



### Chief Editor

**Dr. A. Singaraj**, M.A., M.Phil., Ph.D.

### Editor

**Mrs.M.Josephin Immaculate Ruba**

### Editorial Advisors

1. Dr. Yi-Lin Yu, Ph. D  
Associate Professor,  
Department of Advertising & Public Relations,  
Fu Jen Catholic University,  
Taipei, Taiwan.
2. Dr.G. Badri Narayanan, PhD,  
Research Economist,  
Center for Global Trade Analysis,  
Purdue University,  
West Lafayette,  
Indiana, USA.
3. Dr. Gajendra Naidu.J., M.Com, LL.M., M.B.A., PhD. MHRM  
Professor & Head,  
Faculty of Finance, Botho University,  
Gaborone Campus, Botho Education Park,  
Kgale, Gaborone, Botswana.
4. Dr. Ahmed Sebihi  
Associate Professor  
Islamic Culture and Social Sciences (ICSS),  
Department of General Education (DGE),  
Gulf Medical University (GMU), UAE.
5. Dr. Pradeep Kumar Choudhury,  
Assistant Professor,  
Institute for Studies in Industrial Development,  
An ICSSR Research Institute,  
New Delhi- 110070.India.
6. Dr. Sumita Bharat Goyal  
Assistant Professor,  
Department of Commerce,  
Central University of Rajasthan,  
Bandar Sindri, Dist-Ajmer,  
Rajasthan, India
7. Dr. C. Muniyandi, M.Sc., M. Phil., Ph. D,  
Assistant Professor,  
Department of Econometrics,  
School of Economics,  
Madurai Kamaraj University,  
Madurai-625021, Tamil Nadu, India.
8. Dr. B. Ravi Kumar,  
Assistant Professor  
Department of GBEH,  
Sree Vidyanikethan Engineering College,  
A.Rangampet, Tirupati,  
Andhra Pradesh, India
9. Dr. Gyanendra Awasthi, M.Sc., Ph.D., NET  
Associate Professor & HOD  
Department of Biochemistry,  
Dolphin (PG) Institute of Biomedical & Natural Sciences,  
Dehradun, Uttarakhand, India.
10. Dr. D.K. Awasthi, M.SC., Ph.D.  
Associate Professor  
Department of Chemistry, Sri J.N.P.G. College,  
Charbagh, Lucknow,  
Uttar Pradesh. India

ISSN (Online) : 2455 - 3662

SJIF Impact Factor :5.148

# EPRA International Journal of Multidisciplinary Research

Monthly Peer Reviewed & Indexed  
International Online Journal

Volume: 5 Issue: 5 May 2019



Published By :EPRA Publishing

CC License





## THE AGITATED OCEANS OF INDIA: ISSUES OF SEA-PIRACY AND LEGAL LACUNAS

**Shruti S Mathew**

Student,  
Department of Law,  
Chandigarh University,  
Chandigarh,  
India

### ABSTRACT

*Sea-piracy, an issue which has never been much discussed and also, not understood as it does not directly influence the day-to-day lives of many people. However, it's a major perturb for shippers, cargo owners, insurance agencies, guarantors and crews and consequently, it influences all consumers since it can drive up the cost of merchandise, including oil, different wares and fabricated items. Yet, there is no stringent law which could protect their rights, shipping companies have always been on their own to surmount with piracy. Focusing on these issues, national navies took the initiative with its loosely coordinated patrols to defer of pirates from their territorial waters. Thereafter, this coordination was enhanced by reporting mechanisms and naval guards on ships. Later, these guards went ahead on commercial vessels among which most guards were from private maritime security companies and some from host militaries*

### INTRODUCTION

Sea-piracy, an issue which has never been much discussed and also, not understood as it does not directly influence the day-to-day lives of many people. However, it's a major perturb for shippers, cargo owners, insurance agencies, guarantors and crews and consequently, it influences all consumers since it can drive up the cost of merchandise, including oil, different wares and fabricated items. Yet, there is no stringent law which could protect their rights, shipping companies have always been on their own to surmount with piracy. Focusing on these issues, national navies took the initiative with its loosely coordinated patrols to defer of pirates from their territorial waters. Thereafter, this coordination was enhanced by reporting mechanisms and naval guards on ships. Later, these guards went ahead on commercial vessels among which most guards were from private maritime

security companies and some from host militaries.<sup>1</sup> The issue of befuddled safety regime came much into lamplight and sparked a conciliatory line between India and Italy on February 2012, when the Italian Mariners based on the tanker Enrica Rexie purportedly fired on Indian Fishing trawler off Kerala, India killed two amongst their eleven crew as mariner allegedly mistook the fishing vessel as a private vessel.<sup>2</sup>

The vast and diverse Indian Ocean region, in which 66% of global oil exchange and 33% of global cargo trade pass, goes through multiple trans-border

<sup>1</sup>Lawrence P. Farrell Jr., *Piracy: A Threat to Maritime Security and the Global Economy*, November 19, 2012 available

at <http://www.marsecreview.com/2012/11/piracy-a-threat-to-maritime-security-and-the-global-economy/>

<sup>2</sup><http://www.bbc.co.uk/news/world-asia-india-17071474>

security challenges. These include piracy; armed robberies at sea; terrorism; trafficking in narcotics, arms and people; illegal fishing; and the dangers posed by natural disasters and climate-change.

### LEGAL POSITION OF SEA-PIRACY IN INDIA

Currently, India does not have its own domestic legislation to govern the issues related to sea-piracy. Despite, India is a signatory to both United Nations Convention on the Law of the Sea (UNCLOS) adopted by the United Nations on the 10th December, 1982 and Suppression of Unlawful Activities Convention, 1988.<sup>3</sup>

In the absence of committed lawful system for the sea-piracy, the pirates are charged under the pirates are charged under the Indian Penal Code (IPC) with Trespassing (Sections 441 & 447), Waging War Against the Country (Section 121), Attempt to Murder (Section 307) and Armed Robbery (Sections 397 and 398) and other laws such as Foreigners and Passport Act. Other than these, certain provisions of the archaic British Admiralty Law were also invoked which was later repealed in the year 2005 through a draft i.e. Indian Admiralty Bill. Also, the UN General Assembly Resolution 64/71 was introduced in 12 Mar 2010 with intent to facilitate a proper prosecution and apprehension of the personnel who has committed the acts of sea piracy. The resolution also focused on cooperation with the International Maritime organization for which adopted proper procedure which includes the adoption of national legislation.<sup>4</sup>

### UNDERSTANDING PIRACY IN THE INTERNATIONAL CONTEXT

Laymen frequently befuddle the word 'piracy' with the 'copyright infringements' in the contemporary dictionary however International Law concurs a much profound significance to the term. The United Nations Convention on the Law of Seas, 1982, which has witnessed the codification of different sets of customary international law principles, has 164 member countries including the European Union in the convention. Article 101 of the same deals with the "definition of piracy" and reads hereunder:<sup>5</sup>

"Piracy consists of any of the following acts:<sup>6</sup>

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
  - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
  - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)."<sup>7</sup>

On a much closer analysis of this definition one would realize that piracy is an illegal act of violence or detention or any act of depredation committed for private ends [clause (a)]. It is a crime which is committed on the high seas [clause (i)] or outside the jurisdiction of any State [clause (ii)].<sup>8</sup>

It is inescapable for me to refer to the Somali pirate groups to give a much more clear example of what the Article deals with. In any case, piracy is not just limited to Somalia's coast (Africa's longest), the whole Horn of Africa extends like a knife into the Arabian Sea to frame a key chokepoint, and in recent years, private insurance companies have started to pay billions in ransom for the benefit of their ship-owning customers.<sup>9</sup> The mainstream media has portrayed the present pirates as savage foes of mankind, with pundits even saying that if it were not for political correctness, international law, and human rights, we could eliminate this scourge.<sup>10</sup>

With the increasing number of piracy incidence in the Indian waters including India's Exclusive Economic Zone and also, increasing number of apprehensions by the Indian Naval forces, acted as an alarming call of the time for enacting a powerful domestic legislation on piracy which could provide

<sup>3</sup><http://www.thehindu.com/opinion/lead/article3569983.ece>

<sup>4</sup> <http://maritimeindia.org/article/nmf-exclusive-draft-indian-piracy-bill-preliminary-assessment-raghevendra-mishra>

<sup>5</sup> The United Nations Convention on Law of the Sea, 1982 available at: [https://www.un.org/Depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf)

<sup>6</sup> Ibid

<sup>7</sup> Art. 101, United Nations Convention on Law of the Seas, 1982.

<sup>8</sup> Ibid

<sup>9</sup> Ibid

<sup>10</sup> Sonia Cardenas & Andrew Fibbert, Why We Love to Hate Pirates, Counter Punch, May 22-24, 2009, accessed at <http://www.counterpunch.org/2009/05/22/why-we-love-to-hate-pirates/>

appropriate legal framework within the country for prosecution of persons for piracy related crimes and in response to the same, the Piracy Bill 2012 was brought into picture.<sup>11</sup> India isn't the only nation pondering the complexities of law managing sea-piracy and in which is why, the bill may be of some assistance to different nations needing it.

*Following are some of the features of the Bill:*

1. Definition of Piracy is verbatim from the United Nations Convention on the Law of the Sea, 1982.
2. **Punishment:** An act of piracy is punishable with imprisonment for life except where the accused has caused death in committing the act of piracy or attempt thereof in which case he may be punished with death and in addition the Designated Court may also subject to any restitution or forfeiture of property involved in the commission of the offence. On one hand, there is a demand for abolishing death penalties at all forums, including death as a punishment might not be taken well by the international community at large.
3. An attempt to commit piracy or any unlawful attempt intended to aid, abet, counsel or procure for the commission of an offence of piracy shall also constitute an offence and is liable on conviction to be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine. In addition, an accomplice to an act of piracy shall be liable on conviction to be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.
4. **Extradition and Reciprocity:** The offence shall be deemed to have been included as extraditable offences and provided for in all extraditable treaties made by India. In the absence of a bilateral extradition treaty, the offences under this Act shall be extraditable offences between India and other Convention States on the basis of reciprocity. What is interesting here is that for the purposes of application of the provisions of the Extradition Act, 1962 to the offences under this Act, any ship registered in a Convention State shall, at any time while that ship is plying, be deemed to be within the jurisdiction of that Convention State whether or not it is

<sup>11</sup>The Piracy Bill, 2012, [http://www.prsindia.org/uploads/media/Piracy/piracy%20bill%20text%20\\_%202012.pdf](http://www.prsindia.org/uploads/media/Piracy/piracy%20bill%20text%20_%202012.pdf)

for the time being also within the jurisdiction of any other country.

5. **Extension to Exclusive Economic Zones:** It is also for the first time that the Indian jurisprudence is being extended beyond the territorial waters with particular reference to the Exclusive Economic Zone (EEZ) of India. This might raise some debate since the contiguous zones and EEZ for all practical purposes are considered as high seas except for certain environmental, fiscal related purposes and for the use of maritime resources by the coastal state.
6. On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

The Bill looks to address the uncertain nationality issues of Somali<sup>12</sup> working from a dysfunctional domain by including stateless people under the ambit of the enactment. The second issue that has been focused is the 'two ship dilemma' when at least one of the group individuals straightforwardly or in a roundabout way encourage an act of piracy. It additionally takes into consideration *inabsentia* prosecution of the offences, and furthermore, provides for dedicated Sessions Court under every High Court through a consultative procedure with draconian bail provisions. An interesting aspect of the Bill is that it puts the onus of proving the innocence on the accused, instead the basic caveat of 'being innocent until found guilty'.<sup>13</sup>

In addition, the trilateral agreement was signed by the three countries vide, India, Sri Lanka and Maldives in October 2011 with an aim to enhance maritime security in the neighborhood, to pool

<sup>12</sup>A Template for Those at Risk: India's Response to Maritime Piracy 2010-11 by Swadesh M Rana, OEF Project Adviser and Focal Point for South Asia available at [http://southasia.oceansbeyondpiracy.org/sites/default/files/a\\_template\\_for\\_those\\_at\\_risk\\_indias\\_response\\_to\\_maritime\\_piracy\\_2010-11v3.pdf](http://southasia.oceansbeyondpiracy.org/sites/default/files/a_template_for_those_at_risk_indias_response_to_maritime_piracy_2010-11v3.pdf)

<sup>13</sup><http://maritimeindia.org/article/nmf-exclusive-draft-indian-piracy-bill-preliminary-assessment-raghevendra-mishra>

resources and share information in the area for better control and also, to detect suspicious movements in the territorial waters. The agreement aims for collaboration in carrying out surveillance, anti-piracy operations and in checking illicit exercises including maritime pollution. Maritime Domain Awareness is considered as the key part of the data sharing. Moreover, in order to protect the eastern Indian waters, India had signed agreements with Royal Thai and Indonesian naval forces to conduct coordinated patrolling in the east, around the region of the Malacca Straits.

While the law and agreements are in pipelines, an issue that came up some time back was whether private military security companies (PMSC) are proving successful. It is agreed that there are many benefits of the PMSC but, the limitation comes from the lack of clear rules of engagement<sup>14</sup> (ROE) on the use of force at sea and the consequences the contractors might face. There is a particular need for greater awareness of the consequences of opening fire against suspected pirates and insurgents who are subsequently found to be innocent. This is apparent in light of the occurrence when the Italian guards unfairly murdered the fishermen. Accidental death or injury, for instance, could expose contractors, and conceivably those that employ them, to exorbitant liability claims and, worse, criminal charges as happened in India.<sup>15</sup> An issue that returned up some time was whether private military security associations (PMSC) are exhibiting viable. It is accepted fact that there are different preferences of the PMSC in the meantime; the arrest starts from the nonattendance of clear rules of duty (ROE) on the use of intensity loose and the outcomes the transitory laborers may go up against. There is a particular prerequisite for progressively significant awareness of the results of beginning to shoot against suspected privateers and guerillas that are thus seen to be guiltless. This is obvious in light of the scene when the Italian checks unjustifiably killed the fishermen. Inadvertent downfall or harm, for instance, could reveal legally binding specialists, and potentially those that use them, to over the top commitment cases and, progressively horrendous, criminal charges as happened in India

<sup>14</sup><http://www.thehindu.com/news/international/india-sri-lanka-maldives-to-ink-trilateral-cooperation-on-maritime-issues/article4203041.ece#>

<sup>15</sup>Peter Chalk, Private Maritime Security Companies (PMSCs) and Counter-Piracy available at <http://www.counterpiracy.ae/upload/Briefing/Peter%20Chalk-Essay-Eng.pdf>

## PROBLEM OF PIRACY IN INDIAN CONTEXT

With the expansion in worldwide exchange, the oceanic security has risen as a noteworthy test. The Gulf of Aden which isolates Somalia and Yemen and interfaces the Arabian Sea to the Red Sea has seen a noteworthy spurt in Attacks by privateers working from Somalia since 2008. This issue has truly been exasperated as of late. With Indian maritime nearness in the Gulf of Eden, the issue which was at the time identified with Somalia and the Horn of Africa, a portion of the pirates started to move their tasks eastwards and southwards. This prompted a portion of the pirates working nearer to the Indian Exclusive Economic Zone (EEZ) and the Western shoreline of India. In 2011, 286 piracy attacks took place which resulted in 33 hijacking. From December 2010, the Indian Navy and the Coast Guard conducted several major antipiracy operation of India's Western Coast and apprehended around 120 suspected pirates.<sup>16</sup>

The issue of piracy keeps on continuing yet especially after the activities of Indian Navy, it is viewed as being most noticeably terrible in the western part of the Indian Ocean than in the territories promptly near India's EEZ. However so, at present India does not have a separate domestic enactment to manage or deal piracy related offenses. Without a clear and unambiguous reference to the offense of maritime piracy in the Indian law, issues have been looked in guaranteeing viable prosecution of the pirates. In the *Alondra Rainbow* case, which is considered as the first of its case to be attempted in an Indian Court in 1999, without a piracy law or the definition or meaning of piracy in the penal law of India, other important provisions of the Indian Penal Code and Admiralty Act were summoned to attempt the pirates. Despite the fact that the indictment was successful in the preliminary trial court, the appeal went for the denounced in the High court apparently on jurisdictional grounds. The 120 caught pirates are right now being prosecuted under provisions of IPC, Indian Arms Act and so forth. In any case, without an appropriate domestic enactment, pirates that are caught adrift can't be prosecuted successfully. The provisions of the Indian Penal Code relating to equipped theft and so forth as additionally the Armed Act have been conjured in the past to prosecute pirates secured by the Indian Navy and the Coast Guard. India's domestic law (for example IPC) has not characterized piracy as an offense and an accused can be charged just for offenses, for example, attempt to murder, robbery, dacoity and so forth.

<sup>16</sup>Standing committee report, ministry of foreign affairs, India

Another restriction of the IPC is that the acts related to piracy committed by a foreigner outside territorial waters of India do not amount to an offense under IPC. These offenses may so attract in lower sentences and cases may set aside for long to get disposed off eventually.

Along these lines, Ministry of External Affairs of India has concocted a bill to prosecute the pirates named the Piracy bill, 2012. This bill defines "piracy" as defined by the UNCLOS and offers capital punishment to pirates who commit the offense and India will confront a similar issue as the United Kingdom. So as to overcome the issues few potential solutions are recommended.

### POTENTIAL SOLUTIONS

#### *Increased support for prosecution and imprisonment in Somalia*

The most well-known thought for improving prosecutions for robbery off Somalia is to build the international support and cooperation for training judges, amendment of domestic laws on piracy and increment and improve detention facilities in Somalia:

It is prudent that Somalia prosecutes and detains its very own nationals who are suspected and piracy convicted. This would hopefully have advantages of local legitimacy and "messaging", and it is generally considered desirable that convicted persons serve their sentence as close to their family and community as possible.<sup>17</sup> The UN Office on Drugs and Crime (UNODC) is leading work on capacity-building in Somalia, in conjunction with the UN

Development Program (UNDP), the UN Office of Legal Affairs, the European Commission, the UN Political Office for Somalia, , the Contact Group on Piracy of the Coast of Somalia and its anti-piracy trust fund, and different contributors including the US and the UK. This includes training the judges and the prosecutors, preparing courts, and upgrading and constructing new prisons. The UN estimates that its support will enable around 200 more suspected 'low-level' pirates to be prosecuted in Somalia per year, at a cost of \$25 million for the first three years (not including staff costs).<sup>18</sup> Although the Somali authorities do not favor foreign nationals participating as judges or

<sup>17</sup> Dr. Douglas Guilfoyle, 4 July 2011, Written evidence to the House of Commons Foreign Affairs Committee, Piracy off the coast of Somalia, HC 1318 2010-12, 5 January 2012, Ev 100

<sup>18</sup> 5 Report of the UN Secretary-General on the modalities for the establishment of specialized Somali anti-piracy courts, S/2011/360, 21 June 2011, pp3-11

prosecutors in Somali courts, appropriately qualified and experienced legal professionals have been identified who would be interested in participating in antipiracy courts either inside or outside Somalia.<sup>19</sup> Many of them had served as legal professionals in Somalia before the 1990s.<sup>20</sup>

The UNDP has a legal assistance programme which provides free legal advice and assistance to people in Somalia. It represented 107 suspected pirates in 2010-11.<sup>21</sup>

The Telegraph reports that prison-building in Somalia is proceeding apace:

A new prison built by the UN and with £600,000 of British money will open next year in the central Somali town of Garowe, in the country's semi-autonomous region of Puntland. It will house up to 500 convicted pirates.<sup>22</sup>

Major upgrades to prisons in Hargeisa, in Somaliland, and Bossaso, in Puntland – both more than half funded by Britain – will also soon begin taking prisoners transferred from the Seychelles.<sup>23</sup>

Although, there is far to go: three years before trials in Somalia fulfilling international standards and two years for the most recent 1,000-bed jail building program – and that is just the beginning. Extensively more would be required for Somalia to manage all the arrested pirates at the present rate. There have been recommendations that specific piracy courts could be set up in Somalia, however the TFG and Somali provincial authorities do not conceive this, not least since it could require changing the constitution.

### CONCLUSION

There is no end to piracy in sight, and somewhere down maritime threats have increased seemingly. It is critical hence, that a strong international legal structure controlling or regulating the utilization of PMSCs and their ROEs is created or

<sup>19</sup> Report of the UN Secretary-General on the modalities for the establishment of specialized Somali anti-piracy courts, S/2011/360, 21 June 2011, p7

<sup>20</sup> Report of the Secretary-General pursuant to Security Council resolution 1950 (2010), S/2011/662, 25 October 2011, p13

<sup>21</sup> "Britain's anti-piracy 'conveyor belt' stretches from Somalia to Seychelles and back", Telegraph, 22 February 2012

<sup>22</sup> Report of the UN Secretary-General on the modalities for the establishment of specialized Somali anti-piracy courts, S/2011/360, 21 June 2011, p3

<sup>23</sup> Report of the UN Secretary-General on the modalities for the establishment of specialized Somali anti-piracy courts, S/2011/360, 21 June 2011, p3

developed. A solid law, is certainly expected to keep away from the ambiguities yet as the challenge is obviously past the ability of national naval forces alone, cooperation with the shippers is essential to oversee this issue. Lack of international agreement to address the issue, in the most pessimistic scenarios, could lead to conflict. Contiguous zones and EEZ for every possible purpose are considered as high seas except for specific purposes and thus the all-encompassing legal reach of this Bill may not discover support of different countries. In any case, since piracy is a pivotal issue, the expanded jurisdiction may not be a hindrance after all. Aside from all the criticism, this Bill ought to be welcomed by the Indian sovereign as it gives it all the 'operational freedoms' it requires to handle this consistently developing famous marvel notwithstanding the vital legitimate power. The top need in this manner is to upgrade and enhance maritime safety and security so as to guarantee harmony, steadiness and sustainable economic development and advancement in the Indian Ocean. This incorporates building a typical comprehensive account towards conquering security challenges, including on maritime terrorism; looking for a corresponding approach towards sea space awareness; guaranteeing a provincial legal framework for effective maritime governance; and building capacity over these territories as well.