Chapter – 2  
LAWS OF WRECKAGE AND NAVIGATION IN THE  
INDIAN OCEAN

The Indian Ocean, over which much of the Indo-Arab trade was conducted, had its own laws and customs of navigation and wreckage, which developed over time, independently of the Mediterranean.

For the Indian law of wreckage, Marco Polo (c. 1300) provides us with our earliest evidence: "And this naughty custom prevails over all these provinces of India, to wit that if a ship be driven by stress of weather into some other port than that to which it was bound, it was sure to be plundered."¹ About fifty years later Ibn Battuta reported that, "whenever a ship is destroyed, whatever is saved from it goes to the treasury."² But in the region of Calicut, "lawful proprietors collect whatever is thrown up by the sea."³ He further mentions the occasion of a ship in the territory of the Raja of Calicut. The Raja personally came to the place of wreckage where "A fire was lit before him on the coast, and his police officers

² Mahdi Husain (tr.), The Rehla of Ibn Battuta, Baroda. 1976, p. 192
³ Ibid
(zahaniya) belaboured the people so that they should not plunder what the sea has cast up".

Abdur Razzaq (15th century) observed that if a vessel bound to some port was driven away to another roadstead, the inhabitants according to the practice, plundered the ship.

From the evidence cited above there remains no doubt that the customary law pertaining to seizure of wreckage had been in operation on the Malabar coast since early middle ages. The same old customary law continued in operation in the pre-modern period. During the period of Tipu Sultan (1785), for example, a dhow of two Muscat merchants namely Rutn Jee and Jeevan Dass, merchants and subjects of Muscat, was damaged in a storm and brought to Bhatkal (‘Bytekoal’), a seaport in Tipu’s dominions. The cargo of the damaged ship was unloaded and retained by Government. On the persuasion of the owners of the damaged dhow, the Imam of Muscat wrote to Tipu requesting him to return the cargo and the dhow belonging to the Imam’s subjects. In his reply, Tipu said that the dhow and its cargo had been restored to the owners, “although in such cases, it was customary for the prince, or the ruler of the place, where a ship happens to be wrecked, to take possession of it and whatever it contains”.

1 Rehla of Ibn Batuta, op. cit., p. 192.
Similar laws of wreckage appear to have prevailed on the Arabian coast. A wreck on the coast of Shihr and Dhofar is described by Nihawandi: The wreck was that of Rahimi, a ship belonging to Khan-i-Khanan. The vessel was on her voyage from Mokha to Surat. Nihawandi noted that the ruler of Shihr took away the entire property on board the ship. After the arrival of victims at Surat and having come to know of their misfortune Khan-i-Khanan issued orders to his officials at Surat to pay one lakh of rupees to them, out of which 50,000 rupees were paid to Mulla Shakebi and the other 50,000 to other victims.¹

While the laws of wreckage seemed to have been inexorably stern in the Indian Ocean, ethics seem to have recommended compensation. Nihawandi in Ma'asir-i-Rahimi describes a shipwreck in River Indus which had on board Iranian merchants. The ship was laden with rich cargo as the merchants hoped to make a huge profit in extensive land like that of India. Those wrecked, however, lost much of their property, to local inhabitants.² Khan-i-Khanan having come to know of the calamity issued orders to the vakils of his court to assess the cost of the cargo lost in the wreck and pay the affected

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2. Ibid., pp. 571-72. See also the account of another similar incident for compensation for loss by fire in Ibid., Vol. II, pp. 572-73.
merchants their cost of the cargo and the profit that they could have made in India by selling those goods. On the testimony of trustworthy merchants the net cost of the cargo amounted to Rs. 1,25,000 which was sanctioned and entrusted for payment to the Diwan-i-Kul, Rai Sunder Das, who disbursed the amount accordingly from the revenues of the jagir of Ferozpur which was Khan-i-Khanan's own assignment.¹

A 17th century traveller (1625-1631) and author of Bahrul Asrar, Mahmud bin Amir Wali Balkhi, in his account of voyage aboard a Portuguese ship sailing from Sri Lanka destined to Aji Rabiko and Shahr-i-Nau (both in the vicinity of China), describes the disaster when the ship was caught in a storm and wrecked on the coast near Cuttak in Orissa. The Portuguese made their escape from the scene of wreck, leaving everyone else behind because of the fear of the prevailing law of wreckage and navigation which authorised the port official to take possession of everything contained in the ill-fated ship. Moreover, since the place of occurrence was a bandar-i ghair qauli (a non-contractual port) they feared capture inevitable and risk to their lives as well.²

¹ Ibid., op. cit., Vol. II., pp. 571-572.
² See Mahmud bin Amir Wali Balkhi, Bahr-ul-Asrar, (ed.) Riazul Islam. Karachi, 1980, p. 640. The word 'Xarnauz' (Portuguese) or Shahr-i-nau (Persian) used for Authya, the capital of Thailand, see Sanjay Subrahmanyam. 'Persianization' and 'Mercantilism': Two Themes in Bay of Bengal History, 1400-1700', OM Prakash and Denys Lombard (eds.), Commerce and Culture in the Bay of Bengal, 1500-1800, (Manohar, 1999), p. 57.
While the customary law of wreckage on the one hand authorised the state to take possession of ship's estate, the excesses committed by Mughal officials on the other hand were not thus to be overlooked. The author of the *Fath-i 'Ibriya* says as soon as it reached the ear of the Mughal officials that if a wrecked ship passed without paying hasil, the vessel was liable to be seized. These unlawful practices continued except during the reign of Feroz Shah Tughlaq and much later under Aurangzeb who were the only rulers to have prohibited it.¹

Shivaji during his negotiations with an embassy dispatched by the East India Company over the restoration of the remnant of goods on board a wrecked ship explained that it was against the "Laws of Conchen" (Konkan) to restore any ships or goods that were thrown on to the shore by storm or such other natural agency.² He said that if he granted the English Company an exemption from this practice, the French, Dutch, and other merchants as well would claim the same right. He, therefore, not only declined to concede the demand of the Embassy but added that he would not violate the custom that had continued for ages.³

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There is another instance of shipwreck at Warli (then under the East India Company's jurisdiction). The wreck is said to have occurred on 15 August 1670. The Calicut-based vessel was on her voyage back from Muscat. The ship consisted of 100 men among whom there were several banyas who carried valuables and horses. In the incident, only eleven men and two horses survived. Misfortune again fell upon the survivors. This time they were robbed of their belongings by the people of 'Verula' (Warli) and whatever still remained, the 'coolies' robbed them at the instigation of the Portuguese clergy of Bandara. Since the wreck took place within the jurisdiction of the Company stern measures were taken to punish the offenders. Investigation was conducted by Gray, then the Governor of Bombay, and those 'coolies' found guilty were whipped and kept prisoners. Inventory of recovered goods was made and sent to Surat. Recovery of a sum of 2005 abasses was made from the clergy and justices at Mahim were appointed in March 1671.¹

One may infer from the above account that the English here held that, contrary to local custom, robbery of a wrecked ship was an offence.

M. Torri in his article ‘In the Deep Blue Sea’, says that in 1763 a group of 58 non-ship owning merchants of Surat belonging to various business communities trading to Mokha, Jedda and Basra, made a declaration¹, duly certified by the Qazi, giving reasons (in favour of the East India Company) for not freighting their goods on ships belonging to “Mooremen and Indians”. One of the reasons advanced by these merchants was that the Indian ships left Surat too late and the other that Indian ships, which ran aground very easily. Torri says that the prevailing customary law of the land was that “wrecked ship and its cargo became the property of the authorities ruling the country on whose coasts the wreckage has occurred”.² He says that the Indian ship owners and Turkish or Arab ruler had clandestine understanding, and after the wreck the spoils were shared by both.

Yet Valentia has cited another instance of a wreck of Indian ships in 1803 on the coast between Mount Febx and Zaila. Soon after the wreck the chief of the coast seized all that was contained in

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¹ In response to a letter of explanation issued by the Court of Directors at London to Mr. Hodges on the persuasion of the ‘Sublime Porte’ following the complaint by the Chellabis among the wealthiest ship-owners in India, originally from Turkey. The allegation about Indian ships running aground and leaving late from Surat seems to be an unfounded allegation.

² Michelgugliembo Torri, ‘In the Deep Blue Sea: Surat and its merchant Class During the Dyarchic Era (1759-1800)’, The Indian Economic and Social History Review (IESHR), July-December, 1982, Nos 3 & 4, Vol. XIX, pp 273-74
the ships. But he was kind enough to rescue the crew of the ships and extended his hospitality till they finally left for Mokha.¹

An incident of shipwreck in 1806 is placed on record by Ali Bey (an Aleppo Traveller), which is alleged to have taken place nearby Jedda in the Red Sea. He says an English ship was got struck over a rock. The ship was commanded by an English Captain and her owner was Petrucci, the English Vice-Consul at Rosetta and a friend of the Sheriff of Mecca.² After the wreckage the Arabs (as Ali Bey calls them) got into the ship and took possession of the cargo. The governor of Geneba, on the other hand, seized the hull and the rigging. The captain’s hue and cry for the return of the ship’s store was of no avail. He was even denied entry into the ship to bring out the necessary papers. His request to the Sheriff for a certificate of the misfortune that had befallen him in order to justify his position as a victim of the wreckage to the owner of the ship went obviously unheard.³ Ali Bey narrates that the captain was so much desperate


2. According to the account the Sheriff of Mecca had a very lucrative trade with Asian countries and for this brisk trade the English were very helpful to him. He was extraordinarily rapacious and always looked for money from captains of ships by unfair means. So far his shipping in the Red Sea was concerned, he always enjoyed priority over other merchants in matter of loading of cargoes. See Ali Bey, Travels in Arabia, London, 1816. Vol. 2, p. 121.

3. It appears as if before the actual wreckage, the Captain had already perceived some danger; he went personally to the Sheriff for a pilot and an anchor but the Sheriff put him to insult rather than rendering him any help. Ali Bey, Travels, Vol. 2, pp. 121-22.
that he made request for a certificate from Ali, who came to his help by certifying the catastrophe to the ship after taking the declaration of the sailors who had accompanied the captain.

Yet another aspect, slightly different, emerges from Ali Bey’s description of another ship-wreck of a dhow around Jabel Hazen, also in the Red Sea. It was the dhow our traveller as well was aboard it. The wreckage was caused because of a large hole in the keel of the vessel near the prow, which had drawn a lot of water. Having been rescued by safety boats the passengers of the ill-fated ship wished the captain of another ship putting up anchor nearby to take them aboard and on his refusal they approached the captain of yet another ship. Ali Bey says that the captain’s refusal was due to the fact that since there was frequent occurrence of misfortunes on ship in that sea (i.e. Red Sea), it was customary not to allow on board another ship, passengers or cargo of a wrecked ship, without its master’s consent. However, as the survival of the ship became nearly impossible the captain signalled to the passengers to shift themselves to another one, which the latter did accordingly.

On law of wreckage there is account of Henry Pottinger of the year 1810. He says that in his presence in the Darbar of the ruler of

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1. Ali Bey at this juncture describes the disasters that the passengers aboard the dhow had to encounter and then subsequently how they were saved from the peril. Ali Bey, Travels, Vol. 2, p. 165.
Beluchistan a letter of the *Imam* of Muscat addressed to the Baluch ruler was presented by an Arab messenger. The letter took up the case of an ill-fated vessel of the *Imam*, driven away on the coast near Someany and wrecked there. However, from the letter it appears some trifling goods were recovered from the place of occurrence of the wreckage. The *Imam* in his letter requested the ruler that the recorded goods might be delivered to his people. The Baluch ruler in very audible tone made proclamation of the return of the ship's store. This was just a gesture of goodwill and friendship; otherwise there was no compulsion or obligation whatsoever to return the ship's store.¹

The age-old law of wreckage, however, was in no way in the interest of modern shipping in Asian waters. It was owing to this perhaps that the British in India made a demand upon Mohammad Ali *Pasha* to agree to a clause on issue of wreckage in the Red Sea. A provisional treaty thus concluded between the British government in India and the *Pasha* of Egypt on 28th May 1810 stipulates as under:

"Should any British vessel either by contrary winds or any other unforeseen accident be wrecked or be obliged to run into any

of the ports in the Red Sea under the Dominion of the Pasha of Egypt, and to unload her goods thus loaded to provide for the safety of the caravans as far as Cairo”.¹

A “cowlnama” (written Engagement)² granted by the Imam of Muscat to the East India Company dated the 1st of Jamad al-awwal 1213 A.H. (12 October 1798) in its sixth clause stipulated that

“On the occurrence of any ship-wreck of a vessel or vessels appertaining to the English there should certainly be aid and comfort afforded on the part of this government, nor shall the property be seized”.³

What the law of the Indian Ocean countries about compensation in cases of piracy on high seas was, is brought home to us by the position taken by Jahangir’s administration in case of piracy committed by Captain Hall and his men upon a Chaul-based vessel, off Mokha in 1623. There was a great loss of cargo. Among the victims there was a party of Turks who clamoured for justice from Saif Khan against the English. They demanded compensation for their lost property worth 85,000 rials of eight. The Turks promised Saif Khan 50% of the claim. Rastell, seeing no chance

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¹ Secret and Political Department Diary, No. 366 of the Year 1810, p. 6754.
² The “cowlnama” in all consists of seven clauses on various diplomatic issues. The documents are preserved at Maharashtra Archives, Bombay.
³ Secret and Political Department, No. 68 of the Year 1798, f. 5387.
of escape, paid 70,000 *mahmudis* to Saif Khan as bribe on condition that the latter would allow him to load indigo, which he, however, did not permit. But the English, who were first imprisoned, were released. In June the same year the matter was referred to the Emperor. The English won over the governor and other potential men like Asaf Khan and others at the court. Jahangir exonerated the English and remarked that “neither the complainants nor the defendants were subjects of his, and the event complained of had taken place outside his jurisdiction.”¹ In other words, had the victims been subjects of the Mughal Empire, compensation from the English would have been due.

Danishmand Khan (then the Governor of Surat) confiscated the goods of the English merchants worth Rs. 184,000 (or more)² and that of the Dutch merchants worth Rs. 456,000 (and more) to compensate Mullah Abdul Ghafur on suspicion that the piracy on the latter’s ship was the result of an English and Dutch conspiracy.

Finally, as Lorimer has pointed out, the Mughals bound the European powers in 1695 to cooperate with their officials in suppression of piracy. But the measure proved futile and the piracy

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by 1696 was so rife in the Indian Ocean that even the Americans found it profitable to construct ships at New York purposely fitted for piracy.¹

That the Mughal authorities felt a certain obligation towards the safety of their subjects' shipping is shown by the letters in Persian to the Portuguese viceroy, which are preserved in the Lisbon archives (photocopies in the Department of History, AMU).

In 1701, Basalat Khan, the Mughal Faujdar of Tal Kokan-i-Adil Khani, wrote to the ‘Wazarail’ (viceroy) of Goa to instruct the Captain of Diu to return the boat of a Hindu merchant of Surat seized by the captain. Another letter addressed to the ‘Wazarail’ (viceroy) by the Faujdar requests the return of the ship Muhammadi Salamati owned by one Sheikh Mohammad, again a merchant of Surat. The Portuguese authorities were also asked to see that the ship reached Surat safely (under the protection of the East India Company since the ship was carrying British Flag). There is yet another piece of evidence of a slightly different nature. This evidence comes from the demand for compensation for loss of cargo of a wrecked ship during depredations by pirates infesting the coast of Aden has been made by Haines (of Indian navy) on behalf of the

¹ J G Lorimer, Gazetteer of the Persian Gulf, Oman, and Central Arabia, Vol. 1 (pt 1A), Calcutta, 1915, p 53
East India Company in January 1838 from the “sultan” of Aden who is described as “indolent and almost imbecile man, 50 years of age” and resided at Laha.¹

The outrage was alleged to have been committed by the pirates on the coasts of Aden on passengers and crew of some native craft carrying the British flag. The ill-fated ship is believed to have been wrecked in the neighbourhood of Aden. However, the Sultan undertook to make compensation for the plunder of the vessel and was made to sell the port and town to the English. But owing to the resistance of his son, the agreement reached between the British Government in India and the Sultan was declared null and vide by the former which resulted in British hostility and take-over of Aden on the 16 January 1838 by the naval steamer, Volege of 28 guns, and cruiser of 10 guns, with 300 Europeans and 400 native troops under Major Baillie.²

Investment of money on ships by Mughal officials for speculative motive for extra income was quite common at Surat and also in Bengal. But in cases of any untoward incident such as shipwreck or disaster like seizer of cargo of ships by European or

² Ibid
pirates of the Indian Ocean, the investor in all probability was the 
loser.¹

Delay in reaching the destination could cause considerable 
loss to the owner of a ship. When in 1643 the 'Discovery' of the 
East India Company owing to the adverse wind was delayed at Surat 
there was a sharp rise in the rate of insurance from 3 to 30% which 
was a sure sign of great loss expected to be incurred by the 
insurers.²

A varying body of law dealt with how property of merchants 
who died while on their travels or on board the ship would be 
treated. Ibn Battuta says that one As-Sarsari's brother (native of a 
town ten miles from Baghdad on the way to Kufa) was living in 
Cannanore and possessed immense wealth. He died willing his 
property in favour of his small children. As-Sarsari at the time of 
Ibn Battuta's departure was about to leave Cannanore for Baghdad 
with his brother's children and belongings, for says Ibn Battuta, "It 
is the custom of the inhabitants, of India as with those of the people 
of Sudan not to interfere with the property of the dead".³

1. Jean-Baptiste Tavernier, Travels in India (translated from the original French 
Edition of 1676), (tr.) V. Ball & (ed.) William Crooke, Delhi: Oriental Book 
2. President Fremlen at Swally Marine to the Company, January 17, 1643, 
English Factories in India, 1642-45, p. 92.
Ceasar Frederick (1581) tells us that the Portuguese had a 'House' known as "the school of sancta miseri cordia commissaria" in all cities under their jurisdiction.¹ These houses were placed under the jurisdiction of Portuguese governors, legally authorised to issue 'will' or 'Testament' on the payment ('if you give them for their pains') which the testate was allowed to retain in his possession. A 'Captain' on each voyage was privileged to recover the goods of these merchants who died during the voyage. In case of any dying intestate, the 'Captain' of justice for Portuguese Christians assumed in anticipation his own claim over the property of the deceased and by the time the heirs approached the authority concerned, the bulk of his belonging would have been consumed and very little left for the claimants.²

In another document from British Records there is an interesting case of one 'Cojah Cazar Gregorioa' a subject of Iran, who died intestate in a ship. He is said to have been born at "Shorret" circa 1730 to Persian parents. In its letter of claim for the Estate of Cazar Gregorioa to the government of India, the Persian government declares the year of Cojah's death as 1774; he had died

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1. Samuel Purchas, *Purchas His Pilgrimes* (20 volumes), Purchas & Sons, (London), 1905, Vol. 10, pp. 141-42. 'Cities' in the present context applies to perhaps port cities, the most famous among them were Hormuz, Goa, Malacca, Macao and Muscat which were commercially very important.
as an Iranian subject.¹ The papers of the intestacy reveal that the 'Cojah' was engaged in trade during the middle of the 18th century and died on his return voyage from Bengal on the Middleton, which got wrecked at 'Tofelgate'. He had his consignments on board the ship. He had no relation nor friend and therefore the agent of the East India Company at Basra, Henry Moore, had taken charge of his property.

Ali Bey around 1806 observed that the captain of a richly laden ship from Maldives Island anchored at Jedda harbour passed away, having made no will. According to customary law the Sheriff at once took possession of the ship and its cargo. Afterwards the Sherif sent the ship to India in company of his own richly laden ship, but both of them were seized by the French and only one of them returned and that too only after unloading the confiscated cargo of both of them, about which the Sherif lodged protest to Napoleon.²

Other local navigational customs may also be noted. Barkur (Faknar) on Malabar coast during Ibn Battuta's time was a port of call and our traveller says that according to the practice of the

₁. Political Department, Vol. 143 of 1870, ff. 8-20. It is noteworthy that since the deceased did not make any will or gift of his property the customary law of Iran, therefore, authorised the government to make the claim on behalf of the deceased.

country all ships passing through that port had to cast anchor there and pay tax. Ships that evaded payment were chased by the king’s officials and forcibly brought into the harbour and as punishment double the amount of tax was charged. These vessels were liable to be detained for any length of time.

Abdur Razzaq in the 15th century tells us of a practice that assured security to the merchants’ goods at Calicut. He says that the customs officers made themselves duty-bound to look after the merchandise stored in warehouses and kept strict watch over it. Only if a transaction was executed a duty of 1/40 was levied on the aggregate goods, and if it remained unsold no charge whatsoever was made.

By 1800 all those Indian shippers who sailed from Surat were made to carry the East India Company’s flag and enter ‘mochulka’. Ships that sailed under other than the British flag were liable to pay heavy fine. Certain conventions for carrying freight seem to have been prevalent in the Indian Ocean. For instance in 1795, for the transport of the East India Company’s cargo the factor at Mokha had

1. Rehla of Ibn Battuta, (translation), op.cit., pp. 184-85. The actual term used for tax in the text is ‘haqq-ul bandad’
2. Ibid., op.cit., p. 185.
4. Bombay Castle, 22 October 1802, Secret & Political Department, No. 128, f. 6069.

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first to apply to the captain (Nakhuda) and only when he agreed the freight was loaded.\(^1\) There was yet another convention in operation which made the traders and shippers both enter into an agreement before the consignment was loaded.\(^2\) The offer of carrying freight to Bombay and other Indian ports was made through a general announcement by the ship's captain himself. The terms and conditions for carrying freight as well were decided by Captain of the ship.\(^3\) It is to be presumed that similar conditions for shipping had prevailed in earlier times as well.

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