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INDIA AND MARITIME LAWS: A SYSTEMATIC REVIEW OF THE MARITIME PIRACY BILL, 2019

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ABSTRACT

Maritime piracy is a complex transnational security issue that is characterised by new worldwide financial activities and organisational structures, an excess of labour, and low entry barriers. The Indian Navy and Coast Guard have been actively patrolling, which has resulted in the capture of pirates and the requirement to punish them by specialised domestic legislation. Charges like armed robbery (Section 392 of the IPC) and claiming the admiralty courts' jurisdiction (which deals with marine and maritime matters) were deemed lacking. To prosecute piracy acts and ensure the safety of Indian maritime trade, vessels, and crew, the anti-piracy statute special was required. External minister S Jai Shankar while moving the bill in the house asserts that this law will play a crucial part in protecting sea routes since over 90% of India's trade is conducted by coastal lines, and more than 80% of the nation's hydrocarbon needs were supplied through the sea. 27 incidents involving 288 Indian nationals were detected between 2008 and 2011, and 19 cases involving 155 Indian crew members were detected between 2014 and 2022. The Indian parliament passed Anti maritime Piracy Bill in 2019 to assure respect and commitment to international law as India is a member of the united nation convention on the law of the sea (UNCLOS), but is yet to form any municipal laws regarding the same. The researcher in this paper tries to

analyse and examine the effect of the Anti-Maritime Piracy bill, of 2019. The researcher also tries to evaluate the legal history of piracy in India. The paper examines the current scenario of piracy law in India and the world through various case laws.

KEYWORDS: Anti-maritime piracy bill, 2019, Piracy, Indian Ocean, UNCLOS, Exclusive Economic Zones

INTRODUCTION

Recently, India passed Anti Maritime Piracy Bill, 2022 intending to tackle maritime piracy in international water. This Bill was earlier passed in 2019 but it lapsed due to certain discrepancies. Currently, India does not have any specific laws or legal provisions. The Bill provides a mechanism to take action against piracy in territorial waters, the Exclusive Economic Zone (EEZ), and the high sea. This Bill has accepted 14 of 18 recommendations made by The Standing Committee.¹⁴⁹⁵ The Bill also provides penalising and prosecuting the provisions of persons committing the act of piracy. The idea of this bill was first laid down in 2012.¹⁴⁹⁶

This Bill was planned in consonance with UNCLOS which was formed in 1982 and was ratified in India by 1995 but has yet to enact any municipal law under Article - 253 of the Indian Constitution.

In recent years, there has been a significant increase in the number of cases related to piracy around sea borders near India. For instance, a report which was revealed by RECAAP ISC suggests that there are almost 10 incidents of piracy and armed robbery on ships

¹⁴⁹⁵ PTI, Parliament passes anti-piracy bill to ensure maritime security, THE ECONOMIC TIMES (2022), <https://economictimes.indiatimes.com/news/india/parliament-passes-bill-to-deal-with-maritime-piracy/articleshow/96401787.cms?from=mdr> (last visited Jan 11, 2023).
¹⁴⁹⁶ Id.

off the coasts of India and Bangladesh.¹⁴⁹⁷ Another example of sea piracy is that about 18 Indian crude oil carrier was pirated. The Maritime Union of India suggested that there was a rapid increase in sea piracy by about 26% due to the pandemic.¹⁴⁹⁸

UNCLOS (United Nations Convention on the Law of the Sea) defined Piracy as "any illegal acts of violence, detention or depredation committed for private ends by the crew or the passengers of the private ships directed of high seas against another ship or persons or property on board such ship or committed against a ship, persons or property in a place outside the jurisdiction of any state."¹⁴⁹⁹

The UN General Assembly passed a resolution that talks about "how the states should take major steps under national laws apprehension and prosecution for the people who are alleged to committed acts of piracy in collaboration with International Maritime Organization implementing efforts to effectively combat piracy and armed robbery at sea."¹⁵⁰⁰

The United States Security Council Resolutions encourages States to cooperate with the investigation and prosecution of all individuals who are involved in acts of piracy and armed robbery. They also encourage States to make piracy a criminal offence under their domestic law and to favourably consider prosecuting pirates and imprisoning pirates who have been found guilty.¹⁵⁰¹

¹⁴⁹⁷ Pia Krishnankutty, 10 cases of piracy, armed robbery on Indian and Bangladeshi ships this year, report says, THEPRINT (2020), <https://theprint.in/india/10-cases-of-piracy-armed-robbery-on-indian-and-bangladeshi-ships-this-year-report-says/462776/> (last visited Jan 11, 2023).

¹⁴⁹⁸ PTI, Maritime piracy major cause of concern for over two lakh Indian seafarers: MUI, THE ECONOMIC TIMES (2020), <https://economictimes.indiatimes.com/news/defence/maritime-piracy-major-cause-of-concern-for-over-two-lakh-indian-seafarers-mui/articleshow/79989175.cms?from=mdr> (last visited Jan 11, 2023).

¹⁴⁹⁹ Article-101, UNCLOS
¹⁵⁰⁰ National Legislation on Piracy, UN.ORG (2023), https://www.un.org/depts/los/piracy/piracy_national_legislation.htm (last visited Jan 11, 2023).

¹⁵⁰¹ T. Treves, Piracy, Law of the Sea, and Use of Force: Developments off the Coast of Somalia, 20 EUROPEAN JOURNAL OF INTERNATIONAL LAW 399-414 (2009), <https://academic.oup.com/ejil/article/20/2/399/500835> (last visited Jan 11, 2023).

The third largest ocean in the world is The Indian Ocean. It is mainly famous for the export of oil and global maritime trade. The Indian Ocean is home to many natural resources such as fish, nickel cobalt iron, zinc, silver and gold present in sizeable quantities. It covers a lot of water surface with a coastline measuring about 7517 in length which is the 18th longest in the world with 11 major and 168 minor ports along the coast.¹⁵⁰²

Among the nations with the greatest commercial cargo-carrying fleet, India comes in at the fifteenth number. 2.01 million square kilometres make up India's Exclusive Economic Zone. Marine vessels go across the Indian coastline zone in numbers close to 1,00,000.¹⁵⁰³

PIRACY AND ITS EVOLUTION THROUGH THE YEARS

The first noted instances of piracy were back in the 13th century BC. These are the exploits of the Sea Peoples, who in the Aegean and Mediterranean Sea at that time gave danger to trade. The Great Karnak Inscription, a collection of inscriptions about the king's fight against the Sea Peoples, was written by the Egyptian pharaoh Merneptah (1213-1203 BCE) and is still intact on a wall in an ancient temple of Luxor, Egypt. It specifically refers to them as the "peoples of the sea."¹⁵⁰⁴ The Sea Peoples, in addition to engaging in piracy, apparently had political ambitions and made attempts to seize control of ancient Egyptian territory in the late 19th Dynasty of the New Kingdom (1292-1190 BCE). By coincidence, the Kingdom's prestige and political influence were at their lowest point at the time of these invasions. Even under the Roman Republic (508-27 BCE), piracy was still

¹⁵⁰² The Maritime Boundaries of the Indian Ocean Region, GOOGLE BOOKS (2019), https://books.google.co.in/books?hl=en&lr=&id=j77Wr02ChMsC&oi=fnd&pg=PP11&dq=types+of+maritime+law+in+india&ots=hK6VISDSAc&sig=h2ZdU6gxpRDwi2a1XHSsG1MC0cc&redir_esc=y#v=onepage&q&f=false (last visited Jan 11, 2023).

¹⁵⁰³ Id.
¹⁵⁰⁴ Colleen Manassa. The Great Karnak Inscription of Merneptah: Grand Strategy in the Thirteenth Century BC. New Haven: Yale Egyptological Seminar, Department of Near Eastern Languages and Civilizations, Yale University, 2003.

an issue, albeit infrequently and on less-travelled channels. The Illyrians of the western Balkan peninsula, one of the most known piratical tribes, made a large portion of their income through piracy and used the Adriatic Sea as their base of operations.¹⁵⁰⁵ When the Romans took control of Illyria in 168 BCE, their misadventures finally came to a stop. Despite this, there were still pirate havens all along the eastern borders of the Republic, so piracy was still a problem for the Romans. During this period, there were a lot of pirates operating out of far-off places like the Anatolian coast, causing trouble for Republican trade. Famous Roman general Julius Caesar was even taken hostage by a band of Turkic pirates during a trip across the Aegean Sea in 75 BCE¹⁵⁰⁶ and was afterwards imprisoned on the tiny Dodecanese islet of Pharmacusa, which has barely one square mile of land. According to mythology, Caesar claimed he was worth at least fifty talents of gold when informed that the pirates' initial ransom for him was "twenty talents of gold." As a result, the pirates increased it to that amount. All in vain, though, as soon as Caesar assembled a fleet of Roman ships, chased and apprehended the pirates, and ordered his men to execute them. The Roman Senate overwhelmingly decided to combat the menace of piracy in the Republic in 67 BCE. By that point, it had become clear that it was crucial to the future of Republican business.¹⁵⁰⁷ Roman senators granted commander Pompeius Magnus complete authority to deal with the menace that pirates posed to legitimate trade in the Lex Gabinia (Gabinia Law) of that year. When given three years to eradicate piracy from the Mediterranean, Pompeius "The Great" finished the job in just three months. In the process, Pompeius not only succeeded in temporarily ensuring the security of trade in the Mediterranean but also

succeeded in extending Republican control into hitherto uncharted waterways and regions.¹⁵⁰⁸

The most famous pirates in the Western world throughout the Middle Ages, roughly from 780 to 1066 CE, were the Vikings, a Scandinavian peoples' group whose more scrupulous members also participated in exploration and commerce. It seemed like nothing was off-limits to Viking pirates during this time. They pillaged coastal and inland towns and cities in western Europe, even as far away as western Spain, north Africa, Italy, towns along the Black Sea, and Persia, using every body of water imaginable.¹⁵⁰⁹

There was no unified authority, no Carausius or Julius Caesar, to control them. The Roman Empire had long since lost its status as a formidable opponent. The notorious Barbary coast pirates across the Mediterranean operated out of the North African ports of Tunis, in modern-day Tunisia, Tripoli, in modern-day Libya, Algiers, in modern-day Algeria, and Sale, in modern-day Morocco, from the time of the Crusades in the 11th century until the early 19th century. Barbary pirates managed to penetrate Atlantic waters and strike as far north as Iceland in the 17th century, frequently hitting the coastal towns and villages of Italy, Spain, and the various Mediterranean islands. Even if the pirates of the Old World undoubtedly deserve their time in the spotlight, many Westerners are more fascinated with the pirates of the New World.¹⁵¹⁰ The widespread colonisation of the New World by Spanish and Portuguese inhabitants and explorers in the 15th century marked the beginning of piracy in the Americas. People who engaged in piracy, one of the most lucrative professions of the time, began to appear alongside the new imperial towns and villages that were springing up all across the newly acquired areas. Around 1560, what is usually referred to as the "classical" phase of

¹⁵⁰⁵ Kamil Peter Kozlowski, *Toward Resolving the Problem of Modern Piracy: A Case Study of Somalia*, CUNY ACADEMIC WORKS (2013), https://academicworks.cuny.edu/cc_etds_theses/172/ (last visited Jan 14, 2023).

¹⁵⁰⁶ Id.

¹⁵⁰⁷ *Supra* note. 11

¹⁵⁰⁸ *Supra* note. 11

¹⁵⁰⁹ *Supra* note. 11

¹⁵¹⁰ John S. Burnett, *Dangerous Waters: Modern Piracy & Terror on the High Seas*. New York: Plume, 2004, 57.

piracy in the area began, and it lasted until the first three-quarters of the 18th century. A group of Mexican pirates invaded and conquered the town of Guaymas in 1870, putting the US embassy in the city in jeopardy in what would be the last act of piracy in the New World. A naval mission led by Rear Admiral Willard H. Brownson was sent to the area by Washington after learning of the occurrence. In a battle that came to be remembered in history as the Battle of Boca Teacapan, Brownson's squadron quickly and effectively ended the pirate threat.¹⁵¹¹ After this incident, the Western Hemisphere saw almost no more pirate activity beyond a few minor events during the 20th century. For the most part throughout history, pirates have done this to benefit both themselves and their crews. An act of piracy committed for any other motive, most notably politics, was extremely uncommon.¹⁵¹² This is partly due to semantics, as political pirates were previously referred to as "privateers" or "corsairs." Depending on the purpose of each attack, these people were given different names. During battles, one camp would frequently refer to the privateers of the other camp as "pirates," and the other way around. However, since the Paris Declaration of 1856, which forbade privateering as a tactic of warfare, state actors have largely refrained from using it in open waters during times of conflict.¹⁵¹³

The ANTI-MARITIME PIRACY BILL, 2019 AN ANALYSIS

When the bill was passed in parliament, the groups were divided into two groups one which is advocating the bill, while the other discouraging the bill. According to N-Reddeppa Giri, India will become "Vishwa Guru" by implementing this, Bill. The Alok Kumar Suman of JDU was of the view that this legislation is the outcome of a commitment made by India by

signing the United Nation Convention on the law of the sea.¹⁵¹⁴

The role of agencies or departments should be clearly defined in the Bill. Danish Ali of (BSP) termed the Bill 'good' and much required and praises the government for bringing such legislation. On the other hand, Kalyan Banerjee remarked that there is also much requirement for adequate training of Maritime police to deal with the issue of Maritime Piracy.¹⁵¹⁵

A detailed examination of the Bill is provided which helps in critically analysing the Bill and providing suggestions for the same.

1. **Applicability of Bill:** This Bill states that it will apply to all sea areas surrounding and beyond India's Exclusive Economic Zone (EEZ) or more than 200 nautical miles from the coast.¹⁵¹⁶
2. **Definition of Piracy:** This Bill defines piracy as "an unlawful act of assault, detention or destruction committed by the crew or passengers of a private ship or aircraft against a ship, aircraft for private benefit."¹⁵¹⁷
3. **Punishment for Piracy:** According to the proposed Bill, piracy will be punished by either:
 - 1) life in prison
 - 2) death, if it causes murder or death while attempting piracy¹⁵¹⁸
4. **Arrest and Seizure:** According to Bill, ships or aircraft controlled by pirates on the high seas or outside of Indian territorial waters may be seized.¹⁵¹⁹
5. **Jurisdiction of Courts:** This Bill states that unless an intervention is asked by the country of origin of the ship or by the ship owner or any other person on the

¹⁵¹¹ Id.

¹⁵¹² The History of Maritime Piracy in the Indian Ocean, VOICE OF INTERNATIONAL AFFAIRS (2018), <https://internationalaffairsbid.com/history-maritime-piracy-indian-ocean/> (last visited Jan 14, 2023).

¹⁵¹³ Id.

¹⁵¹⁴ PTI, Lok Sabha takes up debate on Anti Maritime Piracy Bill, THE PRINT (2022), <https://theprint.in/india/lok-sabha-takes-up-debate-on-anti-maritime-piracy-bill/1253342/> (last visited Dec 18, 2022).

¹⁵¹⁵ Id.

¹⁵¹⁶ PRSINDIA.ORG (2019), <https://prsindia.org/billtrack/prs-products/prs-standing-committee-report-summary-3384> (last visited Jan 9, 2023).

¹⁵¹⁷ Id.

¹⁵¹⁸ Supra note. 20

¹⁵¹⁹ Supra note. 20

ship, the designated court will not have jurisdiction over offences on a foreign ship.¹⁵²⁰

6. **Coordination of involved ministers:** The bill allows the central government to make regulations on matters including the authority to arrest, investigate and prosecute, the designated court's jurisdiction and the jurisdiction and court's ability to try criminal cases.¹⁵²¹

ADVISORY NOTE: BY THE STANDING COMMITTEE REPORT

1. The committee highlighted that governments have the authority to carry out Anti-Piracy activities in their Exclusive Economic Zone (EEZ) under the UNCLOS. It suggested adding the EEZ to this Bill's scope of application.¹⁵²²
2. The report observed that the Supreme Court had declared the death sentence to be mandatory in contravention of Constitutional Articles 14 and 21 to be arbitrary and unfair. It also mentioned that the court had overturned sections in other Acts that mandated the death sentence. The committee did advise the mandatory execution of anyone who causes death while engaging in or attempting does not result in death, the death sentence should not be applied.¹⁵²³
3. In accordance to provide for Universal Jurisdiction as stated in UNCLOS, the committee proposed that the applicability of this provision be expanded to an area outside the jurisdiction of any state. Furthermore, the court may order the disposition of sized property.¹⁵²⁴
4. The committee also took note of Bill's provisions for the capture and detention of private ships, planes and other vessels under their control. It does not specify

how to respond when there is a subject of piracy. The committee advised allowing an authorised individual to use their suspicion that the vessel is involved in piracy.

5. Further, the committee stated that this goes against Article 21 of the Constitution, which states that no one may be deprived of their life and freedom. It was advised to include several safeguards for trials conducted in absentia such as:
 - 1) The accused is informed of the trial
 - 2) A counsellor sits in for them during trial
 - 3) The accused does not timely request an appeal¹⁵²⁵
6. The committee also made notice of the involvement of the Ministers of External Affairs, Home Affairs, Law and Justice in acts of piracy. It was advised that all relevant authorities including state governments should be included in a coordination framework and that the clear functions of various agencies and departments be specified in the Rules.¹⁵²⁶
7. To prevent delays in the law's implementation, the committee also suggested that the Ministry of Home Affairs create standard operating procedures for the expulsion and surrender of pirates within a defined time range.¹⁵²⁷

GLOBAL ROLE IN COUNTER-PIRACY IN THE INDIAN OCEAN

Several multinational organizations have taken action to fight the problem of piracy within the Arabian Sea after realising the threat it poses. Under UN Security Council Resolution 1851, the Contact Group on Piracy off the Coast of Somalia was established by the UN in 2009 and currently has more than 66 state participants. Additionally, the UN Political Office for Somalia and the United Nations Development

¹⁵²⁰ Supra note. 20

¹⁵²¹ Supra note. 20

¹⁵²² Supra note. 20

¹⁵²³ Supra note. 20

¹⁵²⁴ Supra note. 20

¹⁵²⁵ Supra note. 20

¹⁵²⁶ Supra note. 20

¹⁵²⁷ Supra note. 20

Programme-Somalia work together on anti-piracy initiatives. Three maritime forces, including the Combined Task Force, NATO's Operation Ocean Shield, and the European Union Naval Force's Operation Atalanta, also patrol the waters off Somalia. Additionally, a large number of states have collaborated or cooperated unilaterally to combat piracy in this area.¹⁵²⁸

The majority of these anti-piracy initiatives have taken the form of marine operations in the Arabian Sea and the Gulf of Aden. More than 30 nations stationed navy boats in this region throughout 2011, performing daily inspections for pirates and reacting to distress signals. Although these naval operations have up to now been the main method of preventing piracy in the Arabian Sea, it has long been accepted that they are insufficient to eliminate the menace. The high-risk area covers more than 1.1 million square nautical miles of water and is too huge for Navy warships to adequately police. Somali pirates now operate in this area. Each of the 25 naval ships that patrol this enormous area all faces the onerous duty of covering an average area of 44,000 square nautical miles. Additionally, pirates usually move their operations to uncontrolled waters when navy ships are present in a region.¹⁵²⁹

LEGISLATIVE PERSPECTIVE OF MARITIME PIRACY

Alondra Rainbow case:

A violent incident illustrates that Indian courts have dealt with. It depicts in detail India's lack of express legislation prohibiting piracy. On October 22, 1999, the Alondra Rainbow departed from Kuala Tanjung in Indonesia towards Mike in Japan with a cargo of 7,000 tonnes of aluminium ingots. It was captured by pirates. The seventeen crew members on board were

imprisoned for the following week until being finally let go and saved by a Thai ship. The pirate reporting centre run by the Indian Maritime Bureau (IMB) began disseminating the ship's information to all other ships in India on October 28. On November 14, the captain of a Kuwaiti tanker noticed the ship. Although the ship's name had been changed, the Indian Coast Guard seized it after making extensive preparations and discovered that fifteen Indonesians were involved in the kidnapping. The Indian Penal Code does not address concerns related to piracy, the United Nations Convention on the Law of the Sea, 1982, has not been incorporated into Indian national law, and India has not signed the 1988 SUA convention (India became a party to the SUA in 2002). The Indian Penal Code of 1860, the Indian Passport Act of 1967, the Foreigners Act of 1946, and the Indian Arms Act of 1950 were among the legal barriers that the Bombay police charged the pirates with violating on 11 counts. On February 25, 2003, the trial came to an end, and all of the pirates had been found guilty on nine out of the eleven charges.¹⁵³⁰

The Republic of Italy vs Union of India & Ors:

this case took place on 4th Sep 2012. In this case, two Italian marines were imprisoned by Kerala police in connection with the death of an Indian fisherman aboard a fishing boat 20.5 nautical miles off the Kerala coast. The state of Kerala lacked jurisdiction to look into the matter, the supreme court ruled. The Indian Penal Code, the Code of Criminal Procedure, the UNCLOS, and the Maritime Zones Act of 1976 would all be used in the trial and disposition of the case, according to a court order for the respondent to establish a session court. After evidence was introduced on behalf of the parties, the appellant, the Republic of Italy, was permitted to bring up the issue of jurisdiction. By the court's directive, the National Inquiry Agency was

¹⁵²⁸ IRAM Qayyum, Piracy in Indian Ocean Region: Case study of Somalia, PIRACY IN INDIAN OCEAN: A CASE STUDY OF SOMALIA (2014), https://www.academia.edu/45644504/Piracy_In_Indian_Ocean_Region_Case_study_of_Somalia (last visited Jan 9, 2023).
¹⁵²⁹Id.

¹⁵³⁰ legal Service India, Sea Piracy - The Legal lacunae that exist, LEGALSERVICESINDIA.COM (2021), <http://www.legalservicesindia.com/article/793/Sea-Piracy---The-Legal-lacunae-that-exist.html> (last visited Jan 9, 2023).

selected by the Indian Ministry of Home Affairs to conduct the investigation. The respondent to the court informed it that the NIA was looking into the case. According to the appeal, giving the NIA investigative authority violated the forum. The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002, which authorised the use of the death penalty in cases involving any of the scheduled offences, was also permissible for the NIA to use. The appellant in the case also stated that the investigating authorities were not allowed to employ the act's provisions in light of the Court's instructions because it was not included in the original charge sheet. The court denied this appeal because it did not see any justification for contacting the agency and having them decide how to handle the investigation. Addressing the courts' authority over Italian marines, the court gave its judgement. The respondent was permitted by the court to select a body that is fair to both parties before having a specific court assigned jurisdiction over the trial.¹⁵³¹

United States vs Smith:

In this case the ruling by the Supreme Court about piracy. This incident occurred in Virginia in March of 1820. This case turned out to have a significant impact on both domestic and international piracy legislation. It discussed universal jurisdictions as well as several other, more general topics related to the countries' responses to piracy.

In this case that the concept of piracy by the law of the nations as a crime on the sea was well within the constitutional powers of congress. The Smith Court reviewed numerous treaties written in a variety of languages, including English, Latin, French, and Spanish, as well as case law.¹⁵³²

The United States vs Said:

¹⁵³¹The republic of Italy vs Union of India & Ors, (2013) 9 SC 89

¹⁵³² United states vs Smith, (1820) 18 U.S. 153

In this case, pirates are described as sailing up to the USS Ashland in the Gulf of Aden in a small skiff. One of the pirates used a gun to fire a shot at the USS Ashland. The crew responded by firing, smashing the skiff and killing one of the passengers in the process. The USS Ashland was not attempted to be boarded by the pirates. The crew members arrested them and took them into custody. The pirates were charged with several offences. They proposed a motion to throw out the charge of violating 18 U.S.C. 1651. It was done on the justification that their actions weren't considered piracy because neither a boarding of the location nor a takeover of the ASS Ashland by pirates had occurred. The district court granted the request. According to the decision, the pirate Act cannot be interpreted to cover crimes other than robbery or forcible maritime depredations. This is because of due process grounds, this was done by the rules, procedures, and definition of piracy provided at the time, and the US v. Smith decision.

Chang – sun merchant vessel case:

In this case, Customs officers stopped the Chang-Sun merchant ship in the South China Sea in 1998 as it was sailing towards Malaysia with a crew of 23 persons. Each member of the crew was murdered by the uniformed customs agents, and their corpses were dropped into the water. The Chinese government swiftly conducted raids on Chinese pirates and detained 38 individuals who were directly or indirectly supporting pirates. After the swift execution of 13 pirates, China became a country that pirates wanted to avoid.¹⁵³³

CRITICISM AND ANALYSIS OF THE BILL

The Bill defines piracy as any unlawful act of violence, detention, or depredation carried out against another ship or aircraft for personal benefit while at sea or in an area outside of Indian territorial waters. This meaning is

¹⁵³³ Supra note. 34

consistent with that given in Article 101 of UNCLOS (United Nations Convention on the Law of the Sea). At first, piracy was only considered to be crimes committed on the high seas—an open area that is not a part of any State's territory. Areas outside of a State's geographical jurisdiction were subsequently included in the definition's scope under the UNCLOS, and as a result, the Bill. This includes the Exclusive Economic Zone, which extends 200 nautical miles offshore and serves as a boundary between territorial waters and the high seas. The issue of pirate activity taking place in Indian territory and internal waters is not addressed by the aforementioned definition of piracy. The International Maritime Organization defines "Armed Robbery against Ships" as an act of violence, detention, or depredation committed for personal gain within a State's internal waters, archipelagic waters, and territorial sea. It can be argued that acts committed in these areas fall under this definition. In India, there has been a persistent trend of these crimes, with an average of six incidents each year. In despite of this, India lacks a domestic legal system that would sanction an act of "Armed Robbery against Ships." In the past, the Indian Penal Code's armed robbery provisions were used to deal with the prosecution of pirates. However, "robbery" and "piracy" are fundamentally dissimilar terms. According to Section 390 of the IPC, there cannot be robbery without theft or extortion, hence an act cannot be punished as "armed robbery" unless it meets the criteria for either of these two offences. The victim must have had some of their property dishonestly taken away to meet the thresholds. However, this requirement is not necessary for piracy. Additionally, as shown by the 1999 hijacking of the MV Alondra Rainbow, other IPC provisions including attempted murder, forgery, criminal conspiracy, trespassing, assault, etc. may also be used to combat acts of piracy. This could, however, allow the pirates in question to escape punishment due to other requirements or other "systems failings," as it did in this specific

instance. Therefore, it is impossible to prosecute acts of piracy that take place within Indian territorial waters using these sections of the IPC reliably and accurately. There is yet another way that this issue could present itself, and it has to do with global piracy as a whole, not just with India. The high seas are open to all States and belong to no State, therefore any State may pursue a ship there. However, this right to pursue stops when the ship enters the territorial waters of another State. This stems from the notion of sovereignty, which is defined by customary international law as a State's exclusive right to exercise effective authority over its territory. Many nations do not have developed legal frameworks to deal with piracy occurring within their national waters. Therefore, it is inevitable that pirates who are fleeing from other States chasing them on the high seas may use these waters as a safety net or a loophole. If pirates begin using their territorial seas to flee from chasing nations and take advantage of the legal gaps in their anti-piracy legislation, governments like India may find themselves in a Gordian knot.

CONCLUSION: A WAY FORWARD

The phenomenon of piracy has been in the news since people started using marine transport. Lok Sabha recently pass a Bill through which it has become clear that the Indian Government is serious about defensive measures to fight the threat of Maritime Piracy. Piracy has been the principal manifestation of maritime criminality since the earliest days of using platforms to transport people and goods at sea. The anti-maritime piracy bill, of 2019 provides the legal ground for facing the issues related to piracy. The bill is considered a good move by the Indian government as the issue of sea piracy has rapidly increased during these current years. India must come up with domestic legislation related to the United Nation Convention on the Law of the Sea (UNCLOS) as India has not framed the same despite being a member of the



organisation in 1995. Therefore, in conclusive parlance, India is trying to combat and prevent the problem of sea piracy by making the legislation stronger and making the penalising provision stricter. However, it is as equally important to execute the same to make the provision visible in the practical world.