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Application of Marine law in India: Critical Analysis

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ABSTRACT

The paper offers insight on the application of marine laws in India. India has long been a nautical country and has been involved in maritime trade since the beginning of time. Between 1823 and 1940, the colonial administration passed several laws governing business activities and regulating the Indian shipping industry. Indian shipping was eventually driven off the high seas by the onerous British navigational restrictions, which also hampered its expansion and development. Following independence, the Indian government enacted new laws and norms to facilitate better execution and accelerate the expansion of shipping.

KEYWORDS: Admiralty, Marine Policing, Maritime Claims, Maritime Insurance

I.INTRODUCTION

India has an extensive history of maritime trade, and statutes and regulations have been put in place to ensure that matters relating to marine navigation, affairs, property, etc. are supervised. Admiralty laws could refer to maritime regulations. The broad spectrum of maritime laws covers important subjects including admiralty laws, marine insurance laws, marine pollution laws, etc. Additionally, maritime rules fall within the category of private law, unlike their counterpart, the “law of the sea”, which falls under the purview of public international law.

The colonial authorities put into effect a number of laws, including the Inland Steam Vessels Act of 1917, the Coasting Vessels Act of 1838, the Indian Ports Act of 1908, the Indian Merchant Shipping Act of 1923, the Merchant Seamen (Litigation) Act of 1946, the Control of Shipping Act of 1947, and the Merchant Shipping Laws (Extension to the Acceding States

and Amendment) Act of 1949. However, because these regulations did not adhere to the then-current Indian system the Indian government implemented a number of regulations to promote continuous development of trading practices across the sea and enacted the Merchant Shipping Act of 1958.

II. MERCHANT SHIPPING ACT, 1958

The fundamental shortcoming of the former laws was that they did not allow for registration of what could be referred to as Indian Ships was remedied by the merchant shipping legislation of 1958. To hasten the development of shipping in the years following independence, some enabling clauses were also included in the Act¹. This Act is broken down into 24 parts, each of which deals with a different sector of commercial shipping, such as the creation of a national shipping board, ship registration, certification, control of Indian ships, ship registration procedures etc,. Advanced instructions are also included in the act addressing its oversight of foreign ships and vessels utilized in various commercial activities.

In the case of *British India Steam Navigation Co Ltd v Shanmughavilas Cashew Industries*² The Supreme Court ruled that, unless otherwise stated, a statute's territorial reach includes the nation's territorial waters as well as any other locations where its intended application might be inferred. The Indian Parliament lacks the power to enact laws governing foreign ships and the foreigners who travel abroad on international waters. No foreign ships or their owners are generally deprived of their rights by the statutory enactments unless it is specifically stated that a foreign ship entering an Indian port or territorial seas and therefore coming within the territorial jurisdiction is to be covered. As a result, foreign property and foreigners who are not citizens of India are not protected by Indian law. Section 2(2) of the Indian Merchants Shipping Act contains a quotation of the principle³.

¹Merchant shipping act- Its intent and purpose, [https://Merchant Shipping Act - Its intent and purpose \(dgshipping.gov.in\)](https://Merchant Shipping Act - Its intent and purpose (dgshipping.gov.in)) (last visited January 3, 2023)

² *British India Steam Navigation Co Ltd v Shanmughavilas Cashew Industries* (1990) 2 Comp LJ 1 (SC)

³ Maritime laws in India: Interpretation and Analysis, <https://Maritime Laws in India: Interpretation and Analysis - iPleaders> (last visited January 3, 2023)

III. MARINE POLICING AND MARITIME SECURITY IN INDIA

The Bureau of Police Research and Design (BPR&D) has defined the roles and responsibilities of the police in broad terms. These roles and responsibilities include: maintaining the law; promoting and maintaining public order; protecting the public's property; preventing crime; assisting in times of calamity; gathering intelligence; and promoting amity, among other things⁴. The need to prevent infiltration through water routes heavily influenced the development of modern marine policing in India. As a result, the Marine Police, like the Coast Guard, functions primarily as a maritime law enforcement agency (MLEA). The Coast Guard has enforcement jurisdiction over the Exclusive Economic Zone, but the Marine Police only has enforcement authority over the territorial seas (EEZ). Its investigative authority, however, goes beyond the territorial seas⁵.

The expanded roles of the naval police in India, which today span a wide range of operations and tasks, are revealed through examining key publications and media coverage. 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) etc⁶.

In India, the term "maritime security" is not formally defined and is primarily used in relation to specific circumstances. A paper produced by the Indian Navy, *the Indian Maritime Doctrine*, defines maritime security as "freedom from threats at or from the sea"⁷. The

⁴ Bureau of Police Research and Design, "Functions, Roles and Duties of Police in General," <https://bprd.nic.in/WriteReadData/userfiles/file/6798203243-Volume%202.pdf>, (last visited January 3, 2023)

⁵ MHA Notification S.O.2097(E), dated 13 June 2016, <https://cdn.s3waas.gov.in/s358238e9ae2dd305d79c2ebc8c1883422/uploads/2018/04/2018040418.pdf>, (last visited January 3, 2023)

⁶ Marine policing and Maritime Security in India: Evolving dimensions, [https://MARINE_POLICING_AND_MARITIME_SECURITY_IN_INDIA: EVOLVING_DIMENSIONS - National_Maritime_Foundation \(maritimeindia.org\)](https://MARINE_POLICING_AND_MARITIME_SECURITY_IN_INDIA:_EVOLVING_DIMENSIONS - National_Maritime_Foundation (maritimeindia.org)) (last visited January 3, 2023)

⁷ Indian Navy, *Indian Maritime Doctrine* (New Delhi: Integrated Headquarters Ministry of Defence (Navy), 2015), <https://www.indiannavy.nic.in/sites/default/files/Indian-Maritime-Doctrine-2009-Updated-12Feb16.pdf>, p. 14

definition as it stands, however, is not as useful as it could be because it lacks a context, does not specify the indicators that could be used to assess threats, and sees maritime security as a state of being rather than an ongoing process that is typically only noticeable when a threat is present. There is no consensus among the Indian government ministries as to what the word "marine security" actually signifies because the term lacks a defined definition. The absence of a uniform framework for marine security has also frequently resulted in opposition to activities that could be viewed as violating the authority of a department or agency.

Two official publications, *the Indian Maritime Doctrine* and *Ensuring Secure Seas: Indian Maritime Security Strategy* deals explicitly with these topics. Additionally, the Indian Navy developed two documents that feature two notable restrictions. First, the navy does not have any control over other peer departments, whether they are military or civilian, because the navy is in essence a department of the government. Therefore, other departments must acknowledge these as foundational documents and willingly adopt their requirements for the policies contained within to be valid. Second, despite the use of the word "maritime" in both publications, the content is centered on maritime issues from a naval standpoint. In addition, the Indian Maritime Doctrine specifies that it only deals with the ideas and guidelines for using India's naval force. In light of this, it can be claimed that the document is more akin to a naval doctrine than a maritime doctrine. The archives provide a thorough perspective of India's strategic marine thought notwithstanding their shortcomings. On the other hand the safety and security of Indian inhabitants, shipping, fishing, trade, energy supply, assets, and resources in the maritime realm are all listed under the heading "*ensuring secure seas*."

IV. ADMIRALTY JURISDICTION

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, is an Act of the Indian Parliament that attempts to codify the existing rules governing admiralty jurisdiction, admiralty procedures on maritime claims, maritime liens, arrest, detention, vessel sales, and other related issues. The High Courts of Bombay, Madras, and Calcutta previously possessed the admiralty jurisdiction granted by the various British laws prior to the passage of the new act. The High Courts of Hyderabad, Gujarat, Kerala, Orissa, and Karnataka⁸ now have admiralty jurisdiction as a result of the passing of the new Act under Section 3 read with

⁸ The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, [https://The Admiralty \(Jurisdiction and Settlement of Maritime Claims\) Act, 2017 - iPleaders](https://The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 - iPleaders) (last visited January 3 , 2023)

Section 2(1)(e) of the Admiralty Act 2017. Additionally, under certain conditions, the Act enables the federal government to publish notifications in the official gazette. The boundaries of a state's territorial waters are not entirely clear, despite the fact that each court has admiralty jurisdiction over those waters.

A. JURISDICTION OVER VESSELS AND PERSONS

Admiralty jurisdiction is exercised by each high court over all ships, people, and other objects in its jurisdictional waterways and territory. The high courts with admiralty jurisdiction may utilize their authority to a person's detriment in relation to maritime matters. However, in some situations, accusations against a person will not be heard by the upper courts. These consist of the following:

1. damage, loss of life, or injuries sustained as a result of a vessel collision that occurred in India, or
2. violation of the Merchant Shipping Act of 1958's collision regulations by a person who doesn't live or conduct business in India⁹

Additionally, if a case involving the same occurrence is pending in a court outside of India, the Indian high court with admiralty jurisdiction will not consider taking legal action against that person.

For the purpose of providing security against a maritime claim that is the subject of a legal dispute, the high court with admiralty jurisdiction may order the detention of any vessel that is under its jurisdiction. They might do so for the following reasons:

1. owner of the vessel is liable for the claim,
2. the claim is based on mortgage of the vessel, and
3. the claim relates to ownership of the vessel, etc.¹⁰

B. MARITIME CLAIMS

According to Section 4 of the Admiralty Act 2017, the maritime Claims are covered by the admiralty jurisdiction of the High Court. It covers disagreements over the ownership,

⁹ Ibid. p.4

¹⁰ Ibid, p.5

control, mortgage, or any other security placed on the vessel, as well as disputes over the vessel's construction, repairs, and allegations of wrongful death or bodily harm. The sale of the vessel may be ordered by the High Court, which has admiralty jurisdiction, in order to settle any unpaid obligations owed by the parties to the proceedings.

C. MARITIME LIEN

A lien is the creditor's legal right to keep possession of the debtor's property until the obligation is settled, according to common law. A maritime lien is a protected claim made against a marine asset or for work performed on it or damage it caused. The maritime asset can be a ship, its contents, or its freight, among other things, but not the owner. The lien over the vessel will be removed if it is sold pursuant to a court judgment. The lien against the vessel's owner will remain in place for a year notwithstanding any changes to ownership, registration, or flag.

V. MARITIME CARGO CLAIMS

The majority of the time, shipping is used to move goods across international borders. Consequently, the shipping sector is particularly important to maritime transportation. By serving as a conduit for international trade and business, the shipping industry has significantly improved the state of the world economy. Additionally, there has been a greater participation of India in the maritime sector as a result of the expansion of globalization and the removal of trade barrier restrictions.

The main objective of shipping is cargo transportation. Inland water transportation involves a complicated network of shippers, merchants, and carriers who work together to guarantee that the consignment arrives at its destination without any loss or damage.

The COGSA (Indian Carriage of Goods by Sea Act, 1925) sets the rules for maritime cargo transportation. ¹¹The legislation is applicable to the shipping of commodities by sea on bills of lading or other similar documents of title issued in India from one port to another port, whether inside or outside of India. The COGSA was created to recognise and put into practise the international convention known as the Hague Rules of 1924, which bestows rights,

¹¹ Section 2 of The Indian Carriage of Goods by Sea Act, 1925

privileges, and immunities upon the carrier while imposing obligations and liabilities. When the carrier is sued by his shipper who is situated in India, COGSA, which is the substantive law of India regarding the carrying of goods by sea, would be required to be applied.

A. DEFENSES AVAILABLE TO A CARRIER

The schedule to COGSA, which is mentioned in Article IV of the Act, gives the carrier and the ship privileges and immunity from liability for loss or damage to the cargo that resulted from circumstances that were completely out of their control.

Furthermore, the carrier may rely on the statutory defenses that are available, such as the plaintiff's right to assert a claim, privity of contract, and jurisdiction. Additional conditions under which the carrier will not be liable for the loss or any damages are listed in Clause 2 of Article IV.

B. LIMITATION

As per **Article III Rule 6 of COGSA**¹² The limitation time for bringing a claim is one year from the date on which the goods were delivered or on the date on which they should have been delivered. The time frame may be extended with the parties' consent, but only if the cause of action has also arisen. However, rule 6 also contains the following clause and is mentioned hereinbelow:

“Provided that a suit may be brought after the expiry of the period of one year referred to in this sub-paragraph within a further period of not more than three months as allowed by the court”

This means that a lawsuit may be filed if the court permits it beyond the one-year term mentioned above but within a subsequent window of no more than three months . As a result, following the 1993 amendment¹³ The statute of limitations for bringing a lawsuit under the Indian COGSA may not exceed one year and three months only if authorization is given by the court or for a term agreed upon by the parties after the cause of action has arisen.

¹² The Indian Carriage of Goods by Sea Act, 1925

¹³ Cargo Claims in India, [https://\(13\) Cargo claims in India | DIVYESH MODI - Academia.edu](https://(13) Cargo claims in India | DIVYESH MODI - Academia.edu) (last visited January 5, 2023)

Indian law on cargo claims problems acknowledges that the clause in Article III rule 6 cited above is not that an action shall be brought within one year from a given date or that no suit shall be brought after one year has passed, but rather that if the suit is not brought within the time indicated, the carrier and the ship will be released from all liability. This is with regards to loss or damage, meaning that the ship or carrier will not still be liable.

Further **Clause 3 of Article VI**¹⁴ The Act states that the shipper shall give a notice of loss or damage at the time of accepting delivery at the destination or, if the damage is not immediately apparent, within three days of delivery, if the carrier fails to fulfill its obligations to deliver the goods to the consignee in appropriate condition. If not, within 30 days, such delivery shall be regarded as prima facie proof that the carrier delivered the goods as specified in the bill of lading.

C. BILL OF LADING

A bill of lading is a legal document that the carrier issues to a shipper. It contains important information about the conditions of the carriage contract as well as other information about the cargo, thus it is more than just a simple acceptance. Once a "bill of lading" has been issued by the carrier, that person is in charge of ensuring the safe delivery of the goods to their destination. If any damage does occur, the consignee has the right to make a claim for reimbursement from the carrier. Additionally, the carrier's liability is not absolute or limitless.

VI. SHIP ARREST

Marine admiralty has the authority to forbid a ship from moving or engaging in commerce while the relevant court case is still being resolved. In this situation, rather than an arrest warrant being issued for its own reason, the ship that has been given permission by the relevant authority to be detained is typically taken into custody in conjunction with a claim¹⁵. The ship is impounded by legal means in order to protect a maritime claim, but the arrest warrant does not suggest that the ship was taken in fulfillment of the court's ruling.

¹⁴ Maritime Cargo claims in India, [https://Maritime Cargo Claims in India: An Analysis - S.S Rana & Co \(ssrana.in\)](https://Maritime Cargo Claims in India: An Analysis - S.S Rana & Co (ssrana.in)) (last visited January 5, 2023)

¹⁵ Ship Arrest Under Maritime Law: Reasons, Procedure, and Precautions, [https://Ship Arrest Under Maritime Law: Reasons, Procedure, and Precautions \(marineinsight.com\)](https://Ship Arrest Under Maritime Law: Reasons, Procedure, and Precautions (marineinsight.com)) (last visited January 5, 2023)

The arrest of ships could be caused by a variety of things. The relevant authorities may execute an arrest warrant on a ship and undertake a formal or informal inquiry into specific crimes by adhering to the legislation of ship arrest. The Supreme Court of India in *M.V. Elisabeth* case¹⁶, laid down that India's common law incorporates the principles of international conventions on maritime legislation. A ship may be impounded for a number of reasons, including those outlined in the Arrest Conventions, claims for damage to cargo, claims for damage caused by any ship, claims originating from or related to the use and hiring of a ship, and claims for other reasons.

Mentioned hereinbelow are the Ships that can be arrested: -

1. ***The Offending Ship***- the offending ship is one whose owner or death charterer shall be responsible for the maritime claim¹⁷
2. ***Sister Ships***- refer to other ships owned by the person whose ownership of the ship that gave rise to the maritime claim or any ship owned by the demise charterer, time/voyage charterer, or other person who is liable in personam for the maritime claim¹⁸. Sister ships can only be detained if they are owned by the same person or registered business that is liable or responsible for the claim.

In *M/s. Universal Marine & Anr. v. m.t. Hartati, Bombay High Court*¹⁹ It was held that While being a part of the same common holding company, the subsidiaries are not sister ships for a claim against another subsidiary firm.

VII. MARINE INSURANCE

Each human activity entails some level of danger. And an insurance contract is quite important in protecting oneself from such risk. The promotion of trade and commerce in the twenty-first century is greatly aided by maritime transportation. It ranks among the most economical ways of transportation. The importance of protecting the parties through insurance contracts is enhanced by the fact that maritime transport also has a high level of

¹⁶ AIR 1993 SC 1014

¹⁷ 1999 Arrest Convention, Article 3(1)

¹⁸ 1999 Arrest Convention; Article 3(2) & decision of the Supreme Court in the *m.v. Elisabeth*

¹⁹ 2014 SCC OnlineBom 223

risk. In this sense, maritime insurance becomes one of the most fundamental components of global trade and commerce to assist reduce the risks involved.

Section 3 of the Marine Insurance Act of 1963 defines marine insurance. The guaranteed party under a marine insurance contract is safeguarded from losses occurring on inland waters or from any land risk that may arise during a sea cruise. According to the laws, a policy must include the terms of the marine insurance contract. The official documents that constitute the conditions of contract under marine insurance law are the “policy” and the “slip”.

Because marine insurance is primarily an indemnity contract, the insurance company's obligation is only limited to the real losses or damages that the insurer has actually sustained. The insurance cannot be held responsible for every loss. and the damage to the insured property must result from a “maritime peril”. According to Section 2(e) of the statute, “maritime perils” are any mishaps or casualties that happen during a journey as a result of an act of god without any human interference.

The first need for making a claim under marine insurance is the presence of a maritime peril, which is a prerequisite to making a claim for loss or damage. The guaranteed must also have insurable interest in order for the second requirement to be met²⁰. The underlying idea of an insurable interest is that no insurance may be written against damage to property in which the insured has no stake.

TYPES OF MARINE INSURANCE CONTRACT

Marine insurance policies come in a variety of forms. Below is a list of a few of them:

1. Hull Insurance

Hull insurance covers losses brought on by the destruction and damage to the owner's waterborne marine vessels. It functions similarly to property insurance by providing coverage for real damage to the ship and any associated machinery in the case of an accident while at sea.

²⁰ Marine insurance Law in India, [https://MARINE INSURANCE LAW IN INDIA - S.S Rana & Co \(ssrana.in\)](https://MARINE INSURANCE LAW IN INDIA - S.S Rana & Co (ssrana.in)) (last visited January 5, 2023)

2. Machinery Insurance

Under this insurance, all necessary equipment is covered, and compensation claims are possible in the event of operational damages.

3. Cargo Insurance

In addition to protecting the possessions of a ship's voyages, cargo insurance protects the goods from any physical damage or loss to the items during the passage by sea. Third-party liability is covered by marine cargo insurance for any harm done to a port, ship, or other method of transportation as a result of unsafe cargo being transported there. The owner receives compensation from the insurance provider in the event that the cargo is destroyed²¹.

4. Freight Insurance

When addressing freight insurance, it is important to note that the term "freight" denotes to the cost of moving products from one port to another. Corporations operating commercial ships that run the risk of losing money in the form of freight if the cargo is lost due to a shipwreck are protected by insurance.

5. Liability Insurance

When referring to the term "liability insurance "it denotes coverage provided by an insurer that commits to covering losses incurred by an insured party due to liability to a third party resulting from a ship collision or another comparable danger.

DISPUTE RESOLUTION MECHANISM

The Civil and Consumer courts in India, which have the necessary territorial and pecuniary authority²², handle claims relating to marine insurance. The disagreement shall be resolved by adjudication in circumstances when the marine insurance policy contains an arbitration

²¹ Different types of Marine Insurance and Marine Insurance Policies, [https://Different Types of Marine Insurance & Marine Insurance Policies \(marineinsight.com\)](https://Different Types of Marine Insurance & Marine Insurance Policies (marineinsight.com)) (last visited January 5, 2023)

²² ibid

VIII. CONCLUSION

Today's society places a great deal of importance on maritime legislation. One of the important sectors that aids in our nation's ability to earn laudable revenue and foster economic growth is the sea. By enhancing its potential, the maritime industry may act as a strong foundation of the blue economy. The Indian government is actively eliminating some of the outdated, existing legislation and substituting the marine law for them. In India, claims, jurisdiction, procedures, and all other aspects of marine claims and concerns are governed by maritime law.

