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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ANALYSIS OF MARITIME LAW AND **POLICY IN INDIA AND UAE**

AUTHORED BY - ADV. GURKIRAT SINGH.

Introduction

Maritime law, also known as admiralty law, is a body of laws, conventions, and treaties that govern private maritime business and other nautical matters, such as shipping or offenses occurring on open water. International rules, governing the use of the oceans and seas, are known as the Law of the Sea.¹ With the rise in the trade and commerce, the transportation through sea has also increased drastically, in order to ensure economic development and growth the nations rely on export and import of goods from other nations. The taxes levied on these goods thus add into the economical factor of the country, thereby affecting the growth and development of nation. The import and export of goods is not altogether a new concept, it was very much prevalent and in existence in the past as well, different communities, tribes and civilization used to exchange goods and services for their use and benefit. In olden days, ships and vessels were the only mode of transportation for travelling to different nations and for transporting goods not only the goods rather the ships were also used in the warfare, the strong nations like the Roman Empire strongly believed in maintaining a strong navy in order to protect their kingdom from the naval attacks of other nations. Therefore, the use of sea routes and the ships, boat and the vessels has always been an important mode for transportation. Howsoever in order to ensure free and unimpeded the flow of goods and the sailing of the voyages certain laws were framed by the civilizations and the communities, the oldest being the code of Manu or the Manu Smriti which regulated the flow of the ferry's and the ships, it also determined the amount to be paid to the sailors and the workers on the ship. The code of Manu is the oldest as it dates back to 1500 B.C, other ancient code with regard to the maritime law included the Hammurabi code dealt with the maritime law and the Rhodian law of the Roman empire, which was particularly in use in the Mediterranean sea. Even in the 21st century sea routes are used as major mode of transportation, as it provides certain advantages as compared to the transportation by air (i) the ships have much load carrying capacity

¹ www.investopedia.com

and provides sufficient storage space (ii) the chances of loss to the goods is less as compared to the air transport (iii) the transportation by the ship is cost-effective as it is capable of carrying larger amount of goods. With the passage of time and the advances in technology, the law, principles governing the navigation and exploration sea have also evolved. The different nations have realized the importance of cooperation and information sharing in order to boost their economic and technological advancement, therefore today there exists a common consensus among the nations with regard to the principles and the conventions for the use of sea routes and the customs. Today maritime law is not only a domestic legislation but is also a part of international private law. The United Nation Convention on the Law of the Sea (UNCLOS) is one such convention which regulates the international rules and regulations of the sailing of the ships in the international waters. The United Nation Convention on the Law of the Sea came into force and became operative on 16th November 1982, although the proposal of the UNCLOS was first time announced in the United Nations in 1973.² The UNCLOS not only provides for the law with regard to the voyages or the exploration but it also provides the principles for the use and exploitation of the minerals and the natural resources of the sea, sea beds and the continental shelf. The UNCLOS also provides for setting up of international Marine research Centers and sharing of the marine technology among the member states, measures for controlling marine pollution, liabilities of the ship owners and the merchants rights of the landlocked countries, and the mechanism for the peaceful settlement of the disputes amongst the nations etc. Thus UNCLOS covers broadly all the aspects related to the law of the sea right from the sailing in the high seas i.e the right to innocent passage to the sharing of the information and resources from the sea.³ The *International Maritime Organization* (IMO) and *International Sea Bed Authority* also plays vital role along with the UNCLOS in administration of the international maritime law. The maritime law is yet to face various challenges in the coming time as there is a drastic growth in the import and export of the goods as the most of the developing countries aim to achieve its objective of increasing the export thereby giving boost to its economy and development.

Maritime Law in India

India has always been one of the important countries for the export and import of goods and services not only to its neighbors but also to the western world, the rate of export of goods and services as the

² www.marineinsight.com

³ www.un.org

percentage of GDP is 19.74% whereas the rate of import is 23.64%.⁴ However with its plan to convert its single digit economy into a double digit economy, it definitely tends to increase its exports as compared to the imports. In the ancient times India was one of the most lucrative countries for trading, there are sufficient evidence in the Indian history that suggests that it was one of the leaders in trade and commerce sector during the Mauryan Empire, the Mughal empire and the reign of various other dynasties there was sufficient amount of trade and commerce that took place between different dynasties. It enjoyed special status during the ancient times; probably the it was the suitable environment of trade and commerce which attracted the Britishers to India for setting up their own East Indian Company. India being a developing country is emphasizing upon the use and export of the domestic products, in the past local customs were followed while trading with its neighbors. It was only during the colonial rules during which several acts were framed and passed for the maritime law. Some of the enactments include the Admiralty Offences Act 1849, the inland-vessels act 1917, the Coasting Vessels Act 1838, the Registration of Shipping Act 1841, the Indian ports Act 1908, the Indian Merchant Shipping Act 1923 etc.⁵ The Admiralty Act 2017 is the most comprehensive legislation as on today, the merchant and the shipping activities India are controlled by the Ministry of Ports, Shipping and Waterways, initially the Ministry of Ports, Shipping and waterways was known by the name of Department of War transport it was bifurcated from the Department of Communication and was formed in July 1942. The main objective and purpose of the Department of War Transport included management and utilization of road and water transport, transportation of petrol and gas, strengthening of ports, coordinating the needs in the time of war and administration and development of ports.⁶ It was in the year 1957, the Department of War Transport was renamed as Ministry of Transport & Communication and by the notification of 10.11.2020 Ministry of Ports, Shipping and Waterways Ports, Shipping and Waterways" has been renamed as "Ministry of Ports, Shipping and Waterways".⁷ The ***Shipping Corporation of India*** is one of the largest government owned shipping company that operates looks after the maintenance of the vessels, the Shipping Corporation of India established on 2nd October 1961 as an amalgamation of the Eastern Shipping Corporation and Western Shipping Corporation and is one the first public sector company in the area of shipping. Its services include the cruise liner and passenger ships, the bulk carriers and the tanker

⁴ Wits.worldbank.org

⁵ cmlnluo.law.blog

⁶ <http://shipmin.gov.in/>

⁷ <http://shipmin.gov.in/>

and the offshore services, some of its major clients are Indian Oil Corporation, Bharat Heavy Electronics Limited, Steel Authority of India, Oil and natural Gas Corporation etc. Since its establishment Shipping Corporation of India has also entered into various joint ventures with the prestigious and renowned global companies.

The Liberalization, Globalization and Privatization policy of India also played a vital role in giving boost to the shipping sector of India, these policies opened new gateways not only for the shipping sector but also helped in improvising the import and export schemes. The admiralty Act, 2017 is a comprehensive law on the law of the sea, it deals with various issues right from the arrest of the ships to the maritime claims and liabilities. The act provides for the exclusive jurisdiction to the High Courts to settle the disputes between the parties and gives powers of arrest in rem and admiralty jurisdiction in personam. On the other hand the Registration of Ships Act 1841 provides for the registration of the ships within India, the method and procedure for the registration is simple and easy Section 1 provides that all the details regarding the owner or the owners must be given in detail including the name, the number of joint owners, the address of the owners, the dock at which the ship is or was built, the number of decks ship etc. Thereafter the certificate of registration is issued by the Registrar. The certificate must bear the name of the port at which the registration was applied for and duly completed (Section 2) and a book of registry must be maintained at all times by the registering officer (Section 4).⁸ The act also provides for certain penal provisions in certain situations such as the fraudulent use of certificates. The Territorial waters, Continental Shelf Act, The Exclusive Economic Zone and Other Maritime Zones Act 1976, defines the territorial extent of maritime water in India and its border countries. The act clearly provides for the rights of the India over its continental shelf, exclusive economic zones and its territorial water. Moreover it also defines the offences and the place of trial in case the offence is being committed.⁹ The maritime law in India has evolved from the colonial period to the current times as per the needs and requirement, it is also signatory to the United Nation Convention on the Law of the Sea (UNCLOS) and therefore under international obligations to its neighbors and other countries. Moreover maritime subject matter is important not only from the trade and commerce point of view but also from the point of defense and strategical advantage.

⁸ The Registration of Ships Act 1841

⁹ The Territorial Waters, continental Shelf, Exclusive Economic Zone And Other Maritime Zones Act, 1976

Maritime Law in UAE

The United Arab Emirates is basically a federation of the states which include the Abu Dhabi (the capital), [Ajman](#), [Dubai](#), [Fujairah](#), [Ras Al Khaimah](#), [Sharjah](#) and [Umm Al Quwain](#). It is one of the most important and a powerful nation in the Middle East today, both economically and strategically. The export rate of the United Arab Emirates is 93.86% of its GDP and import of 67.98% of its GDP, thus it is very much clear from the statistics that the export of goods and services is of the utmost importance for UAE, in order to maintain its dominant position in the Middle East.¹⁰ Moreover the UAE has the 6th largest oil reserves and the 7th largest gas reserves in the world. The country provides for a suitable and friendly environment for trade and commerce, rather some of its cities like Dubai are the hub for trade and commerce which attracts various international companies. Before the discovery of the oil and gas reserves the maritime activities were one of the major sources of income for the UAE, it depended upon fishing and other maritime activities for its economy. But today UAE is one of the leaders in the maritime activities and the export and import of goods and services, it has one of the largest and well developed ports in the world, it has excelled in the art of the construction of the sea ports. Some of its cities like Dubai today are the renowned hub for the maritime industry, it has more than 5500 companies registered and engaged in more than 13000 activities from shipbuilding to container logistics and dry cargo handling.¹¹

The UAE Maritime Law, 1981 governs the shipping law and the law relating to its territorial water, the act aims to promote the foreign and domestic trade and increase the number of the fleet of the ship flying the flag of the state in order to strengthen its self economically. The act provides for the registration and the navigation of the ships within its territorial waters, the vessels or the ships registered in any of its ports must be deemed to be the national carrier of the state, if the ship or the vessel is owned by more than one person it is important that all the owners must be the nationals of the state (Article 14).¹² The act also provides for the restriction on the foreign ships for carrying out certain activities such as (i) coastal navigation between the ports of the state (ii) towage or the pilotage in the ports of the state (iii) fishing or pleasure cruising in the territorial waters but howsoever by way of exception license may be granted to the foreign ships for carrying out one of the activities but for

¹⁰ wits.worldbank.org

¹¹ www.dubaichamber.com

¹² The UAE Maritime Law, 1981

a limited period of time only (Article 16). The registration of the ships is mandatory in order to ensure the free movements of the ships, in case if any person operates the ship which is not registered in accordance with the law shall be liable to the imprisonment for a minimum term of one year and fine not exceeding fifty thousands dirhams (Article 44) .¹³ At the same time the UAE is all set to introduce the new maritime law The Federal Transport Authority-Land and the Maritime is currently reviewing the Federal which would be replacing the UAE Maritime Law of 1981.

Conclusion

Maritime law in today's era is very crucial for the countries especially from the point of view of its economic development as the strong maritime law promotes free flow of goods and services which in return adds up to the economic development of the countries. Moreover the maritime law is not important from the economical point of view but also for the defense and it provides strategic advantages over its neighbors. The maritime law is a dynamic law that keeps on changing according to the needs and requirement, the law has evolved and developed as per the change in time and technology and would continue to evolve. With time new challenges come up and so does the new rules and regulations in order to solve such challenges.

¹³ The UAE Maritime Law,1981