Chapter 1

HISTORICAL SURVEY OF MARITIME LAWS IN INDIA AND IRAQ

1.1 INTRODUCTION:

It is a well-known fact that maritime is the one among vital sectors that assists the socio-economic development of several countries surrounded by the sea or having inland water-bodies such as lakes and rivers.\(^1\) These features are of huge importance especially in terms of the trade \(i.e.,\) transportation of useful resources like for \(e.g.,\) fish, oil and other minerals. Trade therefore, is the life-blood of a nation and international trade is carried out predominantly through the mode of shipping.\(^2\) Both India and Iraq are emerging economic superpowers much of which is attributable to a spirit of entrepreneurship and a visionary instinct inherent in their people.

For proper long term sustainability and coordination, there must be a system of laws/rules to regulate the movement of ships in the international waters, hence, the need for maritime law.

Maritime law not only provides for the legal framework for maritime transport but also comprises of a body of legal rules and concepts


concerning the business of carrying goods and passengers by water.\(^3\) In other words, maritime law\(^4\) subsumes the entire body of laws, rules, legal concepts and processes that relate to the use of marine resources, ocean commerce, shipping, navigation, seaman, passengers and cargo, towage, wharves, peers, docks, insurance, maritime liens, and in some countries, inland waters.\(^5\)

The special jurisdiction of admiralty\(^6\) has a maritime purpose, different from the common law. It is not exclusively rooted in the civil law system, although it includes substantial derivations there from. It has a strong international aspect, but may undergo independent changes in several countries.\(^7\)

The flag flown by a ship determines what national laws govern it, \(i.e.,\) ships with an Iraqi flag answer to Iraqi law while Indian ships are governed by Indian admiralty laws and regulations passed by competent authorities in India.

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\(^4\) While maritime law consists of two broad elements, dividing it into two neat compartments and labelling them "public" and "private", is rather an oversimplification. The shipping industry is involved in many matters of general law and non-maritime legal transactions which are not part of the *lex maritime*, see, G. Gilmore and C. Black, *The Law of Admiralty* 1, 2\(^{nd}\) edn., Edition, (1975).


\(^6\) The word “admiralty”, which is derived from Arabic and probably entered into English through Spanish or French, refers to the special jurisdiction exercised by specialized English Courts known as Courts of Admiralty that originated in the medieval period.

1.2 MARITIME LAW:

“Maritime law” as already stated, it refers to the laws and regulations that deal with injuries and accidents that occur at sea, mutiny and other crimes aboard ship, alleged violations of the rules of the sea over shipping lanes, rights-of-way, maritime contracts and commerce. These laws solely oversee activities at sea or in any navigable waters, which include territorial and international waters. They also involve transactions with shipping or ocean fishery.

In most developed nations, maritime law is governed by a separate code and has a separate jurisdiction from national laws. The United Nations, through the International Maritime Organization, has adopted numerous Conventions that can be enforced by the navies and coast guards that have signed the treaty outlining the rules. The principle provisions of modern maritime law that constitute international public maritime law fall into three categories:

a) **Conventions that regulate the legal regime of maritime areas:**

These are: the *United Nations Convention on the Law of the Sea, 1982* [hereinafter referred to as *UNCLS*]; the *Convention on Territorial Sea*...

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9 Ibid.
and the Contiguous Zone, 1958; the Convention on the High Seas, 1958, the Convention on the Continental Shelf, 1958, the International Convention on Protection of Underwater Telegraph Cables of, 1884, etc. There are also agreements regulating straits, rivers and canals, including the Convention of the Suez Canal, 1888, the Convention on the Regime of Straits, 1936, the Convention on the Regime of Navigation on the Danube, 1948, the Agreement on the Panama Canal, 1977, et.al.

c) **Other Conventions intended to protect the marine environment:**


1.2.1 **COMPONENTS OF MARITIME LAW:**

Although admiralty actions are frequently brought *in personam*, against individual or corporate defendants only, the most distinctive feature of admiralty practice is the proceeding *in rem*, against maritime property, that is, a vessel, a cargo, or “freight,” which in shipping means the compensation to which a carrier is entitled for the carriage of cargo.\(^\text{12}\)

Under maritime law, the ship is personified to the extent that it may sometimes be held responsible under circumstances in which the shipowner

himself is under no liability. The classic example of personification is the
Compulsory Pilotage case.\(^\text{13}\) Some State statutes impose a penalty on a ship-
owner whose vessel fails to take a pilot when entering or leaving the waters
of the State. Since the pilotage is thus compulsory, the pilot’s negligence is
not imputed to the ship-owner. Nevertheless, the vessel itself is charged with
the pilot’s fault and is immediately impressed with an inchoate maritime lien
that is enforceable in Courts.

Maritime liens can arise not only when the personified ship is charged
with a maritime tort, such as a negligent collision or personal injury, but also
for salvage services, for general average contributions, and for breach of
certain maritime contracts\(^\text{14}\).

In a proceeding in rem, the vessel, cargo, or freight can be arrested
and kept in the custody of the Courts unless the owner obtains its release by
posting a bond or such other security as may be required under the
applicable law or as may be acceptable to the plaintiff. More frequently,
however, the owner will post security to avoid a threatened arrest, and the
property never has to be taken into custody. When the judgment is for the
plaintiff in a proceeding in rem, there will be a recovery on the bond or other
security if the owner of the property does not pay; or, if security has not

\(^{13}\) See, “Maritime Law in India”, http://www.lexuniverse.com/shipping-laws/india/Maritime-Law-in-
India.html, [accessed on 13\textsuperscript{th} October 2012.

\(^{14}\) T. Carver, Carriage by Sea, 12\textsuperscript{th} ed., (Colinvaux Publishers, 1971).
been posted, the Courts will order the property sold, or the freight released, in order to satisfy the judgment\textsuperscript{15}.

The sale of a ship by an admiralty Courts following a judgment \textit{in rem} divests the ship of all pre-existing liens—and not merely those liens sought to be enforced in the proceeding \textit{in rem}. By way of contrast, the holder of an \textit{in personam} judgment against a ship-owner can, like any judgment creditor, have the ship sold in execution of the judgment; but such a sale, unlike the sale under an admiralty judgment \textit{in rem}, does not divest existing liens; the purchaser at the execution sale takes the ship subject to all such liens. Thus, an \textit{in rem} proceeding has decided advantages over a proceeding \textit{in personam} in a case in which the shipowner is insolvent.

Efforts have been made from time to time to increase the security value of ship mortgages, in order to encourage lending institutions to finance vessel construction, but these efforts have not been very successful, largely because of differences in national laws respecting the relative priorities of mortgages and maritime liens.

Under general maritime law there is a complex hierarchy of maritime liens; that is to say, in a proceeding that involves distribution of an inadequate fund to a number of lien claimants, liens of a higher rank will be

paid in full in priority over liens of a lower rank; and in most countries a ship mortgage ranks lower than a number of maritime liens.

Attempts were made to harmonize some of these conflicts by international Conventions signed in 1926 and 1976, but the first failed to win widespread support and as of the end of 1983, the second had been ratified by only half of the signatories required for the Convention to enter into force.

In view of the above, both India and Iraq have enacted various laws and framed rules and regulations to facilitate smooth flow of traffic in the international seas.

1.3 HISTORY OF ADMIRALTY LAW: A GLOBAL VIEW

Admiralty law\textsuperscript{16} has been in existence since time immemorial. From the fact that the ancient Egyptians engaged in shipping on a wide scale, it can be inferred that they had at least rudimentary laws regulating that activity, although no trace of any has been found thus far.\textsuperscript{17} Nor is there

\textsuperscript{16}Admiralty law refers to the body of law including procedural rules developed by the English Courts of Admiralty in their exercise of jurisdiction over matters pertaining to the sea. This jurisdiction was distinctively different from that of the common law Courts. Admiralty law thus originally encompassed those subject matters over which the admiralty Courts possessed inherent jurisdiction imbued through a process of evolution. Subsequently, these subject matters, which bore a maritime character, were codified and enumerated by statute.

\textsuperscript{17}It may be noted that from the earliest period maritime law was shaped according to the practical needs of those early merchants and seafarers engaged in maritime trade, see, Thomas J. Schoenbaum and Jessica L. McClellan, Chapter 1. “Admiralty and Maritime Law: Background and Development”, Westlaw International, 2009; http://international.westlaw.com.ludwig.lub.lu.se/result/default.wl?ridb=CLID_DB7764463010262&cfid=1&db=ADMMARL&sv=Split&service=Search&eq=TOC&fmgv=s&method=TOC&action=Search&query=MARITIME&nt=WestlawInternational&fn=_top&origin=Search&vr=2.0&rlt=CLID_QRYR8898246
anything known of any maritime laws of the Phoenicians, who succeeded the Egyptians as commercial leaders in the Mediterranean.\textsuperscript{18}

Seaborne transport was one of the earliest channels of commerce and/or trade, and rules for resolving disputes involving maritime trade were developed early in recorded history. Historical records of these laws include the Rhodian Law\textsuperscript{19} (\textit{Nomos Rhodion Nautikos}) of which no primary written specimen has survived,\textsuperscript{20} but which is alluded to in other legal texts: Roman and Byzantine legal Codes and later the customs of the Hanseatic League.\textsuperscript{21} In Southern Italy the \textit{Ordinamenta et Consuetudo Maris}\textsuperscript{22} (1063) at Trani and the Amalfian Laws\textsuperscript{23} were in effect from an early date.\textsuperscript{24}

The Islamic Law also made major contributions to international admiralty law\textsuperscript{25} departing from the previous Roman and Byzantine maritime laws in several ways. These included muslim sailors\textsuperscript{26} being paid a fixed

\textsuperscript{18} “History of Maritime Law”, \url{http://legal-dictionary.thefreedictionary.com/Admiralty+and+Maritime+Law}, [accessed on 14\textsuperscript{th} February 2011].
\textsuperscript{19} See, “Byzantine Law” \url{http://en.wikipedia.org/wiki/Rhodian_law#The_Sea_Laws}, [accessed on 17\textsuperscript{th} September 2011].
\textsuperscript{20} Robert D. Benedict, \textit{The Historical Position of the Rhodian Law} 18, Yale Law, 1909.
\textsuperscript{21} “Hanseatic League”, \url{http://en.wikipedia.org/wiki/Hanseatic_League}, [accessed on 15\textsuperscript{th} August 2011].
\textsuperscript{22} See, “Ordinamenta et Consuetudo Maris”, \url{http://en.wikipedia.org/wiki/Ordinamenta_et_consuetudo_maris}, [accessed on 19\textsuperscript{th} September 2011].
\textsuperscript{23} See, Amalfian Laws”, \url{http://en.wikipedia.org/wiki/Amalfian_Laws}, [accessed on 11\textsuperscript{th} October 2011].
\textsuperscript{24} See, “Admiralty Law”, \url{http://en.wikipedia.org/wiki/Admiralty_law}, [accessed on 17\textsuperscript{th} May 2011].
\textsuperscript{26} “Islamic Economies in the World”, \url{http://en.wikipedia.org/wiki/Islamic_economics_in_the_world#Age_of_discovery}, [accessed on 24\textsuperscript{th} June 2011].
wage "in advance" with an understanding that they would owe money in the event of desertion or malfeasance, in keeping with Islamic Conventions in which contracts should specify "a known fee for a known duration." Muslim jurists also distinguished between "coastal navigation, or cabotage", and voyages on the "high seas", and they made shippers "liable for freight in most cases except the seizure of both a ship and its cargo". Islamic law "departed from Justinian's Digest and the Nomos Rhodion Nautikos in condemning slave jettison", and the Islamic Qirad was a precursor to the European commenda limited partnership. The Islamic influence on the development of an international law of the sea can thus be discerned alongside that of the Roman influence.28

Thereafter, admiralty law was introduced into England by the French Queen Eleanor of Aquitaine while she was acting as regent for her son, King Richard the Lionheart. She had earlier established admiralty law on the island of Oleron where it was published as the Rolls of Oleron in her own lands although she is often referred to in admiralty law books as "Eleanor of

27 In contrast, Roman and Byzantine sailors were "stakeholders in a maritime venture, inasmuch as captain and crew, with few exceptions, were paid proportional divisions of a sea venture's profit, with shares allotted by rank, only after a voyage's successful conclusion.

Guyenne, having learned about it in the eastern Mediterranean while on a Crusade with her first husband, King Louis VII of France.²⁹

In England, special admiralty Courts handle all admiralty cases. These Courts do not use the common law of England, but are civil law Courts largely based upon the Corpus Juris Civilis of Justinian.

Admiralty⁴⁰ Courts were a prominent feature in the prelude to the American Revolution.⁴¹ Admiralty law became part of the law of the United States as it was gradually introduced through admiralty cases arising after the adoption of the U.S. Constitution in 1789. Many American lawyers who were prominent in the American Revolution were admiralty and maritime lawyers in their private lives. Those included are Alexander Hamilton in New York and John Adams in Massachusetts.⁴²

In 1787, Thomas Jefferson, who was then ambassador to France, wrote to James Madison proposing that the U.S. Constitution, then under consideration by the States, be amended to include trial by jury in all matters of fact triable by the laws of the land as opposed to the law of admiralty.

³⁰ While in the English language the word "admiralty" originates in the office of the Lord Admiral, its root meaning is derived from Arabic, see, Thomas J. Schoenbaum and A.N.Yiannopoulos, Admiralty and Maritime Law, Cases and Materials 1, (Charlottesville, Va., 1984).
The result was the Seventh Amendment to the U. S. Constitution. Alexander Hamilton and John Adams were both admiralty lawyers and Adams represented John Hancock in an admiralty case in colonial Boston involving seizure of one of Hancock's ships for violations of Customs regulations. In the modern era, Supreme Courts Justice Oliver Wendell Holmes was an admiralty lawyer before ascending to the Federal Bench.

1.4 HISTORICAL DEVELOPMENT OF MARITIME LAW IN INDIA:

Maritime law has proved to be of rich heritage in trade and commerce in India. The Indian Sub-continent is bounded by the Indian Ocean on the south, the Arabian Sea on the west, and the Bay of Bengal on the east. India has a coastline of 7,517 kilometers.\textsuperscript{33} Since the period of the Indus Valley Civilization, India has a recorded maritime history.

Primarily, the maritime links have developed owing to the maritime trade and maritime journeys. During the 17th Century, Portugal had established colonies in Goa and Bombay and other European countries like France, Sweden, and the Netherlands were already actively trading with

India\textsuperscript{34}. With the advent of the British East India Company in India for trade purposes, the maritime trade and journey received another impetus.

By the end of the 17th century, the British Empire had acquired effective authority over the three principal ports in India, Bombay, Madras, and Calcutta. After the complete colonization of India, the British Government has enacted several laws to regulate the various aspects of the shipping industry.\textsuperscript{35} The \textit{Bombay Coasting Vessels Act}, 1838\textsuperscript{36} is the first codified law on the subject. The restrictive British laws on shipping providing preferential treatment to British shipping and navigation impeded the growth of the Indian shipping industry. The provisions of the International Conventions with respect to \textit{Load Lines}, 1930 and \textit{SOLAS}, 1948, were ratified by India and were incorporated through \textit{Indian Merchant Shipping Amendment Acts} of 1933 and 1953. After independence, the \textit{Merchant Shipping Act}, 1958 was passed by the Indian Parliament in order to remove the deficiencies in the earlier laws regarding the provision for registration of Indian Ships.

\textsuperscript{35} See, “Maritime Law in India”, \url{http://www.lexuniverse.com/shipping-laws/india/Maritime-Law-in-India.html}, [accessed on 13\textsuperscript{th} October 2012].
\textsuperscript{36} See, “Bombay Vessels Act”, \url{http://shipping.gov.in/writereaddata/linkimages/coastingvessels1560069767.htm}, [accessed on 13\textsuperscript{th} October 2012].
The historical development of admiralty jurisdiction and procedure in India is of practical as well as theoretical interest, since opinions in admiralty cases frequently refer to the historical background in reaching conclusions on the questions at issue.\textsuperscript{37}

Admiralty jurisdiction exercised by the Indian Courts is those conferred on them during the British Regime. Initially maritime disputes were heard by ordinary civil Courts. In 1360 the King of England granted to the ‘Admiral of the Fleets’ the power to hear and decide maritime disputes such as piracy, maritime civil disputes, maritime torts and charter party disputes. These admiralty Courts applied the ‘law of merchant’ or ‘\textit{lex mercatoria}’ and not the English common law\textsuperscript{38}. This had resulted in a serious conflict between the admiralty Courts and the common law Courts in England. Consequently, the Statutes of 1389 and 1391 were passed demarcating the jurisdiction of admiralty Courts and of the Common Law Courts\textsuperscript{39}.

The admiralty jurisdiction of Indian Courts started with the \textit{Letters Patent} which conferred admiralty jurisdiction on the Chartered High Courts of Calcutta, Bombay and Madras. Clause 32 of the \textit{Letters Patent} of 1865

\textsuperscript{37} “Maritime Practice in India”, \texttt{http://www.maritimepractice.com/}, [accessed on 10\textsuperscript{th} August 2011].
\textsuperscript{39} The admiralty Courts had no jurisdiction to decide disputes “within the realm” of the Great Britain.
stated that the Letters Patent Courts “shall have and exercise all such civil and maritime jurisdiction as may now be exercised by the said High Courts as admiralty or vice-admiralty”\textsuperscript{40}. Subsequently, this jurisdiction was enlarged for colonial Courts by the \textit{Colonial Courts of Admiralty Act}, 1890, which was extended to India by the \textit{Colonial Courts of Admiralty (India) Act}, 1891.\textsuperscript{41}

Thus, by the latter Act the Chartered High Courts in India were vested with the admiralty jurisdiction which was enjoyed by the High Courts of England. This position continued under the \textit{Government of India Act}, 1915. Section 106 of the 1915 Act specifically provided that all High Courts established by Letters Patent were Courts of record and had such original and appellate jurisdiction including admiralty jurisdiction.

Section 223 of the \textit{Government of India Act}, 1935 also stated that the High Courts shall have the powers and jurisdiction that they had enjoyed before. After independence and the coming into force of the \textit{Constitution of India} the admiralty jurisdiction was protected by Article 225 which stated as follows:


\textsuperscript{41} David W. Steel and Francis D. Rose, \textit{Kennedy’s Law of Salvage} 67, 5\textsuperscript{th} edn., (London: Stevens and Co., 1985).
The jurisdiction of and the law administered in any existing High Courts, and the respective powers of the judges thereof in relation to the administration of justice in the Courts, including the power to make rules of Courts and to regulate the sittings of the Courts and of the members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution.

Thus, the current position on the admiralty jurisdiction after the advent of the Constitution of India has been summarized by the Supreme Courts in *M. V. Elisabeth v. Harwan Investments and Trading Ltd.*\(^42\) in the following words:

The British statute assimilating Indian High Courts to the position of the English High Courts in respect of admiralty jurisdiction is an enabling legislation and it is but one of the strands of jurisdiction vested in the High Courts by virtue of the constitutional provisions. The jurisdiction of the High Courts is governed by the Constitution and the laws, and the continuance in force of the existing laws is not a fetter but an additional source of power. Access to Courts for redressal of grievance being an important right of every person, it is essential that the jurisdiction of the Courts is construed harmoniously and

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consistently with its vital function in that respect, so that absence of legislation will not jeopardize that right.

Admiralty jurisdiction, despite the peculiarities of its origin and growth rooted as it is in history and nurtured by the growing demands of international trade is nevertheless a part of the totality of jurisdiction vested in the High Courts as a superior Courts of record, and it is not a distinct and separate jurisdiction as was once the position in England before the unification of Courts.\(^{43}\) The 1890 and 1891 Acts specifically conferred admiralty jurisdiction on the Indian High Courts by reason of their being Courts of unlimited jurisdiction. These Acts did not create any separate or distinct jurisdiction, but merely equated the Indian High Courts to the position of the England High Courts (united and consolidated as that Courts has been since 1875) for the exercise of admiralty powers within the jurisdiction of the former”.

In the above judgement the Supreme Court also expressed its anguish that the “rights and interests of citizen of the independent sovereign state continued to be governed by legislations enacted for colonies by the British Parliament” and that “[v]arious provisions in 1890 Act have been rendered not only anomalous but even derogatory to the sovereignty of the State”.

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Following the pronouncement of the Supreme Court in *M V Elisabeth’s case* on the urgent need to codify and clarify the admiralty laws of India, the Law Commission of India in its 151st Report tabled in the Parliament in August, 2005 recommended for the enactment of a new Admiralty Act. Consequently, the *Admiralty Bill, 2005* was introduced in the Lok Sabha on March 11, 2005. The object of the Bill was to consolidate and amend the law relating to admiralty jurisdiction of Courts, legal proceedings in connection with ships, their arrest, detention, sale and connected matters. Clause 3 of the Bill conferred civil jurisdiction on High Courts with a provision for conferring jurisdiction on District Courts if necessary. Further, Clause 5 of the Bill while specifying the scope of Admiralty Jurisdiction gave it the widest possible scope by expanding the various heads on which admiralty jurisdiction can be exercised by Admiralty Courts. Moreover, Clause 6 of the Bill provided for prior notice before initiating action *in rem* against ships of Indian registry. This apart, Clause 7 of the Bill dealt with exercise of *in personam* jurisdiction. In addition, Clause 13 of the Bill while defining maritime liens adopted the wider definition as provided under the 1993 Geneva Convention on Maritime Liens and Mortgages.

The Bill was referred to the Parliamentary Standing Committee on Tourism, Transport and Culture, (Standing Committee) which recommended
the passage of the Bill after carrying out certain suggested changes. The main recommendation of the Standing Committee for change was to confer a pan-Indian jurisdiction on the eight High Courts of Madras, Bombay, Calcutta, Ahmadabad, Bhubaneswar, Cochin, Hyderabad and Bangalore. It also recommended a review of the claims over which admiralty jurisdiction could be exercised by admiralty Courts and further recommended that maritime liens were to be limited to the five heads as approved by the Supreme Courts in Won Fu’s case. However, in spite of the recommendation of the Standing Committee the above Bill was never reintroduced in the Parliament with suggested changes and the Bill was allowed to lapse.

All in all the modern maritime law of India has developed over a long period (1838-2014), from colonial times, vide the Admiralty Offences (Colonial) Act, 1849, the Inland Steam-vessels Act, 1917; the Coasting Vessels Act, 1838; the Indian Registration of Ships Act, 1841; the Indian Registration of Ships Act (1841) Amendment Act, 1850; the Indian Ports Act, 1908; the Indian Merchant Shipping Act, 1923; the Merchant Seamen

45 Won Fu Production v. Justine Tim, U.S 224 FB
(Litigation) Act, 1946; the Control of Shipping Act, 1947; and the Merchant Shipping Laws (Extension to Acceding States and Amendment) Act, 1949, Territorial Waters Jurisdiction Act, 1878, etc. In addition to these, a series of legislative Acts of British Parliament, promulgated between 1823 and 1940, governed various aspects of Indian shipping, including shipowners’ liability, salvage, certification of seafarers, safety and load line conventions.

The Government of India in 2005 circulated a draft bill for an Admiralty Act, 2005, seeking to repeal all of the aforementioned obsolete legislations and in their place, to bring into existence a comprehensive law to regulate the claims, jurisdiction, procedure, etc., in Admiralty in India.

In addition to the above, there are other legislations applicable in India in relation to maritime law, and they are the (Indian) Merchant Shipping Act, 1958, the (Indian) Carriage of Goods by Sea Act, 1925, the (Indian) Bills of Lading Act, 1856, the Multimodal Transportation of Goods Act, 1993, and the Major Port Trusts Act, 1963. There are further general statutes, like the Marine Insurance Act, 1963, the Contract Act, 1872, the Sale of Goods Act, 1930, the Evidence Act, 1872, the Indian Penal Code, 1860, the Transfer of Property Act, 1882, the Civil Procedure Code, 1908, the Criminal Procedure Code, 1973, the Limitation Act, 1963, the Companies Act, 1956.

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46 It is relevant to point out that the Indian Ports Act, 1908 and the Major Port Trusts Act, 1963 deal with the administration of the ports and the jurisdiction over ships in ports.
the Arbitration and Conciliation Act, 1996, the Maritime Zone of India Act, 1981, the Territorial Waters Continental Shelf – Exclusive Economic Zone and Other Maritime Zones Act, 1976, etc.

Further, the Customs Act, 1962, contains various regulatory measures in relation to ships, goods and persons, in connection with importation or exportation, clearance of goods for home consumption, exports, dutiability of goods, prohibitions, etc. In addition thereto, there are certain laws in relation to employment of labour and payment of compensation to seafarers, officers and crew in cases of death or disability etc., all of which would also be relevant in the context of the Indian maritime law.

Apart from these legislations, there are judgements of various Courts in India, which have laid down general principles of maritime law as is recognised and practiced in India.

1.5 HISTORICAL DEVELOPMENT OF MARITIME LAW IN IRAQ:

Maritime law in Iraq, just like India, has proved to be of rich heritage in trade and commerce since time immemorial. Iraq has a narrow section of
coastline measuring 58 km on the northern Persian Gulf between Iran and Kuwait.\textsuperscript{47}

The genesis of maritime legislation or codified maritime law in Iraq begins with the \textit{Code of Hammurabi of Babylon} dating back to the period between 2000 and 1600 B.C. It contained rules with respect to marine collisions.\textsuperscript{48}

In the ancient time when the old world civilizations and kingdoms used to name Iraq with two reveries valley (Mesopotamia) at that time, there was the first lawmaker in the history of mankind ever that was the wised king (Hammurabi), the great Babylon king who in his laws had organized every details in the human life starting with schools, sailing, buying, marriage, crimes and even banks.\textsuperscript{49} Among these laws there were the trading and/or maritime laws \textit{i.e., Hammurabi laws} and \textit{Ashnonina laws}. These laws contained provisions like for \textit{e.g.}, the salary of the seamen, the charting value for full ship or naked ship, paying for damages and/or insurances,\textit{ etc.}\textsuperscript{50}


\textsuperscript{50} \textit{Ibid.}
Later in the 19th century, the Iraqi maritime sector began following the Oatmeal maritime law in spite of the fact that many of working Codes in place for maritime trade were from British sources.

In 1920s, Iraq became a kingdom. The new kingdom’s urgent mission was enacting new laws and ratifying International Codes. The first Iraqi maritime law (Law No. 5, Registering of Merchant Ships) was enacted in 1928. It was followed by Law No. 44 (Organizing of Iraqi Ports According to The International Standers) in the 20th century.\textsuperscript{51} The other instruments were:

- Law No. 6 in 1935 (Organizing of Manning on Ships).
- Law No.7 in 1935 (Acknowlegding of International Flags).

In 1963, the Government of Iraq established a new Ministry (the Iraqi Labour and Social Affairs Ministry) to coordinate with the International Labour Organization [hereinafter referred to as ILO]). The Ministry helped to a great extent in adopting the ILO Conventions relating to maritime law in Iraqi like for e.g.,

- ILO Convention No.16 (Medical Examination of Young Persons - Sea-) in 1921: enacted in Iraq as Law No.177 in 1965;

\textsuperscript{51} “Iraqi maritime legal position according to the International Maritime Organization (IMO) & International Labour Organization (ILO) conventions”, \url{http://www.pfri.uniri.hr/imla19/doc/019.pdf}, [accessed on 19th October 2011].
• ILO Convention No.8 (Unemployment Indemnity-Ship Wreck) in 1920: enacted in Iraq as Law No.178 in 1965;

• ILO Convention No.22 (Seamen Employment Contracts) in 1926: enacted in Iraq as Law No.75 in 1966;

• ILO Convention No.23 (Repatriation of Seamen) in 1926 enacted in Iraq as Law No.29 in 1967;

• IMO Convention (Joining) in 1948: enacted in Iraq as Law No.98 in 1973;

• IMO-TONNAGE Convention (Tonnage Measurements of Ships) in 1969: enacted in Iraq as Law No.19 in 1977;

• IMO-FAL Convention (Facilitation of International Maritime Traffic) in 1965: enacted in Iraq as Law No.73 in 1977

• IMO-SOLAS Convention (Safety of Life’s At Sea) in 1974: enacted in Iraq as Law No.119 in 1978.

• ILO (Accommodation of Crews) Convention No.92 in 1949: enacted in Iraq as Law No.141 in 1977 with Iraqi law no.141 in 1977;

• ILO (Continuity of Employment-Seafarers-) Convention No.145 in 1976: enacted in Iraq as Law No.133 in 1979;

• ILO (Seafarers Annual Leave with Pay) Convention No.146 in 1976: enacted in Iraq as Law No.134 in 1979; and

The Iraq-Iran war (1980-1988) had a huge impact in Iraq in all sectors. The Iraqi merchant fleets had to use non-Iraqi ports out of Iraqi water ways. This led Iraq to adopt new Conventions \textit{i.e.,}

• IMO-INMARSAT Convention (International Maritime Satellite Organization) in 1976: enacted in Iraq as Law No.43 in 1980;

• UN-UNCOLS Convention (United Nations Convention of Law at Sea) in 1982: enacted in Iraq as Law No.50 in 1985;

• IMO-INMARSAT OA Convention (International Maritime Satellite Organization –Operation Agreement) in 1976 enacted in Iraq as Law No.61 in 1986;

• ILO (Wages, Hours of Work & Manning-Sea-) Convention No.93 in 1949;

• ILO (Wages, Hours of Work & Manning-Sea-) Convention No.109 in 1958.

In the Gulf War-1991, Iraq also suffered huge damages. The international community blocked Iraq from contacting with maritime organizations and bodies like International Maritime Organization [hereinafter referred to as \textit{IMO}] and ILO. But Iraq managed to ratify one IMO Convention, \textit{i.e.,} the
IMO-STCW Convention (Standards of Training, Certification & Watch keeping for Seafarers) of 1978 with Iraqi Law No.44 in 1999.

The late 1970s is regarded as the most active stage in maritime law in Iraq. In that period, Iraqi maritime sector had three maritime merchant fleets that belonged to three different Ministries as below:

- Iraqi Maritime Transport Co. fleet (Iraqi line) from the Iraqi Transport Ministry;
- Iraqi Oil Tankers Co. fleet from the Iraqi Oil Ministry;
- Iraqi Fishing Co. fleet from the Iraqi Agriculture Ministry.

After 2003, Iraq joined the international community including all fields even the maritime sector in the international level. The last maritime (ILO) Convention which is the (Working in Fishing) was finally adopted in 2007.

Having thoroughly analysed the historical developments in the area of maritime law in India and Iraq, we will now turn to the next Chapter which inadvertently explains the meaning of certain basic concepts which are often used under maritime law like for e.g., Base Like, Internal Water and Territorial Sea, Contagious Zone, Continental Shelf, etc.