Maritime Legislation in India

Akash Kumar

Assistant Professor of Law

National Law University Odisha (NLUO)

Major Maritime Laws in India – an overview

- Merchant Shipping Act, 1958
- Major Ports Act 2021
- Indian Ports Act 1908
- Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017
- Marine Insurance Act, 1963
- Multimodal Transportation of Goods Act, 1993
- Arbitration and Conciliation Act 1996.
- The Commercial Courts Act, 2015
- Carriage of Goods by Sea Act 1925.
- Marine Insurance Act 1963

Recent Maritime Legislations

- The Anti-Maritime Piracy Act, 2022
- Draft Indian Ports Bill, 2021.
- Major Ports Act 2021
- Merchant Shipping Bill, 2020
- The Marine Aids to Navigation Act, 2021
- Inland Vassals Act 2021.
- Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

MARITIME LAWS IN INDIA: A GENERAL VIEW

- Ordinarily, a ship, whether in the Indian waters or in the international high seas, during its voyage is a subject matter of numerous contracts and deals that may create chances for disputes. Moreover, disputes can also be due to collision, wages and allowances of crew, obligations to ports and other governmental authorities, or even loss of life or personal injury caused by ship or occurring in connection with the voyage.
- Furthermore, maritime law in India, as elsewhere in the world, is a wide ranging branch of the law i.e., it includes, ship financing, maritime liens, carriage of goods by sea; marine insurance; laws of ownership and registration of ships; ship sale and building contracts, limitation of liability, ship mortgages; manning of ships; the law of collisions, salvage, towage and pilotage; claims and priority of the same; the law of marine pollution, as well as the Customs and Port laws. All these aspects are covered by a number of legislations in India, which are utterly founded on colonial British legislations on the subjects, as made applicable in India and as amended from time to time by the Indian Parliament.

Merchant Shipping Act 1958

- The principal Act dealing with most of the maritime and shipping issues in India is the Merchant Shipping Act 1958 (MSA). It provides legislative framework for issues like
  - registration of vessels,
  - seafarers qualifications,
  - employment, safety, wages,
  - collision,
  - pollution,
  - pollution rules,
  - salvage, towage, wreck removal,
  - limitation of liability,
  - passenger claims etc.

- This Act needs an urgent revision to bring our laws in conformity with international conventions of International Maritime Organisation on various issues. It may be noted here that an attempt to revise the Act was made in 2016 by the introduction of the Merchant Shipping Bill, 2016 on December 16, 2016. But after that, it was referred to the Parliamentary Standing Committee, and the Committee in its 249th report in 2017 observed that “the Bill was drafted in a hasty manner leading to several loopholes, and possibility of multiple interpretations”. The committee further recommended a revision of all the different clauses to remove ambiguity leading to different interpretations and creating loopholes.

- The Ministry of Ports, Shipping and Waterways in 2020 again issued the Draft Merchant Shipping Bill, 2020 for public consultation. It was clarified that the newer Bill was drafted with the primary aim of promoting the growth of the Indian shipping industry by incorporating the best practices adopted by other advanced countries like the U.S., Japan, U.K., Singapore and Australia.'
- Currently, the Central Government in exercise of powers conferred by section 218A read with section 457 of the Merchant Shipping Act, 1958, continues to issue new rules for different matters covered by old Act pending revision of the same.
- Revision for this Act is needed keeping in mind the compliance with all the existing international maritime conventions that India is a party to, for promoting ease of doing business, and the use of digital technology in registration and certifications of vessels, record keeping, payments etc.

Pollution

- Parts XB, XC and XIA of the Merchant Shipping Act, 1958, govern civil liability for oil pollution damage, contribution to the International Oil Pollution Compensation Fund and prevention and containment of pollution of the sea by oil. India has acceded to the International Convention on Civil Liability for Oil Pollution Damage, 1992 ("CLC 1992") and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.
- Other relevant legislations include:
  - (i) Merchant Shipping (Civil Liability for Oil Pollution Damage) Rules, 2008;
  - (ii) Merchant Shipping (International Fund for Compensation for Oil Pollution Damage) Rules, 2008;
  - (iii) Merchant Shipping (Prevention of Pollution by Garbage from Ships) Rules, 2009;
  - (iv) Merchant Shipping (Prevention of Pollution by Oil from Ships) Rules, 2010;
  - (v) Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Rules, 2010;
  - (vi) Merchant Shipping (Prevention of Pollution by Sewage from Ships) Rules, 2010; and
  - (vii) Merchant Shipping (Prevention of Pollution by Harmful Substances Carried By Sea in Packaged Form) Rules, 2010.

Collision

- Part X of the Merchant Shipping Act, 1958 (“MSA”) governs collisions.
- The Merchant Shipping (Prevention of Collisions at Sea) Regulations, 1975 adopt the Convention on the International Regulations for Preventing Collisions at Sea, 1972 and its Annexures.

Salvage/general average and Wreck removal

- India is a party to the International Convention on Salvage, 1989. Part XIII of the MSA and the Merchant Shipping (Wrecks and Salvage) Rules, 1974 (amended in 1975) deal with salvage.
- There is no legislation that deals with general average; the same is determined by contractual terms.
- Part XIII of the MSA deals with wreck removal. Other relevant pieces of legislation are the Merchant Shipping (Wrecks and Salvage) Rules, 1974 (amended in 1975) and the Indian Ports Act, 1908. India has acceded the Nairobi International Convention Removal of Wrecks, 2007.

Limitation of liability

- Part XA of the Merchant Shipping Act, 1958, adopts the Convention on Limitation of Liability for Maritime Claims, 1976 (as amended from time to time) with certain exceptions. India has ratified the 1996 Protocol (without amendments to the MSA). It has been judicially upheld that the 1996 Protocol is part of the MSA and is in force in India.
- The Convention on Limitation of Liability for Maritime Claims is an IMO treaty that was concluded in London in November 1976. It entered into force in 1986 and superseded the 1957 Brussels Convention of the same name.
- Other relevant pieces of legislation are the Merchant Shipping (Limitation of Liability for Maritime Claims) Rules, 2015 and the Merchant Shipping (Limitation of Liability for Maritime Claims) Amendment Rules, 2017.

Cargo Claims and Passenger Claims

- The Carriage of Goods by Sea Act, 1925 (“COGSA”) primarily deals with cargo claims. The Hague Rules, 1924 have been incorporated in the Schedule to COGSA. The Hague Rules were included in the Schedule of Indian Carriage of Goods by Sea Act, 1925, India updated the COGSA in 1993 and added a few Hague-Visby Rules clauses.
- These rules do not, however, have legal standing in India by themselves as they have not been ratified by India, but parts of it has been adopted under the schedule to Indian COGSA. The applicability of Indian COGSA is limited to outward cargo, which refers to the carrying of goods through ships from Indian to foreign ports or within ports in the Indian territory. It is not applicable to inward cargo i.e., ships transporting goods from foreign ports to Indian ports

Marine Aids to Navigation Act, 2021

- India also repealed an outdated Lighthouse Act 1927 by enacting the Marine Aids to Navigation Act, 2021 and thereby, implemented the Convention on the International Organization for Marine Aids to Navigation 2021 it ratified in December 2021. This is a very welcome move as aids to navigation and vessel traffic services have long been regulated by the state-of-the-art technologies and marine navigation devices via radars and satellites and the provisions of the old Lighthouse Act were just obsolete.
- The Act provides for appropriate statutory framework for aid to navigation, central advisory committee, management of general, vessel traffic, training and certification, and maintenance of heritage lighthouse. Development of the existing lighthouses as heritage sites and their use for education, tourism etc. to contribute to the economy of coastal regions is also provided.

Marine Insurance Act 1963

- In simple terms, marine insurance is a contract which protects the assured against losses on inland waters or any land risk that may be incidental to any sea voyage. Under the Act, the contract of marine insurance must be embodied in a policy. "The policy“ and "the slip" are the formal instruments which usually make up the terms of contract in marine insurance law. When the contract is entered into, an informal memorandum is drawn up which is called a "covering note".
- Under the said Act, loss or damages which occur in the ordinary course of nature or due to own default are not included in the category of maritime perils. These include: Loss damage or expense attributed to willful misconduct of the insured, deliberate damage to/destruction of the goods, ordinary leakage/ordinary loss in weight or volume/ordinary wear and tear of the insured goods, any loss proximately caused by delay, 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.

- Marine insurance is defined under Section 3 of the Marine Insurance Act, 1963 as an agreement whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against marine losses, that is to say, the losses incidental to marine adventure.
- Section 2 (e) of the Act defines 'maritime perils'. Broadly speaking, 'maritime perils' also called as perils of the sea include extraordinary forces of nature which maritime ventures might need to face during the voyage. It includes those accidents or casualties which happen during the voyage by the act of god without any human intervention. Some of the conditions which cover the loss by the perils of the sea are clearly laid down under Sections 55 to 58 of the Marine Insurance Act, 1963.

Major Ports Act 2021

- On February 17, 2021, the Major Port Authorities Act, received the assent of the President which will replace the previous Major Port Trusts Act, 1963.
- Purpose of the Act: The Act is enacted to provide for 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.
- The Act is concise consisting of only 76 sections instead of 134 sections, to reduce ambiguity and overlapping of provisions.
- The Major Port Authorities Act, with the intention of decentralising power, provides for the formation of a Board of Major Port Authority for each of the major ports. These boards will replace the existing Union government-appointed port trusts.
- The board for each major port will include representatives from the state government, Ministry of Railways, Ministry of Defence, Ministry of Customs, and the Department of Revenue as members. In addition, the board will have a government nominee member, as well as a representative of the employees of the Major Port Authority.

Salient features of the Act, which comes as a replacement of the earlier Major Ports Act, 1963:

- The role of Tariff Authority for Major Ports (TAMP) has been redefined. The Port Authority has now been given powers to fix the tariff, which will act as a reference tariff for purposes of bidding for PPP (public private partnership) projects. The Board of Port Authority has been delegated the power to fix the scale of rates for other port services and assets, including land.
- An adjudicatory board will be constituted by the central government to carry out the residual functions of the erstwhile TAMP. It will look into the disputes between ports and PPP concessionaires, review stressed PPP projects, and suggest measures to revive them, among other things.
- The New Act retains the board of trustees under the Old Act, which is the decision-making body for every Major Port. This is now renamed as Board of Major Port Authority ("Board"). The number of members in each Board has been reduced from 17 to 19 members to 11 to 13 members under the New Act.

- The Board is statutorily empowered with greater autonomy in management and taking financial and commercial decisions akin to a private organization. This includes fixation of the scale of rates and all fees charged by the Major Port, awarding tenders and contracts and raising finance.
- The Boards of Port Authority have been delegated full powers to enter into contracts, planning and development, and fixing of tariff, except in matters of national interest, security, and emergency, arising out of inaction and default. Under the previous MPT Act, 1963, prior approval of the central government had been required by the port trusts in 22 instances.
- According to the Ministry of Ports, Shipping and Waterways, the Major Ports Trust Act of 1963 was deemed to be restrictive, with major ports "finding it difficult to operate in a highly competitive environment and respond to market challenges".
- Further, the board of trustees was felt to be too large and disparate to allow efficient decision making.

- Under Major Port Trusts Act, 1963.
  - Board of Port Trusts
  - Tariff Authority of India
- Under the Major Ports Act 2021
  - Major Port Authorities Board
  - Adjudicatory Board

Draft Indian Ports Bill, 2021.

- The Draft Indian Ports Bill, 2021, proposes to transform the existing management system for minor ports, which are presently under the jurisdiction of state governments or state maritime boards. Role of Maritime State Development Council (MSDC).
- The objective of the MSDC is to develop a national plan for the development of the maritime sector that is beneficial for both the states and the Centre.
- While the Ministry should be commended to have hold four rounds of consultations with State governments and other stakeholders on this issue, it is noticed that the improvements in the draft from first version to fourth is just cosmetic and have not been able to iron out differences between Centre and different maritime States.
- The government came with another draft version of the Bill in 2022. The previous versions of the bill had faced very strong opposition from coastal states which had raised an alarm regarding concentration of strong powers in the hands of the central government resulting in the violation of federal structure of governance.

- What makes the Indian Ports Bill 2021 controversial are the provisions of Chapters II and III relating to the Maritime State Development Council (MSDC). MSDC was created by an executive order in 1997, with the Union Minister of Shipping as chairperson and the ministers in charge of ports of the maritime states/Union Territories as members. It served as an apex advisory body for the coordinated development of Major Ports and Non Major Ports (NMPs). MSDC has met only 17 times in the past 24 years.
- The Bill proposes to make MSDC a permanent body with its own office, staff, accounts and audit and gives it wide-ranging powers and functions (Section 10). MSDC is empowered to formulate a National Plan, to be notified in the official gazette, for development of Major and Non-Major Ports, for both existing and new ports, and revise the plan from time to time.
- It can monitor the development of NMPs to ensure their integrated development with Major Ports and the National Plan. If any port contravenes the National Plan, then MSDC can order an appropriate enquiry. The central government has the power to make a port non-operational if it is not in consonance with the National Plan. It prescribes penalties, including imprisonment (Section 83) for non-compliance with MSDC's directions by Port Authorities, port officials and other persons.

Maritime casualty in India

- The Indian Maritime Administration conducts Investigations and Inquires into marine casualties in accordance with Part XII of the Indian Merchant Shipping Act, 1958 (as amended).

- Amongst other objectives, one of the primary aims of a marine casualty investigation is to gather information that could be used to prevent future accidents. An investigation may also assist in determining what changes in the present regulations might be desirable.

Shipping casualties under Merchant Shipping Act 1958

S 358. Shipping casualties and report thereof.—(1) For the purpose of investigations and inquiries under this Part, a shipping casualty shall be deemed to occur when—

(a) on or near the coasts of India, any ship is lost, abandoned, stranded or materially damaged;

(b) on or near the coasts of India, any ship causes loss or material damage to any other ship;

(c) any loss of life ensues by reason of any casualty happening to or on board any ship on or near the coasts of India;

(d) in any place, any such loss, abandonment, stranding, material damage or casualty as abovementioned occurs to or on board any Indian ship, and any competent witness thereof is found in India;

(e) any Indian ship is lost or is supposed to have been lost, and any evidence is obtainable in India as to the circumstances under which she proceeded to sea or was last heard of.

(2) In the cases mentioned in clauses (a), (b) and (c) of sub-section (1), the master, pilot, harbour master or other person in charge of the ship, or (where two ships are concerned) in charge of each ship at the time of the shipping casualty, and in the cases mentioned in clause (d) of sub-section (1), where the master of the ship concerned or (except in the case of a loss) where the ship concerned proceeds to any place in India from the place where the shipping casualty has occurred, the master of the ship, shall, on arriving in India, give immediate notice of the shipping casualty to the officer appointed in this behalf by the Central Government.

Arrest and Security - Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

- The most awaited and notable change to the admiralty jurisdiction came in 2017 with the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017, which replaced various archaic British laws. This Act is seen as an attempt to modernize Indian admiralty law and align it with the International Convention relating to the Arrest of Sea-Going Ships 1952, International Convention on Arrest of Ships, 1999 and the International Convention on Maritime Liens and Mortgages 1993.
- The idea of both the conventions is to provide for actions that can be taken while arresting of a ship (in rem) in nature. It is pertinent to mention here that in the absence of legislative action, the Courts in India had to step in to fill some of the gaps by judicial intervention, most importantly by reading into Indian admiralty jurisprudence and the two Arrest Conventions respectively.

- Until the enactment of this Act the admiralty law in India used to be governed by the Admiralty Court Act, 1840, the Admiralty Court Act, 1861, read with the Colonial Courts of Admiralty Act, 1890, the Colonial Courts of Admiralty (India) Act, 1891 and the provisions of the Letters Patent, 1865. These Acts have been now been repealed by the Admiralty Act, 2017 which seeks to consolidate the existing laws relating to admiralty jurisdiction, maritime claims, maritime lien, arrest of ships, admiralty proceedings and other related matters.

Foreign Judgments and Awards

- The Code of Civil Procedure, 1908 (“CPC”) – Section 13 read with Section 44-A, when a judgment is conclusive and reciprocal enforcement of judgments.
- Part II of the Arbitration and Conciliation Act, 1996 Section 48, grounds for refusal of recognition and enforcement of a foreign award.

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

Maritime boundaries territorial juruisdiction

- Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976:- Along with the above-said amendment, the separate statute was enacted wherein rights and jurisdictions were specifically determined by the Central Government of India.

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.

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.