25	The Netherlands (February 12, 2008) (Renewed on May 10, 2011, May 11, 2014 and October 11, 2017)	MoU between India and the Netherlands for Research and Development; shipbuilding; innovation and sustainability; safety and security; port planning and development; simulation of cargo flows between the two countries; government policies; Ports; Maritime transport and logistics.

26	Pakistan (December 14, 2006)	Protocol on Resumption of Shipping services between India and Pakistan signed on 15 January 1975 to improve direct shipping service between the two countries on the basis of sovereign equality and mutual benefit.
27	South Africa (March 23, 2006)	Agreement between India and South Arica for cooperation between the shipping organizations and enterprises; exchange and training of staff and students; exchange of information to expedite transportation of commercial goods at sea and at ports; joint ventures in the fields of maritime transportation, shipbuilding and ship repairs.
28	United States of America (April 14, 2015 and April 8, 2015)	MoU for cooperation in the fields of Shipping and intermodal operations; Maritime safety and security; Port Management; Dredging and Dredger construction; Ship Recycling; Maritime Training and Education; Technological Development related to Maritime sector; Inland Water Transport and other fields of mutual interest.
29	Morocco (February 22, 2000)	Agreement between India and Morocco for cooperation for rendering sustained mutual assistance and advice on merchant shipping and other related matters.
30	China (November 29, 1996)	Agreement between India and China for cooperation in the field of Maritime Transport.
31	Iran (January 3, 1995)	Maritime transport and port affairs; multimodal transport for transit cargo between the ports of Iran in the Persian Gulf and Caspian Sea through the Asian countries; transit of goods to the third countries through territory of one another; shipping agents and forwarding companies; ship building and ship repair.
32	Russian Federation (December 23, 1994)	Agreement on Merchant Shipping for participation of vessels in the carriage of all cargoes between the ports of the two countries; elimination of obstacles that hamper the development of sea trade between the port of their countries; cooperation between the shipping companies, charterers and shippers.
33	Singapore (January 24, 1994)	Agreement between India and Singapore for cooperation in the field of Maritime Transport.

34	Turkey (July 18, 1988)	Maritime Agreement between India and Turkey to carry out research, technical cooperation and training in Shipbuilding, Marine Transport and other matters on Marine Affairs.
35	Federal Republic of Germany (January 9, 1979)	Agreement between India and Germany in the field of Merchant Shipping.
36	Denmark (February 6, 1965)	Agreement on recognition of tonnage certificates of Merchant Ships.
37	Finland (February 20, 1963)	Agreement for mutual recognition of tonnage certificates of Merchant Ships.
38	Poland (June 27, 1960)	Agreement on Shipping cooperation to strengthen and develop cooperation in maritime transport.

9. PHRD

Port Human Resource Division (PHRD) deals with the establishment and personnel matter of all Major Ports alongwith the labour issues viz. appointment of Chairman/ Deputy Chairman/ Head of Department of Major Port Trusts and of Board level Directors of Kamarajar Port Ltd. including Chairman and Managing Director appointment/constitution of Boards of Trustees of Major Port Trusts, the services/administrative matter of officers and employees of the Major Ports which includes rotational transfer of HoD level Port Trusts Officers, framing of Services Regulations, Pensionary matters and disciplinary cases etc.

The matters of Foreign Training of Port Officers, issuance of Pilot License and monitoring of their APAR are also dealt by PHRD. PHRD also frames/introduces Special Voluntary Retirement Scheme and Productivity Linked Reward Scheme in the Major Ports. Pay and Wage revisions of the Major Ports officers and employees is also done by PHRD.

10. Ports

The Ports Wing is primarily responsible for the development of 12 Major Ports with the objective to provide necessary and adequate cargo handling capacity to meet India’s EXIM trade. The Ports in the country handle around 90% of EXIM Cargo by volume and 70% by value. In order to meet the ever increasing trade requirements, expansion of Port Capacity is accorded the highest priority. While increasing the capacity of the major ports, the Port Wing strives to improve the operational efficiencies through mechanization, digitization and process simplification. As a result over the years the installed capacity & cargo handled by the Major Ports have increased considerably. Besides the efficiency parameters like average turn around time, average output per ship berthday have also improved considerably.

There are 12 major ports and 200 non-major ports (minor ports) in the country. While the Major Ports are under the administrative control of Ministry of Shipping, the non-major ports are under the jurisdiction of respective State Maritime Boards/ State Government. All the 12 Major ports are functional. Out of the 200 non-major ports, around 65 ports are handling cargo and the others are "Port Limits" where no cargo is handled and these are used by fishing vessels and by small ferries to carry passengers across the creeks etc

Maritime State Development Council (MSDC)

The MSDC was constituted in May, 1997 under the Chairmanship of the then Hon'ble Minister (SFT) with Minister in-charge of ports of all Maritime States/UTs, Secretary (SFT) and DA (Ports) as its Members and Joint Secretary (Ports) as Member-Secretary. Administrator, Union Territory of Daman & Diu was added as a Member in November, 1997. In march 2003 Director of Naval Operations, Naval Headquarters, New Delhi and Director (Operations), Coast Guard has been inducted as members in the MSDC. As per mandate of the Instruction of Maritime State Development council under the Chairmanship of Hon'ble Minister of Ports,Shipping and Waterways, the Council would meet at least once in six month.

Tariff Authority for Major Ports (TAMP)

Establishment of TAMP

The Tariff Authority for Major Ports (TAMP) was created in 1997. The regulatory jurisdiction of the Authority extends to all major port trusts and private terminals operating therein.

Role, Functions and Organizational Structure

The Authority is statutorily mandated to frame the Scale of Rates and Statement of Conditions for the services rendered by the Major Port Trusts and Private Terminals thereat as well as charges for use of port properties.

The Authority consists of a Chairman and two Members. The Chairman is of the rank of the Secretary to the Government of India, one Member from amongst economists and one Member with experience in finance. TAMP is functioning with Member (Finance) and Member (Economics) at present.

The Headquarter of Tariff Authority for Major Ports is located at Mumbai.

The sanctioned strength of officers and staff of the Authority is 36. As against that, the existing staff strength as on 01/04/2019 is 30 comprising of 08 Group A posts, 08 Group B posts, 09 Group C posts and 05 Group D post

Meetings of the Authority

The procedure to be followed in processing of tariff cases and conducting the meetings of this Authority is regulated by the Tariff Authority for Major Ports (Transaction of Business) Regulations, 1998.

The Authority follows the following guidelines issued by the Government of India for regulating tariff of Major Port Trusts and Private Terminals operating thereat.

(i). Upfront Tariff Guidelines, 2008

26/02/2008

(ii). Reference Tariff Guidelines, 2013

30/09/2013

(iii). Guidelines for Determination of Upfront Tariff for Stevedoring and Shore Handling Operations, 2016.

15/09/2016

(iv). Berthing Policy for Dry Bulk Cargo for Major Ports, 2016.

MOS Letter dated 16 June 2016

(v). (a). Policy for Determination of Tariff for Major Port Trusts, 2018

16/01/2019

(b).Working Guidelines to operationalize the Policy for Determination of Tariff for Major Port Trusts, 2018

(vi). (a). Tariff Guidelines 2019

07/03/2019

(b). Working Guidelines to operationalize the Tariff Guidelines 2019

07/03/2019

The Authority since inception has disposed of 969 cases till 30 June 2019. The Orders passed by the Authority since 01/01/2001 are hosted in the TAMP website (http://tariffauthority.gov.in).

11. Sagarmala

Maritime sector in India has been the backbone of the country's trade and has grown manifold over the years. To harness India's 7,500 km long coastline, 14,500 km of potentially navigable waterways and strategic location on key international maritime trade routes, the Government of India has embarked on the ambitious Sagarmala Programme which aims to promote port-led development in the country.

The concept of Sagarmala was approved by the Union Cabinet on 25th March 2015. As part of the programme, a National Perspective Plan (NPP) for the comprehensive development of India's coastline and maritime sector has been prepared which was released by the Hon'ble Prime Minister, on 14th April, 2016 at the Maritime India Summit 2016.

Vision of the Sagarmala Programme is to reduce logistics cost for EXIM and domestic trade with minimal infrastructure investment. This includes:

Reducing cost of transporting domestic cargo through optimizing modal mix Lowering logistics cost of bulk commodities by locating future industrial capacities near the coast Improving export competitiveness by developing port proximate discrete manufacturing clusters Optimizing time/cost of EXIM container movement (http://sagarmala.gov.in/about-sagarmala/background)

Sagarmala Programme broadly consists of 5 components which are:

Port Modernization & New Port Development; Port Connectivity Enhancement; Port-linked Industrialization Coastal Community Development; Promotion of Coastal Shipping & Inland Waterways in India; Create jobs and bridge skill gap in ports and maritime sector.

- ***Port Modernization & New Port Development***

Since about more than 90% of India's trade by volume is conducted via the country's maritime route, there is a continuous need to develop India's ports and trade related infrastructure to accelerate growth in the manufacturing industry and to assist the 'Make in India' initiative. India has 12 major ports and approximately 200 non-major ports administered by Central and State Governments respectively.

As per the studies conducted under the Sagarmala Programme, it is expected that by 2025, cargo traffic at Indian ports will be approximately 2500 MMTPA while the current cargo handling capacity of Indian ports is only 2400+ MMTPA. A roadmap has been prepared for increasing the Indian port capacity to 3300+ MMTPA by 2025 to cater to the growing traffic.

This includes port operational efficiency improvement, capacity expansion of existing ports and new port development.

- ***Port Connectivity Enhancement***

  Connectivity is one of the critical enablers for ports and the end-to-end effectiveness of the logistics system drives competitiveness for the maritime industry as well. With infusion of new technology and capacity building, the cumulative/ total capacity available at ports can match demand but will not be able to handle additional traffic if the evacuation to and from the port is restricted. It is, therefore, important that connectivity of major ports with the hinterland is augmented not only to ensure smooth flow of traffic at the present level but also to meet the requirements of projected increase in traffic.

  India's hinterland connectivity is mainly based on surface transport i.e. road and rail, wherein, domestic waterways (coastal shipping and inland waterways) playing a very limited role. Pipelines are predominantly used only for transporting crude oil, refined petroleum products and natural gas.

  In India, smooth connectivity to ports is even more important as the cargo generating centers are mainly in the hinterland instead of in the coastal region. The long lead distance increases the logistics cost and time variability within which the cargo can be delivered.

  Under Sagarmala Programme, endeavor is to provide enhanced connectivity between the ports and the domestic production/consumption centers.

- ***Port-led Industrialization***

  Vision of the Sagarmala Programme is to reduce logistics cost and time for the movement of EXIM and domestic cargo. Development of port-proximate industrial capacities near the coast, in future, is a step in this direction. In this regard, the concepts of Coastal Economic Zones (CEZs), Coastal Economic Units (CEUs), Port-Linked Industrial & Maritime Clusters and Smart Industrial Port Cities have been introduced.

  Each CEZ will consist of multiple CEUs and more than one industrial cluster can be housed within a CEU. Within each industrial cluster there can be several manufacturing units. To accelerate the CEU development process, it is proposed that CEUs be prioritized in locations where land parcels are available in areas close to a deep draught port and with strong potential for manufacturing.

- ***Coastal Community Development***

Approximately 18 percent of India's population lives in the 72 coastal districts that comprise 12 percent of India's mainland. Development of coastal communities through Marine sector related activities like fisheries, maritime tourism and corresponding skill development is an essential objective of the Sagarmala Programme. Development of cruise tourism and lighthouse tourism are other activities which are being actively considered under Sagarmala Programme.

Under Sagarmala Programme, an integrated approach is being adopted for improvement in quality of life with focus on skill building and training, upgrading of technology in traditional professions, specific and time bound action plan for improving physical and social infrastructure in collaboration with the coastal states.

- ***Promotion of Coastal Shipping& Inland Waterways in India***

  Despite having an extensive network of inland waterways in the form of rivers, canals, backwaters and creeks freight transportation by waterways is highly under-utilized. Waterways currently contribute around 6% to India's transportation modal mix, which is significantly less than that in developed economies and some of the developing economies as well.

  It is estimated that coastal shipping traffic of about 250 MMTPA can be achieved from current and planned capacities across coal, cement, iron and steel, food grains, fertilizers, POL by 2025. Additionally about 150 MMTPA of cargo is expected to be moved via inland waterways by 2025.

  Availability of dedicated infrastructure will go a long way in promoting coastal shipping as a mode of freight transportation. Hence infrastructure at ports and supporting infrastructure using rail/road and waterways to facilitate coastal movement are being created. These include development of dedicated coastal berths, bunkering and storage at ports and creation of supporting hinterland transport infrastructure with last mile connectivity.

Sagarmala Development Company Limited

Implementation of the projects identified under the Sagarmala Programme will be taken up by the relevant Ports, State Governments / Maritime Boards, Central Ministries, mainly through private or PPP mode.

The Sagarmala Development Company Limited (SDCL) has been incorporated (on 31st August 2016) under the Companies Act, 2013, after obtaining approval of the Union Cabinet on 20th July 2016. SDCL will provide equity support for the project Special Purpose Vehicles (SPVs) set up by the Ports / State / Central Ministries and funding window and /or implement only those residual projects which cannot be funded by any other means / mode.

Indian Port Rail& Ropeway Corporation Limited

In order to execute the last mile connectivity rail connectivity and internal rail projects of the Major Ports more effectively and efficiently a Special Purpose Vehicle (SPV) – The Indian Port Rail Corporation (IPRC) is incorporated under the Companies Act 2013, under the administrative control of the Ministry of Ports,Shipping and Waterways, Government of India. The work of the SPV will result in substantial reduction in dwell time of cargo at Ports and bring down the overall logistic cost for trade.

12. Transport Research

Transport Research Wing (TRW), Ministry of Ports,Shipping and Waterways collects, compiles and disseminates time series data on Ports, Shipping, Ship Building and Ship Repairing and Inland Water Transport. Besides, it is also responsible for rendering necessary research and data support to the various wings of the Ministry of Ports,Shipping and Waterways for policy planning in the above mentioned sectors.

Transport Research Wing collects data on Ports, Shipping, Ship Building and Ship Repairing and Inland Water TranMinistry of Ports,Shipping and Waterways sport sectors from the concerned source agencies viz. Major ports; State Maritime Boards/State Directorates; Directorate General of Shipping, Shipping Corporation of India, shipping companies in private sector, Ship building companies; Inland Waterways Authority of India and State Governments. The data received from various primary/secondary sources is scrutinised and validated for consistency and comparability and compiled as per the requirement.

The compiled data is disseminated to the users through the following publications:

(i) Basic Port Statistics (Annual)– It gives information on major ports and non-major ports in respect of cargo traffic – commodity wise, type of cargo, performance indicators, port capacity and its utilization, employment and financial performance.

(ii) Update on Indian Port Sector (biannual) – This publication throws light on latest developments at Indian Ports inter-alia macro-economic indicators of India as compared with world indicators. The publication covers state-wise analysis of the developments in the area of sea-borne traffic for maritime States/UTs particularly in respect of cargo traffic, efficiency Indicators and projects under implementation.

(iii) Indian Shipping Statistics(Annual)–The publication contains data on Indian fleet-overseas and coastal fleet by type, size and age of vessels; Net additions to Indian fleet; fuel prices for vessels plying on international run, fleet owned by Shipping Corporation of India, performance of Shipping Corporation of India and financial performance of Shipping companies etc.

(iv) Statistics of India’s Ship Building and Ship –Repairing Industry (Annual)–The publication contains information on Indian Ship Building and Ship Repairing Industry – capacity, facilities, orders in hand and delivered, employment and financial performance etc.

(v) Statistics on Inland Water Transport (Annual)–The publication contains data on navigable waterways, no. of inland water transport vehicles and their ownership infrastructure facilities available on national/state waterways, cargo movement, Plan outlay and expenditure etc.

4. Apart from the publication and dissemination of data, the TRW is also involved in the following:

i) TRW collects monthly data from Major and Minor Ports through online Port Data Management Portal.

ii) Monthly progress report of Central Sector Projects costing Rs. 150 crore and above of the Ministry of Ports,Shipping and Waterways and updates on OCMS (Online Computerized Monitoring System) of Ministry of Statistics & Programme Implementation.

iii) Preparation of technical and analytical papers/notes, as and when required, for the use of the Ministry in various expert Committees and Commissions.

iv) TRW also coordinates with other departments of Central Government and State Governments for supply and collection of data on port, shipping and other related sectors.

LATEST DEVELOPMENTS AND STATISTICS:

According to the Ministry of Shipping, around 95% of India's trading by volume and 70% by value is done through maritime transport. In November 2020, the Prime Minister, Mr. Narendra Modi renamed the Ministry of Shipping as the Ministry of Ports, Shipping and Waterways.

India has 12 major and 205 notified minor and intermediate ports. Under the National Perspective Plan for Sagarmala, six new mega ports will be developed in the country. The Indian ports and shipping industry play a vital role in sustaining growth in the country’s trade and commerce. India is the sixteenth largest maritime country in the world with a coastline of about 7,517 kms. The Indian Government plays an important role in supporting the ports sector. It has allowed Foreign Direct Investment (FDI) of up to 100% under the automatic route for port and harbour construction and maintenance projects. It has also facilitated a 10-year tax holiday to enterprises that develop, maintain and operate ports, inland waterways and inland ports.

Market Size

In FY20, major ports in India handled 704.82 million tonnes (MT) of cargo traffic, implying a CAGR of 2.74% during FY16-FY20. Cargo traffic at non-major ports reached 447.21 MT in FY20 (till December 2019).

The major ports had a capacity of 1,514.09 MT per annum (MTPA) in FY19P. The Maritime Agenda 2010-20 has a 2020 target of 3,130 MT of port capacity.

The Government has taken several measures to improve operational efficiency through mechanisation, deepening the draft and speedy evacuations.

Investments/Developments

In November 2020, Mormugoa Port Trust (MPT), operator of the western Indian port of Mormugoa, extended concessions on iron ore imports and export freight traffic until June 2021 to help ease India's iron ore shipping trade amidst the COVID-19 pandemic.

In November 2020, JSW Infrastructure completed the acquisition of Chettinad Group’s port business for ~Rs 1,000 crore (US$ 135.50 million). This acquisition will enable JSW Infrastructure to gain ownership and operational control of a deep draft international coal terminal and a bulk terminal at Kamarajar Port Limited (KPL) as well as coal and bulk commodity terminal at New Mangalore Port Trust (NMPT).

In October 2020, Adani Ports and Special Economic Zone Limited (APSEZ) completed the acquisition of Krishnapatnam Port Company Ltd. (KPCL) for an enterprise value of Rs 12,000 crore (US$ 1.63 billion).

In July 2020, Adani Ports and Special Economic Zone (SEZ) Ltd, launched an offshore bond offering, raising ~US$ 750 million.

In November 2019, JSW Infrastructure commissioned a new iron ore terminal at the Paradip port in Odisha with a capacity to handle up to 18 million tonnes of cargo per annum.

In November 2019, first ever movement of container cargo on Brahmaputra (National Waterway -2), focused on improving the connectivity to North Eastern Region (NER).

In October 2019, Ease of Doing Business-Implementation of Radio Frequency Identification (RFID) based Port Access Control System (PACS) at Kolkata Dock System (KDS) was introduced.

JSW Infrastructure entered into built-operate-transfer agreement with Paradip Port Trust at an investment of Rs 750 crore (US$ 107.31 million) to operate Paradip port.

In August 2019, India became the first country in the world to issue Biometric Seafarer Identity Document (BSID), capturing the facial bio-metric data of seafarers.

Adani Port and Special Economic Zone (APSEZ) became the first Indian port operator to handle cargo movement of 200 million tonnes (MT) in 2018-19.

The Indian Minister for Shipping, Road Transport and Highways, Mr. Nitin Gadkari, announced a massive investment in India’s ports and roads sector, which is likely to boost country’s economy. The Indian Government plans to develop 10 coastal economic regions as part of plans to revive the country’s Sagarmala (string of ports) project.

The zones would be converted into manufacturing hubs, supported by port modernisation projects, and could span 300-500 kms of the coastline. The Government is also looking to develop the inland waterway sector as an alternative to road and rail routes to transport goods to the nation’s ports and hopes to attract private investment in the sector.

Ports sector in India has received a cumulative FDI worth US$ 1.63 billion between April 2000 and June 2020.

Indian ports and shipping sector witnessed nine M&A deals worth US$ 381 million in 2019.

Government Initiatives

Some of the major initiatives taken by the government to promote the ports sector in India are as follows:

In October 2020, the Ministry of Shipping launched an indigenous software solution for vessel traffic services (VTS) and vessels traffic monitoring systems (VTMS).

In line with the ‘Make in India ’policy of the Government of India and to boost shipbuilding, the Ministry of Shipping reviewed the ROFR (Right of First Refusal) licensing conditions on October 22, 2020 for chartering vessels/ships through the tender process for all types of requirements. To promote the demand for ships built in India, priority for chartering of vessels is given to vessels built in India, flagged in India and owned by Indians as per amendments in the guidelines of ROFR (Right of First Refusal).

In October 2020, Union Minister Mr. Mansukh Mandaviya inaugurated the ‘Direct Port Entry Facility ’at the V.O. Chidambaranar port. This facility will enable direct movement of containers from factories, without intermediate handling at any CFS (Container Freight Station), facilitating shippers to get their exports directly to the container terminal (24x7), thereby increasing efficiency and ease of doing business.

In October 2020, the Ministry of Shipping announced plans to develop a National Logistics Portal (Marine) with end-to-end logistics solutions to help exporters, importers and service providers.

In September 2020, the Shipping Ministry launched a dispute redressal portal, ‘SAROD-Ports ’(Society for Affordable Redressal of Disputes - Ports) to help develop confidence in the private sector, as ports are shifting to landlord models.

As of November 2019, projects worth Rs 13,308.41 crore (US$ 1.90 billion) were awarded in the last three years on upgradation of the major ports.

As per Union Budget 2020-21, the total allocation for the Ministry of Shipping stands at Rs 1,800 crore (US$ 257.22 million).

Major Port Authorities Bill 2020 was introduced in the Loksabha, which intends to provide regulation, operation and planning of major ports in India and to vest the administration, control and management of such ports upon the Boards of Major Port Authorities and for matters connected therewith or incidental thereto.

Net profit at major ports increased from Rs 1,150 crore (US$ 178.4 million) in FY13 to Rs 3,413 crore (US$ 529.6 million) in FY18, while operating margin increased from 23% to 44%.

In May 2018, Ministry of Shipping allowed foreign flagged ships to carry containers for transhipment.

In March 2018, a revised Model Concession Agreement (MCA) was approved to make port projects more investor-friendly and make investment climate in the sector more attractive.

Achievements

Following are the achievements of the government in the past four years:

Turnaround time at major ports stood at 64.69 hours in FY20 (till September 2019).

Project UNNATI was started by the Government of India to identify opportunity areas to improve operations of key ports. Under the project, 116 initiatives were identified, out of which, 98 initiatives have been implemented, as of September 2020.

Road Ahead

Increasing investment and cargo traffic point towards a healthy outlook for the Indian ports sector. Providers of services such as operation and maintenance (O&M), pilotage and harbouring and marine assets such as barges and dredgers are benefiting from these investments.

The capacity addition at ports is expected to grow at a CAGR of 5-6% till 2022, thereby adding 275-325 MT of capacity.

Under the Sagarmala Programme, As of 30 September 2019, a total of 121 projects worth Rs. 30,228 crore (US$ 4.33 billion) have been completed and 201 projects worth Rs. 309,048 crore (US$ 44.22 billion) are being implemented.

Ministry of Shipping has set a target capacity of over 3,130 MMT by 2020, which would be driven by participation from the private sector. Non-major ports are expected to generate over 50% of this capacity.

India's cargo traffic handled by ports is expected to reach 1,695 million metric tonnes by 2021-22 according to a report by the National Transport Development Policy Committee.

Within the ports sector, projects worth investment of US$ 10 billion have been identified and will be awarded in the coming five years.

MODULE-III

MAJOR IMPORTANT MARITIME LEGISLATIONS IN INDIA

MAJOR IMPORTANT MARITIME LEGISLATIONS IN INDIA

In this Module the following maritime legislations are discussed –

- Merchant Shipping Act, 1958
- The Indian Carriage Of Goods By Sea Act, 1925
- Multi Modal Transportation Of Goods Act, 1993
- Major port Trust Act, 1963
- The Inland Vessels Act, 1917
- Maritime Zones Of India (Regulation Of Fishery By Foreign Vessels) Act, 1981
- Territorial Waters, Continental Shelf, Exclusive Economic Zones And Maritime Zones Act, 1976
- The Admiralty (Jurisdiction and Settlement of Maritime claims) Act, 2017
- Major Ports Authorities Bill, 2020

Merchant Shipping Act, 1958

The Merchant Shipping Act, 1958 is a comprehensive legislation which came into force on 15th December, 1958 however, Section 1 of the Act mentions that different parts of sections came into force on different dates of the Act. Prior to this legislation, Indian merchant shipping act, 1923 was enacted which was according to the UK Merchant Shipping Act, 1894. It was the first legislation in India related to merchant shipping after which merchant shipping act, 1958 legislated after independence.

The objective of merchant shipping act, 1958 (hereinafter referred to as "The Act") is to promote the Indian mercantile marine and in order to achieve it; a National Shipping Board should be constituted where the Indian ships would be registered. In order to fulfill this objective, several amendments were made to this Act so that it should be in consonance with the international law as well.

Merchant shipping act, 1958 consists of 461 sections which are divided into 18 parts. Part 1 contains the provision related to definition of the related terms and Part 2 contains the constitution and function of National Shipping Board. National Shipping Board is a statutory body which has been constituted under section 4 of the Act. The body would consist of sixteen members who would represent the central government, ship owners and seamen; however, there would be an equal number of members representing the ship owners and seamen. Among the members, one would be selected to be the Chairman of the Board. The board members shall be vested with the power to regulate its own procedure. The primary function of the Board would be to advise the Central government on matters relating to Indian shipping and its development.

Part 4 constitutes of Shipping Development Fund. The fund would be credited with those grants which the Central Government permit to credit in the fund. A Shipping Development Fund committee would be formed consisting of a chairman and six other members. It would be a body corporate consisting of a perpetual succession and a common seal. Any loans advanced to the committee for fulfilling the object of the fund would also be credited to the shipping development fund. Moreover, if any repayment is made to the fund or any dividends or interests has been realized to the fund, in that case, those repayments or dividends would be credited to the fund itself. Hence, these are the mentioned channels from where the money will be deposited in to the fund however, clause (d) of section 14 open up the channel of depositing money by providing that if any sums would be received for depositing in the fund, it would be done accordingly. The fund would be applied in meeting the expenses of the committee and advancing the loan for maintenance and acquisition of ships. The committee would also keep proper accounts and maintain records and prepare annual statements which would be audited by the Comptroller and Auditor General of India.

Part 5 deals with registration of Indian ships. The first section to this part that is section itself clarifies the definition of "ships". It provides that this part would be applicable only for those sea going ships which have a propelling force attached to it and not the static ships. Clause (41) of section 3 explain this definition further by providing that the ships which goes beyond inland waters or to waters which are declared by the central government to be totally or partially smooth would be called as sea going ships. This part also provides that any ships would not be deemed to be an Indian ship unless it is owned by the person who is a citizen of India or by any company if the principal place of business is India or seventy five percent or any percentage, specified by the central government as notified, of the share capital should be held by an Indian citizen or the three fourth of the total number of directors of the company is citizen of India or the chairman of the board of the company or managing director of the company is the citizen of India. Also the ships which are lower than fifteen tons and is employed solely for navigation on the coast of India would be considered for registration.

A glimpse has been given to some of the provisions of the Merchant Shipping Act, 1958.

However, in order to enable India to accede to International law, two amendment bills have been drafted. The Merchant Shipping (Amendment) Bill, 2013 has been made in order to make the Indian law conform to International Convention for the Control of Harmful Anti–Fouling Systems on Ships, 2001. The said convention seeks to protect the marine environment and human health from the effect of anti – fouling paints which are used to coat ships' surfaces. The Merchant Shipping (second amendment) bill, 2013 had been made in order to comply with International Labor Organization's Maritime Labor Convention, 2006. The said convention discusses about the standard of living and working conditions of seafarers including their food, accommodation, medical care and social security. Therefore, these two bills would amend the merchant shipping act of 1958.

The Bill amends the Merchant Shipping Act, 1958 to ensure compliance with the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001. The Convention ensures that adequate, prompt, and effective compensation is available to persons who suffer damage caused by oil spills, when carried as fuel in ships' bunkers. The Bill also makes amendments to bring provisions of the Act in line with the Nairobi International Convention on the Removal of Wrecks, 2007, and the International Convention on Salvage, 1989. Key provisions of the Bill include: **Liability for bunker oil pollution**: The ship owner's liabilities will include:

(i) any pollution damage caused outside the vessel by contamination resulting from the discharge,

(ii) the cost of any measures taken for preventing or minimising any pollution damage, and

(iii) any damage caused by any such preventive measures. For government (Indian or foreign) owned ships being used for commercial purposes, the concerned government will be liable for pollution damage.

The first Indian Merchant Shipping Act was enacted in 1923, the provisions of which were in line with the U.K. Merchant Shipping Act, 1894. After independence, taking care of new conditions and changes that have taken place in the Shipping Industry, a comprehensive legislation passed by Indian Parliament in 1958 known as Merchant Shipping Act, 1958. The Act has been constantly under revision and amendments to ratify the changes approved by the International Maritime Organisation, through its conventions and protocols, to which India is a Member.

The Merchant Shipping has 24 parts. The review committee appointed by the Government of India, in 1991 under the Chairmanship of DG(s) to study the provision of the Act in its entiraty and give suggestions for amendments taking into consideration the International Convention which India has ratified but not statutorily enacted, has suggested comprehensive amendments to the Act including the amendment of the preamble of the Act. The basic provisions of Act given in various parts are as under: -

Part I deals with the preliminary giving short title of the Act and date of commencement, application of the Act and definitions of the terms used in the Act. The definitions have been given for 66 terms. Besides, certain terms have been defined in their appropriate part where they have occurred specifically.

The review committee has suggested to delete the definition of the following terns on the ground that some of the terms defined under section 3 of the Act have abundant clarity as to their meaning in other relevant parts of Act. These are clause 5 - country to which Load line convention applies, clause 6 - country to which safety convention applies, clause 19 - Load line certificate, clause 20 - load line convention, clause 26 - pilgrim, clause 27 - pilgrimage, Clause 28 - pilgrim ship, Clause 37 - Safety Convention, Clause 38 - Safety Convention Certificate, Clause 53 - valid International load line Certificate and Clause 54 - valid safety convention certificate.

The review committee has suggested amendments of the definition of the following terms: -

Clause 1(a) Coasting ship, Clause 2 - Coasting trade of India, Clause 3 - distressed seaman, Clause 12 - Fishing vessel, Clause 16 – Home Trade Ship, Clause 23 - Owner, Clause 29 - Port of Registry, Clause 35 - Registrar, Clause 42 - Seamen, Clause 45 - Ship, Clause 55 - Vessel and Clause 58 - Wreck.

The committee also suggested to add the definition of following terms in Section 3. Exclusive economic zone, Skipper, Storm, Tanker, Chemical Tanker and Gas Carrier.

Part II of the Act contains provisions relating to the establishment and composition of' National Shipping Board, its functions and powers of the Government to make rules in this respect for term of office of members, appointment of officers or other allowances of Board members.

Part III deals with the General Administration, appointment of Director General, establishment of Mercantile Marine Departments, Shipping Offices, Seaman's employment offices and Seamen's Welfare Offices. It also deals with the appointment of Principal Officers at MMD, Mumbai, Calcutta and Madras and other officers at other ports, appointment of surveyors, radio inspectors, Shipping Masters, Director of Seamen's Employment Offices and Seamen's Welfare Officers.

Part IV - which dealt with the formation of Shipping Development Fund and establishment of Shipping Development Fund Committee, has been abolished vide M.S. (Amendment) Act of 1986 (66 of 1986)

Part V deals with the registration of Indian ships. It defines the Indian ships, contains provisions for obligation to register, procedure for registration, Grant of certificate of registry, endorsement for change of Master and Owner, provision far transfer of ships shares etc., rules as to name of ship, provisions for registry of alternations registry a new and transfer of registry, national character of the ships and flag etc.

Part VI - gives provisions relating to the certificates of officers - Masters, Mates, Engineers, Skippers etc., and also requirments of officers on board various category of ships. Review Committee has recommended that instead of specifying the manning scale in the Act itself, Government should have rule makiing powers to prescribe different manning scale for different types of ships and also to carry a safe manning document on board the ship.

Part VI A contains provisions for obligation of certain certificate holders to serve Government or in Indian ships.

Part VII deals with seamen and apprentices. It gives vide ranging provision for classification of seamen, their engagements, discharge, payment of wages, their right for wages dispute between seamen and employers, provisions for property of deceased seamen and apprentices, distressed seamen, provisions for health and accommodation, protection of seamen in case of litigation and other matters, provision as to discipline, duties of Shipping Master, business of Seamen's employment offices and function of National Welfare Board for seafarers, provisions for rule making powers for imposition of the Board, term of office of members, procedure for conduct of business, levy of fee for providing amenities to seamen and procedure for collection and recovery of Levy fee.

Part VIII deals with passenger ships, their survey, Certificate of survey, powers of surveyor, fee, duration of survey, etc. It provides for keeping order in passenger ships specifying certain acts of persons as an offence under the act. This part also contains provision for special trade passenger ships and pilgrim ships.

Part IX of the Merchant Shipping Act 1958 deals with the provisions relating to Safety.

This part gives the provisions relating to construction rules for ships, prevention of collisions, lifesaving appliances and fire appliances, installation of radio telegraphy radio telephony and direction finders, signaling lamp and provisions relating to stability information. The part also deals with the provisions relating to Safety Certificates, Safety equipment certificates, Safety radio telegraphy Certificates, exemption certificates, etc., provision for determining load lines, issue of load line certificates and special provisions as to ships other than Indian ships. This part also provides powers to make rules as to timber cargo, carriage of dangerous goods, grain loading plan and carriage of grain. The provisions also exists for sub division load lines, unseaworthy Ships, detention of unsafe ships and liability for cost of detention and powers to make rules to issue certificates under this part.

Part IX A Deals with Nuclear Ships which includes application or non-application of certain provision of this Act to Nuclear ships, issue of Nuclear passenger and Nuclear Cargo Ship Safety Certificate and powers to make rules in this respect.

The review committee has suggested for inclusion of one more part – Part IX B to cover provisions for mobile offshore Drilling units – section 344 J to 344 Z. (Proposed).

Part X - This part deals with the collision, accident at sea and liability which includes provision for division of loss in case of collision, damages for personal injury etc.

Part X A - gives provision for limitation of liability of owners in case of certain damages.

Part X B – provides provision for civil liability for oil pollution damage. It embodies provisions for limitation of liability of the owner, constitution of limitation fund, consolidation of claims & distribution of fund amongst claimants, provision for compulsory insurance or other financial guarantee and rule making powers.

The review committee has suggested include part X C to give provision of International Oil Pollution fund Convention 1971 and its protocol.

Part XI - This part gives provision for regular method of giving helm orders, duty of master to report danger to navigation, manner of communicating reports of danger to navigations, obligation to render assistance to persons and ships in danger, etc. This part is also under amendments in accordance with the recommendations given by the review committee to include foreign flag vessels under perview, giving information by Indian ships about position, course, speed to maritime administration and provision for Indian ships to be fitted with prescribed navigational aids and equipments.

Part XI A – Prevention and containment of pollution of sea by Oil:

This part contains provision for prevention of pollution and gives powers to Central Government for prohibition as to discharge of oil and oily mixtures, inspection and control of ships to which Oil Pollution Convention applies, maintenance or Oil record book, oil reception facilities at the ports in India and powers of the Government to take measures for preventing or containing oil pollution, direction to certain ships to render assistance and levy of oil pollution cess. Rules can also be framed by the Government under the provision of this part.

This part does not contain provision for the action to be taken when oil is escaped. The review Committee has recommended to empower the Central Government to take appropriate action when oil is escaped.

Part XII : This part provides the provision for investigation and inquiries in shipping casualties. It gives powers to the Court for holding formal investigations, to arrest witnesses or enter the ships, to commit trial, to censure masters, mates or engineer, or to remove master. A marine board can be appointed by counselor officer if the casualty occurs at foreign waters. Central Government can cancel or suspend certificate of Master, Mate or

Engineer. Constitution of court of survey, reference in difficult cases to scientific persons and investigation into explosions or fire on board of ship are the other provisions of this part.

The review committee has suggested to constitute a formal board of investigation headed by a judge instead of giving the matters to the court, as it is assumed that the court take too much of time in coming to a conclusion.

Part XIII - This part gives provision for matters relating to wreck and salvage. India has ratified 1989 Salvage Convention and therefore review committee has suggested that provisions of this Convention may be inserted amending Section 390, 398, 402 (1) and 404.

Part XIV - of the Act gives powers to the Central Govt. for control of Indian ships and ships engaged in coasting trade. Section 412 which gave powers to fix shipping rates has already been abolished. Some relaxations have also been given under cabotage law.

Part XV – contains the provisions for sailing vessels and part XVA for fishing boats, their registry, name, inspection, certification etc.

Part XVI – gives the provisions for penalties for violation of the provisions of the Act and procedure thereof.

Part XVII` contains miscellaneous provisions for appointing examiners, powers of ship surveyor, inquiry into case of death on board etc.

Though from the above account it appears that MSA is comprehensive and up-to-date statute, it is far from being so. Problems arise out of some of the provisions having been carried verbatim from the older Acts as well as being outdated as compared with the position of law in other developed countries as on today. The other problem with the Act is that it is extremely inclusive. Moreover, the MSA has come under attack on its applicability like for e.g., in the case of *Shanmughavilas Cashew Industries*[35], the SCI whilst considering the applicability of the MSA with reference to foreign vessels and foreign owners of such vessels had held: In general, a statute extends territorially, unless the contrary is stated, throughout the country and will extend to the territorial waters and such places as intention to that effect is shown. A statute extends to all persons within the country if that intention is shown.

The Indian Parliament therefore, has no authority to legislate for foreign vessels or foreigners in them on the high seas. Thus, a foreign ship on the high seas, or her foreign owners or their agents in a foreign country are not deprived of rights by our statutory enactment expressed in general terms unless it provides that a foreign ship entering an Indian port or territorial waters and thus coming within the territorial jurisdiction is to be covered….. Without

[35] British India Steam Navigation Company Co. Ltd. v. Shanmughavilas Cashew Industries, (1990) 3 SCC 481.

anything more, Indian statutes are ineffective against foreign property and foreigners out of the jurisdiction Part X-A of the MSA is coincidentally *para materia*[36] to the Limitation of Liability Convention, 1976. However, there is one significant omission in the MSA as compared to the 1976 Convention, i.e., Art.4 of the Convention emphatically provides that a person liable for omission cannot be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result. This provision does not find a place in the amended Part X-A of the Indian MSA, which may lead one to believe that under Indian law, the right to limit liability is absolute and therefore, difficult to break limitation in India.

The SCI, in *World Tanker Carrier Corporation*[37] had an opportunity to deal with the issue of limitation of liability and the jurisdiction of Indian Courts to entertain acts of omission or commission. The Court, inter alia held Limitation action, though it is normally filed in the admiralty jurisdiction of a Court, is slightly different from an ordinary admiralty action which normally begins with the arrest of the defaulting vessel. The vessel itself, through its master, is a party in the admiralty suit, and the plaintiff must have claims provable in admiralty against the vessel. In the case of an action for limitation of liability, it is the personal right of the owner of the vessel to file a limitation action or to use it as a defence to an action against him for liability. It is a "defensive" action against claims in admiralty filed by various claimants against the owner of the vessel and the vessel. A limitation action need not be filed in the same forum as a liability action. However, it must be a forum having jurisdiction to limit the extent of such claims and whose decree in the form of a limitation fund will bind all the claimants. After recording the history of limitation actions and the applicable provisions in relation to jurisdiction under Indian procedural laws, the SCI further held that:

Limitation action in admiralty jurisdiction cannot be filed in a Court where a part of the cause of action arises when all claimants who are defendants to the action are foreigners who reside outside India, who do not carry on business in India and who have not submitted to the jurisdiction of any Court in India, and have not filed a liability action in India and are not likely to do so….Therefore, the concerned Indian High Court did not have jurisdiction to receive, entertain and try limitation action, inter alia, on the ground that there was no likelihood of any claims being filed before the Courts in India.

[36] It's a Latin Term which means on the same subject or matter **:** in a similar case

[37] World Tanker Carrier Corporation v.SNP Shipping Services Pvt. Ltd. and Others, AIR 1998 SC 2330. It may be noted that this instant case was heard and decided under the old limitation regime, prior to the 2002 amendment to the Merchant Shipping Act, 1958.

To further highlight the problems associated with MSA, the SCI has recently in *Sabeeha Faikage and Others v. Union of India and Others*[38] pointed out the loopholes in the Act and recommended to the authorities concerned to take immediate steps for amending the MSA and rules made thereafter in 2005. The Bench comprising Justice A. K. Patnaik and Justice Swatanter Kumar however, absolved the Union Government of any responsibility towards the mysterious disappearance of ten Indians who were on board Tugboat ‘Jupiter-6’ which was carrying the flag of Saint Vincent and Grenadines but directed the Center to expedite payment of compensation to the legal heirs of the Indian nationals.

The MoS has set up a semi-autonomous statutory body – the Directorate General of Shipping (DG Shipping) – whose powers are circumscribed by the Indian Merchant Shipping Act, 1958 (MSA) to deal with all matters relating to shipping policy and legislation, implementation of various international conventions and other mandatory regulations of the International Maritime Organization. The MSA is a general umbrella legislation to deal with merchant shipping. The MSA empowers the DG Shipping to promulgate delegated legislation such as circulars and notifications to deal with all issues relating to shipping. The Mercantile Maritime Department is a body under the control of the DG Shipping dealing with the registration of Indian-flagged vessels, survey of ships and enforcement of international regulations such as the SOLAS and Load Line Conventions.

The Indian Carriage Of Goods By Sea Act, 1925

The Indian Carriage of Goods by Sea Act was enacted on 21st September 1925. The Act extends to whole of India. Provisions made under this Act are referred as “Rules” and such rules shall have effect in connection with carriage of goods by sea in ships, which are carried from one port of India to foreign ports (outside India). Act covers various definitions like “Carrier, Contract of Carriage, Carriage of goods, Goods and Ship”. For the act “Goods are those which covers not only live animals but also containers, or pallets or any similar articles of transport or packing supplied by the consignor, regardless of whether such property is to be or is carried on or under deck” and “Ship is that vessel which is used to carry goods by sea from one place to another”. Any contract made for carrying of goods by sea carrier whether it could for loading, carriage, handling etc., is governed under rules like “responsibilities and liabilities” and “rights and immunities” by this act.

- A contract to carry goods by sea is called the “contract of affreightment” and the consideration or charges paid for the carriage is called the “freight”. A contract of affreightment may take either of the two forms, namely—

[38] Sabeeha Faikage and Others v. Union of India and Others, (2013) 1 SCC 262. See also, “Amend Merchant Shipping Act Immediately, Recommends SC”

- A charter party, where an entire ship, or a principal part of a ship is placed at the disposal of merchant (known as a charterer); or
- A bill of lading where the goods are to be carried in a general ship and the person consigning the goods is known as a shipper.
- In both these contracts, the ship owner (the carrier) undertakes the responsibility of carrying the goods of a consignor (i.e., either the charterer or the shipper) safely and securely to the destination.

A contract of affreightment—whether in the form of a charter party or a bill of lading — is governed by The Bills of Lading Act, 1856 and The Carriage of Goods by Sea Act, 1925.

Conditions Contained in a Contract of Carriage by Sea:

The terms included in a contract of carriage by sea are of two kinds. These are:

(i) Express terms, and

(ii) Implied terms.

(i) Express terms are those which the parties have specifically agreed to and embodied in the contract. Implied terms are those which law implies in every contract of carriage by sea unless excluded specifically. There are four implied terms:

(ii) Implied warranty of seaworthiness: The ship owner, when he enters into a charter — party for a voyage impliedly warrants that the ship is seaworthy. This is an assurance by the ship owner, at the time of entering into the charter party, that (a) the ship is fit to encounter the ordinary perils of navigation during voyage and (b) to carry the specific cargo. This warranty of seaworthiness extends only to (a) seaworthiness at the time of sailing and (b) 'fitness at the time of loading the cargo. Once the ship has sailed or the goods are on board, this warranty ceases to operate. But in case the voyage is divided into stages, the ship must be seaworthy at the commencement of each voyage.

iii) The ship shall be ready to commence the voyage and shall carry out the same with all reasonable dispatch and diligence.

(iv) The ship shall not deviate from the agreed route without for good cause, such as to ensure safety of the ship, to repair for further damage or to save human life.

v) The charter or the shipper shall not include in his cargo illegal or contraband goods, or goods which are dangerous.

Charter party:

Charter party, is a contract of affreightment entered into for hiring the whole ship or a principle part of ship to carry goods from one port to another port. It also refers to the formal document in which the contract of hiring of the whole or part of the ship.

A charter party is a contract which is negotiated in a free market where bargaining strength of the parties is highly dependent on the factor of supply and demand and governed by the ordinary law of contract. There are three main categories of charter party:

1. a voyage charter party whereby the vessel is chartered for a specified voyage;
2. a time charter party whereby the vessel is chartered for a specified period of time;
3. a charter party by demise whereby the vessel is leased to the charterer

Clauses of Charter party

1. Name of the parties and of the ship along with the nationality of the ship.
2. The class of the charter party , whether a voyage charter or time charter and whether a charter by demise.
3. Location of the ship.
4. A statement that the cargo shall be lawful merchandize both at the port of dispatch & the port of discharge.
5. The name of the place where the ship is to go.
6. The weight or volume of goods that would be shipped.
7. The liabilities of the charter regarding payment of freight whether it is payable in advance or payable after completion of the entire voyage.
8. The duties of the master or the captain.

Duties of a charter party:

The carriage of goods by Sea Act, 1925 lays down that under every contract of carriage of goods by sea the carrier shall be subject to the following responsibilities.

1) The carrier i.e. the ship owner will be bound before and at the beginning of the voyage.

a. make the ship seaworthy.

b. properly man, equip and supply the ship.

2) Carrier must properly and carefully load, handle, carry & keep the goods.

3) After receiving the goods into his charge, the carrier of a shipper agent of the carrier issue to the shipper a bill of lading.

Liabilities of a carrier by sea:

- A carrier of goods by sea i.e. a shipper is liable only for loss or damage arising or damaging from his negligence or fault. He is not liable even for the loss caused by the neglect of the master or the mariner or the crew in the navigation of the ship.
- A ship owner cannot limit or lessen his liabilities arising from his negligence.
- The carrier shall not be liable in any event for any loss or damage to the goods in an amount exceeding Euro 100 per package or unit unless, the nature or the value of such goods have been declared by the shipper before shipment.
- Goods often of dangerous nature to the shipment where of the carrier, master has not consented.

At the start of the journey carrier is bound to take proper care and diligence such as ship is made safe to go in sea, properly equip the ship, see whether the refrigeration, and other cooling parts in ship are proper and in good working condition. In other words, the ship should be properly loaded with all due diligence and other conditions in favour of sea so that ship is properly taken from one place to other. After the ship is loaded the shipper can ask for bill of lading. That bill of lading will show weight, quantity, pieces of goods that are loaded, necessary marks that are given to identify goods, time that the ship will reach the destination, insurance covered for any loss or damages if to occur. As the carrier has to take care and diligence there are certain rights and protection to them.

Ship or the carrier is not responsible for any loss which can be happen due to sea, act of god, act of war, any riots and civil disturbance, segregated restriction act of public enemies, saving or trying to save life of property at sea, insufficiency in packing, insufficiency or not exact marking on goods, latent defects not discoverable by due diligence, if there is any fire caught to ship or carrier. But this act will not immune the shipper or carrier if such loss or damage is caused purpose or if there is any negligence while doing so. Good which are explosive and dangerous in nature and is not in knowledge or not assented about nature to carrier or master may any time before discharge be landed at any place or destroyed by the carrier without compensation then the such shipper will be liable for all damages expenses directly or indirectly arising out of or resulting from such shipment. Even the shipper or carrier is not responsible for any act or mistake which has done by their servant or agent.

In *East And West Steamship*[39] the SCI, whilst dealing with the one year period to bring suits in connection with loss or damage to cargo under bills of lading, has categorically held that the one year period provided by CGSA and the bill of lading is not only a period of limitation but also extinguishment of the right to sue the carrier on the expiry of one year after delivery of the goods or from the date when the goods ought to have been delivered.

Thus Carrier or ship are at their own discretion to whole or in part autonomy increase the liabilities or immunities as they feel so i.e., they can increase the responsibilities and waive the immunity or if they feel they can increase the immunity and waive the responsibility. The agreement made should be legally valid and thus possess legal effect. In short, any carrier or ship is not exempted from entering into agreement they has to enter in agreement for safety purpose which will include condition of goods, reservation or waiving of responsibilities and immunities, handling of goods with proper care, loss or any damages.

To escape liability, the burden of proof lies on the carrier. The correct view on the law of onus is set out in *Asiatic Steam Navigation Co. Ltd. v Jethalal Dharamshi* [40]where the court observed that if the shipper proves that the goods have not been delivered or damaged after shipment during the voyage and while the goods were in charge of custody of the carrier, the onus shifts on the carrier to bring the cause of damage within the exceptions provided in Article IV of the Carriage of Goods by Sea Act, 1925, specially paragraph 2 thereof. If the shipper then wants to defeat the carrier's defence of excepted risks under Article IV by showing and proving negligence, then the onus shifts on to the shipper to prove such negligence

Thus, main purpose for lading the Bill by the Legislature so that rules which are mentioned in act will bring uniformity and stability and importantly assure that goods that are loaded will be taken to the given point carefully and in proper manner which guarded with rules i.e., with legal foundation.

The Indian COGSA is applicable to outward cargo (i.e., ships carrying goods from Indian ports to foreign ports or between ports in India) and does not apply to inward cargo (i.e., ships carrying goods from foreign ports to Indian ports). In the case of *Shipping Corporation of India Ltd v. Bharat Earth Movers Ltd.,*[41] the Supreme Court of India had to determine whether the Indian COGSA or the Japanese Carriage of Goods by Sea Act, 1992 (the

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[39] The East and West Steamship v. S. K. Ramalingam Chettiar, AIR 1960 SC 1058
[40] AIR 1959 Cal 479
[41] (2008) 2 SCC 79

Japanese COGSA) applied in a case involving goods carried from Japan to India. The Court held that the Indian COGSA did not apply to inward shipments and chose to apply the Japanese COGSA. Indian courts have allowed carriers to take defences enumerated under Article IV of the Hague Rules (e.g., fire).[42] The limitation period under the Indian COGSA is one year, unlike the general limitation period of three years provided under the Limitation Act 1963. The Multimodal Transport Act, 1993 applies to multimodal transportation of cargo from any place in India to a place outside India using two or more modes of transport.

The Madras High Court in the case of *MT Titan Vision v. 3F Industries Ltd*.[43] and the Gujarat High Court in the case of *MG Forest Pte Ltd. v. MV Project Workship,*[44] in their interpretation of Section 1 of the Indian Bills of Lading Act 1856, held that only a named 'consignee' or 'endorsee' would have the right in India to initiate a cargo claim against the carrier under the bill of lading contract. In these circumstances, it can be argued that the consignee 'assumes only those rights and liabilities created by the contract of carriage that concern the carriage and delivery of the goods, and the payment therefor' so that, for example, the consignee would not be liable for the consequences of the shipment of dangerous cargo. To incorporate an arbitration or dispute resolution clause, the bill of lading will be required to specify that the arbitration or dispute resolution clause is incorporated.

MULTI MODAL TRANSPORTATION OF GOODS ACT, 1993

With the changing economic scenario, factors such as globalisation of markets, international economic integration, and removal of barriers to business and trade and increased competition have enhanced the need of transportation. It is one of the most important infrastructure requirements, which is essential for the expansion of opportunities and plays an important role in making or breaking the competitive positioning. The cargo industry is still an expanding market.

The need for a comprehensive logistics systems in transportation, communications and information sector, continues to grow. Freight forwarding services alone are no longer sufficient, special deals are to be initiated on regular intervals to lure the customers to maintain them on permanent status, especially to cater to the increasing needs of seasonal vendors. Therefore, the cargo market demands a global solution and network linking all four modes of transportation i.e. (a) Air (b) Road (c) Rail (d) Sea.

The combination of these modes is defined as `multimodal transport system' A worldwide network linking airlines, roadways, railways and shipping lines in one chain with a motive of better quality of service to customers with the most economical costing and dependable

[42] Collis Line Private Ltd. v. New India Assurance Co. Ltd., AIR 1982 Ker 127
[43] (2014) 2 MLJ 154
[44] Misc. Civil Application No. 187 of 2003 in Admiralty Suit No. 14 of 2003

schedule. Multimodal transportation is the movement of cargo from the point of origin to the final destination, by using two or more modes of transport. In its essence Multi Modal Transportation of goods means transportation of cargo from the premises of the shipper to those of the consignee, by more than one mode of transportation, under a single contract which has its evidence in form of a single multimodal transport contract.

In India Multi-Modal Transportation of Goods is regulated by, Multi-modal transportation of Goods act of 1993, which stands amended by, the Multi-modal transportation of goods act of, 2000. Multimodal Transportation of Goods Act, 1993 The Multimodal Transportation of Goods Act, 1993 was introduced to facilitate the exporters and give them a sense of security in transporting their goods. Multi-modal transportation reduces logistics costs of exporter and makes products more competitive in the international market. The concept of door-to-door delivery, which is Multimodal Transportation is all about, is catching up fast in international trade. Reduction of logistics costs is one of the important aspects of Multimodal Transportation, thereby reducing the overall cost to the exporter and making his products more competitive in the international market. It is in this context that the Government of India thought it necessary to codify the rules and regulations governing Multimodal Transportation and enacted the Multimodal Transportation of Goods Act, 1993 based on the UNCTAD/ICC (United Nations Council for Trade and Development/ International Council for Commerce) rules which have gained widespread acceptance.

The Multimodal Transportation Act lays down the standard terms and conditions governing this activity. Under the provision of the Act only those companies who are registered by the competent authority which has been notified to be the Director General of Shipping, can carry out Multimodal Transportation. This requirement of registration has been imposed by the government to ensure that only such companies which have the necessary expertise infrastructure and financial capability are allowed to undertake Multimodal Transportation so that the interests of shippers are fully protected.

The Multimodal Transport of Goods Act, 1993 is divided into five chapters under the heads (1) Preliminary aspects (2) Regulation of Multimodal transportation (3) Multimodal Transport Document (4) Responsibilities and liabilities of the Multimodal Transport Operator (5) Miscellaneous aspects. A schedule is also attached to the Act which brings in certain amendments to (1) The Carriers Act,1865 (2) The Indian Carriage of Goods by Sea Act, 1925 (3) The Sale of Goods Act, 1930. ‘Multimodal transportation’ as defined by Section 2(k) of the Act means carriage of goods by two or more modes of transport from the place of acceptance of the goods in India to a place of delivery of the goods outside India. So a transport to be a multimodal transport, 3 conditions has to be satisfied: (1) the goods are to be carried by two or more modes of transport (2) the place of acceptance of the goods should be in India.(3) the place of delivery of the goods should be outside India. Section 2(j) precisely defines the different modes of transport sought after by the Act. They include carriage of goods: 1) by road 2) by air 3) by rail 4) by inland waterways, or 4) by sea. As per the MMTG Act three categories of companies are eligible to be registered as Multimodal transport operators (MTO): They are

a. Shipping Companies
b. Freight Forwarding Companies
c. Companies which do not fall in either of the above two categories.

In the case of Shipping Companies (which own and operate vessels) as well as Freight Forwarding Companies it must have a minimum annual turnover of Rs 50 Lakh, during the immediately preceding financial year or must have an annual average turnover of Rs 50 Lakh, during the preceding three financial years. However the same needs to be certified by a chartered accountant. In the case of a company falling under third category above, the Subscribed share Capital of the company should be Rs 50 lakh or more or aggregate balance in its capital account or that in the capital account of its partners or proprietor should not be less than Rs. 50 Lakhs. In addition the applicant company should have offices/agents/representative in at least two other countries.

Objective of the Act:

The Act aims to provide for the regulation of the multimodal transportation of goods, from any place in India to a place outside India, on the basis of a multimodal transport contract and for matters connected therewith or incidental thereto.

Registration for Multi Modal Transportation :

No person shall carry on or commence the business of Multimodal transportation unless he is registered under this Act; Provided that a person carrying on the business of multimodal transportation immediately before the commencement of this Act, may continue to do so for a period of three months from such commencement; and if he has made an application for registration within the said period, till the disposal of such application. Such a requirement is mandatory, thus in absence of compliance with the requirements of registration, a non-registered multi-modal transport operator would not be permitted to carry on the business of multi-modal transportation. Section-3, 4, 5&6 of Multi-Modal transportation of goods act deal with the law regulating various aspects such as registration, cancellation and appeal against such registration or cancellation of registration of multi-modal transport operator. Any person may apply for registration in the prescribed form accompanied by a fee of ten thousand rupees to the competent authority to carry on or commence the business of multimodal transportation. On receipt of the application, the competent authority shall satisfy that the applicant fulfills the following conditions, namely and on being so satisfied, register the applicant as a multimodal transport operator and grant a certificate to it to carry on or commence the business of multimodal transportation:-

1. (i) that the applicant is a company, firm or proprietary concern, engaged in the business of Shipping, or freight forwarding in India or abroad with a minimum annual turnover of Rs.50Lkhs rupees during the immediately preceding financial year or an average annual turnover of Rs. 50 Lakhs rupees during the preceding three financial years as certified by a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949;

   (ii) that if the applicant is a company, firm or proprietary concern other than a company, firm or proprietary concern specified in sub-clause (i), the subscribed share capital of such company or the aggregate balance in the capital account of the partners of the firm, or the capital of the proprietor is not less than fifty lakh rupees; and

2. That the applicant has offices or agents or representatives in not less than two other countries, any applicant who is not a resident of India and who is not engaged in the business of shipping shall not be granted registration unless he has established a place of business in India. In respect of any applicant who is not a resident of India, the turnover may be certified by any authority competent to certify the accounts of a company in that country. A Registration certificate granted shall be valid for a period of three years and may be renewed from time to time for a further period of three years at a time.

Renewal Of Certificate:

An application for renewal shall be made in such form as may be prescribed and shall be accompanied by such amount of fees as may be notified by the Central Government, provided that such fees shall not be less than rupees ten Thousand and shall not exceed rupees twenty thousand. The competent authority shall renew the registration certificate if the applicant continues to fulfill the conditions as laid down at the time of registration.

Appeal

Section-6, of Multi-modal transportation of goods act, 1993 provides for provision of appeal against a refusal by the competent authority to (a) Grant or renew registration, or

(b) On cancellation of registration An appeal against refusal by the competent authority to grant, renew or cancel registration lies with the Central Government.

Generally an appeal preferred after the expiry of the prescribed period shall not be admitted, but where the appellant satisfies the central government that he has sufficient cause, for not preferring the appeal within the prescribed period, his appeal may be preferred even after the expiry of such prescribed period. All Appeals should be made in the prescribed form and on the payment of the prescribed fee. All Appeals shall be accompanied by a copy of order, against which such an appeal has been preferred. Where the central government receives an application for appeal, it shall after giving parties a reasonable opportunity of being heard, & after making such inquiry as the central government deems proper, make such order as it deems fit.

Multi Modal Transport Operator (MTO):

"multimodal transport operator" means any person who-- (i) concludes a multimodal transport contract on his own behalf or through another person acting on his behalf; (ii) acts as principal, and not as an agent either of the consignor, or consignee or of the carrier participating in the multimodal transportation, and who assumes responsibility for the performance of the said contract;

Responsibilities and Liabilities of the Multimodal Transport Operator Basis of liability of multimodal transport operator:

The multimodal transport operator shall be liable for loss resulting from- (a) any loss of, or damage to the consignment; (b) delay in delivery of the consignment and (c) any consequential loss or damage arising from such delay, However a multi-modal transporter shall be liable only in instances where such loss, damage or delay in delivery of consignment took place at a time when the consignment was in the charge of such multi-modal transport operator. The multimodal transport operator shall not be liable if he proves that no fault or neglect on his part or that of his servants or agents had caused or contributed to such loss, damage or delay in delivery: Moreover, the multimodal transport operator shall not be liable for loss or damage arising out of delay in delivery including any consequential loss or damage arising from such delay unless the consignor had made a declaration of interest in timely delivery which has been accepted by the multimodal transport operator.

"Delay in delivery" shall be deemed to occur when the consignment has not been delivered within the time expressly agreed upon or, in the absence of such agreement, within a reasonable time required by a diligent multimodal transport operator, having regard to the circumstances of the case, to effect the delivery of the consignment.

If the consignment has not been delivered within ninety consecutive days following the date of delivery expressly agreed upon or the reasonable time (required by a diligent multi-modal transport operator, having regard to the circumstances of the case), the claimant may treat the consignment as lost.

Limits of liability when the nature & value of the consignment have not been declared & stage of transport where loss or damage occurred is not known. Where a multimodal transport operator becomes liable for any loss of, or damage to, any consignment, the nature and value where of have not been declared by the consignor before such consignment has been taken in charge by the multimodal transport operator and the stage of transport at which such loss of damage occurred is not known, then the liability of the multimodal transport operator to pay compensation shall not exceed two Special Drawing Rights per kilogram of the gross weight of the consignment lost or damaged or 666.67 Special Drawing Rights per package or unit lost or Damaged, whichever is higher.

Where a container, pallet or similar article is stuffed with more than one package or units, the packages or units enumerated in the multimodal transport document, as packed in such container, pallet or similar article of transport shall be deemed as packages or units. In Instances where the multi-modal transport contract does not include carriage of goods by Sea or Inland water ways, then in such a scenario, liability of a multimodal transport operator shall be limited to an amount not exceeding a maximum of 8.33 SDR (Special Drawing Rights per Kilogram of gross weight of goods lost or damaged.

Limits of liability when the nature & value of the consignment have not been declared and stage of transport where loss or damage occurred is known. Where a multimodal transport operator becomes liable for any loss of, or damage to, any consignment, the nature and value whereof have not been declared by the consignor before such consignment has been taken in charge by the multimodal transport operator and the stage of transport at which such loss or damage occurred is known, then the limit of the liability of the multimodal transport operator for such loss of damage shall be determined in accordance with the provisions of the relevant law applicable in relation to the mode of transport during the course of which the loss or damage occurred and any stipulation in the multimodal transport contract to the contrary shall be void and unenforceable. Provided that the multimodal transport operator shall not be liable for any loss, damage or delay in delivery due to a cause for which the carrier is exempted from liability in accordance with the applicable law".

Liability of the multimodal transport operator in case of delay in delivery of goods under certain circumstances:

Section 16 of the multi modal transportation of goods act, deals with the liability of multi-modal transport operator, in case of, delay in delivery of goods under certain circumstances. Instances where delay in delivery of consignment occurs, due to: Consignment not having been delivered within the time expressly agreed upon or in absence of such agreement

,within such reasonable time as is required by a diligent multi-modal transport operator having regard to the circumstances of the case, to effect the delivery of the consignment or any consequential loss or damage that arises from such delay, then in such a situation liability of such a multi-modal transport operator shall be limited to the freight payable for the consignment so delayed. Note: Where there is delay in delivery the liability of the multi-modal transport operator shall be limited to freight payable for the consignment so delayed.

Assessment of compensation:

Assessment of compensation for loss of or damage to, the consignment shall be made with reference to the value of such consignment at the place where, and the time at which, such consignment is delivered to the consignee or at the place and time when, in accordance with the multimodal transport contract, it should have been delivered. The value of the consignment shall be determined according to the current commodity exchange price, or, if there is no such price, according to the current market price, or, if the current market price is not ascertainable, with reference to the normal value of a consignment of the same kind and quantity.

Loss of right of multimodal transport operator to limit liability:

The multimodal transport operator shall not be entitled to the benefit of limitation of liability under any of the provisions of this Chapter if it is proved that the loss, damage or delay in delivery of consignment resulted from an act or omission of the multimodal transport operator with intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result. Limit of liability of multimodal transport operator for total loss of goods. The multimodal transport operator shall not, in any case, be liable for an amount greater than the liability for total loss of goods for which a person will be entitled to make a claim against him under the provisions of this Act. Notice loss of or damage of goods. Generally the delivery of consignment to the consignee by multi-modal transport operator shall be treated as a prima –facie evidence of delivery of goods of a description as have been described in a multi-modal transport document. On any loss or damage being noticed in the consignment delivered by a multimodal transport operator , it shall be necessary for such a consignee(receiver of goods) to give a written notice of the general nature of loss or damage to the goods. However such notice must be given in written & that too at the very instance of handing over of such goods to the consignee.

The responsibility of the multimodal transport operator for the goods under this Act shall cover the period from the time he has taken the goods in his charge to the time of their delivery.

Multi Modal Transport Document (MTD) Increased containerization has resulted in Multimodal Transport of Goods under a single transport document covering all modes of transport from the exporters premises to the consignee's premises such Multimodal Transportation under a single document has a number of advantages like reduction in overall transport cost reduction in delays, smoother and quicker movement of and improvement in quality of services. "Multimodal transport document" means a negotiable or non-negotiable document evidencing a multimodal transport contract and which can be replaced by electronic data interchange messages permitted by applicable law; Issue of multimodal transport document.

Section -7 of the Multi Modal Transportation of Goods Act deals with the issuance of a Multi-Modal Transport Document. Where the consignor and the multimodal transport operator have entered into a contract for the multimodal transportation and the multimodal transport operator has taken charge of the goods, he shall, at the option of the consignor, issue a negotiable or non-negotiable multimodal transport document. However, the multimodal transport operator shall issue the multimodal transport document only after obtaining, and during the subsistence of a valid insurance cover. The multimodal transport document shall be signed by the multimodal transport operator or by a person duly authorised by him.

Multimodal transport document to be regarded as document of title:

Every consignee named in the negotiable or non-negotiable multimodal transport document and every endorsee of such document, as the case may be, to whom the property in the goods mentioned therein shall pass, upon or by reason of such consignment or endorsement, shall have all the rights and liabilities of the consignor. Nothing contained in the negotiable or non-negotiable multimodal transport document shall prejudice or affect the right of the multimodal transport operator to claim freight from the consignor or enforce any liability of the consignee or endorsee by reason of his being such consignee or endorsee.

Ingredients of the Multi Modal Transport Document:

The multimodal transport document shall contain the following particulars, namely:-

a) general information• The general nature of the goods, • the leading marks necessary for identification of the goods, • The character of the goods (including dangerous goods), • number of packages or units and • The gross weight and quantity of the goods as declared by the consignor;

b) Apparent condition of the goods;

c) The name and principal place of business of the multimodal transport operator;

d) The name of the consignor;

e) The name of the consignee, if specified by the consignor;

f) The place and date of taking charge of the goods by the multimodal transport operator; (g) the place of delivery of the goods;

g) The date or the period of delivery of the goods by the multimodal transport operator as expressly agreed upon between the consignor and the multimodal transport operator;

h) Whether it is negotiable or non-negotiable;

i) The place and date of its issue;

j) Freight payable by the consignor or the consignee, as the case may be, to be mentioned only if expressly agreed by both the consignor and the consignee;

k) The signature of the multimodal transport operator or of a person duly authorised by him;

l) The intended journey route, modes of transport and places of transhipment, if known at the time of its issue;

m) Terms of shipment and a statement that the document has been issued subject to and in accordance with this Act; and

n) Any other particular which the parties may agree to insert in the document, if any such particular is not inconsistent with any law for the time being in force.

However, the absence of any of the particulars listed above shall not affect the legal character of the multimodal transport document

Reservation in the multimodal transport document:

Where the multimodal transport operator or a person acting on his behalf knows, or has reasonable grounds to suspect, that the particulars furnished by the consignor in the multimodal transport document do not accurately represent the goods actually taken in charge, or if he has no reasonable means of checking such particulars, the multimodal transport operator or a person acting on his behalf shall insert in the multimodal transport document a reservation specifying the inaccuracies, if any, the grounds of suspicion or the absence of reasonable means of checking the particulars.

Where the multimodal transport operator or a person acting on his behalf fails to insert the reservation in the multimodal transport document relating to the apparent condition of the goods, he shall be deemed to have accepted the goods in apparent good condition.

Evidentiary effect of the multimodal transport document:

In all cases except those in which a reservation has been made in multi-modal transport document (a) the multimodal transport document shall be prima facie evidence of the fact that the multimodal transport operator has taken charge of the goods as described in the document; and (b) no proof to the contrary by the multimodal transport operator shall be admissible if the multimodal transport document is issued in negotiable form and has been transmitted to the consignee or transferred by the consignee to a third party, if the consignee or the third party has acted in good faith relying on the description of the goods in the document.[45]

Major port Trust Act, 1963:

India has an extensive coastline of 7517 km, excluding the Andaman & Nicobar Islands. Indian ports handle around ninety percent of the total volume of country's trade and about seventy percent in terms of value. There are twelve major ports and two hundred minor and intermediate ports spread across nine (coastal) maritime States in India. Ports are under the Concurrent List of the Indian Constitution. The legal framework governing the port sector comprises the Indian Ports Act, 1908 and the MPTA.

Major Ports under Central jurisdiction are governed by policy and directives of Ministry of Shipping, Government of India. Minor Ports under State's jurisdiction are governed by policy and directives of respective State Government's nodal departments/ agencies. The MPTA, an Act that makes provision for the constitution of port authorities for certain major ports in India and to vest administration, control and management of such ports in such authorities, contains various provisions.

Chapter II of the MPTA for e.g., contains provisions relating to the constitution of board of trustees and committees. The staff and powers of the board are laid down in Chapter III and V of the Act. The Tariff Authority for Major Ports finds its place in Chapter V-A of the Act while the imposition and recovery of rates at ports in Chapter VI of the Act. The board constituted under the MPTA has power to borrow for e.g., loans on short term bills under the Act. However, the board is under the supervision and control of the Central Government. Every person employed by the authority under the MPTA is considered as a public servant and may face penalty for contravention of various provisions of the Act. The Act also imposes penalty for setting up wharves, quays, etc., without permission, penalty for evading rates, and other offences.

Moreover, Chapter XI of the MPTA contains miscellaneous provisions i.e., limitation of proceedings in respect of things done under the Act, protection of acts done in good faith, power of Central Government to make rules, general power of board to make regulations,

[45] http://www.caaa.in/Image/Carriage%20Laws%20and%20Multi-modal%20transport%20of%20Goods.pdf

saving of right of Central Government and municipalities to use wharves, etc., for collecting duties and of power of customs officers, application of certain provisions of the Act to aircraft, etc. Under the MPTA, each major port is governed by a board of trustees appointed by the GOI. Their composition gives dominance to public enterprises and Government Departments. The powers of the trustees are limited and they are bound by directions on policy matters and orders from the GOI.

Though from the above elucidation it appears the MPTA is a comprehensive Act for regulating and management of ports in India, it is not free from shortcomings. Chapter VI of the MPTA provides that if goods landed into the ports' custody are not cleared, the board is entitled to sell such goods or so much thereof as is necessary, *interalia*, for recovery of the rates and rents payable to the port trusts. The said provision also provides for the procedure to be adopted by the port trusts for this purpose. Though the said Chapter empowers the board to sell the cargo which remains uncleared in excess of two months from the date of arrival at the port, the port trusts take their own time and follow their own procedures which are fraught with delays and laches in selling such uncleared cargo.

There are of course several reasons for such delays i.e., the ports list the cargo for auction sale and when the port does not receive the minimum bids, the cargo is not sold and put up for re-auction and it is eventually sold for only a minimum price. But, the ports continue to charge ground rent, demurrage, etc., throughout these periods and eventually, after the cargo is sold, the sale proceeds are utilised first, to defray the cost of sale; thereafter, the customs duty payable on the cargo; and the balance, if any, is used towards recovery of the port charges accrued on the cargo. In the event of any deficit therein, the ports file suits for recovery of the deficit, against the consignee/receivers as also against the agents of the line. The legal basis of Tariff Authority for Major Ports can be found in the Chapter V-A of the MPTA.

The Tariff Authority for Major Ports is the economic regulator (solely) for the major ports and is charged with fixing and revising tariffs including tariffs of privately owned terminals. It also has powers to control the efficiency of port and terminal services in the major ports. These powers, however, have been rarely used. Besides, Tariff Authority for Major Ports does not have the power to improve efficiencies or lay down quality of service standards in port operations.

Despite being a regulatory body, the Tariff Authority for Major Ports has limited autonomy. Being largely under the Central Government's control, its lack of power to regulate performances and select private parties for contracts and other services implies regulation limitations. The Tariff Authority for Major Ports has also not been able to enforce its own orders and call for data from port operators and it cannot compel any party to share information. It has also not been granted necessary financial autonomy.

The Tariff Authority for Major Ports has no role to play in opening up the port sector for private investment nor does it have power to enforce its own tariff rulings or penalize those found violating the terms and conditions governing tariffs. The MPTA provides that while fixing tariffs the conditions under which the services to be rendered can be prescribed, however, owing to the fact that each port has its own tariff schedules and scales, the uniformity in prescribing the conditions of service cannot be achieved. Moreover, the Tariff Authority for Major Ports's mandate is restricted to tariffs for port services at the major ports, but the Government retains the right to invalidate Tariff Authority for Major Ports's tariff rulings.

Apart from the regulatory limitations of the Tariff Authority for Major Ports, there are problems in regulatory framework of the Act itself. There has been no attempt to encourage competition by introducing two or more service providers. Individual port trusts formulate their own policies, so there is an absence of uniformity in regulations. Under the present regulation regime of major ports, investors and users do not have recourse to an independent regulator on matters such as dispute resolution, performance standards, consumer protection and competition; and therefore the need for a comprehensive regulatory regime for major ports.

There should therefore be established an independent Major Ports Regulatory Authority with powers of a civil Court, power to call for information, investigate, and inspect the books of account or other documents of any port authority or private operator, etc. Equally, in order to enhance maritime trade and competitiveness of the ports with the international ports and the emerging private ports in India, the Ministry concerned needs to come up with proper rules and regulations especially relating to the assessment of dredging requirements based on long-term planning, adequate night navigation facilities, rapid mechanization of handling facilities, proper and effective implementation of deepening and connectivity projects, correct reporting of berth occupancy as well as preberthing detention, etc.

Due to the above substantial loopholes existing in the MPTA, the Ministry of Shipping recently tried to prepare a draft of a proposed new ports Act amalgamating the existing two statutes (i.e., the Indian Ports Act, 1908 and MPTA) governing the port sector into a single piece of legislation. The merger of the two Acts was mainly meant to simplify and streamline ports regulation in India. However, the amendment is yet to be passed by Parliament.

<u>The Inland Vessels Act, 1917:</u>

With the passage of time, operation of power vessels in the inland waters of the country has undergone considerable change with the result that the provisions contained in the Indian Steam-vessels Act. 1917, are not found to be adequate effectively to regulate the operation of the inland vessels. The principal Act was enacted when steam-vessels were in vogue. With the advent of oil-fired vessels, steam-vessels have become scare and even the short title to the

Act would be misleading in the present context. Accordingly it is proposed to modify the short title of the Act as "Inland Vessels Act" and to substitute the expression "steam-vessel" by the expression "mechanically propelled vessel. At present there is no provision in the Act enabling the State Government to take action to clear navigable channels blocked by wreck or other obstruction or by the grounding of an overdrafted vessel though such provisions do find a place in the Indian Ports Act, 1908 (15 of 1908). It is proposed to empower the State Government to clear up the navigable channels so blocked or obstructed. Compensation to passengers travelling in inland vessels involved in accidents is a public necessity. It is, therefore. proposed to provide for the obligatory insurance of passengers against risk and the burden is cast on licensed carriers by adopting provisions analogous to those applicable in the case of motor vehicles accidents. In view of the danger involved in carrying passengers or cargo or both in excess of what is set forth in the certificate of survey granted to a vessel, it is considered necessary to enhance the penalty for exceeding the set limits. In case of desertion, willful absence from duty, negligence, etc. by personnel employed in inland mechanically propelled vessels there are no provisions for the taking of disciplinary proceedings.

This Act comprises of eight chapters and 75 articles. chapter I pertains to preliminary sections which contains title and various definitions such as inland waters, voyage, tidal waters, inland mechanically propelled vessels etc. this Act defines Inland waters to comprise of any canal, river, lake or other navigable water within a state, any area of any tidal water deemed to be inland waters by the Central Government.

Chapter II discusses about survey of Inland (Mechanically Propelled Vessels). Section 3 of the Act says that Inland mechanically propelled vessels shall not proceed on voyage or to be used for service without certificate of survey. Section 4 talks about the appointment of the surveyors and places of survey. Powers of the surveys are laid down by the Act under section 5. Section 8 tells us that the owner or master of an inland or mechanically propelled vessel to whom a declaration is given under section 7, has to send the declaration of such officer within 14 days of receiving it, as the State Government by notification in the official Gazette, appoint in his behalf. In case of failure to send such notification a sum not exceeding five rupees shall be forfeited by him for every day during which such declaration is delayed. The powers of the state government to grant or authorize the grant of certificates of survey are laid down under section 9 of the Act. Renewal and cancellation of the certificates are discussed in section 12 and 13 respectively. Section 19 extensively discusses the power of the government to make rules as to survey.

Chapter IIA discusses about the registration of island in details such as places of registration (19E), grant of certificate of registration (19F), change of Residence or place of business (19L), prohibition (19M) and suspension of the certificates of registration (19N). 19P lays down that in case of refusal to register any inland or suspending a certificate of registration or cancellation, the aggrieved party can appeal against such order within 30 days of receiving such notice.

Chapter III discusses about Masters, Engineers or Inland. It entails provisions relating grant of masters, serangs, engineers and engine drivers, certificate of competency. License (22A). Section 24 lays down the particular cases under which certificate or licenses are granted. Section 26 says that certificates are to be held by master and engineer of vessel of between forty and hundred horsepower. Power for State Government to require master or engineer to hold certificate granted under Act, in addition to other certificate are set out in section 28 of the Act., whereas section 29 and section 30 discuss the power for State Government to make rules as to grant of certificates of competency and power for State Government to make rules as to grant of certificates of service respectively. State governments can also make rules to regulate the granting of licenses under section 22A and also can make rules with regards to the fees to be paid for such licenses and the forms in which such licenses are to be framed and the authority by whom and the manner in which copies are to be kept and recorded under section 23.

Chapter IV talks about the investigations into casulities. Reports of Casualities are to be reported to the nearest police station under section 32 of the Act. The State Government is entitled to appoint a special Court and direct the Court to make investigation into the facts of any case reported under section 32. Section 33 lays down the power of the Court of investigation to inquire into changes of incompetency or misconduct. section 35 gives the State Government to direct investigation otherwise if it has any grounds for believing that there was misconduct or incompetency on part of any master, engineer or engine driver or any other person holding a certificate granted to him under section 33.

Chapter VI deals with protection of and carriage of passengers in inland which contains provisions relating to power for State Government to declare dangerous goods (section 49) and carriage of dangerous goods where no person is allowed to take any dangerous goods with him on boarding inland without intimating of its nature to the owner under section 50 of this Act. Section 51 vests the power on the owner or master of the inland to throw any dangerous goods that are taken on board in contravention to section 50 along with any package in which they are contained. The state Government has been given the power to make rules for the protection of inland (section 52), and the passengers (section 54). Section 54E prohibits the discharge of oil mixture into the Inland water. The Central Government is also empowered to make rules for prevention and control of pollution (section 54E)

The next chapter (Chapter VII) deals with the penalties and legal proceedings. Section 55 provides for penalty for making voyage without certificate of survey. Penalty for neglect to affix certificate of survey in inland mechanically propelled and penalty for neglect or refusal to deliver up or surrender certificates of survey or registration are provided in section 56 and section 57 respectively. Penalty for serving or engaging a person to serve as master or engineer without certificate is laid down in section 58 of the Act. Section 62 says that any person who in violation of section 50 takes on board any inland, any dangerous goods, or delivers or tenders any such goods for carriage on any inland, he shall be punishable with fine which may extend to two hundred rupees and the goods shall be forfeited to the government. The jurisdiction of the magistrate and the place of trial is provided under section 65 and 66 respectively.

The last chapter (chapter VIII) pertains to the supplemental chapter. Section 67 gives power for the State Government to take General rules and also the power to modify application of Act to certain inland and mechanically propelled vessels. Under section 74 of the Act provides publication of rules and section 75 provides for repeal.

MARITIME ZONES OF INDIA (REGULATION OF FISHERY BY FOREIGN VESSELS) ACT, 1981:

The MZIA is an Act that seeks to provide for the regulation of fishing by foreign vessels in certain maritime zones of India and for matters connected therewith. The Act explicitly provides that no foreign vessel can be used for fishing within any maritime zone of India unless it has been granted a licence and a permit by the Central Government under the provisions of the MZIA.

Subsequent to the enactment of the Act, the MZIA was enacted to curb poaching activities by foreign fishing vessels in the Indian exclusive economic zones. In other words, the MZIA enacted to protect the exclusive economic zones from exploitation of living resources by Indians and/or foreign nationals aboard a foreign vessel, which does not hold a valid license or permit issued under the MZIA.

Chapter II of MZIA overtly makes provision for granting of licence to owners of the foreign vessels. The chapter states that the owner of a foreign vessel or any other person not being in either case any person to whom any of the descriptions specifications in sub-items (1) to (3) of item (i) of subclause (II) of clause (e) of Section 2 of MZIA any maritime zone of India may, make an application to the Central Government for the grant of a licence in such form and to be accompanied by such fees as may be prescribed. However, no licences can be granted unless the Central Government, having regard to such matter as may be prescribed in the public interest and after making such inquiry in respect of such other matters as may be relevant is satisfied that the licence may be granted. A licence granted must be in such form as may be prescribed and shall be valid for such areas, for such period, for such method of fishing and for such purposes as may be specified therein and may be renewed from time to time subject to such conditions and restrictions as may be prescribed by the Central Government and to such additional conditions and restrictions as may be specified therein.

Under Chapter II of the MZIA, the Central Government is empowered to suspend or cancel, after making such inquiry as is necessary, the licence granted to a foreign vessel if there is any reasonable cause to believe that the holder of any licence or permit has made any statement in, or in relation to, any application for the grant or renewal of such licence or permit which is incorrect or false in material particulars rule or order made thereunder or of the provisions of any licence or permit or any conditions of restrictions specified therein. Every holder of a licence or permit which is suspended or cancelled is mandated to immediately stop using the foreign fishing vessel and surrender such licence or permit, as the case may be, to the Central Government.

Furthermore, the MZIA specifically empowers authorized Government officials, navy and police to implement and enforce the provisions of the Act and the specific power of apprehension, arrest and seizure are vested with the local police officials in the coastal States.

Moreover, MZIA does not require prior sanction of the Government to initiate prosecutions for the various offences. The violation of the provisions in any area within the territorial waters of India is followed by not only confiscation of the vessels involved but also a penalty of imprisonment for a maximum term of three years and a maximum fine of rupees fifteen Lakhs. If the contravention takes place within the exclusive economic zone of India, it shall be punishable with fine not exceeding rupees ten lakhs. While offences related to poaching are dealt with under the MZIA and smuggling under the Customs Act, there are offences such as, unauthorized research activity, acts aimed at collecting information to the prejudice of the security of India, unauthorized operation of a vessel in the offshore development area, etc., which have not been covered under MZIA and/or any other Statute. Moreover, the operation of deep sea fishing vessels with foreign crew have made the Indian coastal regions vulnerable to nefarious activities, which further emphasizes the need to revise the MZIA to make it more stronger, efficient and effective.

All in all, even though there is a legislation regulating fishing by foreign vessels, there is no such equivalent law for Indian flag vessels. Besides, no other cohesive national legislation relevant for fisheries has been presented in the official legislation list of the Indian Ministry of Law and Justice.

Territorial Waters, Continental Shelf, Exclusive Economic Zones And Maritime Zones Act, 1976:

For several decades, India's territorial waters and continental shelf were governed by proclamations issued by the President of India. In 1976, consequent upon the third United Nations Convention on the Law of the Sea, held in Geneva, the TWCS Act was enacted in India. Accordingly, land, minerals and other resources, underlying the ocean, within the territorial waters, the continental shelf or the exclusive economic zone became the exclusive property of the Union of India. The TWCS Act categorically prescribes the limits of the territorial waters, continental shelf, exclusive economic zone and other maritime zones of India. It also provides the legal framework specifying the nature, scope and extent of India's rights, jurisdiction and control of various maritime zones; the maritime boundaries between India and its neighboring countries; and the exploitation, exploration, conservation and management of natural resources within the maritime zones.

A close scrutiny of the Act also reveals that the offences mentioned therein are generalized and the Act overtly provides that whoever contravenes any provisions of the Act or of any notification there under is, without prejudice to other action which may be taken against such person under any other provision of the Act or of any other enactment, be punishable with imprisonment which may extend to three years or with fine, or with both.

Acting as a deterrent is the punishment awarded to persons found guilty of contravening the provisions of the TWCS Act, which is imprisonment up to three years or unlimited fine or both. However, the Act necessitates the requirement of previous sanction of Central Government before instituting prosecution against such persons without providing a time-line within which the approval is granted or rejected, which has led the maritime enforcement agencies and the police to book the apprehended vessels under various provisions of the Indian Penal Code, the Arms Act, the Customs Act, etc.

Further, the Act empowers the Government to make rules by notification to carry out the purposes of this Act in general and for delegating specific power for inter-alia regulating the conduct of a person in the territorial waters, contiguous zone, exclusive economic zone or any other maritime zone of India.

It is pertinent to note that till date no rules have been framed by the Government under the Act. Accordingly, following are the suggestions towards addressing the enforcement lacunae in the Act:

- the Government should amend Section 14 of the TWCS Act so as to provide the Indian navy and Indian coast guard the necessary legislative support by way of authorization to stop, board, search and seize vessels and bring them before a competent Court for detention and prosecution of offenders;

- Extend these powers to the coastal police force for enforcing the Act to have effective coastal surveillance in the near shore waters; and provide more clarity and understanding of the types of offences that affect the security of India, especially with respect to the use of territorial waters by foreign ships and the exclusive economic zone

Recent developments in Kerala owing to killing of Indian fishermen by armed marines boarded on Italian Vessel Enrica Lexie has left open multiple legal questions. The primary question was whether the marines accused of murder, be tried in Indian Courts as per Indian law, or whether Italian law be applicable being the law of flag State? Even though the question seems to be settled as the incident happened in the contiguous zone wherein Indian law is partially applicable so as to cover incidents of crimes giving Indian Courts jurisdiction over the matter, it is however visible that the domestic legal system is not fully prepared for such determination.

The Admiralty (Jurisdiction and Settlement of Maritime claims) Act, 2017

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (The Admiralty Act) came into force in India on the 1st April 2018. Almost six months to the day that the Act came into force, Mr V. Subramaniam (Kumar), Advocate , Venky's Chambers, 114, Maker Chambers 3, Nariman Point, Mumbai 400021, India provides the UK P&I Club with his thoughts on whether the new Act has bedded in well, what improvements this highly ambitious Act has brought about and what issues remain outstanding. The Admiralty Act has been a much awaited legislation to codify the rules and practices relating to enforcement of Maritime Claims and Liens, and arrests, in India, as well as to incorporate and codify the principles of International Conventions into Indian Law.

Background

The Admiralty Act repeals the archaic laws which had been applicable in India, namely the Admiralty Courts Act, 1840; Admiralty Courts Act, 1861; the Colonial Courts of Admiralty Act 1890; Colonial Court of Admiralty (India) Act, 1891 and provisions of the Letters Patent, 1865 pertaining to the Admiralty Jurisdiction of the Bombay, Calcutta and Madras High Courts.

The Admiralty jurisdiction hitherto being vested in, and exercised by the High Courts of Bombay, Madras, Calcutta, concurrently over vessels wherever they may be in the territorial waters of India, as also vested in and exercised by the High Courts of Andhra Pradesh, Gujarat & Kerala, over vessels in those states' waters, has by the Admiralty Act now been conferred upon the High Courts of all coastal states in India, including Karnataka, Telangana, and Odisha, in addition to the above mentioned High Courts, over vessels which are found within the State waters of the respective states, and consequently their High Courts. Accordingly, the concurrent jurisdiction being exercised is a thing of the past, and it would be the concerned State's High Court within whose waters the vessel should be found when the Suit is instituted that will have jurisdiction, irrespective of the place of residence or domicile of the Owner. Accordingly, an Indian vessel can also now be arrested in India for enforcement / recovery of a maritime claim.

The Admiralty Act aligns Indian laws with the International Conventions for Arrest of Ships, 1952 and 1999 as well as the International Convention on Maritime Liens, 1993; and provides for the adjudication of identified maritime claims, provision of security for such claims, arrest of vessels, and so on.

Improvements and clarifications

Previously, "vessel" / "ship" had not been defined, and by case law was understood to mean 'anything which was capable of navigation'. The Admiralty Act now defines "Vessel" in

Section 2 (1) (l), to include any ship, boat, sailing vessel or other description of vessel used or constructed for use in navigation by water, whether it is propelled or not, and includes a barge, lighter or other floating vessel, a hovercraft, an off-shore industry mobile unit, a vessel that has sunk or is stranded or abandoned and the remains of such a vessel. The Explanation to this section specifically excludes a vessel that is broken up to such an extent that it cannot be put into use for navigation, as certified by a surveyor.

This puts to rest the issue which was the subject of numerous applications pending before the Courts challenging arrests of dumb barges, offshore units etc. on the grounds that they are not "Vessels". This also puts to rest the position where a single Judge of the Bombay High Court had held that a vessel arriving India for the purposes of breaking ceases to be a vessel capable of being proceeded against and arrested in an Admiralty Suit for enforcement of a maritime claim. Until such time the vessel is beached and broken to such an extent that it is incapable of navigation as certified by a surveyor, she can be proceeded against for enforcement of maritime claims, and arrested.

Section 4 of the Admiralty Act sets out a list of Maritime Claims in respect whereof, the High Courts can exercise their Admiralty Jurisdiction. The list of Maritime Claims are similar to the Maritime Claims defined under the International Convention in relation to the Arrest of Sea-Going Ships 1952 and the International Convention on the Arrest of Ships, 1999. However, the Admiralty Act incorporates the following additional claims as Maritime Claims in relation to which a vessel can be proceeded against and arrested. They are claims related to port or harbor dues, canal, dock or light tolls, waterway charges and such like; particular average claims; claims by master or crew or their heirs/ dependents for wages, cost of repatriation or social insurance contributions; insurance premiums, mutual insurance calls; commission/ brokerage agency fees payable by vessel owner or demise charterer; environment damage claims or threat thereof; and wreck removal claims. Thus, the Act widens the Indian Admiralty Jurisdiction for vessel arrests as compared to the scope under the International Conventions.

Although the claims under the Admiralty jurisdiction is enlarged, the enforcement of the Maritime Claims by an action in rem has been narrowed down under the Admiralty Act. Arrest of vessels owned by Time Charterers and Voyage charterers in respect of Maritime claims against them is conspicuously absent from the new Act; i.e. Article 3 (2) of the 1999 Arrest Convention, does not find a place in the Admiralty Act; which gives rise to issues in this behalf and in relation to enforcements of maritime claims against time/voyage charterers in India.

Section 5(1) of the Admiralty Act inter alia provides that a vessel can be arrested only if :

i. Person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected; or

ii. The demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected; or

iii. Any other vessel in lieu of vessel above, subject to the provisions of (i) and (ii) above.

The above provision of the Admiralty Act and its divergence from the Arrest Conventions has led to questions/ issues relating to arrest of ships / sister ships for claims against time charterers, which issue is presently pending for decision before the Bombay High Court.

Section 5(2) permits sister-ship arrests. But, what a sister-ship is, would be subject to Section 5(1). Consequently, beneficially owned ship arrests, is not permissible in India.

Section 6 of the Admiralty Act also confers Admiralty Jurisdiction in personam in respect of certain Maritime claims, subject to certain restrictions as contained in Section 7. Under Section 7, for claims arising out of a collision and related claims, an in personam action can be initiated against the Defendant only if the cause of action, wholly or in part arises in India, or if the Defendant, at the time of commencement of the action actually and voluntarily resides or carries on business or personally works for gain in India.

For the first time in India, by legislation, the Admiralty Act defines 'maritime lien' under section 2(1)(g) and recognizes certain claims as Maritime Liens; and sets out their priorities in Section 9. The Admiralty Act also specifies the period of limitation for Maritime Lien, and states that the maritime lien shall stand extinguished after expiry of one year unless the vessel is arrested / seized and such arrest / seizure has led to a forced sale by the High Court. However, in respect of Maritime Liens relating to claims for wages or other employment related payments, including cost of repatriation and social insurance contributions, the limitation period is two years. The period of limitation would run continuously without any suspension or interruption, except the period during which the vessel was under arrest or seizure which time is to be excluded.

Likewise, the Admiralty Act also provides for priority of Maritime Claims in Admiralty proceedings in Section 10. Maritime Liens have the highest priority, followed by registered mortgages and charges, and thereafter all other claims. If there are more than one claim in any single category of priority, they shall rank equally and salvage claims rank in inverse order of time to when the claims accrued.

The Admiralty Act empowers the High Court to order the Plaintiff seeking an order of arrest, to provide counter security either at the time of arrest or to continue an arrest. This provision for the Plaintiff to provide security is to cover the vessel / owner in the event the arrest is held to be wrongful or unjustified or excessive security has been demanded, or provided. Presently, Plaintiffs give a written undertaking to the Court under the Admiralty Rules, to pay such sums that the Court may award as damages in case any party sustains any prejudice by the order of arrest of the vessel being obtained by the Plaintiff. Under the Admiralty Act, in addition to such written Undertaking under the Rules, Court can order the Plaintiff to furnish security (which would be a cash deposit or a Bank Guarantee in Court), which has been introduced to curtail wrongful arrests and/or demands for excessive security, which would be beneficial to vessel owners.

The High Court is empowered to auction and sell a vessel that has been abandoned by the owner within 45 days of such arrest or abandonment, which may be extended by a further period of 30 days for reasons to be recorded by the court in writing. This would obviate an indefinite wait for the vessel to be sold by the court post arrest with no one entering appearance for the vessel and/or arranging her release.

Outstanding issues and anomalies

The Act provides for Rules to be framed for the purposes of the Act, which are as yet till date to be framed. Until such times as the Rules are framed and notified in the Official Gazette, the existing Rules of the relevant High Court shall continue to be applied as appropriate.

Although the Admiralty Act is the first step towards codification of the Admiralty jurisdiction and related practices and rules followed under Indian law, the Admiralty Act has led to certain anomalies which are yet to be addressed by the Legislature or the Judiciary. One such issue is in respect of the retrospective application of the Admiralty Act under Section 17 (2) which provides that all admiralty proceedings pending in any High Court immediately before the commencement of the Admiralty Act, are to be adjudicated by such court in accordance with the provisions of the new Act. There is no savings provision in the Admiralty Act that protects proceedings initiated before the Admiralty Act came into existence on 1 April 2018.

Another issue is that by virtue of the Admiralty Act, the issue of whether a dumb barge can be arrested and whether the Court can exercise its jurisdiction over Indian vessels is put to rest. However, by operation of Section 17, all such pending applications are rendered infructuous i.e. pointless. This issue is yet to be addressed by the Courts or the Legislature.

Likewise there are other issues and teething problems. For example, some of the coastal High Courts have never exercised and/or dealt with Admiralty cases before the advent of the Admiralty Act and would have to put in place appropriate procedures for arrest etc., which is still not done as of September 2018.

Courts would be called upon to address these issues in due course in appropriate cases, which should then bring about more clarity and definitiveness to this new Act.

From the Admiralty Act, it would be noted that the same pertains only to arrest of vessels, and does not permit arrest of cargo, freight or bunkers, under the Admiralty Jurisdiction of the High Courts. Likewise, reading section 4 along with section 5 of the Act, in my view, arrest of vessels for security in pending arbitrations or proceedings filed elsewhere, is not permissible. This issue under the Admiralty Act, however, is presently being considered before the Bombay High Court, and a decision is expected in due course.

Conclusion

In conclusion, while it has only been six months since the new Admiralty Act entered into force, the Act has brought about some much needed clarification to the maritime law in India albeit that many areas of the law still remain to be clarified and procedures still need to be introduced and/ or refined. The Act is starting to achieve its main aims which are to streamline procedures, clarify and iron out uncertainties and anomalies to make the previous outdated maritime legal regime in India fit for purpose in a modern world.

<u>Jurisdiction over vessels (arrest of vessels) and persons:</u>

Courts with admiralty jurisdiction exercise their authority over both vessels within their territorial waters (jurisdiction in rem) and persons within their territory (jurisdiction in personam). The Admiralty Jurisdiction Act specifies the circumstances in which courts can exercise both these types of jurisdiction.

The Act also sets out certain procedures to be followed on the arrest or sale of vessels. The Act provides that any vessel ordered to be arrested or any proceeds of a vessel on sale under this Act will be held as security against any claim pending the final outcome of the admiralty proceeding. Further, a claimant seeking the arrest of a vessel may be required to furnish an unconditional undertaking on the terms determined by the High Court to secure the defendant from any loss or damage that may result due to such arrest (for example, if the arrest is wrongful or unjustified). The Act also provides that the High Court ordering the sale of a vessel can determine any questions relating to the title to the proceeds of the sale.

Much awaited legislation:

The Admiralty Jurisdiction Act is a much-awaited piece of legislation. It clarifies the admiralty jurisdiction of Indian courts and codifies in a single statute much of what was previously only stated in court judgments. Once the Act is brought into force, it will be a welcome reference point for courts dealing with admiralty matters. In light of the changes brought in by the Act, it would be prudent to revisit shipping documents including bills of lading, service contracts, charter party agreements, contracts of affreightment, documents related to the provision of services at various ports, etc. to ensure that these are in conformity with the new law.

Major Port Authorities Bill, 2020:

The Rajya Sabha on 9th February, 2021 passed the Major Port Authorities Bill, 2020 to repeal the Major Port Trusts Act, 1963.

The Bill seeks to provide greater autonomy, flexibility to the Major Ports in India by creating a Board of Major Port Authority for each major port and replacing the existing Port Trusts.

It was passed by the Lok Sabha on September 23, 2020, during Monsoon Session of Parliament in 2020. The Rajya Sabha cleared the Bill today by Divisional Voting with 84 out of 128 cast votes in its favour.

As per the Statement of Objects annexed to the Bill, Major Ports are facing severe competition due to development of private ports. Further, regulation of tariff in Major Ports by the Tariff Authority under the 1963 Act and their administrative control by the Central Government are some of the critical factors hindering growth and development.

The Bill thus seeks to enable Major Ports in India to compete in the evolving market conditions by providing greater autonomy.

Salient Features

Application

The Bill will apply to the major ports situated in Chennai, Cochin, Jawaharlal Nehru Port, Kandla, Kolkata, Mumbai, New Mangalore, Mormugao, Paradip, V.O. Chidambaranar, and Vishakhapatnam.

Major Port Authorities Board

The Bill proposes to create a Board of Major Port Authority, for each major port. These Boards will replace the existing Port Trusts under the 1963 Act, that are comprised of members appointed by the central government.

Composition of Board

The Board will comprise of a Chairperson and a Deputy Chairperson, to be appointed by the central government on the recommendation of a selection committee. Further, it will include one member each from (i) concerned State Government in which the Major Port is situated, (ii) Ministry of Railways, (iii) Ministry of Defence, and (iv) Customs Department. The Board will also include two to four independent members, two members representing the interests of the employees of the Major Port Authority, and one member not below the rank of Director (nominated by the Central Government).

Powers of the Board

The Bill allows the Board to use its property, assets and funds as deemed fit for the development of the major port. The Board can also make rules on: (i) declaring availability of port assets for port related activities and services, (ii) developing infrastructure facilities such as setting up new ports, jetties, and (iii) providing exemption or remission from payment of any charges on any goods or vessels.

Fixing of rates

Under the 1963 Act, the Tariff Authority for Major Ports fixes the scale of rates for assets and services available at ports. Under the Bill, the Board or committees appointed by the Board will determine rates for: (i) services that will be performed at ports, (ii) the access to and usage of the port assets, and (iii) different classes of goods and vessels, among others.

Adjudicatory Board

The Bill proposes to constitute an Adjudicatory Board, to be appointed by the Central Government, to replace the existing Tariff Authority under the 1963 Act. It will consist of a Presiding Officer and two members.

Functions of Adjudicatory Board

Functions of the Adjudicatory Board will include: (i) certain functions being carried out by the Tariff Authority for Major Ports, (ii) adjudicating on disputes or claims related to rights and obligations of major ports and PPP concessionaires, and (iii) reviewing stressed PPP projects.

Penalties

The Bill stipulates a fine of up to one lakh rupees in case any person contravenes any provision of the Bill or any rules or regulations.

Parliamentary Debate

The members of the Opposition parties apprehended that the Government seeks to privatize the Shipping & Ports sector through this Bill.

Congress MP Shaktisinh Gohil asked the Government why it had prescribed for appointment of seven private members out of the total thirteen members on the Board of Major Port Authority.

It was emphasized that the Board does not provide adequate representation to the State Governments where the ports are situated, to the employees of the ports and the labour working there.

He also pointed out that that there is no clarity so far as the Selection Committee that will appoint the Chairperson to the Adjudicatory Board is concerned.

Several members accused the Government of not imbibing the recommendations made by the Standing Parliamentary Committee to the Bill and bringing it without holding any stakeholder consultations.

Responding to the debate, Minister of State for Shipping, Mansukh Mandaviya insisted that the Bill does not seek to privatize Ports but rather aims to strengthen all Major Ports so that they can compete with the existing private ports.

He informed the House that most of the recommendations made by the Standing Committee have been accepted and the Bill has been introduced after holding proper public/ stakeholder consultations.

He assured the members that such decentralization of power at Major Ports will provide autonomy to the Boards and will enhance their decision making, with respect to infrastructural development, fixing of tariffs, etc.

The Bill will now be presented before the President for his assent.

MODULE-IV

MISCELLANEOUS MARITIME LEGISLATION IN INDIA

MISCELLANEOUS MARITIME LEGISLATION IN INDIA

Apart from the Acts which are discussed in the previous Module, there are several other legislations applicable in India which directly or indirectly relate to maritime law, such as –

- The National Waterways Act, 2016
- Marine Insurance Act, 1963
- The Indian Ports Act, 1908
- Safety Of Maritime Navigation And Fixed Platforms On Continental Shelf Act, 2002
- The Marine Products Exports Development Act, 1972
- The Indian Fisheries Act
- Coastal Aqua culture authority Act, 2005
- New Deep Sea Fishing Policy, 1991
- Marine Fishing Policy
- Coastal Berth Scheme
- Sagarmala Funding guidelines
- Maritime piracy Bill 2012
- Marine Fisheries (Regulation and Management) Bill, 2019

The National Waterways Act, 2016

On 9th March 2016 Parliament enacted The National Waterways Act, 2016[46] , which received the assent of the President on 25th March 2017, and came into force from 12 April 2017 as per the notification of the Government of India[47] . This act has declared 111 rivers or river stretches, creeks, estuaries as National (inland) Waterways. The passage of this legislation enables the Central Government to regulate these waterways for development with regard to shipping, navigation and transport through mechanically propelled vessels. Prior to this Act there were five national waterways, each declared as such by their own separate legislation[48]. While navigation in rivers, lakes and other water bodies has been around since centuries, this has been more in the form of smaller vessels, connecting places not too far from each other. In some cases, especially near ports and coastal areas, this has evolved to more large-scale, commercial shipping. The national waterways project now intends to create such large scale, commercial shipping and navigation systems in these 111 waterways. These are intended to realise the potential of cargo and passenger traffic, including tourism and cruise. The National Waterways Bill, 2015 tabled in the Parliament

[46] National Waterway Act, 2016, http://www.indiacode.nic.in/acts-in-pdf/2016/201617.pdf accessed on 6th October 2016
[47] Gazette Extraordinary Part II Section 3 dated 11 April 2016
[48] These five separate legislations stand repealed by the Section 5 (1) National Waterway Act, 2016 as this Act has now included them in its ambit.

mentioned that "…inland water transport is recognised as fuel efficient, cost effective and environment friendly mode of transport, especially for bulk goods, hazardous goods and over dimensional cargos. It also reduces time, cost of transportation of goods and cargos, as well as congestion and accidents on highways." Other advantages mentioned are that the waterways will "help create seamless interconnectivity connecting hinterlands along navigable river coasts and coastal routes" and that "riverine routes are likely to play a crucial role in connecting the north-eastern states to the mainland."[49]

The National Waterways Bill, 2015 was introduced by Shri Nitin Gadkari, Minister of Road Transport & Highways and Shipping, on 29th April 2015. This Bill was transferred to the Parliamentary Standing Committee on Transport, Tourism and Culture for study and comments. This Bill had suggested 101 new national waterways in addition to existing 5 national waterways. The Standing Committee recommended some more waterways to be added and also asked the government to take cognizance of objections raised by some state governments on certain national waterways. After considering all the recommendations made by Standing Committee the Bill was amended and 13 proposed waterways were removed and 18 waterways were added. The details of these are given in Annexures 2 and 3. Annexure 3 also lists the waterways which the Parliamentary Committee had suggested for addition. The Bill was passed by Parliament with 111 waterways declared as National Waterways.

Apart from the waterways or the channels themselves, these national waterways will also need, and hence involve the construction of other related infrastructure facilities like riverside jetties and ports, navigational aids and control points, material handling sites, storage godowns, barge maintenance and repairing centers, refuelling points, associated dredging equipment, parking areas for vessels and so on. Some of the port/terminals are planned as multimodal hubs which will connect rail, road and waterways, for e.g., the multi-modal hub at Varanasi. Moreover, there is a plan to link many of the national waterways to each other, to roads and railways and to major ports. This scheme is being called the Integrated National Waterways Transportation Grid. According to the National Waterway Transportation Grid Study by Inland Waterway Authority of India: *"Integrated National Waterways Transportation Grid study is undertaken with an aim to link all National Waterways ……….to National/ State Highways, Railways and Sea Ports so that all these waterways become an integral part of the total transportation grid."*

The National Waterways Act, 2016 (Act no. 17 of 2016) is being the Act of Parliament was enacted in the 67th years of Republic of India with the aim and object to provide for the provisions to existing national waterways and also for making provisions for the declaration of certain inland waterways as National Waterways. Moreover, this enactment is also providing for the regulation and development of the said waterways for the connected

[49] *Vision for Coastal Shipping, Tourism and Regional Development, Ministry of Shipping, Government of India, 2015. Pages 19-20*

purposes like of shipping and navigation, etc. This present Act as have been passed, has received the assent from the honourable President of India on 25th day of March, 2016.

The Act was introduced to –

- Make provisions for existing national waterways and to provide for the declaration of certain inland waterways to be national waterways.
- Provide for the regulation and development of the said waterways for the purposes of shipping and navigation and for matters connected therewith or incidental thereto.

The Act divides its provisions into 5 sections and also in a schedule annexed to it. The first section being the introductory provision in this Act provides for short title for the Act as it is called the National Waterways Act 2016.

The second provision of the Act is dealing with the existing national waterways as specified under serial no. 1-5 in the schedule, and it is provided that such waterways should subject to the modifications made under this Act, continue to be national waterways for the said purpose of shipping and navigation. Moreover, the regulation and development as have been vested with the Central Government of such waterways, should continue as the same has been declared as National waterways under this Act. However, the other waterways as provided under serial no 6 to 111 were declared as national waterways for the purposes of shipping and navigation. Moreover, section three provides for the taken over by the Union, of the regulation and development of the waterways specified in the schedule for the purpose of Shipping and navigation to the extent provided in the Inland Waterways Authority of India Act, 1985. Moreover, as per next provision the Parliament is provided with the authority to declare the national waterway under the provisions of the Inland Waterways Authority of India Act, 1985.

Lastly, the Act repeals the five existing Acts, namely, the National Waterway (Allahabad-Haldia stretch of the Ganga- Bhagirathi- Hoogly River) Act 1982, the National Waterway (Sadiya- Dhubri Stretch of Brahmaputra River) Act, 1988, the national Waterway (Kollam-Kottapuram Stretch of West Coast Canal and Champakara and Udyogmandal Canals) 1992; the National Waterway (Talcher- Dharma Stretch Rivers, Geonkhali-Charbatia Stretch of East Coast Canal, Charbatia- Dharma Stretch of Matai River and Mahanandi Delta Rivers) Act, 2008, the National Waterway (Kakinada- Puducherry Stretch of Canals and the Kaluvelly Tank, Bhadrachalam-Rajahmundry Stretch of River Godavari and Wazirabad-Vijaywada Stretch of River Krishna) Act, 2008, saving their effects in the earlier time.

The Act seeks to develop 111 inland waterways. These have been declared as national waterways for purposes of shipping and navigation. All these national waterways would be developed in phases following detailed project reports. In phase I, eight waterways are being considered for development. Some states that these national waterways would cover include Bihar, Uttar Pradesh, Goa, West Bengal and Assam. With the exception of Goa, all the other states share borders with Nepal, Bhutan, or Bangladesh. Thus, India's focus on inland waterways has given rise to hopes of sub-regional cooperation wherein Nepal, Bhutan, Bangladesh, and India's northeast would especially see a development arc driven by rivers.

One of the most important waterways being developed by the government is National Waterway 1 (NW1) under the Jal Marg Vikas Project. This is a 1,620km long Ganga-Bhagirathi-Hoogly river system from Allahabad to Haldia. The World Bank is providing financial and technical support to this project, which is expected to lead to extensive economic and social development of the hinterland along the banks of the river Ganga. The project would enable the commercial navigation of vessels with the capacity of 1500-2000 tons. The Jal Marg Vikas Project includes the development of a fairway with three metres depth; multi-modal terminals at Varanasi, Haldia, and Sahibganj; the strengthening of the river navigation system; conservancy works; modern River Information System (RIS); Digital Global Positioning System (DGPS); night navigation facilities, modern methods of channel marking; and the construction of a new state of the art navigational lock at Farakka. The successful completion of the Jal Marg Vikas Project will benefit Nepal too which is a landlocked country. The Kalghat Terminal would enable transportation of cargo from Kolkata to Nepal through this Waterway. Further, the Gazipur terminal— which is dedicated to LNG (liquefied natural gas) trade—would facilitate the transportation of LNG to Nepal via Gazipur. The Jal Marg Vikas Project will also procure 25 LNG fuelled vessels or barges to promote the use of the waterway. A total of 60–65 vessels will be procured under the project. Measures have also been undertaken to ensure that dredging results in a 3m assured draft between Farakka and Kahalgaon in Bihar.

A beginning has already been made, and goods are being transported through inland waterways. The cargo movement for the landlocked Nepal and Bhutan is partly taking place through the riverine route till Sahebgunj also, from where trucks move goods to Nepal and Bhutan. It is estimated that it has reduced transport costs by 30 per cent. These developments have given rise to a positive response from academicians, business, and political leaders in the Sub-continent. They are of the have opinion that India's National Waterways Act is a landmark game changer that has resulted in a positive shift in the discourse on inland waterway connectivity in the Sub-region. All the participants at this event, including those from Bangladesh, Nepal, Bhutan and Myanmar, were of the opinion that inland navigation—which was prominent during India's pre-Independence era—should be revived. As some of the river systems of Nepal meet the river Ganges in NW1, the possibility of Nepal directly accessing the Bay of Bengal through this waterway needs to be explored.

The Namami Brahmaputra River festival organized by the Assam state government also conveys the need to revive waterway connectivity of the pre Independence period. NW2 (the

Sadiya-Dhubri stretch of Brahmaputra River) and NW 16 (the Barak River) are being promoted by the Assam government. If one looks at the bigger picture, it is argued that Assam and its waterways can play a central role in connecting India with the ASEAN countries. This is to be seen in the context of India's Act East Policy wherein the focus is on expanding political, economic, and socio-cultural linkages with Southeast Asia. All these further re-iterate the need for sub regional cooperation.

India's Sagarmala program brings out the need for multi-modal connectivity wherein inland waterways have an important place. India has 14,500 kms of navigable and potentially navigable waterways, and 7,500 km of coastline covering 13 states. However, transport through waterways accounts for only 6 per cent of total freight movement in India in tonne km terms. The Sagarmala project calls for multimodal connectivity whereby a combination of waterways, railways, and roads will be utilized to have efficient logistics, all of which are important for goods to remain competitive. Given the projections for economic growth in the Sub-continent, there is great potential for increased cargo movement on waterways as freight traffic is likely to increase.

India's Waterways Act 2016 of declaring 111 waterways as national waterways for navigation and shipping has initiated a constructive discourse not only in India but in the BBIN sub region too. India's Sagarmala program has also contributed to this discourse. The debates and discussions which have followed have highlighted the need to move from bilateral approaches towards more regional ones for utilizing trans-boundary rivers as waterways. The central government's efforts in India are being also complemented by those of state governments, as is seen in the organization of the Namami Brahmaputra festival by the Assam Government and the Asian Confluence River Festival in Meghalaya. They are also emphasizing the need for a regional approach and the revival of pre-Independence waterways for the movement of cargo and passengers. Significantly, inland waterways and the need to have a regional approach have been prioritized by India's eastern neighbours too.

Water discourse also seeks to explore multimodal connectivity at the sub-regional level involving both the waterways and the motor vehicle agreement among the BBIN countries. The Bay of Bengal will soon become a hub of maritime trade if the sub-regional projects involving trans-boundary rivers for navigation and shipping are successfully implemented. It will change the very narrative of sub-regional cooperation in which the unhindered movement of not only goods but also of people will take place through the trans-national waterways. With its strategic location as the lower riparian state (wherein all its rivers flow into the Bay of Bengal), Bangladesh has a key role to play in this new paradigm of cooperation. However, consistent political will and convergence among all the countries concerned is an important pre-requisite for commencing and implementing these regional projects. Only then will it facilitate the participation of financial institutions and private entrepreneurs with investments so very necessary for the success of these projects.

Marine Insurance Act, 1963:

Marine Insurance can be connoted to be the most vibrant branch coming under the canopy of insurance laws. This may be attributed to reasons that are far from cogency to the most coherent ones, which includes the discovery of trade routes and their role in the expansion of global trade, the insecurity faced at international levels during the course of sea trade, concerns about the heavy investments made for a successful sea trade, the generally anticipated scale of attacks that may be faced by a vessel, etc. These different facets can be summed up as contributing to the necessity of developing an encompassing law for the protection of interests of ship owners', buyers' and sellers' of cargoes, that are transferred through the sea.

Marine insurance business can be considered in the broad spectrum as the business of effecting contracts of insurance upon vessels of any description, including cargoes, freights and other interests which may be legally insured in relation to such vessels, cargoes and freights, goods, wares, merchandise and property of whatsoever description insured for any transit by land or water or air or all the three. The same may include warehouse risks or similar risks in addition or as incidental to such transit and includes any other risks which are customarily included among the risks insured against in marine insurance policies.

The MIA is an Act that codifies the law relating to marine insurance. With a few exceptions, this Act closely follows the UK Marine Insurance Act, 1906.

The purpose of MIA is to primarily enable the ship owner and the buyer and seller of goods to operate their respective business while relieving themselves, at least partly, of the burdensome financial consequences of their property from being lost or damaged as a result of the various risks of the high seas. In other words, marine insurance adds the necessary element of financial security so that the risk of an accident occurring during the transport is not an inhibiting factor in the conduct of international trade.

The importance of marine insurance, both to assureds, in terms of the security it provides and its cost element in the overall economics of running a ship or transporting goods, and to countries, particularly developing countries, in its impact on their balance of payments position, cannot be overemphasized. It is well known that in India, until the coming into operation of the MIA, the Courts used to follow the principles of English law and decisions based on such principles as well as the provisions of the Marine Insurance Act, 1906. The Indian law is a direct take-off from its English counterpart, and so, whenever it is not self evident, case law spanning over two centuries is to be looked into to arrive at the true position.

The Indian marine insurance has nine essential features which are also called as fundamental principles of marine insurance, i.e., 1) features of general contract, 2) insurable interest, 3) utmost good faith, 4) doctrine of indemnity, 5) subrogation, 6) warranties, 7) proximate cause, 8) assignment and nomination of the policy and 9) return of premium.

Insurable Interest:

According to the MIA, an insured person has, inter alia, an insurable interest in the subject-matter where he stands in any legal or equitable relation to the subject-matter in such a way that he may benefit by the safety or due arrival of insurable property or may be prejudiced by its loss, or by damage thereto or by the detention thereof or may incur liability in respect thereof. Since marine insurance is frequently affected before the commercial transactions to which they apply are formally completed it is not essential for the assured to have an insurable interest at the time of effecting insurance, though he should have an expectation of acquiring such an interest. If he fails to acquire insurable interest in due course, he does not become entitled for indemnification.

Utmost Good Faith:

The MIA incorporates the doctrine of utmost good faith. The doctrine of caveat emptor (let the buyer beware) applies to commercial contracts while insurance contracts are based upon the legal principle of uberrimae fides (utmost good faith). If this is not observed by either of the parties, the contract can be avoided by the other party. The duty of the utmost good faith applies also to the insurer.

It is incumbent upon the insured to disclose all the material information which may influence the decision of the contract. Any nondisclosure of a material fact enables the underwriter to avoid the contract, irrespective of whether the non-disclosure was intentional or inadvertent. The assured is expected to know every circumstance which in the ordinary course of business ought to be known by him. He cannot rely on his own inefficiency or neglect. The duty of the disclosure of all material facts also falls even more heavily on the broker. He must disclose every material fact which the assured ought to disclose and also every material fact which he knows.

However, the doctrine of good faith may not be adhered to in the following circumstances, namely, i) facts of common knowledge, ii) facts which are known should be known to the insurer, iii) facts which are not required by the insurers, iv) facts which the insurer ought reasonably to have inferred from the details given to him, and v) facts of public knowledge.

Doctrine of Indemnity:

The contract of marine insurance is of indemnity. Under no circumstances an insured is allowed to make a profit out of a claim. It is for this reason that the MIA incorporates the doctrine of indemnity to facilitate the insurer to indemnify the assured in a manner and extent agreed upon between them. Moreover, in fixing the insured value, the cost of transportation and anticipated profits are added to original value so that in case of loss the insured can recover not only the cost of goods or properties but a certain percentage of profit also. Having, agreed of the value or basis of valuation, the MIA provides that neither party to the contract can raise objection after loss on the ground that the value is too high or too low unless it appears that a fraudulent evaluation has been imposed on either party.

Doctrine of Subrogation:

The MIA also includes the doctrine of subrogation. The aim of the doctrine is to ensure that the insured does not get more than the actual loss or damage. After payment of the loss, the insurer gets the right to receive compensation or any sum from the third party from whom the assured is legally liable to get the amount of compensation. Unlike in other cases where the insurer has a right to pay the amount of loss after reducing the sum received by the insured from the third party, in marine insurance on the other hand, the right of subrogation arises immediately after payment has been made, and it is not customary as in fire and accident insurance, to alter this by means of a condition to provide for the exercise of subrogation rights before payment of a claim.

Further, the MIA also deals with the right of contribution between two or more insurers where there is over insurances by double insurance. It is a corollary principle of indemnity.

Warranties:

A warranty is generally a statement according to which insured person promises to do or not to do a particular thing or to fulfill or not to fulfill a certain condition. It is not merely a condition but statement of fact. Warranties are of two types i.e., 'express warranties' which are expressly included or incorporated in the policy by reference, and 'implied warranties' which are not mentioned in the policy at all but are tacitly understood by the parties to the contract and are as fully binding as express warranties. In marine insurance, implied warranties are very important. They include: seaworthiness of ship, legality of venture and non-deviation. All these warranties must be literally complied with as otherwise the underwriter may avoid all liabilities as from the date of the breach. However, there are two exceptions to this rule when a breach of warranty does not necessarily affect the underwriter's liability i.e., where owing to a change of circumstances the warranty is no longer applicable and where compliance would be unlawful owing to the enactment of subsequent law.

The MIA explicitly provides that the insurer is liable for any loss proximately caused by a peril insured against but not otherwise. However, there must be direct and non-intervening cause for the insurer to be liable to pay compensation. The Act also enumerates the losses which the insurer is not liable, i.e.,

- any loss attributable to the willful misconduct of the assured;
- any loss proximately caused by delay; and
- any loss due to ordinary wear and tear, leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils

Assignment:

A marine policy is generally assignable unless it contains terms expressly prohibiting assignment. It may be assigned either before or after loss. It can be assigned by endorsement thereon or on other customary manner. Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy is entitled to sue thereon in his own name and the defendant is entitled to make any defense arising out of the contract which he would have been entitled to make if the suit had been brought in the name of the person by or on behalf of whom the policy was effected.

However, the Act does not provide for losses that occur while the ship is sailing in the international waters. This is practically unfavorable especially to oil tankers and heavy cargo ships.

The Indian Ports Act, 1908

The Indian Ports Act, 1908 was enacted on 18th December, 1908. Act shall extend to ports that are mentioned in First Schedule to that portion which are crossable rivers and channels to that station respectively as prescribe in Indian Ports Act, 1875 and to all other station or parts of crossable rivers or channels as prescribe in this act by Government, and also to any port, river or channels to which this act was not specially extended by the government. This Act will not be applicable to any vessel belonging to or is in service of central or state government, divest any person of any of property or other private right as wordily communicate or influence any provisions relating to customs or any order or direction lawfully made or given pursuant thereto. For purpose of this act, “pilot means, a person for time being authorized by government to pilot vessel, “port includes also any part of a river or channel in which this act is for time being in force”, “vessel includes anything made for conveyance specially by water of human being or of property”, “major port means, any port which central government by notification in official gazette declare under law for being in force have declared to be major port".

Government by notifying in gazette, act will extend to any such port where this act is not applicable or to any part of any passage of river or any other way which leads to port and in which this act is not applicable, also to specially extend to that port or its part where it was not extended, act can even withdraw its extend to any such port or part of port for time being, act has to even define limits of such area which it is extended. Government subject to any rights of private property, alter limits of ports in which act is in force, if limits are alter and shall declare or describe by notification in gazette or by other means as they think fit.

Government, subject to any rights to private property alters limits of any ports in which this act is force and government alter limits of port even as they think proper. Government may make rules for purpose that can be, for regulating time and hour and speed and at what distance vessel may invade, vacate or be transfer to any port, regulating berths, station and harbours to be invade by vessel in any such port, for striking yards and for rigging in roar and at backyard of vessel of such port, for vacating or exact draping or depositing of moor, spars and any such other things being in attached to vessel in any such port, for regulating use of mooring buoys, chains, and other such moorings in that port, for regulating use of fire and lights at that port, for enforcing and regulating use of signals or signal lights by vessel by day or by night in any such port etc., every rule made under this act is by state government, before state legislature and if any person breach any of such rule made under this act is punishable for each and every offence made by such person with punishment of fine which may extend to one thousand rupees. If any master fails whole or in part to any act prescribe by act then health officer shall of act done incurred reasonable expense from him.

Conservator is appointed by government for every port, but if where there is port officer then such port officer is conservator of such port and where there is harbour master then such harbour master is conservator, and then in such case on new conservator is appointed. Such conservator appointed by this act will direct that vessel at such port for carrying into effect that is time in force, if there is disobedience of any rule by any person wilfully, or neglects that directions given by the conservator is punished with fine up to one hundred rupees and if such offence continued then fine increase to one hundred for every day. Conservator of any port may if there is urgency cut or cause any warp, rope, cable or hawser endangering safety of any vessel in such port and is not private property. Conservator may remove any timber, raft, or any such thing which is floating in any part of port which he thinks can be obstacle impedes free navigation and owner of such timber shall be punished by conservator himself or magistrate having jurisdiction with fine to one hundred rupees or be abated.

Health Officer is appointed by government for such port having powers to enter board on vessel and medical examine all or any of seamen or apprentices on board vessel, to require and enforce production of log book and other books and such relayed documents necessary for purpose of health and medical condition of person on board of vessel.

If there is any dispute arising in case of sum to be paid or damages then it has to be referred to magistrate on application made to him by either of party to dispute. Thus, any order, judgment cannot be rejected only if there is merit reasoning it can be rejected.

Safety Of Maritime Navigation And Fixed Platforms On Continental Shelf Act, 2002

The SMC Act is a legislation specifically meant to give effect to the International Maritime Organisation Convention for Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the continental shelf and for matters connected therewith.

The SMC Act, 2002 seeks inter alia, to deal with offences against ships, fixed platforms, cargo of a ship and navigational facilities, etc., and penalties therefore, and provides for discretion to the Central Government to confer powers of investigation, exercisable by a police officer, on any gazetted officer of the Coast Guard or any officer of the Central Government, power of the State Governments to specify, with the concurrence of the Chief Justice of the High Court, a Court of Session to be a Designated Court to try offences, the application of provisions of the Code of Criminal Procedure, 1973 in the trial of offences, the provisions as to bail and extradition, powers of the Central Government to treat certain ships to be registered in Convention States, presumption of commission of offences and protection of action taken in good faith by any person or the Central Government.

The SMC Act, 2002 extends to the territorial waters, the continental shelf, the exclusive economic zone and any other maritime zone of India within the meaning of the Maritime Zones Act, 1976. Following the past incidence where the Italian marines shot dead two Indian fishermen, the SMC Act, 2002 was invoked against the marines without following the procedure as laid down under the Act. This was undertaken by the prosecution because of the ambiguity of the provisions under the Act. The competent authorities therefore need to move fast to amend the SMC Act, 2002 to align it with the emerging forms of crimes being committed in the internal and international waters.

THE MARINE PRODUCTS EXPORTS DEVELOPMENT ACT, 1972

The Act was passed in 1972. It has VI chapters and 34 sections. Chapter 1 pertains to short title, extent and commencement, declaration as to expediency of control by the Union and definitions of terms such as fishing vessel, marine products, processing, export, import etc. marine products are meant to include all varieties of fishery products known commercially as shrimp, prawn, lobster, crab, fish, shell-fish, other aquatic animals or plants or part thereof and any other products which the Authority may, by notification in the Gazette of India, declare to be marine products.

Chapter 2 discusses in length about Marine products Export Development Authority. Section 4 lays down the establishment and constitution of the authority. Section 5 lays down the acts or proceedings of Authority or its Committees not to be invalidated. The Central Govt. is vested with the power to appoint a Director of Marine Products Export Development to exercise such powers and perform such duties under the Chairman as may be prescribed or as may be delegated to him by the Chairman under 7(1) of the Act. Section 9 extensively lays down the functions of the authority. Under section 10(1), the Central Govt. has the power to direct the authority to be dissolved for a period which is specified in the notification for the grounds as listed out in 10(2).

Now, coming to chapter III of the Act, which talks about registration, contains 3 sections pertaining to it (section 11-13). Section 11 deals with registration of fishing vessel, processing plant etc. the application, cancellation, fee payable and other matters relating to registration has been discussed under section 12 of the Act. Section 13 says that returns have to be made by the owners.

The next chapter, chapter IV contains provisions relating to Finance, Accounts and Audit. Section empowers the Central Govt. to pay to the Authority by way of grants or loans the sum that the Govt. thinks necessary after the parliament makes appropriation in this regard. The constitution of the fund had been listed out in section 17. Section 19 lays down the process of accounts and audit.

Chapter V discusses control by Central Government and it contains 3 sections (section 20-22). The Central Govt. is empowered to prohibit, control imports and exports of marine products. The Central Govt. can make provision for prohibiting, restricting or otherwise controlling the import or export of marine products, either generally or in specified classes of cases under section 20(1). Under section 21 of the Act, the Authority shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Act. The returns and Reports are given under section 22 of the Act.

The last chapter which is chapter VI is the miscellaneous chapter. This chapter covers section 23-34 of the Act. Section 23 talks about the penalty for making false returns, the punishment for which can extend to five hundred rupees. Section 24 lays down the list of penalties for obstructing a member or officer of the Authority in the discharge of his duties and for failure to produce books and records. The other penalties are discussed under section 25 of the Act. The offences by companies has been dealt under section 26(1) of the Act which says that where an offence has been committed by the company, every person who was in charge of that and also whoever was responsible to the company shall be liable unless he can prove that the offence has been committed without his knowledge or he had taken due diligence in order to prevent the commission of the offence. The jurisdiction of the Court has been laid down under section 27. Section 29 pertains to the protection of action taken in good faith. The power to delegate and suspension of operation of Act have been discussed under section 30 and section 31 respectively. Section 33 extensively lists out the matters regarding which the Central Govt. is empowered to make rules. Section 34 provides the list of matters pertaining to which the authority can make regulations.

The Marine Products Export Development Authority (MPEDA) was set up by an act of Parliament during 1972. The erstwhile Marine Products Export Promotion Council established by the Government of India in September 1961 was converged in to MPEDA on 24th August 1972. MPEDA is given the mandate to promote the marine products industry with special reference to exports from the country. It is envisaged that this organisation would take all actions to develop and augment the resources required for promoting the exports of "all varieties of fishery products known commercially as shrimp, prawn, lobster, crab, fish, shell-fish, other aquatic animals or plants or part thereof and any other products which the authority may, by notification in the Gazette of India, declare to be marine products for the purposes of (the) Act". The Act empowers MPEDA to regulate exports of marine products and take all measures required for ensuring sustained, quality seafood exports from the country. MPEDA is given the authority to prescribe for itself any matters which the future might require for protecting and augmenting the seafood exports from the country. It is also empowered to carry out inspection of marine products, its raw material, fixing standards, specifications, and training as well as take all necessary steps for marketing the seafood overseas.

The Indian Fisheries Act, 1897:

The Indian Fisheries Act was enacted on 4th February, 1897. It extends to whole India expect territories which immediately settled before 1st November, 1956 in part B. This Act should be read with other acts or supplement to other fisheries law. For the act "Fish includes Shell-fish" and "Fixed Engine means a net, or a cage, trap or any other scheme to catch fish which is fixed in soil or made static in other way".

If there is any destruction i.e., using of dynamite or any explosives substance by any person in any water or any coast while catching fish or destroying fish then is punishable with imprisonment for two month and fine which can extend to two hundred rupees. If there is destruction by way of using poison like lime or noxious material by any person in water to catch or destroy fish is punished with imprisonment with two month and fine with two hundred rupees.

State Government make rules for protection of fish in selected waters i.e., all of such waters other then private waters. But State Government may even apply rules to private waters with consent in writing of the owner and to all other person having absolute right of fishery. These rules may prohibit erection and use of fixed engines, construction of wires etc., and also prohibit all fishing in any specified water for a period not exceeding two years. If any of rules ignored then punishment with fine extend to one hundred rupees and if such ignorance is continuing then further fine which may extend to ten rupees for every day.

Any person who commits any offence and is punishable then State Government in this behalf without an order from Magistrate and without warrant arrest that person committing offence and is detained until his name and address is correctly ascertained.

Coastal Aqua-culture Authority Act, 2005:

The Coastal Aquaculture Authority Act, 2005 (24 of 2005) enacted by the Parliament of India on 23 June 2005 provides for the establishment of the Coastal Aquaculture Authority for regulating the activities connected with coastal aquaculture in coastal areas and matters connected therewith or incidental thereto. The Act mandates the Central Government to take all such measures as it deems necessary or expedient for regulation of coastal aquaculture by prescribing guidelines, to ensure that coastal aquaculture does not cause any detriment to the coastal environment and the concept of responsible coastal aquaculture contained in the guidelines shall be followed in regulating coastal aquaculture activities to protect the livelihood of various sections of people living in the coastal areas.

One of the major tasks accomplished by the CAA was the registration of shrimp farms on the recommendations of the State and District Level Committees constituted for this purpose. It is mandatory that all persons carrying on coastal aquaculture shall register their farm with the Coastal Aquaculture Authority. Registration is made for a period of five (5) years, which can be renewed further. The registration process would be continued in respect of new farms as well as farms that may be renovated for taking up coastal aquaculture activities in future.

The Act contains VI chapters and 27 sections. The 1st chapter is the preliminary chapter which contains the short titles and the definitions of various terms such as ‘authority’, ‘coastal aquaculture’, ‘coastal area’ etc. the term coastal aquaculture culturing, under controlled conditions in ponds, pens, enclosures or otherwise, in coastal areas, of shrimp, prawn, fish or any other aquatic life in saline or brackish water; but does not include fresh water aquaculture.

Chapter II pertains to general powers of the central Government. The Central Government by the power vested in it is empowered to take necessary measures or expedient for regulation of coastal aquaculture by prescribing guidelines, to ensure that coastal aquaculture does not cause any detriment to the coastal environment and the concept of responsible coastal aquaculture contained in such guidelines shall be followed in regulating the coastal aquaculture activities to protect the livelihood of various sections of the people living in the coastal areas.

Chapter III deals with the coastal aquaculture authority. Section 4 of the Act discusses about the establishment of authority and appointment of chairperson and members. Section 5 lays down the grounds for the disqualification for appointment of a member. Section 6 also lays down the criterion for the members of reappointment. Section 7 deals with the meetings of authority, and section 8 says that vacancy in authority does not invalidate the proceedings. Appointment of officers and other employees have been dealt with in this section.

Chapter IV pertains to powers of the authority in which section 11 extensively lays down the powers of the authority. Power to enter and registration of Coastal aquaculture are laid down under section 12 and 13 respectively. Punishment for carrying on coastal aquaculture without registration is put forward under section 14 of the Act. No court shall take cognizance of an offence under section 14 without a written complaint filed by an officer of the Authority authorized in this behalf by it under section 15 of the Act.

Finance, accounts and audit are dealt with in chapter V. payments to authority, funds of authority, budget, annual reports and accounts and audit are the topics that are covered under this chapter. Section 16 provides that the Central Government after due appropriation is made by the parliament may pay to the authority as it seems necessary for the performance of functions of the authority.

The last chapter (chapter VI) is the miscellaneous chapter. It contains section 21-27. The topics that are covered under the chapter are Chairperson and other members (section 21), officers and other employees of Authority etc. to be public servants (section 22), Protection of action taken in good faith (section 23) Power to remove difficulties, Power to Central Government to make rules (section 24) .

NEW DEEP SEA FISHING POLICY, 1991:

In March 1991, the Indian government announced New Deep Sea Fishing Policy (NDSP) as part of the economic reforms programme. The policy involved three schemes (i) leasing out of foreign fishing vessels to operate in the Indian EEZ; (ii) engaging foreign fishing vessels for test fishing and (iii) forming joint ventures between foreign companies and Indian companies on 49:51 equity basis in deep sea fishing, processing and marketing. Government of India started giving licenses to joint venture, lease and test fishing vessels. There was opposition to the policy by artisanal fishers.

Marine Fishing Policy:

The marine fishing policy announced by the Govt. of India in the past focused only on the developmental needs of the deep-sea sector. Substantial assistance was channelized through Central and Centrally Sponsored Schemes in to the States/ UT's for the development of coastal fisheries. Non-existence of an integrated policy for this sector was found to hamper fulfillment of the national objectives.

In the present policy the Government seeks to bring the traditional and coastal fishermen also in to the focus together with stakeholders in the deep-sea sector so as to achieve harmonized development of marine fishery both in the territorial and EEZ waters of our country.

Objectives:

(a) To augment marine fish production of the country up to the sustainable level in a responsible manner so as to boost export of sea food from the country and also to increase per capita fish protein intake of the masses.

(b) To ensure socio-economic security of the artisanal fishermen whose livelihood solely depends on this vocation.

(c) To ensure sustainable development of marine fisheries with due concern for ecological integrity and biodiversity.

Marine fisheries Resources:-

The policy underscores the need for a departure from the open access concept in the territorial waters to limited access-

a. Envisages incorporation of principles of the Code of conduct for responsible fisheries.

b. Putting in place stringent management regimes.

c. Promoting exploitation in the deep sea and oceanic waters for reducing fishing pressure in the territorial waters.

Harvesting of marine resources:

There are 3 categories

(i) subsistence fishing

(ii) small-scale fishing

(iii) industrial fishing

The policy advocates protection, consideration and encouragement of subsistence level fishermen and technology transfer to small scale sector and infrastructure support to industrial sector. There would be exclusive area in terms of depth and (or) distance earmarked for non-mechanised (non-motorised) traditional craft. An area beyond this would be demarcated for mechanised and motorised craft.

Schemes:

The schemes are as follows:

- To motorize the traditional craft and also providing better material and technology for their traditional craft.
- To Envisage motorization of about 50% of traditional craft allowing the remaining to carry on subsistence fishing in the near shore waters.
- The small mechanised sector would be encouraged by providing incentives for acquisition of multi-day fishing units.
- Deep sea vessels would be provided with infrastructure support in terms of landing and berthing facilities.
- Encourage introduction of more resource specific vessels of above 20 m length.
- Joint venture initiatives with specified equity norms for package proposals involving catching fish from the EEZ for processing at shore and export.

For ensuring fisherman's welfare the policy takes the following steps:

The policy attaches top priority to ensuring the social security and economic well-being of fishers.

- Each household would be given a card for easy identification and for settlement of claims.
- Apex bodies of cooperatives of each state would be up- linked to the national body.

Artisanal fisheries deploying OBMs and small-mechanised boats up to 12m would be treated at par with agriculture while small scale fisheries involving mechanised boats under 20m OAL would be treated at par with small scale industries. Fishing vessels above 20 m and fishing activity involving mother ships or factory vessels would be treated as industrial activity. The admissibility and extent of concessions for each category would be redetermined accordingly.

In order to minimise impact on coastal waters by industrial effluents, close liaison need to be maintained with Central and State Pollution Control Board for considering suitable legislation for all industrial establishments discharging effluents in to the sea. The Coastal Regulation Zone notification would review the present zonation of areas keeping in view the topography of each region and ensure that any human activity in the high tide limit (HTL) which may cause degradation of the coastal environment would not be permitted.

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<u>The main features of the policy are</u>-

- To curb Illegal, Unregulated and Unreported (IUU) fishing
- To manage fishing capacity to prevent over capitalization in the sector and over exploitation of resources
- To be responsive to regional and international regimes in Marine Fisheries Conservation and Management.
- Address the requirements of ancillary and complementary activities such as postharvest care, marketing etc.

SCHEMES AND GUIDELINES

Coastal Berth Scheme :

- The Ministry of Shipping has launched Coastal Berth Scheme of the flagship Sagarmala Programme.

Main highlights of the scheme:

- The projects under Coastal Berth Scheme of the flagship Sagarmala Programme are distributed over eight states with the highest number of projects in Maharashtra (12 projects), Andhra Pradesh & Goa (10 projects), Karnataka (6 projects), Kerala and Tamil Nadu (3 projects), Gujarat (2 projects) and West Bengal (1 project).
- Out of the 47 projects, 23 projects worth Rs 1075.61 crore have been sanctioned for total financial assistance of Rs 390.42 crore and Rs 230.01 crore has been released to Major Ports, State Maritime Boards and State Governments.
- The remaining 24 projects are under various stages of development and process of approval.
- The Coastal Berth Scheme aims to provide financial support to ports or state governments for creation of infrastructure for movement of cargo and passenger by sea or national waterways.

The admissible financial assistance from Central Government is 50% of the total cost of the project subject to:

- A maximum of Rs 25 crore for projects relating to construction/up-gradation of coastal berths by Major/Non-Major Ports;

- A maximum of Rs 10 crore for construction of platforms/jetties for hovercrafts & seaplanes by Ports/State Governments & passenger jetties in National Waterways and islands by State Governments;
- A maximum of Rs 15 crore for mechanization of berths by Major/Non-Major Ports;
- A maximum of Rs 50 crore for capital dredging of Major Ports/operational Non-Major Ports ; and a maximum of Rs 50 crore for construction of breakwater for existing and Greenfield Ports.

The financial assistance will also be provided for the preparation of DPRs for the projects to be considered under this scheme. The construction of passenger jetties also includes construction of terminal building and allied infrastructure. The balance expenditure has to be incurred by the respective Ports/ concerned State Governments (including State Maritime Boards) from their own resources.

Sagarmala Funding guidelines:

Under Sagarmala Programme, an integrated approach is being adopted for improvement in quality of life with focus on skill building and training, upgrading of technology in traditional professions, specific and time bound action plan for improving physical and social infrastructure in collaboration with the coastal states. Main features of Coastal Community Development plan consists of below

- Skill development
- Coastal tourism
- Development of fishing harbors
- R&D in Port and Maritime Sector

On the skill development front, the skill gap studies which comprises of 21 coastal districts has been undertaken and the same is being implemented. Ministry of Shipping is funding the skill development initiatives under DDU-GKY to train 10,000 persons annually for next 3 years and has currently started training in Andhra Pradesh, Kerala and Tamil Nadu. In phase 1 of the programme , coastal district skilling programs (Phase I) in convergence with DDU-GKY, 1978 candidates have been trained and 1143 candidates have been placed.

To ensure technology based skill development, Ministry of Shipping have setup Centre of Excellence in Maritime & Shipbuilding (CEMS) with two campuses at Vizag and Mumbai that are operational since February 2019. The centres will provide for skilled manpower in Maritime and Ship building sector with its capacity of training is 10,500 trainees per annum.

Ministry is also funding the fire safety training project for workers at Alang-Sosiya Shipyard. Since Feb 2017, when the programme was launched, 23000 workers have been given refresher training so far. It is mandatory for a worker to undergo a 12 day skills training program before he can begin work in any shipyard. Effectively, anyone who works in Alang ship recycling yards undergoes the basic safety training. The Ministry further has ensured third party certification of this training programme to ensure quality of training. Indian Register of Shipping (IRS) is now conducting third party assessments. Additionally, in July, 2018 GMB also signed an MoU with Director General , Factory Advice Services and Labour Institutes, Ministry of Labour & Employment (MoL&E) for enhanced cooperation and expertise in improving health and safety of workers. The course curriculum has been revised and updated to conform to the common norms for skill development schemes under National Skill Qualification Framework notified by the Ministry of Skill Development & Entrepreneurship. A Multi-Speciality hospital at Alang is also operational since March 2019.

Ministry of Shipping (MoS) in partnership with the Ministry of Skill Development and Entrepreneurship (MSDE) is setting up Multi Skill Development Centres (MSDC) in Maritime Logistics under the Pradhan Mantri Kaushal Kendra (PMKK) programme of MSDE at Major Ports. The first such MSDC has been setup at Jawaharlal Nehru Port Trust (JNPT) on 8th March 2019 and has been planned at ChPT, CoPT,VPT and NMPT. The centre will provide skill development in Maritime Logistics and placement to over 1050 students per year in Port and Maritime sector. The key training areas are warehouse management, consignment and tracking, inventory management, EXIM trade documentation and other related courses in the maritime logistics domain. The physical infrastructure has been provided by JNPT and CIDCO and the centre will be managed and operated by the reputed logistics company All Cargo Logistics Ltd

The National Technology Centre for Ports, Waterways and Coasts (NTCPWC), at IIT Madras is being set up to study engineering issues related to ports, waterways and coasts and in the country. NTCPWC will act as a technology arm of Ministry of Shipping for providing the needful technological support to Ports, Inland Waterways Authority of India (IWAI) and all other related institutions. The cost of setting up the centre is Rs 70.53 cr. which is being shared by MoS, IWAI and the Major Ports. MoS’s grant is towards capital expenditure for creating facilities like Field Research Facility (FRF), Sedimentation and Erosion Management Test Basin (SEMaTeB) and Ship/Tow Simulator. Memorandum of Agreement has been signed on 26.02.2018 between Ministry of Shipping and IIT Madras and Sh. Nitin Gadkari, Minister for Road Transport & Highways, Shipping and Water Resources, River Development & Ganga Rejuvenation laid foundation stone for setting up of NTCPWC at IIT Madras at Chennai.

Centre for Inland and Coastal Maritime Technology (CICMT) at IIT Kharagpur has also been proposed. The total cost of the project is estimated at Rs. 76.20 Cr. The centre will serve as a technical arm of the Ministry of Shipping. It will be a state of the art facility and one of its kind in South Asia. It will cover the following 5 domain areas:

- Ship Design for Coastal/Inland waterways
- Shipbuilding Technology and Structural Design
- Transport Systems & Logistics
- Cryogenic Cargo Handling
- Green/Renewable Energy harvesting from Coastal and Inland waters

Fisheries:

Sagarmala Programme in coordination with related Central Ministries and State Governments would fund capacity building, infrastructure, and social development projects related to value addition in fisheries, aquaculture and cold chain development. As part of the coastal community development component of the Sagarmala Programme, Ministry is part-funding fishing harbour projects in convergence with Department of Animal Husbandry and Dairying (DADF). Rs. 242 Cr have been released so far for 16 projects (cost: Rs. 1,452 Cr). In addition, in-principle approval has been given for development of deep sea fishing vessels and fish processing centers in convergence with DADF.

Coastal Tourism:

For promoting tourism in maritime states under Sagarmala, projects have been identified in convergence with Ministry of Tourism and tourism development departments of maritime state governments. Key coastal tourism projects include:

- Development of Coastal Circuits under Swadesh Darshan Scheme of Ministry of Tourism
- Development of infrastructure for promoting Cruise tourism
- Development of lighthouses
- National Maritime Heritage Museum Complex at Lothal
- Underwater viewing gallery and restaurant at Beyt Dwarka

Sagarmala has conducted skill gap studies for 21 coastal districts in India. Skill Development programmes in these 21 districts is being undertaken in convergence with DDU GKY programme of the Ministry of Rural Development

REGULATIONS

India is a party to the Indian Ocean MOU, which lays down basic standards for vessels calling at ports. In order to prevent wreckage of older foreign ships in Indian waters, as well as to prevent oil spills, the MoS has notified the Merchant Shipping (Regulation of Entry of Ships into Ports, Anchorages and Offshore Facilities) Rules 2012, which, *inter alia*, provide that foreign-flagged vessels can only enter Indian territorial waters on being in possession of a Blue Card (i.e., valid insurance cover) from the International Group of P&I Clubs or from insurance companies that are specially authorised by the DG Shipping upon fulfilling certain criteria. Foreign-flagged vessels entering India must be registered with a classification society that is a member of the International Association of Classification Societies

i **Registration and classification:**

Indian-flagged vessels will be registered under the MSA, the Inland Vessels Act, 1917 or the Coasting Vessels Act, 1838, depending on the nature and type of vessel. The Supreme Court of India, in interpreting the provisions of the MSA, has held that a provisional certificate of registry for Indian-flagged vessels can be granted only to a constructed vessel and not to an 'under construction' vessel and such provisional certificate of registry will be valid for a period of six months, within which the ship owner must obtain a permanent certificate by ensuring that all the obligations of the Indian flag state are met.[50]

The Customs Act, 1962 imposes various obligations upon owners of vessels calling at ports in India, such as the Import General Manifest. A central register is maintained by the DG Shipping, which contains all the entries recorded in the registers kept by the registrar at the port of registry in India. Any vessel that is registered requires a licence to trade. Vessels that are more than 25 years old require a special licence to trade.

ii **Environmental regulation:**

India has ratified the CLC Convention and its 1976 and 1992 Protocols. Part XB of the MSA deals with civil liability for oil pollution damage, and Part XC was introduced to incorporate the requirements of the International Oil Pollution Compensation Fund (the IOPC Fund). Where an oil spill occurs from two or more ships as a result of an accident, the owners of all ships are jointly and severally liable for all damage that is not reasonably separable.[51]

India is the second-highest contributor to the IOPC Fund in the world, with 13.12 per cent of the total composition of the fund. The IOPC Fund is under an obligation to pay compensation

[50] Halliburton Offshore Services Inc. v. Principal Officer of Mercantile Marine Department, Civil Appeal No. 5428 of 2017.
[51] Section 352I(4) of the MSA.

to states and persons who suffer pollution damage, if those persons are unable to obtain compensation from the owner of the ship from which the oil escaped or if the compensation due from the ship owner and P&I club is not sufficient to cover the damage suffered.

iii Collisions, salvage and wrecks:

The COLREGs have been incorporated into Indian law under the Merchant Shipping (Prevention of Collisions at Sea) Regulations 1975. While, in principle, Indian courts have the power to apportion liability between two vessels in accordance with the degree of fault, there have been very few instances when they have proceeded to do so. There is no precise formula to measure the degree of negligence of a party under Indian law and the courts have a considerable amount of discretion based on abstract notions of justice and equity.[52] Section 345(1)(a) of the MSA provides that in an event where it is not possible to establish different degrees of fault, the liability shall be apportioned equally. In these circumstances, liability between two vessels in a collision would be apportioned equally unless it is ex facie evident that the degree of fault of one vessel was palpably higher than the other.

The law in India with respect to shipwrecks is laid down in Part XIII of the MSA and in the Indian Ports Act 1908. The term 'wreck' includes 'a vessel abandoned without hope or intention of recovery'. India is in the process of giving effect to the Nairobi WRC 2007 into domestic law, but at present there is no legal regime to deal with the removal of wrecks in the exclusive economic zone of India. In the case of *Oil & Natural Gas Corporation Ltd v. Osprey Underwriting Agencies Ltd.*,[53] the Bombay High Court, in interpreting Section 14 of the Indian Ports Act, directed a foreign P&I club and its Indian agents to deposit the cost of removing and raising the wreck in the Indian court. However, it should be noted that the Bombay High Court, *inter alia*, dealt with a dispute between the assured and the P&I club.

Sections 402 to 404 of the MSA provide the salvor with the right to claim salvage services. The Kerala High Court, in the case of *Commander KP Shashidharan v. Union of India*,[54] allowed an officer of the Indian Coast Guard to claim salvage services even though he had a pre-existing duty to protect life and property at sea.

iv Seafarers' rights:

India has ratified the Maritime Labour Convention 2006 (MLC) and made amendments to the MSA to give effect to the provisions of the MLC. In the exercise of the powers conferred by Section 218A read with Section 457 of the MSA, the Indian government promulgated the Merchant Shipping (Maritime Labour) Rules, 2016 (MLC Rules), which, *inter alia*, cast an

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[52] Municipal Corporation of Greater Bombay v. Laxman Iyer, 2003(8) SCC 731
[53] 1998 (2) BOMLR 179
[54] AIR 2002 Ker 388.

obligation on a vessel's financial security provider for unpaid wages for up to a maximum period of 120 days and repatriation expenses in the case of abandonment by the shipowner.

The Merchant Shipping (Recruitment and Placement of Seafarers) Rules 2016[55] has overhauled the earlier regime set up under the 2005 Rules, and has placed greater responsibility, liability and obligations on the recruitment and placement service providers (RPSL agents). Under these Rules, an RPSL agent has to provide a bank guarantee to the DG Shipping, to ensure that the rights of seafarers are protected and that seafarers would be compensated for any monetary loss arising out of the breach of the obligations of the RPSL agent or the shipowners under the seafarer's employment agreement.

The Supreme Court of India held that a foreign seafarer's right to wages falls within the ambit of a fundamental right to life and liberty under Article 21 of the Constitution of India.[56] Indian courts are likely to be guided by the general standard agreement between the National Union of Seafarers of India and the Indian National Shipowners' Association, as an overwhelming majority of contracts of employment on board a vessel incorporate these terms.

Indian law recognises the rights of an injured seafarer or the family members of a deceased seafarer to claim compensation for injury or death of the seafarer. The Employees' Compensation Act, 1923 (ECA) is a general legislation that allows workmen or employees to claim compensation for death and personal injury of seafarers. However, the ECA would not apply to Indian seafarers working aboard foreign-flagged vessels. Under Indian law, foreign seafarers cannot be employed on Indian-flagged vessels unless they obtain prior permission from the DG Shipping.

v. New insolvency regime

The law relating to corporate insolvencies in India has undergone a paradigm shift with the enactment of the Insolvency and Bankruptcy Code, 2016 (the Insolvency Code), which repeals the Sick Industrial Companies (Special Provisions) Act, 1985 and various provisions of the Companies Act, 2013. The Insolvency Code recognises the 'creditor in possession' model and differs from jurisdictions that follow the 'debtor in possession' model, such as Singapore and the United States. The Insolvency Code stipulates definitive time periods within which various stages of the insolvency, corporate rescue and liquidation proceedings have to be completed. The moment the National Company Law Tribunal admits an insolvency petition, a resolution professional is appointed to take over the management of the company. A committee of creditors is formed, comprising the financial creditors of the company, who then have a period of 180 days (extendable by up to 270 days) to finalise a

[55] G.S.R. 169(E) dated 15 February 2016.
[56] O Konavalov v. Commander, Coast Guard Region (2006) 4 SCC 620

corporate rescue strategy, known as an 'insolvency resolution plan', failing which the company would automatically be put into liquidation. During this period when the committee of creditors is attempting to rehabilitate the company, there is a moratorium on institution of new or continuation of pending legal proceedings against the company.[57] In order to commence the corporate insolvency resolution process, the creditor would have to show that there is no pending dispute between the creditor and the debtor. Such dispute should not be merely illusory in nature.[58] One issue that parties to the insolvency proceedings were facing was with regard to reaching an amicable settlement pursuant to the commencement of the corporate insolvency resolution process. The Insolvency Code only envisages two situations after the commencement of the corporate insolvency resolution process; first formulation of a plan in order to continue the existence of the corporate debtor as a going concern and second, to commence the liquidation proceedings. There was no third alternative available for parties who were willing to settle the claims. In order to fill this lacuna, the Insolvency Code was amended.[59] Pursuant to the amendment parties can now withdraw the application, provided that 90 per cent of the committee of creditors approves such a withdrawal. However, the decision of the committee of creditors in rejecting a proposal for withdrawal should not be arbitrary in nature, and as such the adjudicating authority and appellate adjudicating authority under the Insolvency Code have the power to set aside such a decision.[60]

BILLS

Maritime piracy Bill 2012:

- The Piracy Bill, 2012 was introduced in Lok Sabha on April 24, 2012 by the Minister of External Affairs, Shri S.M. Krishna. According to the statement of objects and reasons, piracy as a crime is not included in the Indian Penal Code (IPC). This has led to problems in prosecution of pirates presently in the custody of Indian police authorities. The Piracy Bill intends to fill this gap and provide clarity in the law. This Bill contains 14 sections. The Bill defines ‘piracy’ as any illegal act of violence or detention for private ends by the crew or passengers of a private ship or aircraft on high seas or at a place outside the jurisdiction of any State. It also prescribes that any act which is held to be ‘piratical’ under international law shall be included in the above definition.

- The Bill seeks to punish piracy with imprisonment for life. In cases where piracy leads to death, it may be punished with death. The Bill also lays down punishments

[57] Section 14 of the Insolvency Code
[58] Mobilox Innovations (P) Ltd v. Kirusa Software (P) Ltd., (2018) 1 SCC 353
[59] Section 12A, Insolvency and Bankruptcy Code, 2016
[60] Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India, 2019 SCCOnLine SC 73

for attempts to commit and abet piracy. Such acts shall be punishable with imprisonment up to 14 years and a fine.

- The Bill provides that if arms/ ammunition are recovered from the possession of the accused, or if there is evidence of threat of violence, the burden of proof for proving innocence shall shift to the accused.
- The Bill empowers the government to set up designated courts for speedy trial of offences and authorizes the court to prosecute the accused regardless of his/ her nationality. It also provides for extradition.

Marine Fisheries (Regulation and Management) Bill, 2019

The Union Government proposes to bring fishing vessels of Indian origin in the Indian EEZ, along with other categories, under a legal regime called the Marine Fisheries (Regulation and Management) Bill 2019, through a common legal framework for regulation of fisheries, and conservation and sustainable use of fishery resources in all maritime zones including territorial waters. The scope of the proposed Bill 2019 includes the territorial waters (can be up to 12 nautical miles from the base line), contiguous zone (can be up to 24 nautical miles from the base line), EEZ (can be up to 200 nautical miles from the base line) and the continental shelf (can be up to 350 nautical miles from the base line). It proposes to bring into its ambit Indian fishing vessels constructed in India, owners of such vessels and fishery and fishworkers on board these vessels and their operations, especially in the EEZ. Fisheries in territorial waters are a state subject, while that of other zones are a Union subject. The regulation of fishing in territorial waters is being legally undertaken by the State Fisheries Departments under marine fishing regulation acts/rules (based on a model bill prepared by the Central Government). In the EEZ, Indian citizens have been given more or less freedom to fish. The Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act 1981 and the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Rules, 1982 are meant to regulate foreign fishing vessels in the Indian EEZ that are owned and/or operated by both Indian Citizens and foreign nations. Thus there is a legal vacuum in relation to the regulation of Indian fishing vessels of Indian build in the EEZ with no legal responsibility or accountability except the requirement to follow the seasonal monsoon ban and the prohibition on taking certain endangered or protected species under the 1972 wildlife (Protection) Act. This Bill seems to be proposed mainly with the purpose of bringing all Indian and foreign vessels and related interests in the EEZ under a legal mechanism so as to meet India’s obligations under 1982 United Nations Law of the sea convention and the 1995 United nations Fish Stocks Agreement and to draw upon relevant sections from the 1995 FAO Code of Conduct for Responsible Fisheries.

MODULE-V

MARITIME LAWS AND DISPUTE SETTLEMENT IN INDIA

History and Admiralty Jurisdiction of the High Courts

For the first Admiralty jurisdiction came to be invested in the Recorder's Court at Bombay which was established by a Charter dated 20th February, 1798. The Recorders' Court, however, was substituted by the Supreme Court of Judicature at Bombay which was established by Letters Patent issued under the Charter of 1823. The Supreme Court of Judicature at Bombay was invested with the same jurisdiction on its Admiralty Side as the jurisdiction which was exercised by the High Court of Admiralty in England.

The Indian High Courts Act was passed by the British Parliament on the 6th August, 1861 and was titled as an act for establishing high courts of judicature in India. This legislation contained only 19 sections only.

Its main function was to abolish the supreme courts and the Sadar Adalats in the three Presidencies and to establish the high courts in their place. The records and document of the various courts became the records and documents of the High Court concerned. It gave power authority in Her Majesty to issue letters patent under the great seal of the United Kingdom, to erect and establish High courts of judicature at Calcutta, Madras and Bombay.

Each High court was to consist of a chief justice and as many puisne judges not exceeding fifteen as her majesty might think fit to appoint. Each high court was to have and exercise all such civil and criminal admiralty and vice-admiralty, testamentary, intestate and matrimonial jurisdiction and original and appellate.

The High Court was to have superintendence over all courts subject to its appellate jurisdiction. It got power, authority to call for return, to transfer any suit or appeal from one court to another and to make and issue general rules for regulating the practice and proceedings of such courts.

The charter for the Calcutta High Court was issued on May 14, 1862 and was published in Calcutta on the 1st July 1862 establishing the high court from the next day. The charter for the High Courts of Bombay and Madras were issued on June 26, 1862 and these courts were inaugurated on the 14th and 15th August 1862.

The Supreme Court of Judicature at Bombay which was established in 1823 as aforesaid was superseded by the High Court of Judicature at Bombay established by the Letters Patent of 1862. Clause 31 of the Letters Patent dealt with admiralty and Vice admiralty jurisdiction. The Letters Patent of 1862 were once again superseded by Letters Patent of 1865 and Clause 32 of these Letters Patent provided:

"And we do further ordain that the High Court of Judicature at Bombay shall have and exercise all such civil and maritime jurisdiction as may now be exercised by the said High Court as a Court of Admiralty or of Vice Admiralty, and also such jurisdiction for the trial and adjudication of prize clauses and other maritime questions arising in India as may now be exercised by the said High Court."

In the year 1890, Colonial Courts of Admiralty Act, 1890 was enacted. Section 2(1), section 3 and section 7 of the said Act read thus:--

> "2. Colonial courts of Admiralty.---(1) Every Court of law in a British possession, which is for the time being declared in pursuance of this Act to be a Court of Admiralty, or which, if no such declaration is in force in the possession, has therein original unlimited civil jurisdiction, shall be a Court of Admiralty, with the jurisdiction in this Act mentioned, and may for the purpose of that jurisdiction, exercise all the powers which it possesses for the purpose of its other Civil jurisdiction and such Court in reference to the jurisdiction conferred by this Act is in this Act referred to as a Colonial Court of Admiralty. Where in a British possession the Governor is the sole judicial authority the expression "Court of law" for the purposes of this section includes such Governor."
>
> 3. Power of Colonial legislature as to Admiralty jurisdiction.---The legislature of a British possession may by any Colonial law:---
>
> (a) declare any Court of unlimited civil jurisdiction, whether original or appellate, in that possession to be a Colonial Court of Admiralty, and provide for the exercise by such Court of its jurisdiction under this Act, and limit territorially, or otherwise, the extent of such jurisdiction; and
>
> (b) confer upon any inferior or subordinate Court in that possession such partial or limited Admiralty jurisdiction under such regulations and with such appeal (if any) as may seem fit;
>
> Provided that any such Colonial law shall not confer any jurisdiction which is not by this Court conferred upon a Colonial Court of Admiralty.
>
> 7. Rules of Court.--
>
> (1) Rules of Court for regulating the procedure and practice (including fees and costs) in a Court in a British possession in the exercise of the jurisdiction conferred by this Act, whether original or appellate, may be made by the same authority and in the same manner as rules touching the practice, procedure, fees, and costs in the said Court in the exercise of its Ordinary Civil Jurisdiction respectively are made:
>
> Provided that the rules under this section shall not, save as provided by this Act, extend to matters relating to the slave trade, and shall not (save as provided by this section) come into operation until they have been approved by Her Majesty in Council, but on coming into operation shall have full effect as if enacted in this Act,

and any enactment inconsistent therewith shall, so far as it is so inconsistent, be repealed.

(2) It shall be lawful for Her Majesty in Counsel, in approving rules made under this section, to declare that the rules so made with respect to any matters which appear to Her Majesty to be matters of detail or of local concern may be revoked, varied, or added to without the approval required by this section.

(3) Such rules may provide for the exercise of any jurisdiction conferred by this Act by the full Court, or by any Judge or Judges thereof, and subject to any rules, where the Ordinary Civil Jurisdiction of the Court can in any case be exercised by a Single Judge, any jurisdiction conferred by this Act may in the like case be exercised by a Single Judge."

By Act No. 16 of 1891 i.e. Colonial Courts of Admiralty (India) Act, 1891, the High Court of Bombay along with the High Court of judicature at Fort William in Bengal and at Madras were declared to be Colonial Courts of Admiralty. The preamble of the said Act stated "Whereas it is provided by the Colonial Courts of Admiralty Act, 1890 that the Legislature of a British possession may by any colonial law declare any Court of unlimited civil jurisdiction in that possession to be a Colonial Court of Admiralty." The High Court of Bombay being the Court of record which had unlimited civil jurisdiction was also declared to be Colonial Court of Admiralty having the same jurisdiction in extent and quality as was vested in the High Court of England by virtue of any statute or custom.

The Colonial Court of Admiralty Act of 1890 equated the High Courts of Bombay, Calcutta and Madras to the High Courts of England with regard to admiralty jurisdiction. Admiralty jurisdiction in India was governed by Admiralty Courts Act 1861 applied by (English) Colonial Courts of Admiralty Act 1890 and adopted by Colonial Courts of Admiralty (India) Act 1891. This state of affairs continued due to legislative inaction. Further Section 3 of the 1890 Act empowered the Colonial Legislature to enact law to declare any Court of unlimited jurisdiction to be a Colonial Court of Admiralty. As per this provision the Indian Legislature enacted the Colonial Courts of Admiralty established under the 1890 Act at Calcutta, Bombay and Madras. Their powers and jurisdiction were continued in the 1915 and 1935 Government of India Acts. The Admiralty jurisdiction of the High Courts continued even after the promulgation of the Constitution by virtue of Art.372 which provided for the continuance of existing laws. Though the Admiralty jurisdiction was extended to a considerable extent in England, it continued to be the same in India as per the 1861 Act, today the Admiralty jurisdiction in India is governed by the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.

Common law legal systems of the United States and Britain are in contrast to civil law legal systems which prevail in continental Europe and trace back to old Roman codified law. Even in England, however, admiralty courts were/are separate from common law courts, and generally follow civil law principles. Most of the common law countries (including Pakistan, Singapore, India, and many other Commonwealth of Nations countries) follow English statute and case law. India still follows many Victorian-era British statutes such as the Admiralty Court Act 1861 [24 Vict c 10]. Whilst Pakistan now has its own statute, the Admiralty Jurisdiction of High Courts Ordinance, 1980 (Ordinance XLII of 1980), it also follows English case law. One reason for this is that the 1980 Ordinance is partly modelled on old English admiralty law, namely the Administration of Justice Act 1956. The current statute dealing with the Admiralty jurisdiction of the England and Wales High Court is the Supreme Court Act 1981, ss. 20-24, 37. The provisions in those sections are, in turn, based on the International Arrest Convention 1952. Other countries which do not follow the English statute and case laws, such as Panama, also have established well-known maritime courts which decide international cases on a regular basis. Admiralty courts assume jurisdiction by virtue of the presence of the vessel in its territorial jurisdiction irrespective of whether the vessel is national or not and whether registered or not, and wherever the residence or domicile or their owners may be. A vessel is usually arrested by the court to retain jurisdiction. State-owned vessels are usually immune from arrest.

In M. V. Elisabeth and another v. Harwan Investment & Trading Co. and another, the question before the Apex Court was whether the High Court in India was invested with admiralty jurisdiction to order the arrest of the vessel in respect of a cause of action relating to outward cargo. While dealing with the said contention, the Apex Court referred to the history of the admiralty law and the various paragraphs, particularly 14, 17, 20, 25, 26, 30, 44, 48, 49, 56, 58, 59, 65, 66, 67, 68, 72, 75, 78, 80, 83, 85, 88, 89 and 101 throw immense light on the extent and power of admiralty jurisdiction possessed by the High Courts.

What is clearly laid down by the Apex Court in M.V. Elisabeth in respect of admiralty jurisdiction is that despite its peculiarity of original growth, it nevertheless is a part of the totality of jurisdiction vested in the High Court as the superior Court of record and is not a distinct and separate jurisdiction as was once the position in England before the unification of codes. The Colonial Courts of Admiralty Act, 1890 and Colonial Courts of Admiralty (India) Act, 1891 conferred admiralty jurisdiction on Indian High Courts by reason of their being courts of unlimited jurisdiction. The two Acts of 1890 and 1891 did not confer any separate or distinct jurisdiction but by passage of these acts equated the Indian High Courts to the position of English High Courts for the exercise of admiralty powers within their jurisdiction. The jurisdiction is not confined to the High Courts who were conferred power and jurisdiction under the Act of 1891 alone.

The State Reorganisation Act, 1956 was enacted to provide for the reorganisation of the States of India. The existing States were divided or expanded and the new States came to be formed from the appointed day i.e. 1st November 1956. Under section 8 of the Act of 1956 a new Part A State to be known as the State of Bombay came to be formed comprising the territories stated therein which inter alia included the territories of the existing State of Kutch. Part V of the Act of 1956 deals with High Courts. Section 49 provides that the High Courts exercising jurisdiction immediately before the appointed day shall be deemed to be High Courts of New States and accordingly High Court of Judicature at Bombay became empowered to exercise its jurisdiction in respect of new State of Bombay by virtue of section 52 of the Act of 1956. Sections 49 and 52 which are relevant for the present purposes read thus:--

49. (1) The High Courts exercising immediately before the appointed day jurisdiction to relation to existing States of Bombay, Madhya Pradesh and Punjab shall, as from the appointed day, be deemed to be the High Courts for the new States of Bombay, Madhya Pradesh and Punjab respectively.

52. The High Court for a new State shall have, in respect of any part of the territories included in that new State, all such original, appellate and other jurisdiction as, under the law in force immediately before the appointed day, is exercisable in respect of that part of the said territories by any High Court or Judicial Commissioner's Court for an existing State.

The State of Bombay which came to be formed in the year 1956 under the Act of 1956 was further reorganised under the Bombay Reorganisation Act, 1960 (Act of 1960). The appointed day of the said Act is 1st of May 1960. Under section 3 of the Act of 1960, State of Gujarat was formed comprising some of the territories of Bombay and the residuary State of Bombay was named the State of Maharashtra. The territories which form the State of Gujarat include Kutch district. Section 3 reads thus:

3. (1) As from the appointed day, there shall be formed a new State to be known as the State of Gujarat comprising the following territories of the State of Bombay, namely,:---

> (a) Banaskantha, Mehsana, Sabarkantha, Ahmedabad, Kaira, Panch-Mahals, Baroda, Broach, Surat, Dangs, Amreli, Surendra nagar, Rajkot, Jamnagar, Junagadh, Bhavnagar and Kutch distircts; and
>
> (b) the villages in Umbergaon taluka of Thana district, the villages in Nawapur and Nandurbar talukas of West Khandesh district and the villages in Akkalkuwa and Taloda talukas of West Khandesh district, respectively specified in Parts I, II and III of the First Schedule; and thereupon, the said territories shall cease to form part of the State of Bombay, and the residuary State of Bombay shall be known as the State of Maharashtra.

(2) The villages in Umbergaon taluka specified in Part I of the First Schedule shall form a separate taluka of the same name and be included in Surat district, and the remaining villages

in the said taluka shall be included in, and form part of, Dahanu taluka of Thana district; and the villages specified in Parts II and III of the First Schedule shall rspectively be included in, and form part of, Sangadh taluka of Surat district and Sagbara taluka of Broach distirct."

The separate High Court for the State of Gujarat was established under section 28 of the Act of 1960 which also provide that High Court of Bombay shall become the High Court for the State of Maharashtra. The High Court of Gujarat, under section 30 of the said Act was conferred jurisdiction in respect of the territories included in the State of Gujarat having the same powers and the jurisdiction which the High Court of Bombay had in respect of the said territories immediately before the appointed date.

The historical development of admiralty jurisdiction and procedure is of practical as well as theoretical interest, since opinions in admiralty cases frequently refer to the historical background in reaching conclusions on the questions at issue. The special jurisdiction of admiralty has a maritime purpose, different from the common law. It is not exclusively rooted in the civil law system, although it includes substantial derivations there from. It has a strong international aspect, but may undergo independent changes in several countries. Certain universal features exist in all countries that have admiralty law and such international features are given serious consideration by admiralty courts. By the end of the seventeenth century the admiralty jurisdiction in England was restricted, it was not as extensive as compared to other European maritime countries due to a long standing controversy in which the common law courts with the aid of the Parliament had succeeded in limiting the jurisdiction of admiralty to the high seas and as such excluded admiralty jurisdiction from transactions arising on waters within the body of a country.

A suit against a foreign ship owned by a foreign company not having a place of residence or business in India is liable to be proceeded against on the admiralty side of the High Court by an action in rem in respect of the cause of action alleged to have arisen by reason of a tort or a breach of obligation arising from the carriage of goods from a port in India to a foreign port. Courts having admiralty jurisdiction is not limited to what was permitted by the Admiralty Court, 1861 and the Colonial Courts of Admiralty Act, 1890. Prior to the decision of m.v Elisabeth-v- Harwan Investment & Trading Pvt Ltd., Goa, the courts exercising Admiralty Jurisdiction statutorily in India were the three High Courts at Calcutta, Madras and Bombay. The High Courts of the other littoral states of India, viz. Gujarat, Karnataka, Kerala, Andhra Pradesh and Orissa, do not possess Admiralty jurisdiction, albeit there have been instances of the High Courts of Gujarat, Andhra Pradesh and Orissa having entertained Admiralty causes apparently on a perfunctory consideration of the various States Reorganisation Acts enacted by the Indian Parliament and presumably without the benefit of a full argument. However, after the decision of the Supreme Court in m.v Elisabeth-v- Harwan Investment & Trading Pvt Ltd) interpreting under A.225 the High Courts in India is superior courts of record. They have original and appellate jurisdiction. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate or discretionary jurisdiction of the Supreme Court, the High Courts have unlimited jurisdiction, including the jurisdiction to determine their own powers.

The Admiralty jurisdiction of the High Courts at Calcutta, Madras and Bombay were the same as the Admiralty jurisdiction of the High Court in England at the time of the enactment by the British Parliament of the Colonial Courts of Admiralty Act 1890 and is, under subsection (2) of the said Act, and subject to the provisions thereof, over the like places, persons, matters and things as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise and exercised in the like manner and to as full an extent as the High Court in England having the same regard as that court to international law and the comity of nations. The subsequent extension of the Admiralty jurisdiction of the High Court in England by statutes passed after that date by the British Parliament, the Administration of Justice Act 1920, re-enacted by the Supreme Court of Judicature (Consolidation) Act, 1925, is not shared by the said three High Courts. After India attained independence, the Indian Parliament has so far not exercised it powers to make laws with respect to Admiralty and thus the three Indian High Courts were to apply Admiralty laws as it was applied by the English Court of Admiralty as defined in the Admiralty Court Act, 1861. The scope and nature of the Admiralty jurisdiction exercised by the High Courts in India have been examined and ascertained in Kamlakar v. The Scindia Steam Navigation Co. Ltd; Rungta Sons Ltd. v. Owners and Master of Edison6; National Co. Ltd. v. M. S. Asia Mariner ; m.v Elisabeth-v- Harwan Investment & Trading Pvt Ltd., Goa

The fact that the High Court continues to enjoy the same jurisdiction as it had immediately before the commencement of the Constitution, as stated in Art. 225, does not mean that a matter which is covered by the Admiralty Court Act, 1861 cannot be otherwise dealt with by the High Court, subject to its own Rules, in exercise of its manifold jurisdiction, which is unless barred, unlimited. To the extent not barred expressly or by necessary implication, the judicial sovereignty of this country is manifested in the jurisdiction vested in the High Courts as superior courts. It is true that the Colonial statutes continue to remain in force by reason of Art. 372 of the Constitution of India, but that do not stultify the growth of law or blinker its vision or fetter its arms. Legislation has always marched behind time, but it is the duty of the Court to expound and fashion the law for the present and the future to meet the ends of justice.

It was because of the unlimited civil jurisdiction that was already vested in these High Courts that they were declared to be Colonial Courts of Admiralty having the same jurisdiction in extent and quality as was vested in the High Court of England by virtue of any statute or custom. The High Courts were declared competent to regulate their procedure and practice in exercise of admiralty jurisdiction in accordance with the Rules made in that behalf. There is, therefore, neither reason nor logic in imposing a fetter on the jurisdiction of those High Courts by limiting it to the provisions of an imperial statute of 1861 and freezing any further growth of jurisdiction. This is even truer because the Admiralty Court Act, 1861 was in substance repealed in England a long time ago.

Assuming that the admiralty powers of the High Courts in India are limited to what had been derived from the Colonial Courts of Admiralty Act, 1890, that Act, having equated certain Indian High Courts to the High Court of England in regard to admiralty jurisdiction, must be considered to have conferred on the former all such powers which the latter enjoyed in 1890 and thereafter during the period preceding the Indian Independence Act, 1947. What the Act of 1890 did was not to incorporate any English statute into Indian law, but to equate the admiralty jurisdiction of the Indian High Courts over places, persons, matters and things to that of the English High Court. There is no reason to think that the jurisdiction of the Indian High Courts have stood frozen and atrophied on the date of the Colonial Courts of Admiralty Act, 1890.

Yet there appears no escape from it, notwithstanding its unpleasant echo in ears. The shock is still greater when it transpired that this state of affairs was and is due to lack of legislative exercise.

Viewed in the background of enactment of 1890 it would be too artificial to confine the exercise of power by the High Courts in Admiralty to what was contained in 1861 Act. Even otherwise for deciding the jurisdiction exercised by the High Court in India founded on jurisdiction exercised by the High Court of England it is not necessary to be governed by the decisions given by English Courts. Law is pragmatic in nature to problems arising under an Act and not by abdication or surrender, 1890 Act is an unusual piece of legislation expansive in scope, wider in outlook, opening out the wings of jurisdiction rather than closing in. The authority and power exercised by the High Court in England, the width of which was not confined to the statute but went deep into custom, practice, necessity and even exigency.

Law of 1890 apart, can the Indian High Courts after 1950 be denied jurisdiction to arrest a foreign ship to satisfy the claim of an owner of a bill of lading for cargo taken outside the country ? Without entering into any comparative study regarding the jurisdiction of the High Court of England and the High Courts in our country the one basic difference that exists today is that the English Courts derive their creation, constitution and jurisdiction from Administration of Justice Act or Supreme Court Act but the High Courts in our country are established under the Constitution. Under Art. 225 enlarged preserves the jurisdiction, including inherent jurisdiction, which existed on the date the Constitution came into force and Art. 226 enlarged it by making it not only a custodian of fundamental rights of a citizen but a repository of power to reach its arms to do justice. A citizen carrying on a particular business which is a fundamental right cannot be rendered helpless on the premise that the jurisdiction of the High Courts stands frozen either by the statute of England or any custom or practice prevailing there or the High Court of England cannot exercise the jurisdiction.

The jurisdiction of the High Court of Admiralty in England used to be exercised in rem in such matters as from their very nature would give rise to a maritime lien - e.g. collision, salvage, bottomry. The jurisdiction of the High Court of Admiralty in England was, however, extended to cover matters in respect of which there was no maritime lien, i.e., necessaries supplied to a foreign ship. In terms of Section 6 of the Admiralty Act, 1861, the High Court of Admiralty was empowered to assume jurisdiction over foreign ships in respect of claims to cargo carried into any port in England or Wales. By reason of Judicature Act of 1873, the jurisdiction of the High Court of Justice resulted in a fusion: of admiralty law, common law and equity. The limit of the jurisdiction of the Admiralty court in terms of Section 6 of the 1861 Act was discarded by the Administration of Justice Act, 1920 and the jurisdiction of the High Court thereby was extended to (a) any claim arising out of an agreement relating to the use or hire of a ship; (b) any claim relating to the carriage of goods in any ship; and (c) any claim in tort in respect of goods carried in any ship.

The admiralty jurisdiction of the High Court was further consolidated by the Supreme Court of Judicature (Consolidation) Act, 1925 so as to include various matters such as any claim "for damage done by a ship", and claim 'arising out of an agreement relating to the use or hire of a ship'; or 'relating to the carriage of goods in a ship'; or "in tort in respect of goods carried in a ship".

The admiralty jurisdiction of the High Court was further widened by the Administration of Justice Act, 1956 so as to include not only the claims specified under Section 1(i) of Part I but also any other jurisdiction which either was vested in the High Court of Admiralty immediately before the date of commencement of the Supreme Court of Judicature Act, 1873 (i.e. November 1, 1875) or is conferred by or under an Act which came into operation on or after that date on the High Court as being a court with admiralty jurisdiction and any other jurisdiction connected with ships vested in the High Court apart from this section which is for the time being assigned by rules of court to the Probate, Divorce and Admiralty Division.

Sub-section (4) of Section 1 removed the restriction based on the ownership of the ship. By reason of Clauses (d)(g) and (h) of the said Section the jurisdiction in regard to question or claims specified under Section 1(i) included any claim for loss of or damage to goods carried in a ship, any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship.

In the course of time the jurisdiction of the High Courts of Calcutta, Bombay, Madras, Gujarat, Hyderabad, Telangana, Karnataka, Kerala and Orissa have entertained Admiralty actions.

The Admiralty jurisdiction exercised by the High Courts in Indian Republic is now governed by the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, repealing the

English Admiralty Courts Act, 1861 applied by (English) Colonial Courts of Admiralty Act, 1890 and adopted by Colonial Courts of Admiralty (India) Act, 1891 (Act XVI of 1891).

The 1861 Act was discarded by the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 on August 9, 2017.

<u>Admiralty Jurisdiction of the High Court:</u>

The Admiralty Rules of the High Courts provide that the rules and practice of the court in the matter of suits and proceedings on the original side of the court shall, if not inconsistent with the said Rules, apply to suits and proceedings on the Admiralty side of the court. In the title of the plaint in a suit in rem, after the name of the ship which is sued, its nationality is usually stated followed by the words "together with its engines, boats, gear, tackle, apparel furniture and papers and everything belonging to it whether on board or ashore", and a statement as to its location. Some draftsmen include in the title "The Owners and other parties interested in the first defendant ship" as the second defendants.

If the claim is under a contractual document, it is usual for a copy thereof and, if it be in a language other than English, a translation thereof to be annexed to the plaint as an exhibit and in the case of a claim for repairs or necessaries, copies of the unpaid bills (In case of urgency, courts allow application for arrest on fax copy of the Power of Attorney/Letter of Authority; on Lodging number of the Suit; and also on clear photocopies of the documents). The court may at any time require that they be produced for its scrutiny when applying for arrest. The Admiralty Rules of the High Courts require that in a suit for wages or for possession against a foreign ship, notice of the institution of the suit be given to the consul of the state to which the ship belongs, if there be one resident at those places and a copy of the notice be annexed to the affidavit leading to the warrant. The Rules of the High Court at Bombay require that such notice shall be given in a suit for necessaries also and that, if there is no such consul resident in Bombay, a statement of that fact be made in the affidavit leading to the warrant.

The Rules of the High Courts relevant to filing of the various caveats are substantially similar. Whereas the Rules of the High Courts require that before issuing the warrant of arrest the registrar of the court shall ascertain whether or not any caveat warrant has been entered, rule 941 of the Bombay Rules, inter alia, requires that a Certificate of the Prothonotary & Senior Master (i.e. the Admiralty Registrar of the Court), certifying that search has been made in the Caveat Warrant Book and that no caveat has been filed, be annexed to the affidavit leading to the warrant. The Rules of all High Courts having Admiralty Jurisdiction require that the affidavit leading to the warrant shall state the nature of the claim in the suit and that it has not been satisfied. The Rules of the Calcutta and Madras courts also require that in a suit for bottomry a copy of the bottomry bond and, if in a foreign language, also a copy of a notarial translation thereof certified to be correct shall be annexed to the affidavit and the original bond and the notarial translation thereof shall be produced for the inspection and perusal of the court's registrar.

Specific Jurisdiction relating to maritime Law

The starting point for ship arrest in maritime law is the subject of admiralty jurisdiction. Admiralty jurisdiction is founded on the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, section 3, provides: "subject to the provisions of sections 4 and 5, the jurisdiction in respect of all maritime claims under this Act shall vest in the respective High Courts and are the courts of specific jurisdiction and be exercisable over the waters up to and including the territorial waters of their respective jurisdictions in accordance with the provisions contained in this Act: ". Admiralty jurisdiction is an essential aspect of judicial sovereignty which under the Constitution and the laws is exercised by the High Court as a superior court of record administering justice in relation to persons and things within its jurisdiction. Power to enforce claims against foreign ships is an essential attribute of admiralty jurisdiction and it is assumed over such ships while they are within the jurisdiction of the High Court by arresting and detaining them. The Indian Courts possessing Admiralty jurisdiction have jurisdiction over the following claims herein under to hear and determine any questions with regard thereto the claims as set out in Section 4 (1) of the Act. The High Court may exercise jurisdiction to hear and determine any question on a maritime claim, against any vessel, arising out of any:

(a) Dispute regarding the possession or ownership of a vessel or the ownership of any share therein;
(b) Dispute between the co-owners of a vessel as to the employment or earnings of the vessel;
(c) Mortgage or a charge of the same nature on a vessel; (d) loss or damage caused by the operation of a vessel;
(d) loss of life or personal injury occurring whether on land or on water, in direct connection with the operation of a vessel;
(e) Loss or damage to or in connection with any goods;
(f) Agreement relating to the carriage of goods or passengers on board a vessel, whether contained in a charter party or otherwise;
(g) Agreement relating to the use or hire of the vessel, whether contained in a charter party or otherwise;
(h) salvage services, including, if applicable, special compensation relating to salvage services in respect of a vessel which by itself or its cargo threatens damage to the environment;
(i) towage;
(j) pilotage;
(k) goods, materials, perishable or non-perishable provisions, bunker fuel, equipment (including containers), supplied or services rendered to the vessel

for its operation, management, preservation or maintenance including any fee payable or leviable;

(l) construction, reconstruction, repair, converting or equipping of the vessel;

(m) dues in connection with any port, harbour, canal, dock or light tolls, other tolls, waterway or any charges of similar kind chargeable under any law for the time being in force;

(n) claim by a master or member of the crew of a vessel or their heirs and dependents for wages or any sum due out of wages or adjudged to be due which may be recoverable as wages or cost of repatriation or social insurance contribution payable on their behalf or any amount an employer is under an obligation to pay to a person as an employee, whether the obligation arose out of a contract of employment or by operation of a law (including operation of a law of any country) for the time being in force, and includes any claim arising under a manning and crew agreement relating to a vessel, notwithstanding anything contained in the provisions of sections 150 and 151 of the Merchant Shipping Act, 1958;

(o) disbursements incurred on behalf of the vessel or its owners;

(p) particular average or general average;

(q) dispute arising out of a contract for the sale of the vessel;

(r) insurance premium (including mutual insurance calls) in respect of the vessel, payable by or on behalf of the vessel owners or demise charterers;

(s) commission, brokerage or agency fees payable in respect of the vessel by or on behalf of the vessel owner or demise charterer;

(t) damage or threat of damage caused by the vessel to the environment, coastline or related interests; measures taken to prevent, minimise, or remove such damage; compensation for such damage; costs of reasonable measures for the restoration of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; or any other damage, costs, or loss of a similar nature to those identified in this clause;

(u) costs or expenses relating to raising, removal, recovery, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel, and costs or expenses relating to the preservation of an abandoned vessel and maintenance of its crew; and

(v) maritime lien.

A Single Judge Bench comprising of Ashis Kumar Chakraborty, J., ordered a marine vessel to be arrested while deciding on the affidavit of arrest filed in an admiralty suit.

The plaintiff prayed for arrest of a marine vessel M.T. Aquarius, flying with Barbados flag, lying at Haldia Dock within the jurisdiction of Calcutta High Court. Plaintiff alleged to have a maritime claim against the defendant vessel of Rs 28,06,31,328 on account of her failure to deliver the cargo of gas oil to the plaintiff at the port of Mukalla, Yemen. It was the case of the plaintiff that the defendant vessel, instead of delivering the said gas oil cargo at Makalla, delivered the same to a third party at Hamriyah, UAE.

The High Court, considering all the facts and circumstances, was of the view that the plaintiff had made a prima facie case and balance of convenience also lie in its favour. The Court also found favour with the submission of the plaintiff that its claim gave rise to a *maritime claim* under Section 4(1)(f) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. It was also noted that the defendant's vessel was likely to leave *Indian Territorial Waters* during the next few days. Accordingly, the Court ordered arrest of the defendant vessel, M.T. Aquarius, along with her tackle, hull, engine, equipments, apparels, furniture and all movables lying on board. However, it was clarified that on payment of the amount stated hereinabove as security with the Registrar of the Court, the order of arrest shall stand vacated. The application was made returnable on a further date.[61]

In the case of *Polestar Maritime Ltd. vs. M.V. QILIN MEN*[62], The plaintiff is the owner of the motor vessel "Rewa". By a memorandum of agreement dated 23rd July 2008, the plaintiff agreed to sell the ship "Rewa" to the defendant no. 2. The defendant no. 3 who is owner of motor vessel M.V.QI LIN MEN (the defendant no. 1) agreed to be a guarantor on behalf of the buyer. Learned counsel for the plaintiff however submits that defendant no. 3 was not only a guarantor but was a buyer himself. That controversy need not be addressed to for the purpose of deciding of the present motion. According to the plaintiff, defendant nos. 2 and 3 committed a default in purchasing of motor vessel and plaintiff has initiated arbitration proceedings in London on account of the alleged default.

According to the plaintiff, the defendant no. 1 ship belongs to defendant no. 3. As soon as the defendant no. 1 entered the maritime waters of India, the plaintiff filed the present suit against the defendants and prayed for arrest of defendant no. 1 ship as a security of the maritime claim which the plaintiff has against the defendant nos. 2 and 3. Ex-parte order for the arrest was passed by this Court on 2nd December 2008. This motion by the defendant no. 1 is for vacating that order. Relying upon a decision of the Full Bench of this Court in *J.S. Ocean Liner LLC* v. *M.V. Golden Progress* learned counsel for the plaintiff submitted that admiralty suit is maintainable in respect of the present claim and it is not permissible to invoke jurisdiction u/s.9 of the Arbitration and Conciliation Act 1996 or under any other law relating to arbitration applicable in London. Counsel for the defendant does not

[61] Quick Time General Trading LLC v. Owners and Parties Interested in the Vessel M.T. Aquarius,2018 SCC OnLine Cal 5363, dated 10-08-2018
[62] Polestar Maritime Ltd vs M.V. Qi Lin Men And 2 Ors on 13 December, 2018, Bombay High Court

seriously dispute about the maintainability of the admiralty suit in view of the decision of the full bench.

Admiralty court exercises jurisdiction in relation to a maritime claim. It has the power to arrest a ship for a maritime claim arising against the ship. Such power has been recognised under the Admiralty Court Act 1861, Supreme Court Act 1981 and Arrest Convention 1952 and Arrest Convention, 1999. In *M.B. Elisabeth* v. *Harwan Investment & Trading Pvt. Ltd. Goa* reported in 1993 Supp (2) SCC 433 : AIR 1993 SC 1014, the Apex Court has recognised the powers of a High Court to arrest a ship, Indian or foreign, entering the Indian waters. Such arrest can however be in respect of the maritime claim.

Learned counsel for the plaintiff submitted that the plaintiff was claiming arrest of the defendant no. 1 ship under the Arrest Convention, 1999 and not under any of the two acts or Arrest Convention of 1952 referred to above.

Any dispute "arising out of a contract for the sale of the ship" is recognised as a maritime claim under Article 1 of the Arrest Convention of 1999. Therefore, the claim arising out of the sale of the ship "Rewa", it would be a maritime claim. However, that maritime claim would be against the ship Rewa and not against the defendant no. 1 ship.

. Clause (1) of Article 3 permits arrest of any ship in respect of a maritime claim is asserted. Clause (1) therefore can be used for arrest of the ship against whom there is a maritime claim. Admittedly, maritime claim in the suit is only against ship "Rewa". There is no maritime claim against the defendant no. 1 ship and therefore clause (1) of Article 3 obviously would not be apply to the present case. This position is also not disputed by the counsel for the plaintiff.

Learned counsel for the plaintiff however submits that under clause (2) of Article 3 an arrest of any other ship of the same owner is also permissible for recovery of dues under the maritime claim. In my view, under Article 3(2) a ship can be arrested in respect of the maritime claim arising against another ship in the following circumstances:

i. The former (arrested ship) and the latter (in respect of which maritime claim exists is owned by the same owner; or

ii. The latter (in respect of which maritime claim exists) was taken of a demise charterer, time charterer or a voyage charterer by the owner of the former ship which is sought to be arrested.

It was opined that none of the two conditions are satisfied in the present case. The maritime claim is said to arise in respect of contract for sale of the ship "Rewa". The ship "Rewa" is owned by the plaintiff and not by any of the defendant nos. 2 and 3. The ship

"Rewa" was not on a as demise charterer, time charterer or voyage charterer by the defendant nos. 2 or the defendant no. 3. at a time when the maritime claim arose. Therefore, for recovery of the maritime claim against "Rewa", the defendant no. 1 ship cannot be arrested even if it is assumed that defendant no. 1 ship was owned by defendant nos. 2 or 3 when the suit was filed.

India statutes does not define what a maritime claim is but the Supreme Court of India applied the provisions of the Supreme Court Act of England 1981 where maritime claims are based on the Brussels convention of 1952 but the Supreme Court held that these provisions of the conventions should be regarded as a part of International Common Law and it suppliments and compliments our maritime law and it should be used to fill up the lacunae in the Merchant Shipping Act. India is not a signatory to the aforesaid Convention following M.V Elisabeth (supra), this Convention becomes part of our national law and must be followed by this Court. Arrest is only permissible of any ship if a maritime claim is asserted against the person who owned the ship at a time when the maritime claim arose for which the owner is liable, and second, that the same ship owner should be the owner of the ship when the arrest is affected.[63]

Limitation of liability

Carriers can limit their liability for cargo claims by way of 'package limitation' and 'kilo limitation' pursuant to the Indian COGSA and the Multimodal Transportation Act, 1993. A party seeking to limit liability under the LLMC Convention, 1976 can initiate limitation proceedings by filing an admiralty suit in the High Court.

Section 352(b) contained in Part XA of the MSA provides that 'the Convention on Limitation of Liability for Maritime Claims, 1976 as amended from time to time' has the force of law in India. The Merchant Shipping (Limitation of Liability for Maritime Claims) Amendment Rules, 2015, which came into force on 16 February 2015, gives effect to the 1996 Protocol of the 1976 LLMC. Under the 2015 Rules, a different unit of account applies to 'Indian ships intended for navigation in or around the coast of India' than to foreign-going vessels. The Merchant Shipping (Limitation of Liability for Maritime Claims) Amendment Rules, 2017, which came into force on 21 February 2017, gave effect to the 2012 amendments to the 1976 LLMC. However, the 2017 Rules do not apply to coastal trade. This would imply Indian-flagged vessels having a licence only to trade along the coast of India would follow the 1996 Protocol to the 1976 LLMC, whereas seagoing vessels would follow the 2012 Amendments to the 1976 LLMC. The amended rates are applicable to incidents that take place subsequent to the amendment coming into force.

[63] Christomar corporation of India vs. MJR Steels Private Ltd.

The High Court of Bombay held that a shipowner's right to limit liability under Part XA of the MSA is absolute and without reference to any proof of loss resulting from a personal act or omission of the shipowner.[64] This decision is therefore likely to make India a favourable jurisdiction for constituting a single worldwide limitation fund, without any prior claim being initiated. Interim limitation funds are not permissible under Indian law.

The CLC Convention, as amended from time to time, has been incorporated under Part XB of the MSA. A party seeking to limit liability can file an action in the admiralty court.[65] Security in the form of cash or bank guarantee is permissible.

India recently recast the law relating to specific performance of contracts from an equitable and discretionary remedy to be exercised in limited circumstances to a statutory remedy. Under the old regime, courts had discretion in granting the remedy of specific relief and could refuse to order such relief even if the party seeking specific relief satisfied all the criteria for it. This discretionary power of the court has now been done away with. Under the old regime, it was impossible to obtain an order directing specific performance of a contract, for the non-performance of which, compensation was an adequate relief. This is no longer the case under the present regime. Indian courts would not be able to pass an order of injunction if such an injunction would be likely to impede the completion of specific infrastructure projects, which, *inter alia*, include capital dredging of ports and other operations in ports, Shipyards (including a floating or land-based facility with the essential features of waterfront, turning basin, berthing and docking facility, slipways or ship lifts, and which is self-sufficient for carrying on shipbuilding, repair or breaking activities), inland waterways, oil pipelines, oil, gas or liquefied natural gas storage facilities (including strategic storage of crude oil), etc. Under the new regime, a court, even after granting specific performance, can additionally grant a certain amount of compensation.

Enforced Sale of the Ship

Under the Admiralty Rules of the three High courts, the sale of ship, whether pendente lite or after adjudication on the plaintiff’s suit, has to be carried out by the marshal/sheriff, just like a sale of movable property in an ordinary civil suit. There is no provision for a reserve price and there is no provision for appraisement as in English Admiralty practice. Nevertheless, the courts, in order to prevent the ship being sold at a price a great deal less than its real value, from recent times have invariably ordered that the ship be appraised at its real value by a ship’s valuer and sold at not less than the appraised value thereof unless the court, on the marshal’s/sheriff’s application, orders it to be sold for a lesser price when the bidding does not reach up to the appraised value.

[64] Murmansk Shipping Company v. Adanin Power Rajasthan Ltd. & Ors., Admiralty Suit No. 43 of 2012 (decided on 8 January 2016)

[65] For an Indian-registered ship, in the high court of the state in whose port the vessel is registered, or where the incident occurs. For foreign ships, at the port or place within the territorial waters of which the vessel is present.

The sale is normally by public auction after publication of the notice of sale in such newspapers as the court may direct. There have been no known instances of sales by private treaty, though there is nothing in the Rules preventing such a sale.

Claims payable in foreign currency:

In those cases where there are several claims payable in a foreign currency, usually United States dollars, the court may accede to a request in that behalf and order that the sale be restricted to persons who are able to bid for the ship in free foreign currency and that, in the event that there is no bid in free foreign currency equivalent to the appraised value, the ship be sold for Indian rupees. In order not to expose the claimants in foreign currencies to the hazards of fluctuations in the rate of exchange between the time from the filing of their suits and the payment out of their claims after adjudication, the court may be persuaded to direct that the sale proceeds in foreign currency, subject to prior approval of the Reserve Bank of India, be held by the registry in the same currency without conversion into Indian rupees. The Bombay High Court has so directed in the cases of The East Hampton,[66] The St. Nicolas,[67] and in both cases the Reserve Bank of India accorded approval to the sale proceeds, when received in the registry, being held in United States dollars without being converted into Indian rupees. The writer has mentioned the two cases within his experience which serve as precedents, as the Reserve Bank of India has not acted consistently in the matter of according such approval. In the cases of ships sold for Indian rupees, foreign claimants have experienced inexorable difficulty and delay in obtaining exchange control permission for repatriation out of India of the amounts recovered by them and wages claimants, especially, have had to suffer great hardship and privation.

Conditions of sale:

Under the terms and conditions of the sale, the successful bidder is required to pay a percentage, usually 15 per cent, of the purchase price forthwith and the balance of the price within a period fixed in the conditions of sale, usually 15 days from the date of the sale. The payment is to be made by means of bankers' draft or a certified cheque. Under the Rules, the sale is subject to sanction of the court. The sale is free and clear of all maritime or other liens and encumbrances.

Arrest and sale of ships:

Admiralty law in Indian has finally been codified as of 1 April 2018 with the coming into force of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (the Admiralty Act). The brief ramifications of the Admiralty Act are:

[66] Sahida Ismail v. Petko R. Salvejkov, LXXIV B.L.R. 514 at 516
[67] Admiralty Suit No.74 of 1981

a. the Bombay and Calcutta High Courts would no longer exercise pan-India jurisdiction and each high court of a coastal state in India would only have jurisdiction over vessels within its own territorial waters;

b. Indian ships are amenable to orders of arrest, except vessels owned or operated by the government of India and vessels registered under the Inland Vessels Act, 1917;

c. a claimant can arrest a vessel to enforce a judgment or order;

d. an express stipulation of the limited cluster of claims that are classified as 'maritime liens' bring much-needed clarity to the rather nebulous notion of whether claims for supply of necessities to a vessel would give rise to a maritime lien;

e. express stipulations on the priority of claims or the hierarchy of various cluster of creditors over a vessel seeking to assert an *in rem* action against a vessel that includes an express stipulation of priorities of various creditors seeking to assert a maritime lien;

f. an expansive definition of a 'vessel' that can be subject to an order of arrest;

g. a plaintiff may arrest a vessel for any defined 'maritime claim' as listed in the 1999 Arrest Convention;

h. the right of a plaintiff to arrest a vessel other than a vessel against which a maritime claim has arisen, is subject to the fulfillment of certain conditions;

i. there is an express right of a plaintiff to initiate a pure action in personam for a 'maritime claim' beyond the scope of an action *in rem*;

j. the appointment of nautical assessors to assist the admiralty court to deal with technical or nautical matters;

k. an express provision authorising the admiralty court to sell the vessel by way of a judicial auction free of all encumbrances, liens, attachments, registered mortgages and charges;

l. a defined time period of one year after which maritime liens would expire, except for seafarers' wages, which expire after two years.

m. the courts have been empowered to impose on a claimant, either as a condition to obtain an arrest or to maintain the order of arrest, an obligation to provide an undertaking to pay damages or furnish security for damages, for any loss or damage to the shipowner as a result of a wrongful arrest or excessive security having been demanded;

n. express power to the Indian Central Government to publish rules under the Admiralty Act;

o. all pending applications in any admiralty court will be decided in accordance with the Admiralty Act; and

p. The Admiralty Act is silent on whether property other than ships, such as bunkers, cargo, freight, is amenable to an order of arrest without an underlying cause of action being made out against a vessel.

The Bombay High Court in the case of *Flag Mersinidi*[68]rejected the notion that a bunker supply contract could be given the recognition of a maritime lien, if the governing law of the bunker supply contract recognises a maritime lien for bunkers supplied to a vessel. The Court had refused to apply American law, which was the governing law of the bunker supply contract and applied Indian law as the lex fori.

The Supreme Court of India held that a claim for necessaries supplied to a vessel would constitute a maritime claim against a vessel and not a maritime lien.[69] The judgment further stated that 'arrest of a foreign ship for a maritime claim is permissible only if there is no change of ownership between the date of claim and date of arrest'.

Arrests can be moved *ex parte*, unless there is a caveat against arrest filed up to a reasonable contemplation of the claim with an undertaking to furnish security for the claim amount. India follows the English case of *The Moschanthy*[70], on the basis of which a claimant can sustain an order of arrest over a vessel merely by making out a reasonably 'best arguable' case.[71] The Division Bench of the Kerala High Court has clarified that even though an admiralty suit for damages can be filed for any amount the plaintiff desires, the owner of the ship cannot be asked to furnish excessive security for an unrealistic amount, having no proximity with the actual loss.[72]

A party seeking release of the vessel is required to furnish security either by way of a cash deposit or a bank guarantee.[73] Indian courts do not accept club letters of undertaking (LOUs) as security as a right, unless consented to by the plaintiff.[74]

In India, every company is a separate and independent legal entity; ownership of the assets vests with the company and not in its shareholders.[75] *Prima facie*, the registered owner of the

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[68] Notice of Motion No. 763 of 2013 in Admiralty Suit No. 8 of 2013
[69] Chrisomar Corporation v. MJR Steels Private Ltd., 2017 SCC OnLine SC 1104.*(Supra)*
[70] [1971] 1 Lloyd's Rep 37.
[71] Videsh Sanchar Nigam Limited v. MV 'Kapitan Kud' (1996) 7 SCC 127
[72] Sangita Das & Ors. v. MV Amber L and Ors. (2018) 1 KLT 836
[73] Security can be deposited in US dollars in the Bombay High Court and Gujarat High Court
[74] Stephen Commerce Pvt. Ltd. v. Owners and Parties in Vessel MT 'Zaima Navard', AIR 1999 Cal 64. However, the parties can agree to an LOU as security, which could be accepted by the courts.
[75] Lufeng Shipping Company Ltd. v. MV 'Rainbow Ace', 2013 (4) ABR1412.

vessel is deemed the beneficial owner, save in very exceptional cases.[76] Only in exceptional circumstances where questions of public policy, fraud or malice are involved, will the courts consider piercing the corporate veil. It must be noted that the party seeking to lift the corporate veil will be required to plead and particularise fraud or malice or public policy.[77]

The Admiralty Act does not expressly contain any provision allowing a party to arrest a vessel for simpliciter security in aid of judicial and arbitral proceedings taking place outside India. That said, a single judge of the Bombay High Court has recently held that it was permissible for a party to obtain security pending arbitration by way of an arrest in India, since the Admiralty Act is silent on this issue and does not expressly prohibit it. According to the Court, a party has a statutory right to initiate *in rem* proceedings under the Admiralty Act, which could not be denied if a party otherwise had a valid maritime claim.[78]

The Supreme Court of India has recognised that although a demise charterer may have absolute dominion and control over the vessel, this fact in itself would not allow a claimant to obtain an order of arrest against the vessel for an in personam claim against the demise charter relating to another vessel.[79] However, a single judge of the Bombay High Court on a bare reading of Section 5 of the Admiralty Act (which departs slightly in wording from Article 3 of the Arrest Convention 1999), came to a conclusion that even a vessel on bareboat charter could be arrested for an unrelated third-party claim against the bareboat charterer.[80] Recent notable judgments in India involving ship arrest and sale have clarified the following matters:

a. In the event that bunkers are ordered by the owner (irrespective of whether the vessel is on time charter or not), the bunker supplier will be entitled to arrest a vessel at the *prima facie* evaluation stage.[81] By a recent judgment, the Appeal Court of the Bombay High Court has held [82] that an arrest granted at the *prima facie* stage cannot be vacated in the absence of a trial, on a rebuttable presumption of privity of contract between the actual physical supplier of bunkers and the shipowner, especially when supplies of necessities to a vessel such as bunkers have been made on faith and credit of the vessel. At the time of writing, a special leave petition (application for leave to

[76] Universal Marine & Anr. v. MT 'Hartati', MANU/MH/0131/2014
[77] Order VI Rule 4, Civil Procedure Code 1906
[78] Siem Offshore Redri AS v. MV Altus Uber, 2018 (6) ABR 361. This judgment is under appeal to a higher bench of the Bombay High Court
[79] Sunil B. Naik v. Geowave Commander, 2018 SCC OnLine SC 203 (Geowave Commander).
[80] Siem Offshore Redri AS v. MV Altus Uber, 2018 (6) ABR 361. This judgment is under appeal to a higher bench of the Bombay High Court on, *inter alia*, the ground that it is contrary to the findings of the Supreme Court in Geowave Commander.
[81] Gulf Petrochem Energy Pvt. Ltd. v. MT 'Valor' in Notice of Motion (L) No. 581 of 2015 in Admiralty Suit (L) No. 94 of 2015 and Drop Energy Services Ltd. v. MT 'Tradewind' in Notice of Motion No. 805 of 2015 in Admiralty Suit No. 240 of 2015. The former judgment is under appeal to a higher bench of the Bombay High Court.
[82] Socar Turkey Petrol Enerji v. M.V. Amoy Fortune, 2018 SCC Online Bom 1999. A petition for leave to appeal against this judgment has been filed before the Supreme Court of India and is currently pending

appeal) against the Amoy Fortune judgment is pending before the Supreme Court of India.

b. While the earlier position was that a vessel could not be arrested for security pending arbitration in the admiralty jurisdiction of the court,[83] per the judgment of the single judge of the Bombay High Court this is now permissible if the suit is filed praying for a decree and determination on the merits of the underlying maritime claim.[84]

c. A claim for damages for wrongful arrest of a vessel is not a special law. Principles of mitigation will apply and the claim is subject to mitigation of losses arising from wrongful arrest of the vessel.[85]

d. The arrest of bunkers onboard a vessel is not subject to the admiralty jurisdiction of the courts in India.[86]

e. Freight alone cannot be arrested.[87]

f. The arrest of cargo without an underlying cause of action being made out against a vessel is not permitted by the Bombay High Court,[88] albeit certain other High Courts have allowed the same on occasions.

g. Institution of a prior legal proceeding against the concerned vessel or its owner cannot be said to be a precondition for maintainability of a suit for constitution of fund to limit the shipowner's liability under the LLMC Convention 1976 and the LLMC Protocol 1996.[89]

h. Proceedings for the sale of a vessel under arrest can be taken out on expiry of three days from the date of arrest if no security or bail has been furnished.[90]

i. 'Owner' means registered owner. The corporate veil can be lifted only in exceptional cases, such as fraud or public policy. The party seeking arrest on the basis of fraud must plead and *prima facie* establish that fraud is committed.[91]

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[83] Rushab Ship International LLC v. The Bunkers on board MV African Eagle, 2014(4) Bom CR 269

[84] Siem Offshore Redri AS v. Altus Uber, 2018 (6) ABR 361. This judgment is under appeal to a higher bench of the Bombay High Court, See footnote 33

[85] Lufeng Shipping Co Ltd v. MV 'Rainbow Ace' and Ors., Notice of Motion No. 1646 of 2013 in Admiralty Suit No. 29 of 2013.

[86] Peninsula Petroleum Ltd. v. Bunkers on board the vessel MV 'Geowave Commander', Notice of Motion No. 385 of 2014 in Admiralty Suit No. 85 of 2014

[87] Bulk Shipping Management SEA & Anr. v. The Bunkers on board MV 'African Eagle', 2013 (3) BomCR 380

[88] Global Integrated Bulkers Pte Ltd. v. Cargo of 14,072.337 MTS of Limestone (Judge's Order No. 253 of 2017 in Comm. Admiralty Suit (L) No. 665 of 2017

[89] See Footnote 18

[90] Coromandel International Limited v. MV 'Glory I' and Andromeda Ship Holdings Ltd., 2014 (3) ABR 365

[91] See Footnote 28

j. In the Bombay High Court, once the order of arrest is vacated, the party that has suffered 'prejudice' can invoke the undertaking issued by the plaintiff to pay damages arising out of a wrongful arrest, and the test of malice or crassa neglentia does not apply.[92]

k. There is no right vested in a shipowner against a receiver or consignee, or the shipper or charterer (unless a vessel is a party) in personam in the admiralty jurisdiction of the court.[93]

l. The Bombay High Court in its interpretation of Section 5 of the Admiralty Act has held that multiple arrests of a number of vessels in the fleet of a shipowner is not permissible for a single claim even in circumstances wherein the sale proceeds of the vessel are sufficient to meet the claim of the plaintiff though these sale proceeds of the vessel may be insufficient to meet the claims of all creditors asserting a claim against the vessel (i.e., that even if the *pari passu* distribution of the sale proceeds of the vessel would be insufficient to fully satisfy the claim of the plaintiff, arrest of multiple vessels to satisfy the plaintiff's claim is impermissible).[94]

m. The Bombay High Court has clarified that only a claimant who has executed a warrant of arrest prior to the date of admission of winding-up petition (liquidation application) would have a charge over the vessel and once the winding-up petition has been admitted, the claimant, in any case, would not be able to obtain decree against sister vessels or other assets of the company in liquidation.[95]

n. The Bombay High Court in its interpretation of Section 4(1)(n) and Section 9(1)(d) of the Admiralty Act held that port dues are in the nature of a maritime lien as well as a maritime claim against the vessel.[96]

o. A claim for interest on a principal amount towards supply of bunkers by a bunker supplier to a charterer would not be a 'maritime claim'.[97]

p. Arrest of a vessel is akin to the seizure of property and thus attracts Article 80 of the Indian Limitation Act 1963, which provides for a limitation period of one year from

[92] Navbharat International Ltd v. Cargo on board MV 'Amtees', MANU/MH/0192/2014.
[93] M/s. Greenwich Meridian Logistics (India) Pvt. Ltd. v. M/s. Sapphire Kitchenware Pvt. Ltd., Admiralty Suit 31 of 2008 of Bombay High Court and MUR Shipping BV Amsterdam v. Al Gyas Exports Private Ltd.
[94] Praxis Energy Agents SA v. M.T. Prathibha Neera, 2018 (4) ABR 148.
[95] Praxis Energy Agents SA v. M.T. Prathibha Neera, 2018 (4) ABR 148. See footnote 47
[96] State of Goa v. Sale Proceeds of vessel M.T. Pratibha Bheema and Ors., A.S. No. 72 of 2014 (decided on 7 June 2018)
[97] M.V. Kiveli v. Monjasa DMCC and Ors., 2018 (5) ALT 73

the date of seizure (the arrest of the vessel) to lodge a claim for damages or to lodge a counterclaim.[98]

q. The Court of Appeal of the Bombay High Court held that a claim involving a vessel operated by the Central Government will be outside the purview of the Admiralty Act in light of the proviso to Section 1(2) therein.[99]

Under Indian law, as a general rule of contractual construction, an attempt must be made to reconcile the relevant terms of a contract if possible and not treat any term as idle surplusage.[100] Indian courts have held that if a party seeks to invoke a termination clause in the contract, it is incumbent upon the party to strictly follow the procedural requirements stipulated in the contract to effect a valid termination.[101]

India allows 100 per cent foreign direct investment into shipbuilding in India. A shipbuilding contract providing for Indian law would be governed by the Indian Sale of Goods Act, 1930. This Act is based on and largely a reproduction of the English Sale of Goods Act, 1893 and the principles of the law of sale of goods in both the countries are the same.[102]

The shipbuilding industry is subject to goods and service tax (GST), which subsumes the earlier levy of VAT, central sales tax (CST), excise duty, octroi, service tax, etc. Customs duty, customs bonds, cost clearing and forwarding excise, foreign income tax, and taxes by ancillary units and subcontractors are charged separately. GST at 5 per cent is applicable on all design and engineering services procured by the shipyards during the course of ship construction. It is important to ensure that any shipbuilding contract with an Indian counterparty to be governed by Indian law and jurisdiction has clear demarcations of the liability on each party, for the payment of taxes imposed by the Indian authorities.

Interest

Indian courts have the power to pass judgments in foreign currency.[103] As a general rule, for commercial transactions, courts award interest at the rate at which monies are lent or advanced by nationalised banks.[104] Indian arbitrators generally award interest at the rate of 18

[98] M.V. Tongli Yantai and Ors. v. Great Pacific Navigation (Holdings) Corporation Ltd., NoM No. 2202 of 2015 in CC 19 of 2012 in AS. No. 3 of 2011 & NoM No. 1770 of 2015 in AS. No. 66 of 2015 (decided on 17.09.2018). This judgment is under appeal to a higher bench of the Bombay High Court.
[99] Joao Martin Fernandes v. The Union of India and Ors., Appeal No. 65 of 2017 (decided on 24 October 2018).
[100] Tiruvenibai v. Lilabai, AIR 1959 S.C. 620.
[101] Base International Holdings NV Hockenrode 6 v. Pallava Hotels Corporation Ltd., 1999 PTC (19) 252.
[102] Consolidated Coffee Ltd. v. Coffee Board, Bangalore (1980) 3 SCC 358
[103] Forasol v. Oil & Natural Gas Commission, 1984 SCR (1) 526; and Forysthe Trading Services Ltd. v. MV 'Niizuru', 2004 (5) Bom CR 806.
[104] Section 34 of the Code of Civil Procedure, 1908.

per cent per annum.[105] The Appeal Court of the Bombay High Court has held that an Indian arbitral tribunal can award interest at the rate of 9 per cent per annum on a claim in US dollars.[106] However, a recent decision of the Supreme Court in *Vedanta Ltd. v. Shenzen Shandong Nuclear Power Construction Co. Ltd*.[107] has held that a high rate of interest on foreign currencies would be punitive in nature, and reduced the rate of interest awarded by the arbitrator to LIBOR plus 3 per cent.

In the case of *Forysthe Trading Services Ltd. v. MV Niizuru*,[108] the contract between the bunker supplier and the shipowner provided for interest of 20 per cent per annum for late payment. The Bombay High Court disregarded the interest rate stipulated in the bunker supply contract and awarded interest of only 8 per cent per annum. The Supreme Court held that a tribunal's award may be inclusive of interest and the sum of the principal amount plus interest may be directed to be paid by the tribunal for the pre-award period.[109]

The Enrica Lexie Case:

The Enrica Lexie Case is an ongoing international dispute concerning the killing of two Indian fishermen that were on board the Indian fishing boat St. Antony, allegedly committed by two Italian navy marines that were on board the Italian oil tanker Enrica Lexie. This incident occurred in the waters alongside the coasts of the Indian State of Kerala on 15 February 2012. Following the accusation of murder, the two Italian marines, Massimiliano Latorre and Salvatore Girone, were arrested by the Indian authorities and put into custody. The case gave rise to dangerous diplomatic tensions between Italy and India, since Italy claimed exclusive jurisdiction for the trial of the two officers, but India refused to release them and insisted on prosecuting the crime before its courts. Several issues appear to be at stake in this case from the international law standpoint. First of all, the rules of both customary and conventional international law governing state jurisdiction over the seas; second, the interpretation of several provisions of the United Nations Convention on the Law of the Sea (UNCLOS); finally, the applicability of the special provisions of the law of the sea for the fight against maritime terrorism, piracy and other similar crimes.

The incident:

The M/V Enrica Lexie is an Italian privately owned oil tanker. At the time of the incident, it was sailing from Singapore to Djibouti and had on board an Italian Vessel Protection Department (VPD)[110], since the International Maritime Organization (IMO) had declared the

[105] Section 31(7)(b) of the Indian Arbitration and Conciliation Act, 1996.
[106] Steel Authority of India Ltd. v. Pacific Gulf Shipping Co. Ltd., Appeal No. 391 of 2013
[107] (2018) SCCOnLine 1922
[108] 2004 (5) Bom CR 806. Refer to Footnote 56.
[109] Hyder Consulting Ltd. v. State of Orissa (2015) 2 SCC 189.
[110] Vessel Protection Detachment are privately hired military forces employed to protect non-military ships against possible piracy attacks. In Italy, they were authorized under art. 5 of Decreto Legge 12 Luglio 2011, n. 11. On this topic see, inter alia, G. M. FARNELLI, 'Vessel Protection Detachments and Maritime Security: An

waters alongside Kerala a high-risk area for piracy. After the report of an armed attack and the killing of two fishermen that were on board the Indian fishing boat St. Antony, the Enrica Lexie was intercepted by the Indian Coast Guard at 36 nautical miles from the coast of Kerala and compelled to dock at the Kochi Port. There, two members of the VPD, Massimiliano Latorre and Salvatore Girone, were brought into custody and charged with homicide, receiving a First Information Report (F.I.R.) on 19 February 2012.

On 22 February, Italy filed a petition to the High Court of Kerala[111] for the quashing of the F.I.R. and all subsequent acts. At the same time, Italy asserted exclusive jurisdiction *over the Enrica Lexie* and started a criminal process against Latorre and Girone, who were charged with murder before the Tribunal of Rome. Nevertheless, the Kerala High Court dismissed the Italian petition by stating that Indian Courts were also entitled to exercise jurisdiction over the case, and started proceedings against the two marines for murder, attempt of murder and mischief. Consequently, Italy filed a second written petition, this time addressed to the Supreme Court of India, 'challenging the jurisdiction of the State of Kerala and the Circle Inspector of Police, Kollam District, Kerala, to register the F.I.R. and to conduct investigation on the basis thereof or to arrest the petitioner[s]'. With this second writ, Italy prayed 'for quashing of F.I.R.' since the same was 'without jurisdiction, contrary to law and null and void.

On January 18, 2013 the Supreme Court of the Union of India entered the fray of the Enrica Lexie incident by issuing a decision on the fate of the Italian military guards, Massimiliano Latorre and Slavatore Girone, who are accused of killing two Indian fishermen. The court, in clear terms, reaffirmed India's jurisdiction over the alleged crimes based both on international and national laws. The court also made certain pronouncements regarding internal divisions of jurisdiction within India. My comments here will be limited to the international legal aspects of the decisions.

Italy challenged the jurisdiction of the Indian court on several grounds. The main thrust was that the guards could not be tried before the Indian courts because their actions were taken as part of their official military duties and therefore covered by sovereign immunity. Italy also made arguments based on the United Nations Convention on the Law of the Sea (hereinafter UNCLOS), principally that the flag State has exclusive jurisdiction over the events that take place aboard a vessel on the high seas. Part of this second argument was an assertion that the Indian fishing boat was not "Indian" within the meaning of the convention and that article 97 gave exclusive jurisdiction to Italy.

Evaluation of Four Years of Italian Practice', Maritime Safety and Security Law Journal, 1, 2015, pp.16 et ss.; J. J. PITNEY JR., J.-C. LEVIN, Private Anti-Piracy Navies: How Warships for Hire are Changing Maritime Security, Lexington Books, 2013; A. PETRING, 'The Use of Force and Firearms by Private Maritime Security Companies Against Suspected Pirates', International and Comparative Law Quarterly, 62, 2013, pp. 667 et ss.

[111] Massimiliano Latorre & others v. Union of India, Written Petition (civil) No.4542 of 2012.

Attorneys for India responded by making arguments primarily based on national provisions extending the penal code to the areas adjacent to the territorial sea such as the international water where the incident took place. The Union's international law arguments included a detailed analysis of UNCLOS. India argued that article 97 UNCLOS was limited to collision type events and had no bearing on jurisdiction in the Enrica Lexie case. This fact, along with the assimilation of ships to national territory and the objective territoriality principle, were sufficient to ground Indian jurisdiction. India also argued that the passive personality principle would grant jurisdiction in this case. On the issue of immunity, the Union pointed out that the State has a policy of not entering Status of Forces Agreements excluding national jurisdiction and that there was no basis for a sovereign immunity claim in a criminal case.

The actual decision of the court was issued in a two-page order. The motivation or reasoning of the decision came in two opinions, one by the Chief Justice. These two opinions are not completely consonant even though they agree in the result. We will turn first to the Chief Justice's views before analyzing those expressed in his fellow judge's concurrence.

The Chief Justice identified two issues that needed to be resolved in the case: one national and one international. The international problem was that of Indian jurisdiction based on applicable law, including UNCLOS, which India was bound to follow. The Chief Justice started by refuting the Italian argument based on article 97 of UNCLOS. After observing that there was no collision in this case the justice reasoned

The next question which arises is whether the incident of firing could be said to be an incident of navigation. The context in which the expression has been used in Article 97 of the Convention seems to indicate that the same refers to an accident occurring in the course of navigation, of which collision between two vessels is the principal incident. An incident of navigation as intended above, cannot, involve a criminal act in whatever circumstances. In what circumstances the incident occurred may be set up as a defence in a criminal action that may be taken, which legal position is accepted by both the countries which have initiated criminal proceedings against the two marines. Even the provisions of Article 100 of UNCLOS may be used for the same purpose. Whether the accused acted on the misunderstanding that the Indian fishing vessel was a pirate vessel which caused the accused to fire, is a matter of evidence, which can only be established during a trial. If the defence advanced on behalf of the Petitioner Nos. 2 and 3 is accepted, then only will the provisions of Article 100 of the Convention become applicable to the facts of the case.

Following the *Lotus* case, therefore, jurisdiction would be proper. Next, the justice observed that States only have limited jurisdiction outside of the territorial sea that are limited by UNCLOS. Unfortunately, this limit is not described and the Chief Justice asserts Indian jurisdiction over the incident based on this limited grant without further deliberation.

Judge Chelameswar issued an opinion agreeing with the judgment but on different grounds. His views were almost entirely based on internal law. The important international component was his assertion that jurisdiction itself is based on "the legitimate interests" of the State asserting its authority. He then used the passive personality and the objective territorial principles as evidence of this existing jurisdiction. Either of which would therefore be sufficient to ground jurisdiction in this case.

In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

Italy argued that the shooting was an "incident of navigation" and so wholly within her jurisdiction. Both opinions corrected concluded that article 97 was implemented with the limited scope of overturning the ruling in the *Lotus* case[112] when it came to collisions and similar events on the high seas. It was not designed to undo the general principles of State jurisdiction. The problem with the justices' analysis lies rather with the application of the passive personality principle.

Article 92 of UNCLOS provides,

Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

This is enough to preclude the application of the passive personality principle. If the nationality of the victim were enough, India would have had jurisdiction over the events if they had occurred entirely on board the Lexie. Such a result would render article 92's provisions on exclusive jurisdiction without meaning. Such a reading should therefore be

[112] In 1927, the Lotus case, decided by the Permanent Court of International Justice (PCIJ), issued a landmark decision regarding jurisdiction over the seas. It involved a collision between a French steamship, the SS Lotus, and a Turkish steamer. As a result, eight Turkish nationals drowned in the seas north of Greece. When the Lotus reached the port of Istanbul, the French skipper was arrested and prosecuted for murder by the Turkish authorities. France and Turkey decided to settle the controversy through the PCIJ, asking whether Turkey had violated international law by arresting a French citizen for a crime committed on the high seas while on board a French vessel. France maintained that, for Turkey to be able to claim jurisdiction, it was necessary for Turkey to provide a specific provision within international law that granted them jurisdiction. Turkey, on the other hand, contended that a State can always exercise its sovereign powers unless a specific rule of international law prohibits it from doing so. In dealing with the issue, the Court made an important distinction between prescriptive and enforcement jurisdiction. The PCIJ clarified that, regarding prescriptive jurisdiction, 'all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction.

avoided. However, given the existence of other bases of jurisdiction, the justices' overstatement of the application of the passive personality principle is not fatal to the international validity of the judgment.

The most unfortunate part of the Supreme Court's judgment was its declining to fully address the issue of sovereign immunity for the Italian guards. The court rejected the argument but did so without an analysis of applicable international law. The court instead punted on the issue leaving it to be re-litigated based on the evidence in light of article 100 of UNCLOS. This last provision is nothing more than an obligation for the States party to co-operate in the fight against piracy. Presumably, this means that if the Italian guards were actually fighting piracy, article 100 UNCLOS would protect them from trial. This, however, would be a strange and unfortunate interpretation of a treaty provision that mentions neither jurisdiction nor immunity.

Most of the UNCLOS aspects of the *Enrica Lexie* incident appear to have been resolved by the Supreme Court of India. What remains now is a determination on the immunity of the guards and the facts of the case. If the guards are determined to have been "fighting piracy" they will in fact be innocent of the crimes with which they are accused. At the same time, under the court's probable reading of UNCLOS, this fact will grant them immunity. If they are instead found to have been acting outside of their mandate (for whatever reason) they will in fact be guilty of the crimes with which they are charged and not benefit from immunity. The Supreme Court would have done better to settle this issue once and for all and leave the trial to address the accusations alone.

ENFORCEMENT OF FOREIGN JUDGMENTS IN INDIA

In India we find the respect for foreign adjudication well established in the Civil Procedure Code 1908. The judgement of a foreign court is enforced on the principle that where a court of competent jurisdiction has adjudicated upon a claim, a legal obligation arises to satisfy that claim. The rules of private international law of each state must in the very nature of things differ, but by the comity of nations certain rules are recognised as commons to civilised jurisdictions. Through part of the judicial systems of each state these common rules have been adopted to adjudicate upon disputes involving a foreign element and to effectuate judgements of foreign courts in certain matters, or as a result of international conventions.

Sec 13 of the CPC lays down Indian law in this respect. Under section 13 of the code a foreign judgement is conclusive and will operate as res judicata between the parties thereto except in the cases mentioned therein. In other words, a foreign judgement is not conclusive as to any matter directly adjudicated upon, if one of the conditions specified in clauses (a) to (f) of sec 13 is satisfied and it will then be open to a collateral attack. As Dicey rightly states:

“A foreign judgement is conclusive as to any matter thereby adjudicated upon and cannot be impeached for any error either of fact or of law.”

Following are the six cases in which a foreign judgement shall not be conclusive.

1. Foreign judgement not by a competent court.
2. Foreign judgement not on merits.
3. Foreign judgement against international or Indian law.
4. Foreign judgement opposed to natural justice.
5. Foreign judgement obtained by fraud.
6. Foreign judgement founded on a breach of Indian law.

Further sec 14 talks about presumption as to foreign judgements. Sec 14 of the court declares that the court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgement, that such judgement was pronounced by a court of competent jurisdiction, unless the contrary appears on the record, or is proved. However, if for admissibility of such copying any further condition is required to be fulfilled, it can be admitted in evidence only if that condition is satisfied.

The scope of sec 13 of the CPC has been explained in extensor by the apex court in *Vishwanathan v. Abdul Wajid*[113] it was emphasised in this case that the foreign court must be a court of competent jurisdiction, that the matter adjudicated upon means the right claimed and that it must have been adjudicated upon directly between the same parties. The law relating to conclusiveness of the foreign judgement contained in clauses (a) to (f) of sec 13 creates substantive rights and is not merely procedural. The court’s ruling in this case establishes the following aspects of conclusiveness of a foreign judgment clearly: ‘conclusiveness’ in sec 13 refers to the final adjudication and not the reasons; the binding character of the judgement can be displaced only on the basis of the six grounds mentioned in the section: the question whether the principal of effectiveness form the basis of conclusiveness of the foreign judgement is debatable; conclusiveness referred to in sec 13 is different in its operation from the rule of res judicata envisaged in sec 11 as applicable to domestic judgements.

The *vishwanathan* further establishes the general rules restriction in matters of court’s jurisdiction: 1) jurisdiction in *rem over res* beyond the limits of jurisdiction; 2) title to immovable property outside the jurisdiction; 3) courts will not exercise jurisdiction in

[113] AIR 1963 SC1.

enforcement in foreign penal and revenue laws. The rulings in this case also explain the basis of *action in personam* thus: a person who institutes a suit in a foreign court and claims a decree in personam cannot after the judgement is pronounced against him, say that the court have no jurisdiction which he invoked and the court exercised. The foreign court's competence in delivering the judgement in question under sec 13 is understood in the international sense and not merely by the law of the foreign state under which the court functions. Reciprocity on the part of the foreign country in the enforcing local judgements is not required as a condition for recognition of foreign judgements as in the United States and in the civil law countries.

Sir Gurdayal Singh v. Raja Of Faridkot[114] where it was held that in a personal action a decree pronounced in absentem by a foreign court to the jurisdiction of which the defendant has not in any way submitted himself is by international law an absolute nullity. But in *Lal Ji Rama v. Hans Raj Nathu Ram*[115] it was clarified that a decree passed by a foreign court to whose jurisdiction a judgement debtor had not submitted is an absolute nullity only if the local legislature had not conferred jurisdiction on the domestic courts over foreigners either generally or under specified circumstances.

It has been held in *Narappa v. Rangaswami*[116] that submission after the issue of the decree is of no effect. Similarily in another case i.e. *Ramkisan v. Harmukhari lal*[117], It was held by the Nagpur High Court that submission to jurisdiction, must be in the proceedings prior to the passing of the decree. But in *Veeraraghaviyer v. Muga sait*[118], ,court held that a submission to jurisdiction in order to save one's property is not voluntary submission, even if the defendant filed a statement on the merits as well.

Enforcement of Foreign Judgments

There are two ways of enforcing of foreign judgment in India:

(1) by instituting a suit on such foreign judgment

(2) by instituting execution proceeding

Suit on Foreign Judgment

A foreign judgment may be enforced by instituting a suit on such foreign judgment. The general principle of law is that any decision by a foreign court, tribunal or quasi-judicial authority is not enforceable in a country unless such decision is embodied in a decree of a

[114] 21 LA 171 PC.
[115] AIR 1971 SC 974.
[116] (1933) 64 MLJ 531.
[117] AIR1955Nag.103
[118] 27MLJ535

court of that country. Court cannot go into the merits of original claim and it shall be conclusive as to any matter there by directly and adjudicated upon between the same parties and the period of limitation is 3 years from the date of judgment.

Execution Proceddings

Section 44-A of the code provides for the execution proceedings in certain specified cases. The section says that where a certified copy of a decree of a any superior court of any of the superior courts of any reciprocating territory a has been filed in a district court, the decree may be executed in India as if it has been passed by the district court. 'Reciprocating territory' means any country or territory outside India which the central government may, by notification in official gazette declared to be a reciprocating territory for the purposes of above mentioned section. A judgment-debtor is free to take all objections in case of any such execution proceedings under section 44-A which would have been open to him under section 13 if a suit had been filed on such judgment.

FOREIGN AWARDS:

Today we have the Arbitration and Conciliation Act 1996, which governs the law regarding the enforcement and recognition of foreign awards. The principal object of the act is to facilitate the resolution of disputes by arbitration, and to ensure that courts interfere as little as possible with the making of the awards, and as far as, possible, recognize and enforce them. Recognition of an award is different from enforcement of the award. Enforcement is a process whereby the successful party takes the steps to compel the other party to comply with the award. Recognition is a defensive process where the successful party uses the award as a shield to protect his rights.

There is a very important case on the new act. In *Bhatia International V. Bulk Trading SA*[119], court observed that even if an award does not fall under the conventions it is still enforceable under part I of the 1996 act. Though this observation was part of the obiter dicta and not the ratio decidendi, it still carries a lot of persuasive value and it is seen that lower courts generally follow such observations of the Supreme Court. If it happens that way then it becomes possible to enforce foreign non convention awards under the act. There is an interesting English case, *Dallal v. Bank Mellat*[120], where a suit was filed after the dismissal of the claim by the international tribunal, the person moved to the English court by filing a suit. The court by applying the principal of *abuse of process* struck off the suit at the very outset. The court explained the concept of abuse of process by observing that it is different from res judicata, though closely related. The former is a wider in scope so that a suit can be struck off at the outset for the abuse of process; whereas the issue of res judicata would be decided at

[119] AIR 2002 SC 1432.
[120] [1986] QB 441, [1986] 1 All ER 229.

the time of trial. Indian district courts can keep such decisions in mind while deciding the cases involving foreign arbitral awards.

Some principles developed by Indian courts over the years are mentioned below:

- Where the award is followed by a judgment in a proceeding which permits any objection being taken to its validity it is enforceable. A foreign award is enforced on the ground, it creates contractual obligation. AIR 1964 SC 538.
- A fraud played in obtaining an foreign award can be established to treat it as not binding. AIR 1975 SC105.
- The Indian courts do not enquire whether the conclusions reached by a foreign court correct or not. AIR 1963 SC 1
- The scope of enquiry in respect of a foreign award, under section 7 of the Foreign Awards Act 1961, is very limited. It is permissible to raise objections to the recognition or enforcement and arbitral award on the ground of the public policy or the principle law of the country. Sec 7(1) of the Arbitration (Protocol and Convention) Act of 1937 is also to the same effect. AIR 1994 SC 560.

Some Important Maritime Foreign Judgments Enforced in India

A foreign judgment can only be enforced in India as if it were a decree of an Indian court if it has been passed in a reciprocating territory declared by the Indian government. Foreign jurisdictions such as the United Arab Emirates and Australia are not 'reciprocating territories' and a party seeking enforcement of a judgment passed in a court in these territories would have to file a substantial lawsuit in India on the cause of action stemming out of the judgment passed by the foreign court in the non-reciprocating territory. Furthermore, only a foreign 'decree' (i.e., a final judgment on the underlying merits of the case) can be enforced in India and not an interim order. Courts in India have the right to examine whether a foreign judgment has been given on the merits.[121] In these circumstances, it would appear that interim or interlocutory orders of freezing or *Mareva* injunctions passed by foreign courts are not enforceable in India.

While the Gujarat High Court in the case of *MV Cape Climber v. Glory Wealth Shipping Pvt Ltd.*[122] has allowed the enforcement of a London arbitral award that has subsequently been converted into a judgment of an English High Court (as a decree of the English High Court), the Delhi High Court, in the case of *Marina World Shipping Corporation Ltd. v. Jindal*

[121] International Woolen Mills v. Standard Wool, (UK) Ltd, AIR 2001 SC 2134
[122] Civil Application (OJ) No. 250 of 2015

Exports & Imports Private Ltd.,[123] rejected this approach and held that a London arbitral award can only be enforced in India under the Arbitration Act and not as an English judgment under the Code of Civil Procedure, 1908 (CPC), even though the London arbitral award had been converted into a judgment of the English High Court. The Bombay High Court in the case of *Marine Geotechnic LLC v. Coastal Marine Construction & Engineering Ltd*.[124] held that a foreign judgment could in principle be directly enforced in India by way of bankruptcy or winding-up proceedings strictly subject to the decree holder establishing that the foreign decree satisfies the requirements of Section 13 of the CPC.

ALTERNATIVE DISPUTE RESOLUTION METHODS IN MARITIME LAW

In the aftermath of the entry into force in 1994 of the 1982 Law of the Sea Convention (LOSC), dispute settlement methods flourished and the tide is still rising twenty years later. States mostly remain the featured players in these forms of dispute settlement methods but there are some avenues for private actors to engage in as their interests almost always lie behind the interests of State actors.

Negotiation

The detailed rules under the contemporary law of the sea, the increasing interest in exploiting resources and the threat of compulsory dispute settlement mechanisms encourage States to enter into negotiations. Identifying the fact that negotiations are going forward is difficult as States often keep them quiet. Studies have however reported 16 negotiations from 1994 to 2012, some of them were successful, such as the 2003 Negotiation between Azerbaijan, Kazakhstan and the Russian Federation, the 2004 Negotiation between Australia and New Zealand, the 2008 Mauritius-Seychelles EEZ Delimitation Treaty, etc.

Negotiations sometimes lead to the resolution of the dispute in the form of a treaty or to other forms of dispute resolution mechanisms. Negotiation is by far the method of dispute settlement preferred by States and other avenues are considered only when negotiations stall.

In the context of boundary delimitation, there are some real disadvantages in pursuing compulsory dispute mechanisms and considerable advantages in negotiating. During negotiations, the parties retain control over a series of very important issues including the precise result of the boundaries delimited, the way the line is being defined, the terms and the timing of the agreement and the way the agreement is presented publically. It is generally believed that litigation always carries risks for the parties and that the range of legal findings available to the tribunal is more restricted than the range of options open to the negotiators. Also, when appearing before a tribunal applying international law, the parties operate within a specific frame which lacks flexibility and leaves little room for creativity

[123] 2007 (3) ARBLR 46 Delhi
[124] Company Petition No. 67 of 2013

and tends to favor always one side while failing to consider the interests of all actors. However, during negotiations, the parties pursue a process of joint development in the maritime space and are able to set aside the legal dispute to focus on practical measures to secure each party's underlying objective, in particular when each party wishes to pursue different types of exploitation.

Conciliation

Conciliation is provided for in Part 15 of the Law of the Sea Convention but is almost never used by States. The 1981 Iceland/Norway Continental Shelf Dispute Regarding Jay Mayen Island is one of the few conciliation proceedings ever recorded. States are not inclined to use conciliation because once they decide to give up control over the dispute and allow for a formal decision by a third party body, States prefer to go all the way to an ultimately binding decision. There is not much to gain from a process which looks a lot like arbitration without the benefit of legal certainty flowing from the issuance of an arbitral award. Also, States would also prefer to lose an arbitration and have grounds to set aside the award rather than lose a conciliation and not have any legal basis to set the result aside.

Arbitration as a mode of dispute resolution in Maritime matters

Many contracts with which ship owners and their masters are concerned, such as bills of lading, charter-parties, salvage agreements, and marine insurance policies, nowadays provide for various litigious matters to be referred to arbitration. Some of the terms used in connection with this method of settling disputes, together with the main advantages and disadvantages of arbitration, the various methods of referring to arbitration, and so on, form the subject matter of this section. This part will present a comparative study amongst different countries with special focus on India.

Arbitration Clauses in contracts of Carriage by Sea

Bills of lading and charter-parties frequently contain clauses to that effect that the parties agree to refer to arbitration disputes arising under the contract. Such clauses are perfectly valid, but what constitutes a "dispute arising under the contract" is a matter deserving of some consideration. If, for instance, one party contends against the other that the contract has never been entered into at all, that is a dispute which cannot go to arbitration under the clause, for the party who denies that he entered into the contract is at the same time denying that he joined in the submission. On similar grounds, if a party alleges that the contract is void, that cannot be a matter for arbitration under the clause, for on the view that the whole contract is void the part (i.e., the submission) must be seen to be void as well.

An arbitration clause may provide that if the claimant fails to appoint an arbitrator within a stipulated time the claim shall be barred absolutely. Generally, this provision is effective, but there are some exceptions. For instance, by the Arbitration Act, 1950, the court may grant an extension of time if of the opinion that undue hardship would otherwise be caused.

No dispute arises within the meaning of the clause where a charterer admits a ship owner's claim for freight but fails to satisfy it. Where a ship owner claimed freight and the charterer, having admitted the claim, sought to- set off the amount due against his counter-claim the Court held that failure to appoint an arbitrator within the prescribed time barred the counter-claim but not the claim which was never in issue.

The question may arise as to whether an arbitration clause in a charter-party is imported into a bill of lading when the latter contains an incorporating clause such as "Freight and all other terms, conditions and exceptions, including the negligence clause, as per charter-party". It would seem that it is not, but as between a ship owner and a charterer who is also the shipper and who, in his capacity as shipper, has obtained a bill of lading, the arbitration clause in the charter-party remains effective even though the charter party contains a cesser clause, and even after the bill of lading has been assigned to a third party.

It appears that a merchant has no right to arrest a ship in respect of a dispute arising under a contract, which contains an arbitration clause.

International Arbitration

International arbitration is a means by which international disputes can be definitively resolved, pursuant to the parties' agreement, by independent, non-governmental decision-makers. There are almost as many other definitions of international arbitration as there are commentators on the subject. Commercial arbitration is common in both international and domestic contexts. Arbitration has several defining characteristics, they are as follows:

1. Arbitration is generally consensual in most cases, the parties must agree to arbitrate their differences.

2. Non-governmental decision-makers resolve arbitrations, arbitrators do not act as state judges or government agents, but are private persons ordinarily selected by the parties.

3. Arbitration produces a binding award, which is capable of enforcement through national courts, but not a mediator's or conciliators non-binding recommendation.

4. Arbitration is comparatively flexible, as contrasted to most court procedures.

In many circumstances, national law permits parties to agree upon the arbitral procedures that will govern the resolution of their dispute. As a consequence, the procedural conduct of arbitrations can vary dramatically across industrial sectors, arbitral institutions, geographic regions, and categories of disputes. In particular fields, or individual cases, parties may agree upon procedural rules that are tailor-made for their individual needs. Apart from specialized fields, commercial arbitration often bears broad resemblances to commercial litigation in national courts. Arbitration will frequently involve the submission of written pleadings and legal argument (often by lawyers), the presentation of documentary evidence and oral testimony, the application of "law" (in the form of judicial precedents and statutes), and the rendition of a reasoned, binding award. Nevertheless, in practice, arbitral procedures are usually less formal than litigation, particularly on issues such as pleadings and evidence. Arbitration often lacks various characteristics that are common in national court litigation, including broad discovery, summary disposition procedures, and appellate review. In smaller matters, domestic arbitrations are frequently conducted without the participation of legal advisers, before a lay-arbitrator, according to highly informal procedures.

International commercial arbitration is similar to domestic arbitration. As in domestic matters, international arbitration is a consensual means of dispute resolution, by a non-governmental decision-maker, that produces a legally binding and enforceable ruling. In addition, however, international arbitration has several characteristics that distinguish it from domestic arbitration. Most importantly, international arbitration is designed and accepted particularly to assure parties from different jurisdictions that their disputes will be resolved neutrally. Among other things, the parties usually seek an independent decision-maker, detached from the courts, governmental institutions, and cultural biases of either party. They also ordinarily contemplate the arbitrator's application of internationally neutral procedural rules, rather than a particular national legal regime.

In addition, international arbitration is frequently regarded as a means of mitigating the peculiar uncertainties of transnational litigation. These uncertainties can include protracted jurisdictional disputes, expensive parallel proceedings, and choice-of-law debates. International arbitration seeks to avoid these uncertainties by designating a single, exclusive dispute resolution mechanism for settling the parties' disagreements. Moreover, international arbitration awards are often more readily enforceable in jurisdictions other than their place of origin than national court judgments.

Although international arbitration is a consensual means of dispute resolution, it has binding effect only by virtue of a complex framework of national and international law. As we discuss below, international conventions, national arbitration legislation, and institutional arbitration rules provide a specialized legal regime for most international arbitrations. This legal regime enhances the enforceability of both arbitration agreements and arbitral awards, and seeks to insulate the arbitral process from interference by national courts or other governmental authorities.

On the most universal level, the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") has been ratified by more than 120 nations, including all significant trading states and most major developing states. The Convention obliges member states to recognize and enforce both international commercial arbitration agreements and awards, subject to limited exceptions. Other international conventions impose comparable obligations on member states with respect to particular categories of disputes or with respect to particular bilateral or regional relationships.

In addition, most developed trading states have enacted national arbitration legislation that provides for the enforcement of international arbitration agreements and awards, that limits judicial interference in the arbitration process, and that authorises specified judicial support for the arbitral process. National arbitration legislation typically affirms the capacity of parties to enter into valid and binding agreements to arbitrate future commercial disputes, provides mechanisms for the enforcement of such arbitration agreements (through orders to stay litigation or (less frequently) to compel arbitration), and requires the recognition and enforcement of arbitration awards. In addition, most modern arbitration legislation narrowly limits the power of national courts to interfere in the arbitration process, either when arbitral proceedings are pending or in reviewing ultimate arbitration awards. In many cases, national arbitration statutes also authorize limited judicial assistance to the arbitral process. This assistance can include selecting arbitrators or arbitral situses, enforcing a tribunal's orders with respect to evidence taking or discovery, and granting provisional relief in aid of arbitration.

In recent years, there have been a number of efforts to harmonise national laws relating to international arbitration. The UNCITRAL Model Law on International Commercial Arbitration is the leading example. About twenty nations expect the United States, have adopted the Model Law to date, and others are considering it. Similarly, national and international bar associations have produced rules or codes of conduct dealing with various arbitration-related subjects, such as evidence taking in arbitration, organizing arbitral proceedings, and the ethics of arbitrators.

International commercial arbitration frequently occurs pursuant to institutional arbitration rules, which are often incorporated by reference into parties' arbitration agreements. The leading international arbitration institutions include the International Chamber of Commerce, the London Court of International Arbitration, London Maritime Arbitrators Association and the American Arbitration Association, each of which has adopted its own set of rules governing the procedural aspects of arbitration. These institutions, as well as another several dozen or so less widely known bodies, supervise international arbitrations when parties agree to dispute resolution under their auspices. In addition, the UNCITRAL Commercial Arbitration Rules are widely used in so-called ad hoc (or non-institutional) arbitrations.

Advantages and Disadvantages of International Arbitration

The popularity of arbitration as a means for resolving international commercial disputes has grown tremendously over the past several decades. This popularity reflects important advantages provided by international arbitration as a means of resolving international commercial disputes. Despite these advantages, however, international arbitration also has significant disadvantages. These advantages and disadvantages can be summarised as follows:

1. International arbitration is often perceived as ensuring a genuinely neutral decision-maker in disputes between parties from different countries. International disputes inevitably involve the risk of litigation before a national court of one of the parties, which may be biased, parochial, or unattractive for some other reason. Moreover, outside an unfortunately limited number of industrialized nations, local court systems simply lack the competence, experience, resources, and traditions of even-handedness satisfactorily to resolve many international commercial disputes.

   International arbitration offers a theoretically competent decision-maker satisfactory to the parties, who are, in principle, independent of either party or any national or international governmental authority. On the other hand, private arbitrators can have financial, personal, or professional relations with one party (or its counsel). In the eyes of some observers, this poses the risk of even greater partiality than the favoritism or parochialism of local courts.
2. A carefully-drafted arbitration clause generally permits the resolution of disputes between the parties in a single forum pursuant to an agreement that most national courts are bound by international treaty to enforce. This mitigates the expense and uncertainty of multiple judicial proceedings in different national courts.

   On the other hand, incomplete or otherwise defective arbitration clauses can result in judicial and arbitral proceedings where the scope or enforceability of the provision, as well as the merits of the parties' dispute, must be litigated. Moreover, even well drafted arbitration agreements cannot entirely exclude the expense and delay of a litigant determined to confound the arbitral process.
3. Arbitration agreements and arbitral awards are generally (but not always) more easily and reliably enforced in foreign states than forum selection clauses or foreign court judgments. As described, some 120 nations have acceded to the New York Convention, which obliges contracting states to enforce arbitration agreements and awards (subject to specified, limited exceptions). In contrast, there are no worldwide treaties relating to either forum selection agreements or judicial judgments. The perceived ease of enforceability of arbitral awards has contributed to fairly substantial voluntary compliance with arbitral awards, although there is little empirical data comparing such compliance with that applicable to judicial judgments.

In some developing and other countries, there has been a perception that international commercial arbitration was developed by, and was biased in favor of, Western commercial interests. As a consequence, national law in many countries was historically hostile towards international arbitration. In some states, this remains the case today. Hostile or simply archaic national law can therefore still pose significant obstacles to the effective enforcement of international arbitration agreements and awards. In general, this hostility has waned somewhat over the past decade, with many states acceding to the New York Convention and enacting "pro-arbitration" legislation.

4. Arbitration tends to be procedurally less formal and rigid than litigation in national courts. As a result, parties have greater freedom to agree on neutral and appropriate procedural rules, set realistic timetables, select technically expert and neutral decision-makers, involve corporate management in dispute-resolution, and the like. On the other hand, the lack of a detailed procedural code or decision-maker with direct coercive authority may permit party misconduct or create opportunities for an even greater range of procedural disputes between the parties.
5. International arbitration typically involves less extensive discovery than is common in litigation in some national courts (particularly common law jurisdictions). This is generally attractive to international businesses because of the attendant reduction in expense, delay, and disclosure of business secrets.
6. Although sometimes advertised on grounds of economy, even its proponents rightly acknowledge that "international arbitration is an expensive process." Both private arbitrators (unlike judges) and arbitral institutions (unlike most courts) must be paid by the parties. And there is a perception that some institutional fees, charged for "administrative" services, are unnecessarily high. Nonetheless, these expenses generally will be less than the legal fees and other costs required for lengthy appellate proceedings or (in some jurisdictions) discovery. Given this background, it is not difficult to find enthusiastic proponents of the arbitral process:
7. In the realm of international commercial transactions, arbitration has become the preferred method of dispute resolution. Arbitration is preferred over judicial methods of dispute resolution because the parties have considerable freedom and flexibility with regard to choice of arbitrators, location of the arbitration, procedural rules for the arbitration, and the substantive law that will govern the relationship and rights of the parties.
8. Equally vigorous are some critics, including those who regard arbitration as "the slower, more expensive alternative," or conclude that "arbitration sometimes involves perils that even surpass the 'perils of the seas.'" In fact, the truth is less clear-cut, and lies somewhere between these extremes: "The more enthusiastic of sponsors have thought of arbitration as a universal panacea. We doubt whether it will cure corns or bring general beatitude. Few panaceas work as well as advertised." At bottom, if

generalizations must be made, international arbitration is much like democracy; it is nowhere close to ideal, but it is generally better than the existing alternatives. To those who have experienced it, litigation of complex international disputes in national courts is often distinctly unappealing. Despite the daunting procedural complexities and other uncertainties, arbitration often offers the least ineffective way to finally settle the contentious disputes that arise when international transactions go awry.

Institutional and AD hoc Arbitration International Arbitration

International arbitration can be either "institutional" or "ad hoc." There are important differences between these alternatives. A number of international organisations and institutions, located in different countries, provide institutional arbitration services. The best-known international arbitration institutions are the International Chamber of Commerce ("ICC"), the American Arbitration Association ("AAA"), and the London Court of International Arbitration ("LCIA"), apart from this international organisations like the World Intellectual Property Organisation ("WIPO"), International Center for Settlement of Disputes ("ICSID"), World Trade Organisation and like provide for international arbitration.

These arbitral institutions have promulgated sets of procedural rules that apply where parties have agreed to arbitration pursuant to such rules. Among other things, institutional rules set out the basic procedural framework and timetable for the arbitration process. Institutional rules also typically authorize the host arbitral institution to select arbitrators in particular disputes (that is, to serve as "appointing authority"), to resolve challenges to arbitrators, to designate the place of arbitration, to fix or influence the fees payable to the arbitrators, and to review the arbitrator's awards to reduce the risk of unenforceability on formal grounds. Each arbitral institution has a staff (with the size varying significantly from one institution to another) and a decision-making body. Of course, arbitral institutions charge an administrative fee, which can sometimes be substantial, for rendering these various services. This fee is in addition to compensation paid by the parties to the arbitrators.

It is fundamental that arbitral institutions do not themselves arbitrate the merits of the parties' dispute. This is the responsibility of the particular individuals selected as arbitrators. Arbitrators are virtually never employees of the arbitral institution, but instead are private persons selected by the parties. If parties cannot agree upon an arbitrator, most institutional rules provide that the host institution will act as an "appointing authority," which chooses the arbitrators in the absence of the parties' agreement.

Ad hoc arbitrations are not conducted under the auspices or supervision of an arbitral institution. Instead, parties simply agree to arbitrate, without designating any institution to administer their arbitration. Ad hoc arbitration agreements will often choose an arbitrator or arbitrators, who is to resolve the dispute without institutional supervision or assistance. The parties will sometimes also select a preexisting set of procedural rules designed to govern ad hoc arbitrations. For international commercial disputes, the United Nations Commission on International Trade Law ("UNCITRAL") has published a commonly used set of such rules. Where ad hoc arbitration is chosen, parties usually will designate an "appointing authority," that will select the arbitrators if the parties cannot agree. If the parties fail to select an appointing authority, then the national arbitration statutes of many nations permit national courts to appoint arbitrators.

Both institutional and ad hoc arbitration have their strengths as well as weaknesses. Institutional arbitration is conducted according to a standing set of procedural rules and supervised, to a greater or lesser extent, by a professional staff. This reduces the risks of procedural breakdowns, particularly at the beginning of the arbitral process, and of technical defects in the arbitral award. The institution's involvement can be particularly constructive on issues relating to the appointment of arbitrators, the resolution of challenges to arbitrators, and the arbitrators' fees. Less directly, the institution lends its standing to any award that is rendered, which may enhance the likelihood of voluntary compliance and judicial enforcement

On the other hand, ad hoc arbitration is typically more flexible, less expensive (since it avoids sometimes substantial institutional fees), and more confidential than institutional arbitration. Moreover, the growing size and sophistication of the international arbitration bar, and the efficacy of the international legal framework for commercial arbitration, have partially reduced the relative advantages of institutional arbitration. Nonetheless, many experienced international practitioners prefer the more structured, predictable character of institutional arbitration, at least in the absence of unusual circumstances arguing for an ad hoc approach.

Maritime Arbitration in India:

Maritime arbitrations in India may be *ad hoc* or institutional arbitration with bodies such as the Indian Council of Arbitration (ICA). It is common for shipping contracts involving Indian government-owned companies to provide for arbitration in India to be administered by the ICA under its Maritime Arbitration Rules.

India has given effect to the UNCITRAL Model Law on International Commercial Arbitration through the Arbitration and Conciliation Act, 1996 (the Arbitration Act). The Arbitration Act was last amended in 2015, ushering in what is essentially a new arbitration regime following the amendment. The default court to move any application with respect to an international commercial arbitration (where one of the parties is a foreign party irrespective of whether the arbitration is taking place in India or not) would be a High Court. Indian High Courts are better equipped to deal with complex commercial disputes relating to international transactions, and the official language of High Courts in India is English. This brings an end to a rather notorious dilatory tactic adopted by certain litigants to initiate proceedings in courts in interior parts of India where the proceedings may be in a language other than English and the judge is ill-equipped to handle complex issues generally raised in international commercial disputes.

The Arbitration Act also empowers Indian courts to pass interim orders for security and other ancillary relief in support of arbitration taking place outside India. Another notable feature is allowing 'any person claiming through or under' a party who was a signatory of the original arbitration agreement to be party to the arbitration agreement. This has the effect of binding even an assignee or subrogatee within the ambit of the arbitration agreement contained in the underlying contract. The High Court of Gujarat has held that an endorsee of a bill of lading, which incorporates the terms of the charter party, including the law and arbitration clause, would be bound by such arbitration agreement.[125] The Supreme Court of India has held that a generic incorporation of a standard form contract in a particular industry (e.g., the GENCON, NYPE, Norwegian Sale Form, SUPPLYTIME in the shipping industry) is sufficient to incorporate the arbitration agreement contained in those forms into the underlying contract.[126] Recently, the Supreme Court has taken this proposition a step further by holding that a generic incorporation of a contract into another contract is sufficient to incorporate the arbitration clause (even if the contract that has been sought to be incorporated into the underlying contract is a bespoke contract, which is not common in the industry). [127]

The Arbitration Act requires an arbitrator to disclose in writing any circumstances relating to his or her impartiality and independence, and contains an exhaustive list[128] of grounds, including direct, indirect, past and present relationship with the subject matter or parties or counsel to the dispute, be it financial, business, professional, personal, and so on. Furthermore, there is a mandate imposed upon an arbitrator to dispose the reference within one year and in certain limited circumstances extend the reference by a further period of six months.

The Arbitration Act, following the amendment, has introduced fast-track arbitration, or document-only arbitration (with the consent of both parties), which, *inter alia*, entails that the tribunal would consist only of a sole arbitrator, the award being passed by the tribunal merely by reviewing documents without an oral hearing and the arbitrator being under obligation to pass and publish its award within six months of its reference.

Under the Arbitration Act, the fact that the award debtor has filed an application to challenge or set aside the award does not in itself amount to a stay on the execution of the award by the award holder.[129] In the event the arbitration proceeding seated in India is an 'international

[125] MV Nicoloas A v. Indian Farmers Fertilizers Cooperative, 2017 SCC OnLine Guj 2149
[126] M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd. (2009) 7 SCC 696
[127] Inox Wind Ltd. v. Thermocables Ltd., (2018) 2 SCC 519
[128] The Fifth and Seventh Schedules of the Arbitration Act
[129] Section 36(2) of the Arbitration Act.

commercial arbitration' seated in India (i.e., when one of the parties to the arbitration is a foreign party), the scope of interference by Indian courts would be limited and similar to the context of deciding the award debtor's application to resist the enforcement of a foreign arbitral award in India whereby the Indian court is precluded from setting aside the Indian-seated arbitral award on the ground of 'patent illegality'.

To obtain a stay on execution, the award debtor would need to file a separate application for such a stay under Section 36(3) of the Arbitration Act. The Supreme Court of India has further clarified this position by holding that the amended Section 36 of the Arbitration Act has retrospective effect, and thereby the automatic stay as envisaged under the old Section 36 no longer applies to any pending application challenging the award under Section 34 of the Arbitration Act.[130] As a general rule, a court would pass an order staying the execution of the award, conditional on the party seeking the stay furnishing security for 50 per cent of the value of the award.

Indian courts would be bound to decline to exercise jurisdiction and to refer the parties to arbitration unless the Indian courts 'find that the said agreement is null and void, inoperative or incapable of being performed'.[131] The Supreme Court, in the case of *Chloro Controls India Private Ltd. v. Severn Trent Water Purification Inc.*,[132] held that the court could have a fully-fledged trial (which includes leading oral or documentary evidence) to make a determination on whether an arbitration agreement exists before referring the parties to arbitration. The finding of the Indian courts on whether an arbitration agreement exists or not, is final and cannot be revisited by the arbitral tribunal. In other judgments, the Supreme Court has taken the view that the question of fraud leading to the conclusion of the underlying contract and arbitration agreement is an arbitral issue that ought to be decided by the tribunal.[133]

In an interesting judgment in 2017,[134] the Delhi High Court, in its interpretation of the *Chloro judgment*, followed the proposition of law laid down by the Singapore High Court in the case of *Aloe Vera of America, Inc. v. Asianic Food (S) Pte. Ltd*.[135] and held that the arbitral tribunal would, in principle, have jurisdiction to decide on issues regarding whether it should disregard the corporate and juridical personality of a company to hold a non-signatory to an arbitration agreement bound by the arbitration agreement. The Division Bench of the Delhi High Court, in its judgment of *Shakti Nath v. Alpha Tiger Cyprus Investment No. 3 Ltd.,*[136] upheld the findings of the court of first instance, which upheld the legal costs awarded by the arbitral tribunal in excess of US$1 million.

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[130] Board of Control for Cricket in India v. Kochi Cricket Private Limited & Ors., (2018) 6 SCC 287
[131] Section 45 of the Arbitration and Conciliation Act 1996
[132] (2013) 1 SCC 641
[133] MSM Satellite v. World Sport Group, (2014) 1 SCC 58
[134] GMR Energy Limited v. Doosan Power Systems India Pvt. Ltd, 2017 SCC OnLine Del 11625
[135] 2006 SGHC 78
[136] 2017 (5) ArbLR 112 (Delhi)

Under the Indian Stamp Act 1899 and legislation in every state of India regulating the payment of stamp duty such as the Maharashtra Stamp Act 1958 etc., legal instruments and contracts require the payment of stamp duty levied by the local state government for these documents to be enforceable in a court of law. Stamp duty is required to be paid, *inter alia*, on shipping contracts such as charter parties, bills of lading, indemnity bonds, delivery orders, protest of the master of ship, agreements creating a hypothecation or pledge over the goods, etc. In the case of an arbitration seated in India between two Indian parties a very recent judgment of the Supreme Court of India in *Garware Wall Ropes v. Coastal Marine Constructions & Engineering Ltd.*[137] has created uncertainty over whether an Indian court can entertain an application for interim measures or security in aid of arbitration seated in India, between two Indian parties when the underlying contract had not been affixed with appropriate revenue stamps.

In an effort to promote institutional arbitration in India, the Indian government has, on 2 March 2019, promulgated the New Delhi International Arbitration Centre Ordinance, under which the New Delhi International Arbitration Centre (NDIAC) was established. The Ordinance seeks to establish an independent and autonomous regime for institutionalized arbitration in India through the NDIAC. The NDIAC has been declared to be an institute of national importance. India is rapidly moving towards a pro-alternative dispute resolution regime, and courts are not shying away from looking to institutions for assistance, including for appointment of arbitrators. In the first case of its kind, the Supreme Court of India has sought the assistance of the Mumbai Centre for International Arbitration to appoint an arbitrator for an arbitration between an Indian and a foreign company.[138]

The Supreme Court of India in SLP (Civil) no.17183/ 1999, the Owners & Parties Interested in *m.v "B.C" & Anr –vs- State Trading Corporation of India Ltd & Anr* has held that "On a careful consideration of the entire matter we are of the view that there is no good ground or acceptable reason why the intention of the parties to incorporate the arbitration clause in the Charter Party Agreement in the Bill of Lading should not be given effect to. The High Court was not right in rejecting the prayer of the appellants for stay of the suit…". A claim which is brought in the Admiralty Court by an action in rem is subject to an arbitration agreement so that if an action were commenced the court would stay the proceedings to arbitration upon the application of the defendant. Under the provision of English Law, under section 26 of The Civil Jurisdiction and Judgments Act, 1982, which is in force since November 1, 1984 provides that where the court stays or dismisses Admiralty proceedings on the ground that the dispute in question should be submitted to arbitration the court may order that any property arrested or security given to prevent arrest or to obtain release from arrest shall be retained as security for satisfaction of the arbitration award or order that the stay be

[137] Civil Appeal No. 3631 of 2019 (Arising out of Special Leave Petition (Civil) No. 9213 of 2018)
[138] Sun Pharmaceutical Industries Ltd. v. M/s Falma Organics Limited, Nigeria, Arbitration Case No. 33 of 2014 (SC)

conditional upon the provision of equivalent security for the satisfaction of the arbitration award. The Court of Appeal has held in *The Bazias 3 & 4 [1993] 1 Lloyd's Rep. 101*, that the effect of section 26 is to assimilate arbitration claims with in rem proceedings in the Admiralty Court. Thus there is no longer a wider discretion when the claim is subject to an arbitration clause, and the ship arrested will ordinarily be released only if security is provided sufficient to cover the amount of the claim together with interest and costs, on the basis of the plaintiff's reasonably arguable best case.

In *Union of India v. Mc Donnell Douglas Corporation*, by a written agreement dated July 30, 1987 the plaintiffs contracted with the defendants for the latter to undertake services for the former in and about the launch of a space satellite. Art. 11 of the agreement provided that the agreement was to be governed by, interpreted and construed in accordance with the laws of India. The agreement also contained an arbitration clause (Art. 8) in the following terms: In the event of a dispute or difference arising out of or in connection with this Agreement, which cannot be resolved by amicable settlement, the same shall be referred to an Arbitration Tribunal consisting of three members. Either Party shall give notice to the other regarding its decision to refer the matter to arbitration. Within 30 days of such notice, one Arbitrator shall be nominated by each Party and the third Arbitrator shall be nominated by agreement between the Parties to this Agreement. If no such agreement is reached within 60 days of the mentioned notice, the President of the International Chamber of Commerce shall be requested to nominate the third Arbitrator. The third Arbitrator shall not be a citizen of the country of either Party to this Agreement. The arbitration shall be conducted in accordance with the procedure provided in the Indian Arbitration Act of 1940 or any reenactment or modification thereof. The arbitration shall be conducted in the English language.

The award of the Arbitrators shall be made by majority decision and shall be final and binding on the Parties hereto. The seat of the arbitration proceedings shall be London, United Kingdom. Each Party shall bear its own cost of preparing and presenting cases. The cost of arbitration including the fees payable to Arbitrators, shall be shared equally by the Parties to this Agreement.... The parties' dispute or difference has been referred to arbitration under the provisions of art. 8. The hearing before the arbitrators is presently fixed to begin in London on Jan. 11, 1993. The question before me is as to the law governing the arbitration proceedings. The parties are, as I understand it, agreed that this Court should decide this question, and should do so on the basis that there is no difference on this issue between English and Indian law.

In essence the plaintiffs contend that the words: "The arbitration shall be conducted in accordance with the procedure provided in the Indian Arbitration Act 1940" make clear that the parties have chosen Indian law, or at least those parts of Indian law found in the 1940 Act, to govern any arbitration proceedings arising under Art. 8. The defendants, on the other hand, contend that by stipulating London as the "seat" of any arbitration proceedings under Art. 8, the parties have made clear not merely that any arbitration will take place in London, but that English law will govern the arbitration proceedings. An arbitration clause in a commercial contract like the present one is an agreement inside an agreement. The parties make their commercial bargain, i.e. exchange promises in relation to the subject matter of the transaction, but in addition agree on a private tribunal to resolve any issues that may arise between them.

The parties may make an express choice of the law to govern their commercial bargain and that choice may also be made of the law to govern their agreement to arbitrate. In the present case it is my view that by Art. 11 the parties have chosen the law of India not only to govern the rights and obligations arising out of their agreement to arbitrate. In legal terms, therefore, the proper law of both the commercial bargain and the arbitration agreement is the law of India. The fact that the law of India is the proper law of the arbitration agreement does not, however, necessarily entail that the law governing the arbitration proceedings themselves is also the law of India, unless there is in that agreement some effective express or implied term to that effect. In other words, it is, subject to one proviso, open to the parties to agree that their agreement to arbitrate disputes will be governed by one law, but that the procedures to be adopted in any arbitration under that agreement will be governed by another law.

India- Bangladesh Maritime Dispute:

Recently, the four decade-long dispute between India and Bangladesh ended when the UN tribunal on Tuesday awarded 19,467 square kilometers, four-fifth of the total disputed area of 25,602 sq km in the Bay of Bengal, to the latter.

The talks on resolution to the maritime dispute over territorial waters, which started from the formation of the country in 1971, first began in an official negotiation in 1974. But when bilateral efforts to solve the issue marked no progress for next 28 years, Bangladesh then moved to UN's International Tribunal for the Law of the Sea (ITLOS) in 2009. The issue went to the Permanent Court of Arbitration (PCA) at The Hague later in May 2011.

The conflict was largely over delimitation of the territorial sea. While India wanted the determination of the boundary on 'equidistance' method which means a nation's maritime boundaries should conform to a median line equidistant from the shores of neighboring nation-states, Bangladesh was pressing for equitable solution (a solution that led to equitable access to resources) to be reached by keeping in focus all relevant circumstances.

Bangladesh and India have welcomed the decision of the UN tribunal which was told to both the parties on Monday but kept under a 24-hour embargo before being made public on Tuesday. The verdict is binding on all parties and there is no option for appeal. Bangladesh had won a similar case against Myanmar in 2012 at the International Tribunal for the Law of Sea in Hamburg, Germany.

During India's external affairs minister Sushma Swaraj's visit to Dhaka in June this year, spokesperson of the ministry Syed Akbaruddin had said that both the countries would act in accordance with the verdict since they went to the court voluntarily. Once the judgement was out, the Indian official said, "We respect the verdict of the tribunal and are in the process of studying the award and its full implications…".

Bangladesh, which said it was satisfied with the decision, applauded India for its approach. Bangladeshi foreign minister Abul Hassan Mahmood Ali said in a news conference, "We commend India for its willingness to resolve this matter peacefully by legal means and for its acceptance of the tribunal's judgment."

When asked about how successful he thinks the country was in its battle, Bangladeshi foreign minister added, "A peaceful resolution to a dispute running for more than 40 years since independence has been achieved. Which success is larger than that?"

The dispute that had been going on for years is believed to have deterred companies from investing in the sea blocks in region. A statement by the Ministry of External Affairs said, "This paves the way for the economic development of this part of the Bay of Bengal, which will be beneficial to both countries."

The key issue of the dispute was over location of the land boundary terminus between the two countries and determination of the course of the maritime boundary in the territorial sea. While India was demanding determination of the boundary on 'equidistance' method, Bangladesh was pressing for 'equitable solution'.

Enforcement Of Arbitral Awards Under New York Convention Or Geneva Convention

Although the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the New York Convention) has also been incorporated into the Arbitration Act, a foreign arbitral award can be enforced in India only if the government declares the country in which the award was passed to be a 'reciprocating territory' under Sections 44 or 53 of the Arbitration Act. A foreign award holder seeking to enforce an award in India would have to apply to the court, within whose jurisdiction the award debtor has its assets, to enforce the foreign award.[139] Presently, there is no requirement to convert the foreign award into a judgment of the Indian court by way of separate proceedings and the party seeking to enforce a foreign award can directly initiate execution proceedings to liquidate the assets of the award debtor.[140] Enforcement and execution proceedings can be initiated in India by placing on record the following documents before the Indian court:

a. the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;

[139] Bharat Aluminium Co. v. Kaiser Aluminium Technical Services (2012) 9 SCC 552
[140] Fuerst Day Lawson Ltd. v. Jindal Exports Ltd. (2001) 6 SCC 356

b. the original agreement for arbitration or a duly certified thereof; and

c. such evidence as may be necessary to prove that the award is a foreign award. In this regard, generally an affidavit from a lawyer from the country in which the foreign award was passed stating that the foreign award is final and binding as a matter of the laws in that jurisdiction and confirming that there is no appeal against the award pending in that jurisdiction suffices.

The award debtor can resist the enforcement of the foreign award on the grounds of objections enumerated in the New York Convention, which are reproduced under Section 48 of the Arbitration Act. One such commonly used ground was on the issue of public policy, where the award debtor would seek to reargue the underlying issues of the arbitration proceedings on merits, and there were a plethora of cases in which the courts considered the merits. However, there were two landmark judgments of the Supreme Court in 2015, in which[141]the scope of public policy was clarified. Subsequently, this was included as an amendment to Section 48 of the Arbitration Act to include an explanation that clarified that 'for the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian Law shall not entail a review on the merits of the dispute'. Hence, the courts have been more restrictive in allowing the reopening of any issues on merits.

Indian courts are now prone to adopting a commercial approach in refusing to allow an Indian party to take advantage of its own wrong and avoid a contract, for example, in circumstances such as issuing guarantees for overseas companies that do not comply with Indian foreign exchange regulations.[142] The Bombay and Calcutta High Courts, in their judgments involving shipping disputes, held that a party is estopped from raising challenges to the foreign arbitral award at the time of its enforcement in India on the grounds of the existence of a valid and enforceable arbitration agreement, when they have chosen not to appeal against the award before the appropriate court in the country where the arbitration had been seated. [143]

Mediation In Maritime Disputes In India:

No matter what the complexity is, no one can understand the pain of the parties than the parties themselves. As both parties come forward and reach a successful settlement, only then does the settlement become enforceable on them, mediation makes more sense as it is comparatively cost effective. As per Dr. Dhananjaya Y. Chandrachud “Mediation at one

[141] Oil and Natural Gas Corporation v. Western Geco International Ltd. (2014) 9 SCC 263 and Associate Builders v. Delhi Development Authority (2015) 3 SCC 49

[142] Intesa Sanpaolo SPA v. Videocon Industries Ltd., 2014 SCC Online Bom. 1276

[143] Mitsui OSK Lines Ltd. (Japan) v. Orient Ship Agency Pvt. Ltd. (India), Arbitration Petition No. 842 of 2009 and Aurelia Reederei Eugen Friederich GmbH v. POL India Projects Limited, Arbitration Petition 12 of 2012; Sifandros Carrier Ltd. v. LMJ International Ltd., 2018 SCC OnLine Cal 7146

level of perception is a means of avoiding the pitfalls of litigation." One of the reasons to opt for maritime mediation in India is the complexity of such disputes. Multijurisdictional cases can arise as a ship in the Indian waters can be subject to innumerable amount of contracts, domestically and internationally. A series of disputes can arise while travelling by the sea. The laws governing the Admiralty sector are complex and tend to cause a significant amount of uncertainty. This is because the ships can be governed by a variety of legislations during their movement through international waters and different ports around the world. Maritime cases are fit for mediation because as any other sector, the benefits which mediation provides easily weigh more than the benefits provided by any other dispute resolution mechanism. The parties are free to choose the mediator, negotiate, and the best feature is that the reputation and the relationship with the other party are mostly not hampered because it's settled amicably. Confidentiality of such matters helps in providing the companies.

Existing Framework With Respect To Maritime Mediation In India:

In India the terms 'mediation' and 'conciliation' are used synonymously; this was clarified in the judgment of the Supreme Court in its decision in *Afcons Infrastructure Ltd v M/s Cherian Varkey Construction*[144]. Hence adhering to this definition, it can be interpreted mediation is encouraged by the judiciary. The judicial system has been encouraging litigants to look towards alternate dispute resolution (ADR) mechanisms, the recent arbitration and conciliation (amendment) bill 2018 also encourages for the same. One such method that is Civil Procedure Code was amended in 2002 in order to incorporate section 89 which includes mediation as a mechanism for ADR. The Rules framed by the Supreme Court and the 24 High Courts provide for reference by courts to mediation. In case of failure in mediation on court-referred mediation the matter shall go on in litigation.

In case the efforts of the mediator succeed in helping parties reach a settlement, a report is to be provided to the court by the mediator. In all, it can be said that mediation may take place in two stages, the first one being pre-litigation and the other stage being the court-referred mediation.8 When the parties by themselves enter into mediation instead of opting for litigation at the first place, it is known as pre-litigation mediation, also known as voluntary mediation. Court referred mediation works on the basis of section 89 of the CPC as mentioned in the above paragraph. During this research it was observed that recent court referred mediation in maritime disputes turned out to be successful in cases like *Startrek Shipyards Private Ltd v/s Chennai Port Trust*[145] and *M/S Chindambram Shipcare Pvt Ltd v/s*

[144] [2010] (7) SCALE 293

[145] Star Trek Shipyards vs Chennai Port Trust. Retrieved October 23, 2018, from Indian Kanoon: https://indiankanoon.org/doc/111960684/

Owners[146] and parties, interested in the vessel M/V coastal, hence court referred mediation does exist in maritime disputes.

Part III of the Arbitration and conciliation Act is applicable to private mediation. Hence private mediation can also be practiced in maritime mediation disputes, Part III consists of provisions for the appointment and role of mediators, conduct of proceedings, communication and disclosure of information, status and effect and enforcement of settlement agreements, confidentiality, not resorting to arbitral or judicial proceedings during mediation (except when necessary to protect rights), costs, non-admissibility of evidence in other proceedings, etc. The Industrial Dispute Act sets up a conciliation framework to resolve disputes between workmen and their employers. As per Section 4 of the Act .The conciliation officers are appointed by the government.

<u>Time Frame – Mediation Compared To Other Adr Methods:</u>

In litigation, an adumbrate outlook given in a chapter on maritime law by the International Comparative Legal Guides on shipping law provides that, as far as the Indian courts are concerned, it depends upon where the court proceedings are being held. As far as the proceedings in the Bombay High Court are concerned it would take between 7 and 10 years to be heard and decided finally.

In arbitration, as per section 29 A of the Arbitration and Conciliation (Amendment) Act, the arbitral tribunal is required to give its award within a period of 12 months of the formation of the tribunal. Hence it makes it mandatory that an award shall be passed in a particular matter within a period of 12 months off the arbitral tribunal entering upon the reference.

The biggest plus point of opting for mediation is the time frame. Mediation proceedings can be completed within a year or close to it .Thus the time frame can depend upon the negotiations and complexity of the case, as there is no set time frame ordered to them by law. The only perquisite is that in order to succeed the consent of all parties is mandatory.

<u>Challenges Faced In Maritime Mediation:</u>

The maritime sector, being a complex sector requires mediators to be highly skilled at maritime law and mediation skills, the people who are skilled at this are very hard to find as this combination of people are usually into arbitration because of better rules and existence of a proper framework.

Mediation in itself as an alternative dispute resolution mechanism has a long way to go. Lack of proper regulatory framework makes it a tough choice for implementation of in contracts involving huge sums of money as the question of its enforceability outside the purview of

[146] M/S ChindambramShipcare Pvt Ltd vs Owners and Parties Interested. Retrieved October 23, 2018, from Indian Kanoon: https://indiankanoon.org/doc/41513158/

Section 89 of the Code of Civil Procedure, which only deals with court referred mediation still prevails.

As per the law commission of India there is also a need to modify section 89 off the CPC, the requirement that the court must formulate the terms of possible settlement places a significant burden on the court, even before referring the parties to the process of mediation. This leads to spending of considerable amount of time and effort in imploring the parties to settle their dispute and draw up the terms of a possible settlement.

Lack of clear distinction in laws relating to arbitration, mediation and conciliation also poses as a challenge and absence of a proper mediation culture. Practitioners of Alternative Dispute Resolution methods have noticed that the Mediation and Conciliation rules of 2004 are somewhat similar to the provisions that are covered in the Arbitration and Conciliation Act, 1996.

In terms of private mediation: A settlement agreement in a private mediation is not enforceable under Sections 73 and 74 of The Arbitration and Conciliation Act, 1996. This is evident as in the Delhi High Court case of *Shri Ravi Aggarwal vs Shri Anil Jagota* (EFA (OS) No. 19 of 2009). The Hon'ble High Court of Delhi refused to enforce a settlement agreement in a private mediation under Sections 73 and 74 of 1996 Act.

Mediation can only be successful in commercial cases relating to the maritime sector if a proper framework is brought into place and encouraged by all sectors of the society. Section 89 of the CPC can only help in increasing mediation up to a certain extent .Our country is becoming an economic hub as more and more countries are investing in India keeping in view its bright future.

Unless and until voluntary mediation is not encouraged by urging companies to enter into mediation clauses, by including new mediation clauses, Arb-Med-Arb or Med-Arb clauses in agreements, increasing pre mediation in India will pose as a basic challenge for all. Keeping this in view, as imports and exports in India are rising and most are usually done through the sea route, because of economic advantages.

With an increase in import-exports and shipping infrastructure in India there is a huge possibility of disputes to arise. Having a better regulatory framework in place will help corporate engage in maritime sector to tap the mediation processes more effectively, and hence increase the chances of reducing the burden of going through litigation or constraining their scope only to arbitration in order to settle a dispute.

INDIAN MARITIME DISPUTES AND ITS NEIGHBORING COUNTRIES

Now for better understanding of the role of judiciary over maritime matters we need to have an understanding about the delimitation of India's maritime boundary first and then we will look into some instances of disputes regarding maritime law with our neighboring countries.

It often comes as a surprise to many that India has maritime boundaries with a larger number of states than those with which it shares land borders. Whereas India's maritime boundaries necessitate delimitation with seven states on adjacent and opposite coasts—Pakistan, Maldives, Sri Lanka, Indonesia, Thailand, Myanmar, and Bangladesh—its land borders are shared with six states (Pakistan, China, Nepal, Bhutan, Bangladesh, and Myanmar). The Indian coast line (including island territories) of 7,516.5 kms is the 15th longest in the world, with Canada (90,889 kms) and Indonesia (54,705 kms) possessing the longest coasts. Due to considerable political and diplomatic efforts since the 1970s, virtually all of India's maritime boundaries have been demarcated. The exceptions primarily remain those with Pakistan and Bangladesh.

In view of the prospective changes in the international law of the sea (the United Nations Conference on the Law of the Sea [UNCLOS] III), which was to provide vastly extended maritime zones to coastal and island states, India began the difficult task of demarcating boundaries with its maritime neighbours in the early 1970s. This was necessary in order to peacefully resolve disputed and overlapping claims of maritime jurisdiction, arising from the new 200 nms of Exclusive Economic Zones (EEZ) and 200-350 nms of continental shelves allocated to states. In 1982, UNCLOS III was opened for signature, and following the 60th ratification by Guyana in November 1993, came into force a year later, on November 16, 1994. This essentially provided India with a vastly expanded area of sea of as much as 2.2 million sq. kms. or two-thirds of the total area of land, along with the potential addition of 1.5 million sq. kms. of continental shelf by the year 2004.

Although UNCLOS III clearly determined the precise limits of various maritime zones, it failed to agree on any single universal set of principles by which these boundaries were to be delimited. Consequently, the process of delimitation, and subsequent demarcation (of maritime boundaries) continues to remain in dispute. As the 'median' or the 'equidistance' line between two coastal states had been sufficient to determine maritime boundaries in the past, this principle has largely been followed in UNCLOS III, for both adjacent and opposite coastal states. The international law of the sea also stresses that neither of the two states is entitled, failing agreement to the contrary, to extend its territorial sea beyond the 'median' line. However, this is not to apply where it is necessary, by historic title or other special circumstance, to delimit the territorial sea between two states in a manner different from this provision.

Meanwhile, in terms of the delimitation of the EEZ or the continental shelf between adjacent and opposite states, no universally acceptable formulation could be evolved. As a result, Articles 74 and 83 of UNCLOS III vaguely state that the delimitation of the EEZ or the continental shelf between states with opposite or adjacent coasts shall be affected by agreement on the basis of international law, as referred to in Article 38 of the statute of the International Court of Justice, in order to achieve an equitable solution. As no distinction has been made in terms of the delimitation between the EEZ and the continental shelf, or between adjacent or opposite coasts, such a formulation has considerable potential for misinterpretation. In effect, it is widely agreed that this does not constitute a reliable guide to negotiators or even arbitrators of delimitation questions.

India's Maritime Boundaries:

Notwithstanding these problems and difficulties, India, to date, has signed 12 maritime agreements with all five of its neighbours on opposite coasts—nine bilateral agreements with Maldives (1976), Sri Lanka (1974 and 1976 (2)), Indonesia (1974 and 1977), Thailand (1978 and 1993), and Myanmar (1986), and three trilateral agreements with Sri Lanka and Maldives (1976), Indonesia and Thailand (1978), and Myanmar and Thailand (1993) . As a result, the delimitation of India's maritime boundaries with four of these five states is complete; the only exception, Myanmar, requires a trilateral agreement to determine its tri-junction point with India and Bangladesh. However, this necessitates the prior resolution of the maritime boundary dispute between India and Bangladesh.

India and Sri Lanka:

India's first bilateral maritime boundary agreement took place with Sri Lanka on June 26/28, 1974, and resolved the vexed question of disputed sovereignty over Kacchativu island, covering an area of 3.75 sq. miles (located in the Palk Straits about 12 miles from the Indian coast and 10.5 miles from Sri Lanka). In a package deal, the Indian government recognised Sri Lankan sovereignty over the island, as well as Indian sovereignty over the Wadge Bank. Indian fishermen and pilgrims were also to continue to enjoy access to Kacchativu without the need for travel documents or visas. In effect, the maritime boundary line between India and Sri Lanka followed the 'median line' principle, with adjustments made in the Palk Straits in relation to Kacchativu.4 In addition, two more bilateral maritime boundary agreements were signed between the two countries in the same year, as well as a trilateral agreement with Maldives in the same year on the determination of the trijunction point between the three countries in the Gulf of Manaar.

However, in view of the fragile security scenario in the area, due to the activities of the Liberation Tigers of Tamil Eelam (LTTE), Indian fishermen continue to be harassed by Sri Lankan naval vessels. It is estimated that till 1997, approximately 160 Indian fish-workers had been killed, and more than 500 injured, by the Sri Lankan Navy.

India- Indonesia:

India's second bilateral maritime agreement took place with Indonesia on August 8, 1974, on the delimitation of the continental shelf between the two countries. This was followed by another bilateral agreement on January 14, 1977, and a trilateral agreement, along with Thailand, on June 22, 1978, on the determination of the trijunction point and the delimitation of the related boundaries of the three countries in the Andaman Sea. In effect, all the maritime boundaries between the two countries have been settled by following the 'median line' principle.

India- Maldives:

On December 28, 1976, India signed its first bilateral maritime agreement with Maldives, on the maritime boundary between the two countries in the Arabian Sea and related matters. This had been preceded in July 1976 by a trilateral agreement with Sri Lanka. Both agreements have been based on the 'median line' principle.

India- Thailand:

India's first maritime agreement with Thailand took place on June 22, 1978, on the delimitation of the seabed boundary in the Andaman Sea. This was followed by an agreement on the maritime boundary between the two countries in the Andaman Sea (1993), as well as a trilateral agreement with Myanmar on the determination of the trijunction point between the three countries in the Andaman Sea (1993). Earlier, on June 22, 1978, Thailand had entered into a trilateral agreement with Indonesia. Thailand is the only country to be party to two trilateral maritime agreements with India. In effect, minor adjustments in the Andaman Sea were made on the boundary between the Indian Nicobar islands and the Thai coast, through the modification of a series of purely 'median' lines.

India- Myanmar:

Although bilateral negotiations had begun as early as 1976, India's first maritime boundary agreement with Myanmar took place only on December 23, 1986, followed by a trilateral agreement with Thailand on October 27, 1993. In effect, the bilateral agreement recognised Indian sovereignty over Narcondam island in the Andaman Sea.

Indo-Pakistani Maritime Dispute

The Indo-Pakistani maritime dispute comprises two related issues— the resolution of the land boundary in Sir Creek (a 38 km long estuary in the marshes of the Rann of Kutch) of the Gujarat (India) and Sindh (Pakistan) provinces, as well as the delineation of the maritime boundary seaward within the territorial sea and beyond. A reasonable and satisfactory solution to this dispute has eluded India and Pakistan for decades. Not only do both countries differ with each other on a solution on technical grounds, but Pakistan's insistence on linking it to the dispute over Kashmir has made it impossible for a political resolution of the dispute. Whereas Pakistan also continues to directly link any resolution of the maritime boundary with that of the land boundary in Sir Creek, India continues to attempt to tackle both issues in a related, but separate, manner. However, with a view to concluding a mutually satisfactory agreement at an early date, India's "non-paper" to Pakistan on Sir Creek in January 1994 stated that it was "willing to enter into further discussions on the lines suggested by Pakistan."

The dispute over Sir Creek began even before Independence, some 90 years ago in 1908, in what was then undivided India. Its origins apparently lay in an argument between the rulers of Kutch and Sindh over a pile of firewood lying on the banks of a creek dividing the two principalities. This problem was referred to the then government of Bombay, which gave its decision in 1914 in the form of Map number. B44, and subsequently implemented in the form of Map number B74. Although this dispute was not resolved, it remained dormant at Independence, and throughout the late 1940s and the 1950s. It came into prominence once again in the 1960s.

In the wake of Pakistan's claim that half the Rann of Kutch along the 24th parallel was its territory, and India's counter claim that the boundary ran roughly along the northern edge of the Rann, followed soon after by the 1965 Indo-Pakistani war, it was agreed that this issue be decided through arbitration. Consequently, the Indo-Pakistan Western Boundary Case Tribunal upheld 90 per cent of India's claim to the entire Rann, conceding small sectors to Pakistan. However, as both state parties had agreed to limit arbitration only to the boundary in the north, the dispute over the boundary to the south was excluded from the purview of the Tribunal. This involved a) the demarcation of the boundary from the head of Sir Creek downward to the west, right up to the mouth of the creek on the Arabian Sea, as well as b) the boundary from the top of the Sir Creek eastwards to a point (on land) designated as the Western Terminus.

There had been a few rounds of official talks at different levels have been held between the two countries on the Sir Creek and maritime boundary issues in the past nine years. The first round of talks took place in Islamabad on June 2, 1989, where the Indian delegation was led by the Surveyor-General, Major General S.M. Chadha, and the Pakistani delegation by Major General Anis Ali Syed (Surveyor-General). Other than a basic discussion of the issues involved, no substantive agreement took place. This was followed by the second and third rounds of talks in 1990 and 1991. These were followed on October 28-29, 1991 by Secretary-level (for the first time) talks on these issues in Rawalpindi. Conducted by the then Secretary (West) in the Indian Ministry of External Affairs (MEA), I.P. Khosla, and the Defence Secretary of Pakistan, Salim Jilani, along with the two Surveyor Generals, these talks floundered over technical differences and the linking of the two issues. There were also differences over the factors which should govern the determination of the boundary of Sir

Creek, as well as the principles of 'equidistance' or 'equity' to be used in demarcating the maritime boundary.

The fifth round of talks on this dispute were held in New Delhi, on November 5-6, 1992, led by the then Additional Secretary in the MEA, Nareshwar Dayal, and the Additional Secretary in the Pakistani Ministry of Foreign Affairs, Khalid Saleem. Although the Indian Navy had conducted considerable research on the possibilities of defining a maritime boundary from the sea (whose starting point was undetermined), this issue was not formally brought up during the talks.

The sixth round of talks on Sir Creek and the maritime boundary dispute took place six years later, on November 9, 1998, in New Delhi. The resumption of the talks was the result of the Indo-Pakistani Foreign Secretary-level talks of June 1997 and September 1998, where it was agreed to address all outstanding issues of concern under the framework of a two plus six "composite dialogue," which included the establishment of a Working Group on Sir Creek (as one of six such groups). Whereas the Indian delegation was led by the Surveyor General, Lt. General A.K. Ahuja, the Pakistani delegation was led by an Additional Secretary in the Ministry of Defence, Rear Admiral M. Jameel Akhtar.

The technical differences between the two sides on the resolution of the maritime dispute are the following:

a. India considers the boundary of Sir Creek to be defined by its mid-channel, whereas Pakistan considers it to be on the eastern bank of the creek, thereby claiming the entire Sir Creek. Both countries have provided maps and legal interpretations through the years to support their cases. In this respect, India has provided a 1925 Pakistani map (B74), which shows the boundary defined by the 'mid-channel principle', and represented by proper boundary symbols. Although Pakistan argues that the map attached to the Resolution of 1914 (B44) shows a "green line" on the eastern bank (thereby indicating the official boundary), the Indian counter-argument remains that this does not have any legal value as it is only a mere riband (cartographic symbol), as also that the map served simply as an annexure to the 1914 Resolution.
b. India's case for a mid-channel boundary is based on the characteristic of Sir Creek as a navigable channel throughout the entire year, especially so during the period of high tide. Pakistan, however, states that as the creek is not a navigable channel, this principle does not apply to it. Meanwhile, India's case for mid-channel demarcation is firmly recognised under the thalweig principle of international law, which divides river boundaries between states in the middle of the mid-channel.
c. India's proposal for the initial delimitation of the maritime boundary from the 'seaward' side was rejected by Pakistan, which insisted that Sir Creek and the maritime boundary delimitation issues were inseparable. India had even suggested that the delimitation of the maritime boundary could proceed towards land from the

extremity of the EEZ limit to a mutually acceptable limit. This limit could be governed by the internationally recognised technical aspects of the Law of the Sea. In effect, this would settle the greater portion of the maritime boundary.

d. In the 1994 "non-paper" India had also proposed that the delineation of the maritime boundary in the territorial sea could be governed by the 'median'/'equidistant' principle, using the low water lines and low tide elevations of both countries, whereas beyond the territorial sea it could be governed by 'equidistant' as well as 'equitable' principles. However, it appears that Pakistan could very well insist on the 'equitable' principle alone to define its seaward maritime boundary with India, thereby disregarding India's larger coast line and EEZ.
e. Finally, Pakistan's declaration of straight baselines on September 10, 1996 (a series of nine straight lines), has been challenged by India. Not only are some of these lines not in accordance with Article 7(2) of UNCLOS III, but its Point K lies off the eastern bank of Sir Creek as well. Meanwhile, India, which has not yet declared its baselines (as required by UNCLOS III), is expected to do so shortly.

Meanwhile, a consensus of sorts appears to exist between the two countries on the horizontal sector of the land boundary, in that both could accept the boundary line defined by the existing boundary pillars along the horizontal line, as well as by fixing intermediary pillars on the same alignment if required. India also forcibly rejected Pakistan's attempt to internationalise the Sir Creek issue through arbitration by an international tribunal, by stating that differences between the two countries had to be resolved bilaterally in accordance with the Indo-Pakistani Simla Agreement (1972).

It has been calculated that the differences between the two countries on Sir Creek involve a disputed area of only 6-7 sq. miles of marshy swamp land, but as much as 250 sq. miles of ocean and ocean floor. Moreover, this area is expected to be rich in hydrocarbons, with considerable potential for exploitation. However, the major implications of the absence of a satisfactory resolution of the Indo-Pakistani maritime dispute are political and humanitarian. In terms of the former, there remains considerable tension between the two states in patrolling and guarding their respective maritime zones. Although this has not led to a clash between naval/coast guard forces, the stakes in the area remain high.

In terms of the latter, both Indian and Pakistani fishermen suffer by straying into the other countries perceived maritime zones, and facing arrest and imprisonment, at times as suspected spies. As early as 1986, fishing trawlers have been seized and fishermen apprehended by both countries. Although exchanges of fishermen take place occasionally, far more needs to be done at a humanitarian level.

Instances of Disputes:

India- Sri Lanka maritime dispute:

Despite, successfully demarcating its maritime boundary with Sri Lanka through 1974 and 1976 agreement, some issues have cropped up in recent regarding the fisherman and Kachchathivu island which has brought some confusion.

Kachchathivu issue:

1974 Agreement, the boundary line was agreed upon based on 'modified equidistance line'. And Kachchathivu island was given to Sri Lanka and special provisions were included to allow the continuing use of Kachchathivu for pilgrimage and for drying nets and free movement of vessels in the Palk Bay as before. But, fishing was not explicitly mentioned.

Indian fisherman has claimed their traditional fishing rights in the region which have been denied by the Sri Lankan authorities. But such rights are not mentioned in agreement. This has infuriated Indian fishermans.

In 2014, Tamil Nadu Government pleaded in Supreme Court to cancel the ceding of island to Sri Lanka as it was not approved by Parliament. But Indian government clarified that, island was not ceded, but was a disputed territory and therefore was given during boundary settlement process. (In *Berubari Union case* it has been decided that settling of territorial disputes does not require Parliamentary approval.)

Fisherman's issue:

The narrow waters between the two countries and historical fishing by the fisherman communities in the same region without any problems have become a problem in present days because of security threats and threat to ecosystem.

The issue of Indian fisherman staying into Sri Lankan water gained significance after Sri Lankan Navy started exercising greater control and vigilance over Palk Strait during Tamil Elam war. It was an attempt by the navy to stop arms smuggling and other illegal activities. During the process many a times they had fired on Indian fisherman which had infuriated dispute.

After the end of LTTE war, the security has remained heightened. Along with this the ease on the restriction on Sri Lankan fisherman, use of high end technology by Indian fisherman has complicated the issue.

The issue is more related to technical and administrative measures than to maritime dispute and should be solved accordingly.

Indo-Bangladeshi Maritime Dispute

The Indo-Bangladeshi maritime dispute primarily focuses on differences in the principles by which the maritime boundary is to be demarcated, as well as disputed sovereignty over a small island. Whereas India has consistently favoured the 'equidistant'/'median-line' principle for the demarcation of maritime boundaries, Bangladesh favours the application of the 'equitable' principle alone. In effect, the consideration of a 10-fathom baseline for the measurement of its 200 nm EEZ would serve to mitigate the negative effect of its concave coast, thereby enclosing hundreds of square miles of continental shelf within its internal waters (by drawing straight baselines along the farthest seaward extent of a submerged sedimentary delta). Moreover, by the application of the 'median line' principle between India and Bangladesh, as well as between Myanmar and Bangladesh, it is seen that Bangladesh will get self-locked, thereby being unable to claim the full extent of its EEZ or continental shelf.

Both India and Bangladesh also continue to claim an island covering an area of 2 sq. miles, lying in the estuary of the Haribhanga and Raimongal rivers in the Bay of Bengal. Known as New Moore or Purbasha in India, and South Talpatty in Bangladesh, this island emerged in 1970 in the wake of acute volcanic activity in the area. It lies 5 nms off the Ganges delta from the coast of Bangladesh, and 2 nms off India's coast. India claims the island on the basis that the flow of the Haribhanga river is to the east of the island, and the island lies on the natural prolongation of Indian territory. Meanwhile, Bangladesh claims that the river flows to the west of the island, as a result of which it is not possible to distinguish the natural prolongation of Indian territory. In May 1981 there was a brief scuffle over its possession—three Bangladeshi gunboats threatened an Indian survey ship in the area. This ended with the dispatch of an Indian frigate, the INS Andaman, to the island. Finally, in 2014, Bangladesh won the arbitration case against India.