



CENTRE
FOR
MARITIME LAW
NATIONAL LAW UNIVERSITY ODISHA



सत्ये स्थितो धर्मः

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Maritime

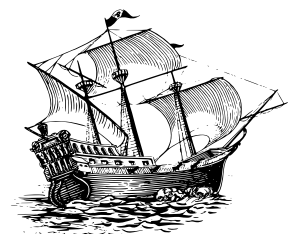
THE NEWS OF THE SEA

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ABOUT CML

The Centre for Maritime Law was established in 2015 with an aim to build a centre of excellence and research in the field of maritime law in India. The Centre identifies first and foremost, that the statutes which govern maritime law were adapted from foreign states and these statutes don't address the concerns pertaining to the field appropriately, as the Indian trade practices are relatively different from those foreign states. Also, under the Indian maritime law regime, there has been a lack of timely amendments and proper implementation and hence most of the laws are out dated and are not equipped to deal with modern complications. Keeping in mind the complications which perforate the Indian maritime law regime, the Centre has been analyzing the foreign case laws, statutes and their relevancy to the Indian jurisdiction. The Centre is currently working on Indian statutes, case laws, international treaties and conventions pertaining to maritime law and seeks to crystallize the current maritime jurisprudence in India.





Mr. Akash Kumar

CENTRE DIRECTOR, CML

MESSAGE FROM OUR FACULTY ADVISOR



Mr. Subhaprad Mohanty

The Centre for Maritime Law at NLUO is an ideal springboard for students who are interested to make a career in the field. This Centre run by students will also instil values of coordinated teamwork and responsible leadership among the students. I wish them all the best in their future endeavors.

*"There is a tide in the affairs of men which, taken at the flood, leads on to fortune;
Omitted, all the voyage of their life
Is bound in shallows and miseries.
On such a full sea are we now afloat,
And we must take the current when it serves, Or lose our ventures"*
By Julius Caesar





Need for urgent reform of Shipping Laws in India

By Akash Kumar

The Indian Ocean has in the recent past become arguably one of the most important and major sea routes for international trade today, more than ever. India on the world map is placed at a very strategic location with two island groups and 7500 kms of coastline where approximately 95% of the country's trade by volume and 68% by value is moving through Maritime Transport (Source: Sagarmala at <http://sagarmala.gov.in/>). Understanding the importance of port ecosystem, the Ministry of Ports, Shipping and Waterways has already identified the objective of 'propelling India to the forefront of global maritime sector' in their ten years blueprint 'Maritime India Vision 2030'. However, this maritime revolution in the country is largely being held back by the old and obsolete maritime laws which have not been able to respond to the growing investments and infrastructure.

There is an urgent need to work on two fronts, one is addressing India's port ecosystem which includes major issues like port infrastructure, port congestion, custom clearance, shipping line issues and charges, documentation and paperwork, regulatory clearances etc., the other is developing a sound legal system which can equip itself to the various challenges in this sector. As regards port ecosystem, the government's flagship programme Sagarmala identified four pillars for port-led development namely port modernisation, port connectivity, port-led industrialisation, and coastal community development. As part of Sagarmala Programme, more than 574 projects (Cost: Rs. 6.01 Lacs Cr.) have been identified for implementation, during 2015-2035 (Source: Sagarmala at <http://sagarmala.gov.in/>), across the areas of port modernisation and new port development, port connectivity enhancement, port-linked industrialisation, and coastal community development. However, in terms of legal response to

these developments, several concerns have been flagged regarding some of the most important maritime legislations, including some which were passed recently. It is seen that there are several issues like lack of certainty, procedural delays, ambiguity, jurisdictional issues, and most importantly non-adherence to the interterminal conventions and international best practices surrounding it. These issues are holding back the maritime trade and resulting development of the country.

While there have been some remarkable developments in enacting newer laws like Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017, Major Port Authorities Act 2021, the Marine Aids to Navigation Act 2021, Recycling of Ships Act 2019, there is a need to clarify their application with regards to some international conventions which India signed. The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017, for example has a lot of new claims as 'maritime claims' added with regard to which, a ship can be arrested, which are not there in the International Convention relating to the Arrest of Sea-Going Ships 1952 and International Convention on Arrest of Ships, 1999. The Supreme Court applied the 1952 arrest convention provisions in *M. V. Elizabeth & Ors. Vs. Harwan Investment Trading P. Ltd (1993)*.

The Act does not provide for the release of a ship upon furnishing of security, nor is there any provision for re-arrest/multiple arrests of ships, ship arrest pending arbitrations is also not covered by the Act. It is left for the Admiralty Courts, some of which are new, to make these interpretations. The Ministry of Ports, Shipping and Waterways, even after holding four rounds of consultations with State governments and other stakeholders on the draft of Indian Ports Bill 2022, seeking to replace Indian Ports Act 1958, has not been able to iron out differences between Centre and different maritime States. Both 2021 and latest 2022 versions of Indian Ports Bill faced very strong opposition from coastal states which had raised an alarm regarding concentration of strong powers in the hands of the central government.

The Indian Bills of Lading Act, 1856 is applicable in a very limited manner and needs urgent revision regarding cargo claims in India. About the Indian Carriage of Goods by Sea Act, 1925 (COGSA), India updated the COGSA in 1993 and added a few Hague-Visby Rules clauses. A clarity is needed if provisions of the Hague/Hague Visby rules apply in India as India is not a signatory to either of them. India should also start working towards the adoption of the newer Rotterdam rules on carrier liability. The revision of the Merchant Shipping Act 1958 is also pending since the Ministry of Ports, Shipping and Waterways issued the Draft Merchant Shipping Bill, for public consultations in 2020. The Act is crucial to implement several updated International Maritime Organisation (IMO) Conventions on the issues of registration of vessels, seafarers' qualifications, employment, safety, wages, collision, pollution, pollution rules, salvage, towage, wreck removal, limitation of liability, passenger claims etc. Laws are also needed to regulate the ship recycling industry which continues to pose an increased threat to the marine environment and labourers health working there.

The shipping laws in India play a significant part in country's development and have immense potential to scale new heights and support India's economic growth. However, it needs to be strengthened more to protect its interests.

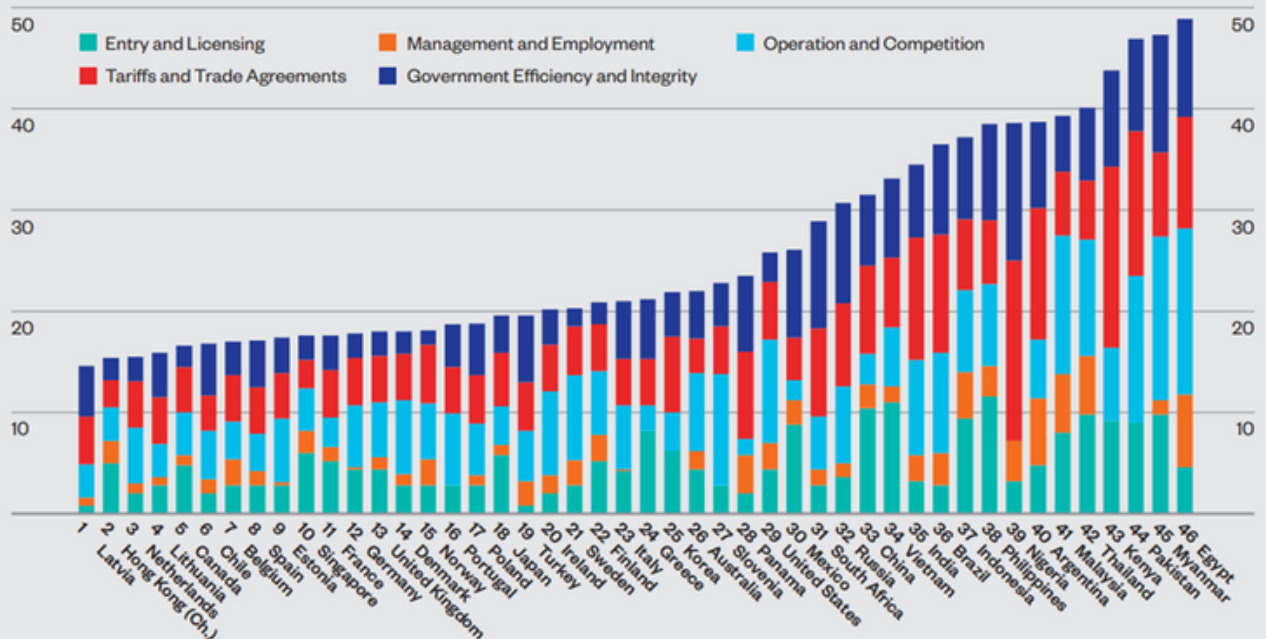
Need for Liberalising Maritime Transport Services for Post-COVID Recovery of International Trade

by Eluckiaa A

Maritime transportation is a key lifeline for international trade and accounts for over 80% of world trade volume. Given its critical role in international trade, there is a renewed focus on improving maritime transport services in the post-COVID recovery. The UNCTAD's study provides that international maritime trade flows had declined in 2020 by 3.8 per cent with the onset of the pandemic and the trade flow slightly improved by 3.2 per cent growth in 2021. Thus, this fragile recovery should be supported by liberalising maritime transport services. The war in Ukraine has accentuated the geopolitical risks. With China's zero-COVID policy disrupting supply chains, there is a need for more resilient

trade. In this context, there are many non-tariff measures that need to be relaxed at the domestic level. For instance, if 'entry and licensing' conditions under Mode 1 of GATS are liberalised, that may stimulate maritime trade growth. Australia, in its proposal to initiate negotiations on maritime transportation services, stated that there were many burdensome non-tariff measures like unreasonable environmental and safety standards, burdensome vessels and cargo examination procedures, and lengthy and cumbersome port access and clearance procedures. The ICSI study points out that many trade-restrictive measures are imposed deliberately for protectionist purposes and that such measures are used as weapons in trade disputes. This study scores and ranks countries based on factors like management and licensing rules, government integrity and tariffs (PRIME score or Protectionism in Maritime Economics score). India has been ranked 35 out of 46 countries in the world.

Figure 3: PRIME Index global ranking



Source: ICS/Craig Van Grassek, Protectionism in Maritime Economies Study (ICS, 2021)

One way of strengthening maritime transportation services is to improve countries' commitments in trade agreements. Although, ICS study states that this may be of little significance as it states that a country's commitments under GATS differ from its actual policies. But strengthening commitments under GATS could be baby steps in liberalising maritime transportation services. Given the failure to reach an agreement on maritime services in the Uruguay Round and the fact that very few WTO Members have undertaken specific commitments under GATS present a need for negotiation on maritime transportation. The ICS study also reveals that very few countries have prioritised maritime transport while negotiating trade agreements.

Schedules of WTO Members with Specific Commitments on Maritime Transport

	Passenger transportation	Freight transportation	Rental of vessels with crew	Maintenance and repairs of vessels	Pushing and towing services	Maritime support or auxiliary services	Additional commitments
Afghanistan	X	X	X	X	X	X	
Albania**	X	X	X	X		X	X
Antigua and Barbuda		X		X			
Antilles (Netherlands)**	X	X				X	
Aruba (Netherlands)**	X	X				X	
Australia**	X	X	X			X	
Benin**	X	X	X			X	
Cabo Verde**	X	X				X	X
Cambodia**	X	X					X
Canada**	X	X				X	X
China**	X	X				X	X
Croatia	X	X	X	X	X	X	
Cuba	X	X		X		X	
European Union 25	X	X	X	X	X	X	
Egypt	X	X				X	
The Gambia	X		X	X	X	X	
Georgia		X	X	X	X	X	
Ghana**	X	X				X	X
Hong Kong, China**		X	X	X		X	X
Iceland**	X	X				X	X
Indonesia	X	X					X
Jamaica		X					X
Japan**	X	X			X	X	X
Jordan**	X	X	X	X		X	X
Kazakhstan**	X	X	X	X		X	X
Korea, Republic of**	X	X		X		X	X
Kyrgyz Republic	X	X	X	X	X	X	
Liberia**	X	X					X
Malaysia**	X	X				X	X
Moldova, Republic of	X	X	X	X	X	X	X
Montenegro**	X	X	X	X	X	X	X
Myanmar	X						
New Zealand**	X	X				X	
Nigeria		X	X	X			
Norway**	X	X				X	X
Oman**	X	X					X
Papua New Guinea	X	X					X
Peru	X						X
Philippines	X	X		X			X
Russian Federation**	X	X				X	X
Saint Kitts and Nevis						X	X
Saint Lucia	X	X				X	
Saint Vincent and the Grenadines	X	X				X	
Samoa**	X	X					X
Saudi Arabia**	X	X	X	X			X
Senegal						X	
Seychelles**	X	X		X		X	X
Sierra Leone	X	X	X	X	X	X	
Singapore**		X				X	X
Thailand**	X	X			X	X	X
Tonga**	X	X					X
Trinidad and Tobago				X		X	
Turkey	X	X	X	X			
Ukraine	X	X	X	X	X		
Venezuela		X				X	
Viet Nam**	X	X				X	X
Yemen**	X	X	X			X	X
Total	47	51	20	23	12	41	33

** : commitments undertaken fully or partially based on the Maritime Model Schedule

Market access restrictions and lack of national treatment pose significant problems in maritime transportation services. Most countries impose such restrictions not just to give domestic carriers a competitive advantage but also for national security reasons. Extending national treatment will ensure that subsidies, tax concessions, soft loans, preferential port dues or service fees are given to all shipowners.

The ICS study reveals that out of 46 countries analysed, around 31 countries have imposed 'entry and licensing' conditions under Mode 1 but not Mode 3. Under the Mode of commercial presence, around 25 countries have imposed minimum capital requirements which is not applicable for domestic carriers. In case of subsidies and taxes, this study reveals that 26 countries have treated foreign suppliers differently than domestic suppliers. 21 countries have placed restrictions on pilotage and towing services.

The Most Common Restrictions on Maritime Trade

Operation and Competition	No. of nations
Limits on scope of service (numerical and non-numerical) via mode 1	39
Foreign suppliers treated differently regarding taxes and/or eligibility for subsidies	26
Obligation to use local maritime and port services	21
Port services serving own-ships not allowed	21
Restrictions on pilotage and towing services	21
Entry and Licensing	
Conditions imposed under mode 1 (cross-border trade) but not mode 3	31
Minimum capital requirement (in some cases not applicable to national flags)	25
Management and Employment	
Economic needs tests/labour market tests - Contractual service supplier	29
Economic needs tests/labour market tests - Independent professionals	28
Economic needs tests/labour market tests - Intra-corporate transferees	27

Note: 'Modes' refers to the means by which services are provided and regulated (defined in WTO GATS).

Mode 1 = **cross-border supply of services**, e.g. A foreign-owned shipping firm may seek to supply its services in another market.

Mode 3 = **Commercial presence (i.e. foreign direct investment)**, e.g. An investor may seek to establish a permanent office for a shipping company in a foreign market.

There is no doubt that the maritime transportation sector is not adequately covered by the WTO. There are not very strong commitments in this sector from WTO Members. Thus, in the aftermath of the pandemic, when there is a need to boost international trade to make an economic recovery after COVID-19, the role of maritime services cannot be discussed. There is a need for strengthening WTO Members' commitments to liberalise maritime services. One way to do this is to increase trade facilitation like expedited customs procedures, pre-arrival processing, single window clearance etc. associated with maritime transportation. Some of these procedures were relaxed in the context of movement of goods to combat COVID-19 and such relaxed procedures could be extended to other commodities for a permanent basis. From here, the WTO may adopt an approach in its trade negotiations by identifying the core issues and priority aspects of maritime transport. The interconnectivity of trade in goods and its associated sector cannot be ignored and especially the fact that trade in goods is dependent on maritime transportation. Thus, this conversation of securing effective and affordable maritime transportation through the WTO by focusing on liberalising maritime transportation service is needed for post COVID-19 recovery of international trade.

International Conventions on Ship Arrest vis-à-vis Indian Law

by Parth Agrawal

INTRODUCTION

In maritime law, ship arrest is a legal process by which a ship is physically detained and is prevented from leaving a particular jurisdiction until the dispute is settled or the security is paid. The power to arrest a vessel is a crucial power given exclusively to the admiralty courts. It serves as a powerful tool at the disposal of the Claimant to secure their claims against the vessels. This article examines the law on the arrest of ships in India from the lens of various international conventions on the arrest of ships. The first part of this article will primarily focus on the transition from the International Convention Relating to the Arrest of Sea-Going Ships, 1952 ('Arrest Convention 1952') to the International Convention on Arrest of Ships, 1999 ('Arrest Convention 1999'). The latter part will then focus on the legal position of the arrest of ships in India and will critically analyze such position from the viewpoint of the international conventions.

INTERNATIONAL CONVENTIONS ON ARREST OF SHIP

The Arrest Convention 1952 under Article 1 provides for the arrest of ships and sister ships on the maritime claims mentioned in the list therein. This list is limited and close in the sense that any maritime claim that does not fall within the list cannot be the ground for the arrest of a ship under this convention. The rules relating to the arrest of ships were unified by this convention, it allowed the contracting state to arrest the ships of other contracting states within its jurisdiction only in respect of the maritime claims covered by the limited list. Further, the convention prohibited the claimant from arresting the same ship in the jurisdiction of different contracting states when such ship has been arrested in the jurisdiction of one contracting state with respect to the same claim.

It cannot be denied that the Arrest Convention, 1952 played a significant role in establishing international standards for the arrest of ships. However, with the passage of time and the development of the shipping industry, this convention became outdated and a number of issues started to arise. One of the major limitations of the Arrest Convention 1952 was that the list providing for limited maritime claims for the arrest of ships was inadequate to cover all the claims that may arise in the modern shipping industry, thus leaving certain creditors without the security of ship arrest. Another significant issue was with regard to the vague and ambiguous language used in the convention, the interpretation of which may vary from jurisdiction to jurisdiction, especially between the civil law and common law jurisdictions. Therefore, this convention was later superseded by the Arrest Convention, 1999.

The Arrest Convention of 1999 brought significant changes to the international framework governing the arrest of ships. The objective of the new convention was to establish uniformity internationally with respect to ship arrest taking into consideration the developments in the field. The Arrest Convention 1999 dealing with one of the major drawbacks of the Arrest Convention 1952, expanded the scope of claims for which the ship can be arrested. It provides for a more flexible and broader list of maritime claims for which the arrest of ships is permissible. Under the Arrest Convention 1952 total of seventeen claims were considered as maritime claims whereas this number was increased to twenty-two under the new convention. Additionally, it recognizes the concept of maritime liens which means that the ships can be arrested for enforcement of maritime liens.

The Arrest Convention 1999 allows for the re-arrest of the ship and also permits the arrest of multiple ships for securing a claim. It also recognizes the hardships that the ship owner may face in case of wrongful or unjustified arrest of the ship or due to the demand for excessive security. Therefore, it allows the court to impose counter-security on the claimant, i.e., the court can obligate the claimant to provide security for any loss that the defendant may suffer as a result of the arrest. The Arrest Convention 1999 is much more clearly drafted making it more adaptable to contemporary issues in the shipping industry. Therefore, it not only dealt with the substantive drawbacks of the 1952 convention but also addressed the issues that existed due to the vague drafting of the 1952 convention.

THE ADMIRALTY (JURISDICTION AND SETTLEMENT OF MARITIME CLAIMS) ACT, 2017

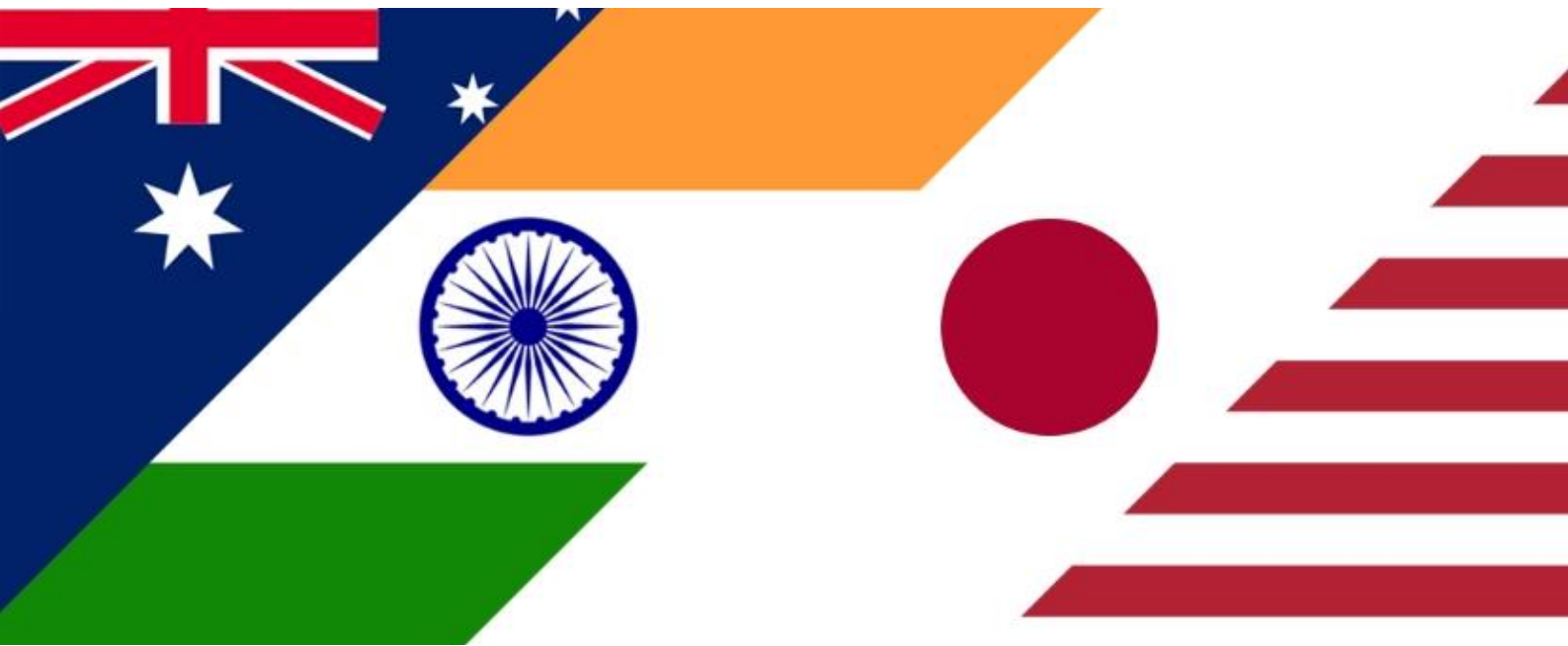
The Admiralty Act 2017 governs the arrest of ships in India. Section 4 of the Act provides the list of claims which would amount to maritime claims. The list provided in this section is similar to the list of maritime claims provided under the Arrest Convention of 1999 except for a few differences. The Admiralty Act also includes the claim for a particular average and claim by heirs and dependents of master or crew. Similar to the Arrest Convention of 1999, it also provides for the protection of the shipowner or the defendant from any wrongful or unjustified arrest or in case of excessive security being demanded.

The Admiralty Act has further narrowed the scope of the arrest of vessels in rem by not incorporating the provisions relating to the arrest of ships owned by charterers. This divergence from the Arrest Convention 1999 has led to difficulty in the enforcement of maritime claims against the charterers in India.

Unlike the Arrest Convention 1999, the Admiralty Act 2017 does not provide for the release of the ship upon payment of security by the Defendant. It also does not provide for rearrest or multiple arrest of ships for securing the creditor's claim. One major drawback of the Admiralty Act 2017 with respect to the arrest of ships is that the Act confers the jurisdiction to arrest ships on limited High Courts which have admiralty jurisdiction. A High Court having admiralty jurisdiction can arrest a ship only if such ship is within the territorial waters of their respective jurisdiction and not beyond.

CONCLUSION

The Admiralty Act 2017 even follows the footsteps of the Arrest Convention 1999, there still remain a lot of grey areas for the legislation to tackle, including the issues relating to the jurisdiction of a limited number of courts and the arrest of multiple ships. The Act has made positive progress towards structuring and regulating ship arrest in India, there are notable limitations in the Act that may impact in the effective and efficient enforcement of maritime claims.



Policy in QUAD: Pertaining to EEZ

By Rishita Agarwal & Meenal Singh

After the 2004 Indian Ocean Tsunami, a loose alliance of four nations called QUAD was formed to coordinate humanitarian aid and disaster relief. QUAD is made up of Australia, India, Japan, and the United States. Its goal is to achieve practical cooperation in order to have an open and free Indo-Pacific.

On May 24, QUAD had its second in-person summit in Tokyo, where they unveiled a new Indo-Pacific programme that enables the partner nations to completely monitor the region's waterways and committed more than \$50 billion in infrastructural support for the area over the following five years. As QUAD countries classify tasks, responsibilities, and resources while coping with the post-pandemic economic crisis, it is urgent to disassemble QUAD and ASEAN as a regional discourse. While ignoring challenges like exploitation of marine resources and illegal fishing in the EEZ zone, the creation of the

Indo-Pacific Partnership for Maritime Domain Awareness (IPMDA) may be the impetus these strategic forums require. The IPMDA can also be viewed as a coordination plan for the existing resource allocation to address problems in the Pacific Islands, Southeast Asia, and the Indian Ocean.

It is hoped that Southeast Asia's strategic buy-in will help to further efforts to address the issues facing EEZs. Each QUAD member is properly outfitted with surveillance gear, which is crucial for monitoring the situation with illegal fishing. Illegal, unreported, and unregulated (IUU) fishing is what it is known as. It is unclear how Quad members would meet demands for further resource mobilization or how they can mobilize the necessary space-, air-, or land-based surveillance assets for such constant tracking. India has started constructing Coastal Surveillance Radar Stations (CSRS), although there are issues with supply and demand. IOR nations have been the primary locations for this. Chinese trade is largely conducted via Indian Ocean routes that go through maritime checkpoints. In the event of border aggression by the Chinese, QUAD nati-

-ons may be able to obstruct Chinese trade. With the implementation of the IPMDA, India now has unrestricted access to the maritime domain for coalition building, rule-making, and other types of strategic exploration. Additionally, India can counteract China's imperialist actions in the Indian Ocean region with the aid of the other QUAD nations, ensuring regional stability and prosperity for all. India's strategic location in the heart of the Indo-Pacific region also allows for the realization of the idea of a "broader Asia" that may project its influence beyond national borders. India and Australia have agreed to cooperate to create supply chains that are more reliable and durable and to ensure widespread economic growth in the strategically important Indo-Pacific region. India can also support group efforts in disaster relief and humanitarian aid, monitoring shipping for search-and-rescue or anti-piracy operations, providing infrastructural support to countries with susceptible climates, connection projects, and other similar endeavours.

Due to IUU fishing, several nations have experienced budgetary losses, which have had disastrous effects on conservation and sustainability initiatives. The key to this effort is to relate existing regional collaboration mechanisms that are already analyzing and trying to assess threats and challenges in their respective areas of concern. Even though India may benefit from the IPMDA programme, there are various difficulties that restrict India's participation. First, there are infrastructure limitations that affect shipbuilding, ship repair, modernization, and hinterland connectivity for integrated development of both India's coastline and interior regions.

At the Indian Ocean Region Information Fusion Centre of the Indian Navy, India is unable to accept postings for International Liaison Officers. The growth and development of India's economy depend heavily on the infrastructure of the nation. India must improve its maritime infrastructure as part of its growth-led economic strategy, including ports, harbours, connections, logistics, etc. Second, appointing Indian liaison personnel at other sites and centres in the area has been continually delayed. With the help of the IPMDA, the IFC-relationships IOR's with the other IFCs are expected to improve, and eventually it will serve as the central repository for all marital data in the IOR. Therefore, the outstanding suggestions must be resolved right now to prevent India from losing this chance. The QUAD nations also need to do a better job of explaining the Indo-Pacific Vision in a comprehensive framework in order to advance everyone's economic and security interests, even though the QUAD vision has a lot of potential.

India should also lobby for further invitations to the QUAD group membership from nations like Singapore and Indonesia in order to increase its strength and power. The proposal should be put into action by the nations, else its momentum would wane.



Marine Aids to Navigation Bill 2022: Impact Analysis

by Yash Kaushik

Recently a much needed step to alter the Indian Ports Act, 1908, which aims to bring significant reforms and required changes in the shipping industry by bringing non-major ports into the national fold, has been made public by the Ministry of Ports, Shipping, and Waterways, Government of India.

Vision of this Amendment: It aims to implement significant reforms in the sector by including minor ports in the national framework and fold, developing a new dispute-resolution mechanism so as to resolve various conflicts and issues effectively, and strengthening the maritime state development council (MSDC). It is to be taken into account that more than 110 years have been passed since the Indian Ports Act of 1908 and now the time has arrived to bring necessary changes.

Necessity of this Amendment: It has become essential that the Act be updated to take into account current frameworks, contemporary issues and include India's duties under international agreements and treaties, address new environmental and climate concerns, and support the consultative development of the ports industry in the very interest of our nation. The measure, which would alter the Major Ports Authority Act, which was introduced last year and drew criticism for the potential concentration of more authority in the hands of the federal government, which oversees India's 12 major ports of our country, could, according to industry analysts, suffer the same fate.

The fact that the majority of central and state stakeholders are represented in this council, but the chairperson—who, according to the proposed change, is the Union minister of ports—holds all final, binding authority. As stated by the government official, this amendment aims to level the playing field for all ports since little ports, particularly ports in private sector, operate under the jurisdiction of their individual state marine boards and local laws, while major ports are governed by federal regulations.

The bill establishes a council under the direction of the Union minister for ports, shipping, and waterways in an effort to end delays in decision-making for non-major ports and will directly foster the growth and development of shipping sector and will assist in making India a global leader in the global shipping sector. It is also stated that MSDC will foster the feeling of cooperative federalism where Centre and State administrations will work together to create a progressive road map for the nation.

Analysis of Port Sector and Policies made in 2022

by Yash Kaushik

Sagarmala Programme:

The Indian government has initiated the Sagarmala Programme to improve the efficiency and management of the country's logistics sector. In order to reduce the amount of infrastructure that must be built in order to achieve these goals, the concept envisions utilizing the potential of waterways and the shoreline of our nation.

The Sagarmala Programme's major goal is to lower down the logistics costs for domestic

Developments in Coastal Shipping:

Under project Sagarmala, the Ministry's major objective is to promote coastal shipping. For achieving this goal, The Asian Development Bank has created a prospective strategy up to 2025 on the development of coastal shipping in India in order to assist the growth of coastal trade and development of port sector. Other initiatives include lowering the GST on bunker fuel from 18% to 5%, relaxation of cabotage for cargo ships, combining coastal and inland cargo, support for Indian shipping companies through subsidies.

Other initiatives includes, Priority berthing for coastal vessels at key ports and green channel clearance for coastal cargoes. Also, the government of India is offering support for the capital dredging, mechanisation of coastal berths, and the development or upgrading of exclusive coastal berths, platforms, or jetties.

Additionally, with the introduction of PM Gati Shakti and the National Logistic Portal, coastal shipping will receive the additional boost it needs to succeed in lowering overall logistic costs.

Developments in Coastal Communities:

As part of the Pradhan Mantri Matsya Sampada Yojana, Centrally Sponsored Scheme, the Ministry is co-funding fishing harbour projects with the Ministry of Fisheries, Animal Husbandry, and Dairy for the benefit, growth and development of the fishing community. Also, five significant fishing harbours at significant ports are being modernized by the Ministry as part of the Sagarmala Project.

Developments in Ports Sector:

One of the economies in the world with the quickest growth rates in India. India's maritime sector is one of the main drivers of this advancement. In order to attain significant commercial growth, India's port act as a hub for

international trade, coastal shipping, and cruise shipping.

A recent meeting of the Maritime State Growth Council was held by the Ministry of Ports, Shipping, and Waterways to formulate a national strategy for the development of the maritime industry in India. The goal of this council is to guarantee the integrated development of both significant and minor ports.

Major Ports Conciliation and Settlement Committee:

Commercial enterprises like Major Ports have realized that commercial dispute resolution through arbitration or courts is incredibly time-consuming and expensive. So in order to reduce this cost in dispute resolution, a Conciliation & Settlement Committee (CSC) made up of impartial specialists was appointed, creating an alternative conflict resolution procedure for Major Ports and resolving arising issues and conflicts peacefully and effectively.

More than 800 projects with a projected cost of roughly 5.54 lakh crore have been selected for implementation as part of the Sagarmala Programme between the year 2015 and 2035. Sagarmala projects cover a wide range of endeavours, including new ports, terminals, jetties and tourism, improved port connection and efficiency, interior waterways, lighthouse tourism, industrialization near ports, skill development, technological centres, and many more such initiatives. These initiatives can be broadly categorised into Sagarmala's five pillars. The Central Line Ministries, State Maritime Boards, and Major Ports are the bodies which are responsible for carrying out the Sagarmala projects, preferably with the help of the private sector and Public Private Partnerships (PPP) whenever possible.

Analysis of the Golden Crescent Drug Trade

By Anshuman Kar

The Golden Crescent region, which encompasses parts of Iran, Afghanistan, and Pakistan, is a major source of illegal drugs, including opioids, cannabis, and methamphetamine. The illicit drug trade has had a profound impact on the region, fuelling conflict, corruption, and organized crime, and causing significant harm to individuals, families, and communities. Despite efforts by international law enforcement agencies, the drug trade continues to thrive in the Golden Crescent, in part because of the lack of effective law enforcement and governance in the region. This article will examine the history of the drug trade in the Golden Crescent, the challenges facing law enforcement, and the implications for maritime law and security.

The Golden Crescent has a long history of opium cultivation and trade, dating back to the early 19th century when British colonial administrators encouraged Afghan farmers to grow opium as a source of revenue. In the 20th century, the Soviet occupation of Afghanistan and the subsequent civil war and Taliban rule led to a significant increase in opium production, which was exported to markets in Europe, the Middle East, and South Asia. After the U.S.-led invasion of Afghanistan in 2001, opium production increased again, fuelled by instability and the lack of governance in many areas of the country.

The drug trade in the Golden Crescent is dominated by organized criminal networks, which operate across borders and are highly sophisticated in their use of maritime transportation to smuggle drugs to markets around the world. These networks often use vessels registered in countries with lax regulations and weak enforcement to evade law enforcement and avoid detection. The maritime routes used by drug smugglers are complex and difficult to monitor, and the vastness of the oceans makes interdiction a major challenge for law enforcement agencies.

The lack of effective law enforcement in the Golden Crescent is a major contributor to the persistence of the drug trade. In Afghanistan, for example, the Afghan National Police and other security forces are often under-resourced and under-trained, and are unable to effectively address the drug trade and other criminal activities. In Iran, the government has launched a series of crackdowns on drug trafficking, but corruption, limited resources, and political constraints have limited the effectiveness of these efforts. In Pakistan, law enforcement agencies have made some progress in disrupting drug trafficking, but the challenge remains significant, with drug smugglers often operating with impunity.

The impact of the drug trade in the Golden Crescent on maritime law and security is significant. The use of vessels registered in countries with lax regulations and weak enforcement undermines the integrity of the international shipping system and undermines the ability of law enforcement agencies to interdict drugs at sea. The drug trade also fuels corruption and undermines governance in the region, which has implications for stability and security in the region and beyond.

The compliance under this act is taken care of by the Directorate General of Shipping. The inspection of ships is carried out by Surveyors from Mercantile Maritime Department on Indian and foreign flag vessels. India is also a signatory to the International Convention for the Prevention of Pollution from Ships (MARPOL). Therefore, the legislative framework for maritime law has taken cognizance of this issue. India has recognised pollution as a major issue.

Scope for improvement:

A problem that stands out from a legislative perspective is the lack of a centralised authority that deals with monitoring, surveying and penalising any discrepancy or misconduct in the infrastructure of the ship required to prevent pollution. A centralised approach in the hands of a single authority would streamline the process significantly. A possible remedy is centralising the entire process under the office of the Directorate General of Shipping. The surveyors can either be under the Directorate General itself or the due diligence aspect can be given to the Directorate on a post facto basis. A special office can be set up under the ambit of said authority specifically dealing with issues pertaining to maritime pollution. In sensitive coastal areas, the state and centre can coordinate to increase vigilance and quicken the pace of reacting to any maritime environmental mishaps. A special coordination centre can be set up for the following purpose. It should be a primary prerogative to address this issue more effectively.

Dirty Tricks: The sentencing of Greek based corporations for skirting US Maritime Environmental norms

By Aditya Danturty



The Department of Justice of the United States of America sentenced two Greece based maritime companies, Empire Bulkers Limited and Joanna Maritime Limited, for violating the Act to Prevent Pollution from Ships (APPS) and the Ports and Waterways Safety Act, having full knowledge of the violations they were committing while in the process of executing them. Their sentencing is with respect to the actions undertaken by them in their capacity as operator and owner of the Motor Vessel Joanna.

Discrepancies in Ship:

An inspection of the Ship last year had brought up significant discrepancies in the pollution control equipment. There were rampant cases of falsification of readings and the resultant records that were mandated to be given to the authorities, which led to a penalty of 2 million dollars in criminal fines. The equipment was tampered with to fudge the oil content of bilge waste being discarded. There was also an unreported fuel leak in the engine room where the safety device to prevent explosions was non-functional due to having been disabled.

Overview of Indian Laws:

This case gives us an opportunity to examine Indian laws and their implementation. The prevention and containment of pollution is covered by the Merchant Shipping Act, 1958.


The international community, through organizations like the United Nations Office on Drugs and Crime (UNODC), has been working to address the drug trade in the Golden Crescent and its impact on maritime law and security. The UNODC has been supporting countries in the region to strengthen their law enforcement capacities and to improve their regulatory frameworks for the shipping industry. The UNODC has also been working to promote regional cooperation on drug control, and to enhance the sharing of information and intelligence between law enforcement agencies.

However, the implementation of the UN Convention remains a challenge in the Golden Crescent, where many countries lack the capacity and resources to effectively implement the provisions of the Convention. Additionally, corruption and political constraints remain significant obstacles to effective law enforcement and the implementation of effective measures to combat drug trafficking.

In conclusion, the drug trade in the Golden Crescent and its impact on maritime law and security remain significant challenges for the international community. Addressing this issue will require a multi-faceted and coordinated approach, involving law enforcement agencies, the shipping industry, and the international community. Effective action will require sustained political will and investment, but the benefits in terms of reducing harm and enhancing stability and security in the region and beyond are significant. The international community must continue to work together to address these challenges and to enhance the rule of law at sea.

Energy Triangle: The Withdrawal of Panama flags from Iranian Ships

By Aditya Danturty



A raging conflict was set up in the maritime domain when the county of Panama withdrew its flag from 136 ships related to Iran's National Iranian Oil Company (NIOC), the State-owned oil company of Iran. It is pertinent to note that Panama maintains the largest registry of ships in the world. It provides its flags to over 8,500 ships. The entire issue of NIOC using Panama registered ships as was brought up because of Jeb Bush, who was the 43rd Governor of Florida and a vocal member of UANI (United Against Nuclear Iran), a collective against advocating for the threat of nuclear proliferation.

Causes for the withdrawal:

On preliminary examination, it seems that global security and political headwinds are the reasons for Panama in coming to the said decision. Panama withdrew the recognition to gain the goodwill of the United States of America for Panama's authorities. Panama was accused by the west of aiding Iran in bypassing the various sanctions imposed by them. Therefore, this move was undertaken to make sure Panama could maintain friendly relations with the Western powers. The National Iranian Oil Company was specifically mentioned due to the west's belief that NIOC and the Islamic Revolutionary Guard Corps were colluding together to alter and bypass imposed sanctions.

Conclusion to be withdrawn:

It is interesting to look into the disproportionate sway and power that Panama

holds in the maritime world. 16% of the world's shipping fleet is registered in Panama. It has been alleged that the National Iranian Oil Corporation has been using the country of Panama to sell oil and natural gas. As is most predictable, Iran maintained the stance that the entire process was involuntary and the claims made were unsubstantiated. The Iranian dispensation believes that the United States of America is the reason for lack of engagement. This matter has turned from a geopolitical and foreign affairs issue to a maritime issue owing to the jurisdiction of the case.

Critical Review on India's Naval Developments in terms of Defence

By Meenal Singh

Background and Objectives:

Shri Rajnath Singh had urged for consistent international action to combat transnational and cross-border terrorism. He reaffirmed India's commitment to a free, open, and inclusive Indo-Pacific region and advocated for peaceful resolving conflicts that respected all nations' territorial integrity and sovereignty.

In some ways, the significance of the Indian Ocean region to China's maritime ambitions has been weakened by Chinese activity in the South China Sea and the dominance of the Pacific region in Washington's security calculations. A crucial trading route for China's energy supplies and networks, the Indian Ocean also stands as a zone of vulnerability.

It makes Beijing's commitment, interests, and priorities in the Indian Ocean clearer when considering the entire region. For instance, only China has embassies in all six of the region's island countries. Washington, in meanwhile, only

maintains three embassies—in Madagascar, Mauritius, and Sri Lanka—and two defence attachés that cover all six islands.

Reviewing Expenditure:

In order to combat the issues pertaining to trafficking, illegal trade of narcotics and illegal fishing patrolling becomes an essential course of action, hence a contract for the construction of Fast Petrol Vessels (FPVs) for the Indian Coast Guard amounting to Rs. 473.47.

ALH Mk-III squadrons 835 Sqn (CG) and 840 Sqn (CG) were commissioned in Porbandar and Chennai, respectively, in June and December, significantly increasing the Indian Coast Guard's capabilities.

The contract to procure two Multi-Purpose Vessels (MPVs) for Indian Navy, amounting to Rs. 887, however, is perplexing given the fact that the use of MPVs is primarily for carrying various cargo and does not contribute well to strengthening security.

The naval anti-ship missile is an example of the Indian Government's attempt to inculcate new technologies for guidance and mission, increased accuracy and accompanied by a launcher for the helicopter

Regional Developments:

The Strait of Hormuz provides the only sea passage from the Persian Gulf to the open ocean, hence being native to some of the world's most important choke points. Operation SANKALP has been enforced in order to ensure the safe passage of Indian Flag Merchant Vessels (IFMVs).

Other essential regional developments include Anti- Piracy Patrol in the Gulf of Aden. It is essential because the Gulf contributes to a significant number of Piracy cases since it is the main path through which a massive amount of trade takes place, espe-

-cially during the post-Coronavirus outbreak, when most countries are focused on recovering their economies.

Anti-Narcotics Operations have been undertaken by the Indian Navy. It was done when the Navy intercepted massive heroin shipments in the Arabian Sea. The delay in deployment of such an operation only after the interception calls upon the relatively poor policy-making regarding Maritime crimes and security surveillance.

Conclusion:

Overall, the management of expenses and allocation of resources can be concluded as still poorly written, keeping in mind India's involvement in ASEAN, aims to combat terrorism and its initiatives in the Indo-Pacific Maritime Domain Awareness (IPMDA). The need to formulate policies combating various environmental crimes and other criminal hurdles like human trafficking, narcotics, weapon smuggling etc.

The policies with respect to maintaining diplomatic and bilateral relations has been commendable given the number of joint exercises undertaken. This effort has also boosted India's 'soft power' while exposing it to new technologies.

international trade, coastal shipping, and cruise shipping.

A recent meeting of the Maritime State Growth Council was held by the Ministry of Ports, Shipping, and Waterways to formulate a national strategy for the development of the maritime industry in India. The goal of this council is to guarantee the integrated development of both significant and minor ports.

Major Ports Conciliation and Settlement Committee:

Commercial enterprises like Major Ports have realized that commercial dispute resolution through arbitration or courts is incredibly time-consuming and expensive. So in order to reduce this cost in dispute resolution, a Conciliation & Settlement Committee (CSC) made up of impartial specialists was appointed, creating an alternative conflict resolution procedure for Major Ports and resolving arising issues and conflicts peacefully and effectively.

More than 800 projects with a projected cost of roughly 5.54 lakh crore have been selected for implementation as part of the Sagarmala Programme between the year 2015 and 2035. Sagarmala projects cover a wide range of endeavours, including new ports, terminals, jetties and tourism, improved port connection and efficiency, interior waterways, lighthouse tourism, industrialization near ports, skill development, technological centres, and many more such initiatives. These initiatives can be broadly categorised into Sagarmala's five pillars. The Central Line Ministries, State Maritime Boards, and Major Ports are the bodies which are responsible for carrying out the Sagarmala projects, preferably with the help of the private sector and Public Private Partnerships (PPP) whenever possible.

In Conversation with Advocate Ashutosh Mohanty

INTERVIEWED BY SAMRIDHI PRAKASH

The Centre for Maritime Law had the privilege of interviewing Mr. Asutosh Mohanty, an admiralty law specialist. He holds a B.A LL.B degree from Ram Manohar Lohiya National Law University Lucknow. Mr. Mohanty is a Partner in Pegasus Research Offices Global. He is also the founder the Grand Pegasus Foundation, a social welfare organisation. The following is a transcript of the interview.

Interviewer. You have served for a number of years in this industry. What would you like to share as your journey in the admiralty field.

Asutosh Mohanty: We were fortunate that the Admiralty Act came in 2017. I started working in this High Court in 2015, but there were no admiralty cases. We are the first and only chamber in Odisha to take up Admiralty cases. This happened because in 2017 the Act came in and the Odisha High Court was given admiralty jurisdiction. Previously only the Presidency courts of Calcutta, Madras and Bombay had admiralty jurisdiction. Now, when any ship enters the territorial waters of any port in Odisha, the Odisha High Court has jurisdiction. We are just fortunate enough that all 6-7 admiralty suits that have been filed have been filed by us. It is technical in nature. You will get to know in due course.



Advocate Ashutosh Mohanty
Partner, Pegasus Research Offices
Global

Interviewer. How is the maritime trade industry different from other areas of trade and commerce?

Asutosh Mohanty: Maritime Trade Industry is quite different because amongst all the methods of transport and trade. You have land transport, water transport and air transport. The fact is that the bulk of the transport happens by sea in the form of maritime trade. It is the cheapest mode of transport, the land transport being the costliest. And Air is the next to costliest. Maritime trade happens to be the cheapest mode of transport. Since maritime trade can only happen in the seas, it can only connect ports and it requires inland transport. So, the transport cost varies. This is why ports were built since ancient times. Trade always happened around those ports. So that is the reason Bombay, Calcutta and Madras as towns grew during colonial times. Because maritime trade used to happen, the products were also sold there. So, the cities came up there. They did not need inland transport for bigger cities to grow. Maritime trade is the most preferred mode of trade.

Interviewer. So, as you know Odisha is a coastal region which is prone to cyclones and drastic weather conditions. So how do these conditions affect professions specifically related to maritime industries?

Asutosh Mohanty: True. The effect is not only restricted to Odisha. The entire eastern coast of India is affected. We have the Indian Ocean on one side and the silent Arabian Sea on the other. On the East coast we have the Bay of Bengal, which is more prone to cyclones. Cyclones normally don't happen on the Arabian Sea. That is why you see the maritime load on the western ports, i.e., ports on the western coast of India is much more than the ports of eastern India. If there are 10 ships that are coming in the Jawaharlal Nehru Port Trust in Mumbai, you will have only one ship coming to Odisha. It is out of compulsion that ports have a lot of maritime trade in Odisha because of the mines and minerals. There is a lot of import and export happening related to mines, minerals and fertilizers. Other than that, consumer products are not transported through any of the ports in Odisha. So, it is only mines and minerals, chemicals and fertilizers, which is out of compulsion. Given an option, that would also have happened through ports of western India. Since it is easier to have a port here, there is trade here.

Interviewer. Which areas of maritime law require rigorous academic study and also provide good career opportunities?

Asutosh Mohanty: When it comes to the legal fraternity, we should restrict our study to the addressing of claims. This pertains to whether a maritime claim exists in the first place and the manner of getting an appropriate remedy from the court. Appearing on behalf of one side, advise must be imparted on how to get a vessel arrested realise any money due. On the defendant's side, you have to advise your client on how to get their vessel released when there is a claim. The third pursuit is to reach an amicable settlement so that the arrested vessel can be released and the claim is fulfilled as well. There are very few operations where the claim is absolutely zero. Majority of the claims are legitimate. Till what extent the claim is legitimate is something that can be decided by both the parties in the settlement that they reach. It is burdensome on the judiciary to get a vessel arrested, make it stay in the port for a long time and then get it released. It is a burden on both the parties, the court and the port. If you get a vessel arrested in a port, that amount of space and bandwidth is blocked in a port. So, it the duty of the lawyers to get an amicable settlement and get the vessel released.

Interviewer. How well equipped are our Indian laws when it comes to maritime concerns. Is there any scope of improvement in this area?

Asutosh Mohanty: See when it comes to Admiralty laws, I think we are quite well equipped because there are international conventions that we already adhere to. The Admiralty Act 2017 is one such Act. Only after signing and ratification international conventions did we come up with this Act. A problem that has already come up is the court fees because an admiralty suit is the original jurisdiction of the High Court. So, when an original jurisdiction case happens, the court fees is fixed according to a percentage. The state can choose to cap the court fees. Unfortunately, in Odisha there is no cap on the court fees. So, when you file a partition suit in the district court or an admiralty suit in the High Court, you will have to pay roughly 3 percent court fees, which is very high. This discourages a lot of parties from filing admiralty suits in Odisha. That has to change. It is not up to the courts to fix a cap. It is upon the government to fix a cap. If this is not done, there will not be a lot of Admiralty cases in Odisha.

Interviewer. What was the impact of the Covid-19 crisis on the maritime industry?

Asutosh Mohanty: Initially there were few restrictions. However, there were no restrictions on maritime trade or ports as time passed. Maritime trade continued because a halt in maritime trade would lead to economic collapse. This is because majority of the trade happens through the seas. Import and export are dependent on maritime trade. The land transport restarted after over 3-4 months. On the other hand, maritime trade restarted just 1 month into the pandemic. Claims. also continued to arise. So, we were filing admiralty suits in 2021, even though 2021 was the peak of covid-19. Maritime trade is an essential service that cannot stop.

Interviewer. What do you think a student should be studying or researching upon during their college days to get adept at this subject? What kind of opportunities exist in maritime law as a field?

Asutosh Mohanty: A law student should restrict themselves, because the ambit of maritime law is huge. Instead of getting into what maritime trade really is, students need only know the basics of it. A deep understanding of the Admiralty Act of 2017 is required, which is fairly simple. A student must know when maritime claims can be raised. The procedure of arresting or releasing a vessel is pertinent to know. The territorial jurisdiction of the High Courts under the Admiralty Act is important. These pieces of information will help a student when they start practicing.

Interviewer. Regarding the career opportunities which can exist. A lot of people in my college want to opt for only corporate law, some of them want to go for litigation.

Asutosh Mohanty: You have law firms which deal with maritime law only in Calcutta, Chennai and Mumbai. There cannot be a maritime law firm in cities like Delhi and Hyderabad, which are inland States. In places such as Odisha and Andhra Pradesh, small offices are coming up now for dealing with maritime cases. Otherwise, you have a lot of maritime cases happening in Gujarat. The biggest maritime law firms that deal with maritime law are in Bombay, Madras and Calcutta. So, you can either join these law firms or tie up with the law firms that have offices in places like Odisha.

Interviewer. Any comment on the Russia Ukraine war, any impact it has on Indian waters?

Asutosh Mohanty: There was change only regarding the trade of oil. We now have more oil ships coming in from Russia. Oil was

brought in only by gulf tankers. We had just one oil tanker that came from the United States last year. That was the first of its kind. Now, Russia has become a strategic partner when it comes to oil. This is significant development. India is getting a lot of cheap oil from Russia. We are also breaking international sanctions that are imposed on Russia. NATO is constantly warning India not to import oil from Russia. However, the Indian people have to look after their economy first. Our country is not under NATO. Therefore, India is allowing the import of Russian oil. Prices have risen when it comes to general cost of trade. Container costs have also gone up significantly. Therefore, there have been a few disruptions.

Interviewer. How are policies like blue economy and deep ocean mission affecting the field of maritime law? Is there any feasibility that maritime law can in turn augment the strengthening of such missions or plans by the Indian government?

Asutosh Mohanty: These considerations should be left to the west. India and China are much bigger economies and are responsible for catering to the basic needs of much larger populations. Therefore, initiatives like this are not a priority.

Interviewer. Any Odisha specific or personal experience from this field that you would like to share?

Asutosh Mohanty: The most interesting story I recall is our first Admiralty suit that was filed in 2019. It was three days post Cyclone Fani. Therefore, the courts had no electricity supply. The firm had to use a diesel inverter to get the printouts done because we had to get a vessel arrested within 2 days and said vessel has just docked at Paradip. The High Court was closed due to the prevailing circumstances. After we got ready with the file, we went to the Chief Justice directly. He designated 2 judges to hear our matter. We then got the matter filed with the registrar at

his residence. There was no transport, no electricity, no water supply. As we left our office and we were going to the court we got to know that the matter has been settled and the suit had to be withdrawn. Psychologically, it was a setback for us as well as the judges. As soon as we entered the court room, we informed the judges that the matter had already been settled. They were also disappointed as this would have been the first order of arrest issued. It eventually happened some months later.

Interviewer. Any message you want to give to the students of NLUO. Any words of advice?

Asutosh Mohanty: I believe that you should continue your enthusiasm towards maritime law. The scope might be less in Odisha. However, it is of major importance in the bigger High Courts. There are very few law firms that deal with it. Since the students will gain expertise of this kind of law, it will be easier for the students to practise in this field.

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