RESEARCH PUBLICATIONS


Shipping Industry in India: Legal, Environmental and Policy Issues

Sony Vijayan
Amrita School of Arts and Sciences, Kochi

Abstract
Over 95% of the international trade happens by sea. The sustainable development of shipping industry is inevitable for international trade. Its development has an impact on marine environment, if unregulated, may lead to irreversible degradation of the ecosystem. There have been commendable efforts to promote quality shipping under the aegis of the International Maritime Organisation (IMO) and other international institutions. Unfortunately in India, the major concern is that the shipping operations are being carried out under substandard conditions raising crucial issues of pollution and safety in coastal waters. Unhindered access to sea ports is indispensable for economic progress in the current scenario of Globalisation. Equally important is to establish a balance between trade and environment. In the absence of proper access control and monitoring quality of ships, the topography of Indian ports and its navigable waters may not be environmentally secure in future. In the wake of massive port expansion programmes and globalization, this paper analyses the major legal, environmental and policy challenges connected with access and control of ships into Indian ports.

Keywords: Shipping Industry, Legal Framework, India

Introduction
Owing to globalization and the open port policy, there has been tremendous rise in maritime transport coupled with oil exploration along the Indian coastal line. In India, over 95% by volume and 70% by value of international trade happens by the sea. The country is also one among the major crude oil importers in the world. India has 13 major ports, over 197 minor ports, more than 250 fishing harbours and over 100 offshore platforms. Hence, shipping is a major industry in India and the industry is of great significance for the country’s economic development. The maritime policy of India adopts an all-inclusive approach for the port development, in order to meet the needs of dynamic shipping operations. While giving thrust to capacity building and technology infusion in maritime ports, the policy also aims for the sustainable development of ports and shipping industry. “...trade and environment are two facets of the same coin; both have to compliment mutually...at least in the sense that increasing world welfare can lead to citizen demands and governmental actions to improve protection for the environment”. In spite of these sound policy initiatives, shipping operations in India are reported to be carried out under substandard environmental and safety considerations. In the wake of massive port expansion programmes and globalization, this paper analyses the major legal, environmental and policy issues connected with shipping operations in India.
The issue of Regulating Access to Ports

The purpose of maritime ports cannot be accomplished without facilitating free access and egress of vessels. States generally keep their ports open for foreign vessels based on reciprocity, courtesy and Port state co-operation. At the same time, the port state's sovereignty to deny access to vessels is already established under the international law. Hence, regulating access can be used as a precautionary measure to control vessel sourced pollution. The denial of access if, not on legitimate grounds may provoke heated political arguments between the flag state and port state thereby running down the trade relations and economy.

The United States of América, the United Kingdom, and the European community of nations have made radical changes to their laws regulating access to ports. Even in the absence of specific regulations, the U.S Coast guard had denied access to foreign vessels on the ground of national security under the Special Interest Vessel Program (SIV). Similarly, if the events occurring on high seas had any 'effects' on the vessel of another flag state or on the territory of a state, no rule in international law would prevent those states from initiating legal proceedings against the transgressing vessels. No country other than the United States would have applied this 'vital interest theory' or 'effects doctrine', very intensely to secure its national interests.

In India, the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (here in after the MZA76), gives the central government sovereignty to deny access to all or any class of vessel, if the voyage is a threat to the peace, good order or security of India. Under this Act, all foreign ships except warships and submarines can enjoy innocent passage through the territorial waters, unless such passage is prejudicial to the peace, good order or security of the country. In spite of this wide power to restrict the entry of polluting vessels, many of them find easy access to our ports and navigate freely through the territorial waters of India. A prominent reason is that the MZA 76 and the rules thereunder set no clear criteria for denying the access. Hence, what constitutes a threat to peace, good order or security of India is often a political consideration rather than a question of law.

This legal crisis has been vehemently used by the Ship breaking industry for illegal benefits. This is a major industry giving employment opportunities to many millions and generating immense revenue for the governments. Yet, it operates under substandard conditions in India. If, the provisions of MZA 76 had clearly laid down the criteria for denying access to ports, India would not have become the junkyard of “ghost ships” of the western world. Consequently, judicial approaches on whether to allow access for these ships to Indian ports remain conflicting. For example, in the Clemenceau case, the French warship at the time of its phasing out had 130 tons of asbestos and other toxic wastes on board. It was not given access to ports worldwide subsequently. In December 2005, it left for Alang, in India for ship breaking. In January 2006, owing to huge public appraisal and media attention, a petition came up before the Supreme Court of India and the Court had issued a temporary order prohibiting the vessel’s entry to the Alang port. The court had expressed a strong view to strike a balance between economic development and environmental protection.

In the Blue Lady Case\textsuperscript{16}, the major issue in question was whether Alang had technological sophistication for safe ship dismantling. Ignoring the opinion of the High Level Expert Committee that Alang never had the technology sophistication to dismantle vessels in an eco-friendly manner, the Supreme Court of India ordered for the entry of the vessel into Alang and allowed its dismantling. According to court, sustainable development also means balancing ‘the priorities of economic development and environmental protection’.

Indian Admiralty Law: Still in its infancy

The Indian legislature has not taken notice of the day to day dynamism in maritime operations and the modernization of admiralty jurisdiction in other countries. The British Statute Repeal Act abolished over 250 British statutes but the Admiralty law remained untouched. The Government of India, following the Law Commission Reports\textsuperscript{17}, the Parveen Singh Committee\textsuperscript{18} and pressures from all stake holders in the industry had introduced the Admiralty Bill in 2005. No concrete efforts towards consolidating the admiralty law in India had happened after that. As such there are serious vacuums and ambiguities in Admiralty law especially on adjudication of maritime claims as to safety and pollution control in ports, wreck removal, salvage, planning, preparedness and response in case of maritime casualties, the Coast Guard’s powers to implement the contingency planning, surveillance and monitoring of vessels, civil liability in case of oil spills, giving access to vessels in distress etc.

The Ambiguity of Admiralty Jurisdiction

Yet another critical issue is that India is not having a consolidated law on admiralty jurisdiction. The admiralty jurisdiction in India is still governed by a few colonial legislations: the Admiralty Court Act, 1861, the Colonial Courts of Admiralty Act, 1890 and the Colonial Courts of Admiralty (India) Act, 1891. It can be said that the Admiralty Jurisdiction of India is a consolidated effect of the Articles 372, 225, 226 & 227 of the Constitution of India, Section 443 of the Merchant Shipping Act and the decision in M.V. Elizabeth’s case\textsuperscript{19}. In that case, the Supreme Court of India had expressed its deep anguish over application of colonial laws to Indian cases of admiralty.

The vagueness in the substantive law has created a situation where judges are forced to rely on procedural rules. And, this has caused serious deterioration in the standards of adjudication of maritime disputes in India. A handful of shipping legislations confer civil and criminal jurisdiction in admiralty matters to the Magistrate courts thereunder and this has created issues of overlapping jurisdictions. Ultimately, Port State Jurisdiction and the enforcement regime of Indian Administration have become all bark and no bite. The Enrica Lexie is the latest case on this point.

The Enrica Lexie

The Indian Administration vide its circular dated 29th August 2011, had issued guidelines on the deployment of armed security guards on its merchant ships as a deterrent counter-piracy measure. In the Enrica Lexie case\textsuperscript{20}, one of the prominent reasons for jurisdictional conflict between India and Italy may be the absence of global standards and strict Rules for the use of Armed Forces on Merchant ships. In the present scenario, the Coastal State’s law enforcement agencies and their security task forces will have to face serious legal and political repercussions when exercising jurisdiction over vessels deployed with armed forces.
In the United States of America and other developed countries, the Admiralty Jurisdiction is well developed and is actively supported by criminal laws of the land. This is not the case in India. Under section 361 of the Merchant Shipping Act 1958, a magistrate is required to make only a formal enquiry upon a maritime casualty and may forward the case to the proper court, if necessary. In the said case, the crime was primarily charged under the Indian Penal Code. Had the offence been charged also under the Admiralty law, the families of the deceased seamen could have claimed proper compensation? As long as the Admiralty law is not consolidated and ambiguity continues, it will be very difficult to adjudicate such cases and fix liability under the civil liability regime. Instead of addressing to these vital issues, the government has rather politicized the case.

Weak Port State Control Regime (PSC)
India is a member of the Indian Ocean Memorandum of Understanding on Port State Control (IMOU). The Port State Control Officers (PSCO) inspect foreign ships in national ports to verify the compliance of international conventions on shipping. In the year 2012, out of the total 5051 inspections carried out by the member states, India had done around 634, out of which 518 inspections were identified with deficiencies. The total number of detentions was just 119. The number of detentions is less primarily because of the weak enforcement of environmental regulations in ports. There are neither dedicated department nor sufficient officers for PSC. Its functioning is included under the Mercantile Marine Department which has several other duties to perform under its wing, thereby unable to effectively perform its role as PSC Authority.

The far-reaching changes made in the international Conventions on vessel safety and pollution control are merely repeated in verbatim in the rules framed under the Merchant Shipping Act and by means of circulars issued by the Director General of Shipping in India. The Indian Ports Act 1908 is obsolete and does not incorporate these changes into the port regulations. Considering the urgency and critical nature of the issue, the Indian Ports Bill 2011 is under consideration. Once enacted this new Act will replace the Indian Ports Act 1908 and the Major Port Trust Act 1963. Hence, the Indian standards of PSC are very mediocre and the inspections conducted by Indian PSCOs are definitely below the target specified under the international law. This has facilitated the hassle free entry of unseaworthy vessels and increased pollution incidents in Ports.

Segregation of Enforcement Powers on various Ministries and Departments- Ambiguity as to the Powers of the Indian Coast Guard
In India, provisions to ensure sustainable shipping lay scattered in a handful of legislations making it difficult to co-ordinate the enforcement under a single agency, especially in cases of marine pollution. Chapter II, Section 4 of the Coast Guard Act, authorizes the Coast Guard of India, to ensure the security of maritime zones of India, which includes control of marine pollution. The Coast Guard has the responsibility to prevent and protect the marine environment of the Country and ensure safety in territorial waters.

Under the provisions of the Indian Ports Act 1908 and the Major Port Trust Act 1963, the Port Trust acting through the Conservator of Ports has to ensure safety and pollution control within the Port area. At present the Indian Coast Guard (ICG) is exercising its functional responsibilities such as surveillance, combating oil spills, central co-ordination of the
Indian Law on Control of Vessel Sourced Pollution in Maritime Ports


National Oil Spill Contingency Plan (NOS-DCP), inspection of vessels to ensure seaworthiness and detention of violators of anti-pollution provisions under section 356(g)(1) of the M.S. Act 1958, only beyond the port limits. Hence, the Port conservator should get sufficient information from the ICG before taking any action against the violators. Unless this process is well co-ordinated and fast, timely detentions and control measures may not be effective. The Ministry of Environment and Forest also has functional responsibility to monitor and take remedial action in the event of marine pollution along the coastal side or beaches.

By clearly defining the role and hierarchy of enforcement agencies and by streamlining their activities under a central agency, i.e. the ICG, the enforcement regime could be made more efficient. The Indian Coast Guard Act should be revised so as to confer definite powers to ICG as the nodal agency to monitor, survey, enforce and punish the offenders contributing to pollution in the Indian waters instead of demarcating the same under different laws upon a handful of bureaucratic agencies.

Conclusions and Suggestions

The Maritime Policy aims for sustainable development of the shipping industry. The Indian law on Admiralty is not in pace with the dynamism in shipping operations. Unless, the law is consolidated and well defined, India's Ports state Jurisdiction will not be effective and in tune with the international regime. The Port State Control should be made an independent arm of the Port Authority which can solely dedicate its manpower and resources to control and monitor the vessels calling at Indian Waters thereby increasing its effectiveness. If the entries of inferior quality ships are not regulated judiciously, it may question the very existence of the ports; the trade and economic prospects of the country will be in turmoil.

End-notes

5 Jacson, World Trade Rules and Environmental Policies: Congruence or Conflict? 49 Wash & Lee. Rev.1227, P.1
7 Articles 25(2), 211(3), 218 and 219 of the United Nations Convention on Law of the Sea 1982 (UNCLOS III) & under the provisions of major IMO Conventions such as the SOLAS 74, MARPOL 73/78, STCW 78 etc.
Indian Law on Control of Vessel Sourced Pollution in Maritime Ports

...
**BIO- DATA**

**Personal Profile:**

<table>
<thead>
<tr>
<th>Name</th>
<th>Smt. Sony Vijayan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of Birth</td>
<td>05/10/1975</td>
</tr>
<tr>
<td>Address for Correspondence</td>
<td>Flat No. 5B, Abad Olympus, Raghavan Pillai Road, Edappally P.O. Kochi- 682024</td>
</tr>
<tr>
<td>Permanent Address</td>
<td>36/1738, (50/2177A), Chilanka, Edappally North, AIMS-Ponekkara P.O., Kochi- 682041.</td>
</tr>
<tr>
<td>E-mail ID</td>
<td><a href="mailto:sonyvineeth@gmail.com">sonyvineeth@gmail.com</a></td>
</tr>
<tr>
<td>Mobile Number</td>
<td>9895827513</td>
</tr>
<tr>
<td>Telephone Number</td>
<td>0484-6592252</td>
</tr>
<tr>
<td>Languages Known</td>
<td>Malayalam, Hindi and English</td>
</tr>
</tbody>
</table>

**Educational Profile:**

<table>
<thead>
<tr>
<th>COURSE</th>
<th>BOARD/ UNIVERSITY</th>
<th>PERIOD OF STUDY</th>
<th>SPECIALIZATION</th>
<th>CLASS</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>UGC- NET</td>
<td>University Grants</td>
<td>N/A</td>
<td>LAW</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>Commission</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>M.L</td>
<td>University of Madras</td>
<td>2001-2003</td>
<td>International law &amp; Constitutional law of India</td>
<td>First class &amp; First Rank</td>
<td>63.4</td>
</tr>
<tr>
<td>LLB</td>
<td>Mahatma Gandhi University</td>
<td>1993-1998</td>
<td>Elective-Labour laws</td>
<td>First class</td>
<td>64</td>
</tr>
<tr>
<td>PRE-DEGREE</td>
<td>Mahatma Gandhi University</td>
<td>1991-1993</td>
<td>Science</td>
<td>First class</td>
<td>78.6</td>
</tr>
<tr>
<td>S.S.L.C</td>
<td>DPI, Kerala</td>
<td>1990-1991</td>
<td>…</td>
<td>Distinction</td>
<td>89.3</td>
</tr>
</tbody>
</table>

**Experience Profile:**

Advocates Practice for 7 years. Assistant Professor (SG) and Head of the Department, Commerce and Management, Amrita School of Arts and Sciences, Kochi.
<table>
<thead>
<tr>
<th>Paper Presentation/ Seminar Participation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Presented a paper on “The role of professional bodies in regulating quality education in self-financing professional colleges” at the UGC-National Conference on Self-financing Professional Educational Institutions, School of Legal Studies, CUSAT</td>
</tr>
<tr>
<td>4. Presented a paper on “Informed Consent” at the National Seminar on “Right to Health Care”, School of Legal Studies, CUSAT</td>
</tr>
<tr>
<td>5. Presented a paper titled “Ship breaking to recycling: problems and challenges” at the National seminar on “Realization of Socio-Economic Rights”, organized by Department of Law, University of Kerala.</td>
</tr>
<tr>
<td>8. Chair-person for Two day National Conference on E-governance: the Economic Impact on Common Man in Rural Area on 30-31st October 2013 at Amrita School of Arts and Sciences, Kochi. At Amrita School of Arts and Sciences.</td>
</tr>
</tbody>
</table>
9. Chair Person for a Two Day National Conference of “Innovations in Banking for Future Growth” on 3\textsuperscript{rd} -4\textsuperscript{th} March 2014

10. Participated in National Seminar on “Foreign Direct Investment (FDI) in Indian Retail Sector and its impact on Kerala Economy”, at Amrita School of Arts and Sciences, Kochi on 19\textsuperscript{th} March 2013

**Publications:**


**Achievements/ Medals won:**

First rank holder and gold medal recipient for M.L. Degree Examinations of the University of Madras in the year 2003.

1) The President of India Dr. Shanker Dayal Sharma Endowment Gold medal

2) Late Sri. Meloth Krishnan Nambiar Endowment Gold Medal

3) L.C. Miller Medal

4) Dr. A.L. Mudaliar Prize.

*I hereby declare that all the information furnished above is true and correct to the best of my knowledge, belief and conscience.*

Kochi 17/03/2014

SONY VIJAYAN