

Maritime Crimes and Jurisdiction Issues Maritime crimes governance

Mr. Akash Kumar, Assistant Professor of Law, National Law University
Odisha (NLUO)

M.A. (Maritime Laws) at DDE, NALSAR

SAGAR – Security and Growth for All in the Region

- It is an increasing recognition of the importance of maritime security, maritime commons and cooperation. Through SAGAR, India seeks to deepen economic and security cooperation with its maritime neighbours and assist in building their maritime security capabilities. For this, India would cooperate on the exchange of information, coastal surveillance, building of infrastructure and strengthening their capabilities.
- SAGAR is seen in conjunction with India's other policies impacting the maritime domain like Act East Policy, Project Sagarmala, Project Mausam, focus on Blue Economy.
- Blue economy presents India with an unprecedented opportunity to meet its national socio-economic objectives (livelihood generation, achieving energy security, building ecological resilience etc.) as well as strengthening connectivity with neighbors. Apart from it, blue economy provides many opportunities: Oceans provide a substantial portion of the global population with food and livelihood, as well as transportation for 80% of global trade.

Maritime Security in India- Scope for improvement

- Managed by nine state coast guards and Union Territories
- Overlapping jurisdiction between the IN, ICG and the SCP and a lack of unity of command at the ministry and force level.
- It could be argued that the IN has been made responsible for overall Maritime Security, and ICG given the responsibility for overall coordination between the State and the Central agencies. However, both the IN and ICG are under the Ministry of Defence (MoD) and not the Ministry of Home Affairs (MHA), the nodal ministry responsible for border management.
- ICG was not set up as an agency to guard India's maritime borders in the first place but for policing and general superintendence of India's maritime areas.
- Other than Baseline, the terms Maritime Security, Coastal Security, Offshore Security, and Coastline are not defined in any statutory document

- The evolution of the Marine Police in independent India has been uneven, and driven by local factors. the responsibilities of the Marine Police in India now encompass a wide range of missions and tasks. These includes:
 - coastal border management;
 - coastal patrolling (up to 5 nautical miles from the coast);
 - prevention of infiltration;
 - maritime law enforcement (including prevention, investigation and prosecution of maritime crimes);
 - maintenance of law and order in coastal areas; fisheries monitoring and enforcement;
 - protection of Critical Maritime Infrastructure (CMI), such as Single Point Moorings (SPM), ports and other vital assets/areas along the coast;
 - intelligence collection, inter-agency coordination;
 - assistance to lead agencies in tasks, such as coastal defence, disaster management, oil pollution response and search and rescue (SAR);
 - safety of fishers, tourists and coastal population;
 - biodiversity conservation; and facilitating community participation in coastal security.

International Maritime Bureau

- The International Maritime Bureau is a specialized department of the International Chamber of Commerce.
- The IMB's responsibilities lie in fighting crimes related to maritime trade and transportation, particularly piracy and commercial fraud, and in protecting the crews of ocean-going vessels. It publishes a weekly piracy report and maintains a 24-hour piracy reporting centre in Kuala Lumpur, Malaysia.

The Alondra Rainbow case (1999)

- October 1999 the vessel MV Alondra Rainbow (owned by Japanese, flying a Panama flag and carrying 7000 tonnes of Aluminum ingots valued between US 8-14 million) reported missing with 17 crew members on board!
- Soon after the ship had sailed from Kuala Tanjung in Indonesia for Miike in Japan, a gang of pirates armed with swords and guns hijacked the ship. The Japanese Master Mariner filed a complaint about the incidence with Thai authorities.
- The (International Maritime Bureau) IMB Piracy Reporting Centre passed the information regarding the alleged ship sighting along with a photo of the Alondra Rainbow to the Indian Coast Guard, requesting assistance.
- It was for the first time that a Pirated vessel was apprehended and the offenders were caught red handed (in Indian waters?). The owners of the ship were Japanese, part of the crew were mixed with Indonesian and Philippine origin. The pirates were mostly Indonesian , the offence committed in Indonesian waters, the consignment of the Aluminum was for a third country buyer, the vessel was chased in the Indian waters and apprehended by Indian maritime forces. The Law enforcement agency in India, the Police were not oriented in maritime crimes at all.

- It was in November 1999 that the Indian Coast Guard first received a tip-off. A vessel had been seen loitering off the Sri Lankan coast and looked suspiciously like the Japanese ship, Alondra Rainbow which had gone missing, but the name it displayed was Mega Rama.
- The Indian Coast Guard immediately dispatched a patrol aircraft to search the area. The suspected ship had a name MEGA RAMA and was flying a Belize flag. Quick checks by the IMB confirmed that no such ship was registered in Belize.
- The Indian Navy had been closely monitoring the Coast Guard action but as soon as the suspicious vessel raced away into the high seas, the Navy upgraded its operational response to deploy a task force to intercept Alondra Rainbow alias Mega Rama.
- Indian patrol aircraft attempted radio contact with the ship but in vain. It was only when a missile carrying Corvette, INS PRAHAR was called into action that the high seas chase was brought to an end through a graduated use of force. 16 November 1999 Mega Rama captured (300 miles south west of Mumbai?). The 15 Indonesians found on board allegedly attempted to destroy the evidence by setting fire to and scuttling the ship. The naval boarding party put out the fire, brought the flooding under control and towed the ship to Mumbai.

- Numerous difficulties encountered even in finding the relevant sections of the Law of the land or even an international law that could be made applicable in respect of Piracy.
- The law enforcement agencies had to finally seek the relevant sections of some old Admiralty provisions which thankfully were still applicable.
- The accused were held guilty on eleven accounts including charges of attempts to murder, forgery, criminal conspiracy, assault and using deadly weapons, invoking the relevant sections of the Indian Penal Code.
- Framing Charges! How comprehensive is the current legal regime?
- The jurisdiction of a State over acts of piracy is based upon NATIONALITY OR TERRITORIALITY. That is, there must be a genuine link between the State and the ship , or between the State and the waters on which the offences take place.
- Judgment of the Trial Court of Additional Sessions Judge, Greater Bombay (25 February 2003). The trial court convicted the appellants for offence punishable under section 307 (Attempt to Murder), read with section 120-B (1) r/w section 34 of the Indian Penal Code and sentenced them to suffer R.I. for 7 years and to pay a fine of Rs. 3,000/-each, in default of payment of fine, to suffer further R.I. for 2 months.

Persistent Puzzles and Key Questions

- How come the pirates (having served a term of 5 years, 3 months and 14 days of sentence) were let off with fine being waved off by the High Court , overruling the earlier verdict of the Sessions Court?
- What were (and continue to be) the major inadequacies in existing laws?
- Was there a lack of seriousness on the part of concerned agencies in understanding the stringent requirements in the court, after the ruling in the sessions court which had found the accused guilty on several counts?
- How do we explain the unwillingness of the Japanese master of the vessel to identify the culprits?
- And what about the doubts over location (Kochi, Goa, Bombay)?
- Seeking a more comprehensive legal regime to deal with threats of piracy and crimes at sea.

Seaman Guard Ohio case (2013)

- The vessel is owned by a Virginia based US security company Advan Fort but registered in Sierra Leone a West African country. The procedure of registering vessels in any convenient country resulted in the designation of such ships as Flags of Convenience (FoC) Ships. Essentially, the company that chooses a FoC country does so to minimize its expenditure and also to avoid stringent laws in US and other maritime countries that regulate the activities of the vessel during its commissioned life. The vessel was deployed for Maritime Security duties by providing security services to ships plying the High Risk Area.
- The vessel is nearly thirty years old and was carrying ten crew members and twenty five armed guards when detained in the port of Tuticorin. It also possessed automatic and semi-automatic weapons with over 5700 rounds.
- The ship had visited Kochi for bunkering from 23rd to 26th August and was inspected by the Coast Guard and cleared as it did not carry weapons at that time.

- The vessel indulged in illegal purchase of diesel through a Dubai based agent and an Indian citizen from Thoothukodi enabled the transfer of fuel to the ship.
- The ship did not make the mandatory Pre Arrival Notification for Security (PANS) prior to entering Indian waters.
- The Coast Guard ship Naiki Devi based in Tuticorin apprehended the vessel. The Master indicated that all the documents would be provided within an hour but failed to produce any certificates or licenses.
- The crew consisted of two Ukrainians and eight Indians. The Armed guards also included four Indian nationals besides other nationals working as security guards for anti-piracy missions.
- The company Advent Fort in a release tried to mislead the readers with an excuse of the typhoon Phalasin saying that they thank India for allowing the vessel to take shelter and be provided with turn round facilities etc., which was fallacious to say the least.
- The Coastal Police framed charges in various sections of the IPC for violation of the arms act, the essential commodities act etc.,

Maritime crime governance – the Enrica Lexie Case

- According to the Supreme Court (SC), extension in 1981 of the Indian Penal Code (IPC) and the Code of Criminal Procedure (CrPC) to the exclusive economic zone by Section 7(7) of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (Maritime Zones Act), had entitled the Union of India to take cognisance of, investigate and prosecute persons who committed any violation of the domestic laws in the contiguous zone. It further noted that Article 245(2) of the Indian Constitution expressly declared that no law made by Parliament shall be deemed to be invalid on the ground that it will have extraterritorial operation.
- The Court therefore found that India is entitled to prosecute the two marines subject to Article 100 of the UNCLOS, and "directed" the Indian government to set up a special court for trial of the marines.

Maritime crime Jurisdiction governance

Offences under

- The Navy Act 1957
- The Coast Guard Act 1978
- The territorial waters continental shelf, exclusive economic zone and other maritime zones Act 1976.
- India Penal Code 1860
- Anti-maritime Piracy Act 2022

Anti-maritime Piracy Act 2022

- The Act enables Indian authorities to take action against piracy in the high seas. The Act brings into law the UN Convention on the Law of the Sea. It applies to the sea beyond the Exclusive Economic Zone (EEZ), i.e., beyond 200 nautical miles from India's coastline.
- The Act defines piracy as any illegal act of violence, detention or destruction against a ship, aircraft, person or property, for private purposes, by the crew or passengers of a private ship or aircraft.
- Piracy also includes inciting and intentionally facilitating such acts of violence, and voluntarily participating in the operation of a pirate ship or aircraft.
- Committing an act of piracy will be punishable with: (i) life imprisonment; or (ii) death, if the act of piracy causes or seeks to cause death.
- Participating, organising, aiding, supporting, attempting to commit, and directing others to participate in an act of piracy will be punishable with up to 10 years of imprisonment, or a fine or both.

Power to carry out arrest and seizure on grounds of suspicion

- Only authorised personnel may carry out arrest and seizure. These personnel include: (i) officers and sailors assigned to warships or military aircraft of Indian Navy, or (ii) officers and enrolled persons of Coast Guard, (iii) officers of the central or state government authorised for any ship or aircraft. It adds that Authorised Personnel may carry out arrest and seizure on grounds of suspicion.

Jurisdiction of the Courts under Anti-maritime Piracy Act 2022

- The central government, in consultation with the Chief Justice of the concerned High Court, may notify Sessions Courts as the Designated Courts under this Act. The Designated Court will try offences committed by: (i) a person in the custody of the Indian Navy or Coast Guard, regardless of his nationality, (ii) a citizen of India, a resident foreign national in India, or a stateless person. Further, the Court may try a person even if the person is not physically present in the Court.
- The Court will not have jurisdiction over offences committed on a foreign ship unless an intervention is requested by: (i) the country of origin of the ship, (ii) the ship-owner, or (iii) any other person on the ship.
- Warships and government-owned ships employed for non-commercial purposes will not be under the jurisdiction of the Court.

Maritime security

- The term “maritime security” has no universally accepted definition, has multiple dimensions, and, its usage is largely contextual. In 2008, the United Nations (UN) General Assembly identified piracy and armed robbery, terrorist acts, illicit trafficking in arms and weapons of mass destruction, illicit trafficking in narcotic drugs and psychotropic substances, smuggling and trafficking of persons by sea, Illegal, Unregulated And Unreported (IUU) fishing, and intentional and unlawful damage to the marine environment as specific challenges to maritime security.

Need for a Holistic Approach to Marine Policing

- The genesis for creating a Marine Police across all coastal states, as highlighted earlier, was the pressing need to strengthen maritime border and island security primarily to prevent infiltration from the sea. While the focus of the Marine Police overwhelmingly continues to be on the original objectives, the expanded scope of activities reflects the continuing evolution of the Marine Police in India.
- The principal law enforcement charter of the police ipso facto also means the Marine Police, as a wing of the state police, is not only responsible for patrolling and enforcement within its jurisdiction of 5 nm but also for **investigation and prosecution of all crimes in all the maritime zones of India**. Broadly, this includes the entire spectrum of what is commonly termed as non-traditional threats to maritime security, including violent extremism and blue crimes.
- It must be noted that a comprehensive approach to **maritime security also includes the criminal justice system**, and the Marine Police has a pre-eminent role and an almost exclusive role in the investigation and prosecution of crime within India's maritime zones.

Capacity Building

- The budget of the Coast Guard has more than doubled from Rs 2,016 crore in 2010–11 to Rs 5,032.76 crore in 2021–12.
- In a federal system, the MHA will need to give the necessary impetus and financial stimulus for capacity building of the Marine Police. Raising a permanent Marine Police cadre within the state police would perhaps be a key enabler. In addition, there is a need to build capacity for maritime crime investigation, a responsibility which is manifestly that of the state police.
- An apex body for management of maritime affairs should be formed for institutionalized linkages between the Navy, Coast Guard and the concerned Ministries of the Central and the State Governments.

Doctrinal and Conceptual Clarity

- The lack of a clear doctrinal articulation on marine policing makes it difficult to comprehend the multiple dimensions of marine policing, and its relationship with wider concepts, such as national security, coastal security, and maritime security. Furthermore, unlike the Indian Navy and Coast Guard, and other Central Armed Police Forces (CAPFs) engaged in maritime/ coastal security, forging a uniform maritime identity across the Marine Police spread across 13 coastal states and union territories has its own challenges.