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AIAC EVENING TALK SHIP TO SHORE: CHARTERING DISPUTE RESOLUTION IN THE MARITIME INDUSTRY

The Asian International Arbitration Centre (AIAC) recently hosted an engaging evening talk at its Kuala Lumpur Auditorium, bringing together prominent voices in maritime law and dispute resolution.

The panel discussion was led by Justice Dato' Mary Lim Thiam Suan, along with Justice YA Tuan Ong Chee Kwan, Judge of the Court of Appeal, Justice Gopinath Menon, Judge of the High Court of Kerala, and Adv. Joy Thattil Managing Partner of Callidus Legal. They addressed the topic "Judging the Tide: Harmonizing Maritime Dispute Resolution Across Southeast Asia." The evening also featured a keynote presentation titled "Demystifying the Shipping



World: Arbitration, Law, and Trends" by Ms. Wan Hilwanie Arif, Partner of Arif & Co. and President of the International Malaysian Society of Maritime Law. It was an engaging session that highlighted the importance of cross-border expertise, judicial perspectives, and evolving trends in chartering disputes

and admiralty practice.

We were honoured to see our Managing Partner, Adv. Joy Thattil shares his valuable insights alongside such an esteemed panel.

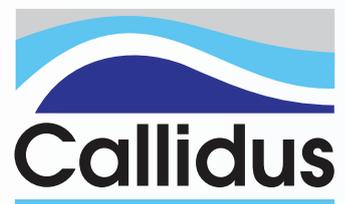
A special thanks to AIAC for creating such a meaningful platform for dialogue and collaboration within the maritime industry. ■



THOUGHT
for the MONTH

Strength doesn't come from what you can do. It comes from overcoming the things you once thought you couldn't

RIKKI ROGERS



REFORMING THE TIDE: A CRITICAL REVIEW OF INDIA'S MARITIME LEGISLATION

Joseph Thomas, B.com LLB Final Year, Bharata Mata School of Legal Studies



This article attempts a comparative analysis of India's current maritime legislative enactments to better understand the financial implications they may carry. As someone currently engaged in the sector, I've closely examined the sweeping reforms introduced in 2025, which aim to modernise outdated laws and attract 1 trillion in investment. While the urgency is understandable and the initial momentum commendable, the new legal framework contains several critical flaws that could jeopardise its long-term sustainability.

The centralisation of authority curtails the financial autonomy of states, generating friction in what ought to be a collaborative federal framework. The vague language surrounding foreign ownership introduces unnecessary regulatory uncertainty, which may deter potential investors. Moreover, the

dispute resolution mechanism lacks institutional independence, making it harder for stakeholders to trust the process, this alone could drive up the cost of capital. There are also concerns about the disproportionate financial strain these reforms impose on smaller domestic operators, who may find it increasingly difficult to remain viable under the revised regime.

India launched its most comprehensive overhaul of maritime legislation in over a century, replacing antiquated colonial-era laws with four new acts: the Indian Ports Bill (passed by both the houses, pending Presidential approval), Merchant Shipping Act 2025, Coastal Shipping Act 2025, and Carriage of Goods by Sea Bill Act 2025. These reforms are part of a broader national strategy to modernise infrastructure, reduce logistical costs, and enhance India's global competitiveness in shipbuilding.

The legislative package is ambitious, aiming to streamline governance and align India's maritime practices with international conventions such as MARPOL and the Ballast Water Management Convention. It's closely aligned with the flagship initiatives like, PM Gati Shakti National Master Plan for multi-modal connectivity, the Maritime India Vision (MIV) 2030, and the long-term Maritime Amrit Kaal Vision (MAKV) 2047, which aim to double port capacity and attract both domestic and foreign investment.

However, the pace at which these laws were enacted has raised legitimate concerns. Several bills were expedited through Parliament with minimal scrutiny, bypassing standing committee reviews and stakeholder consultations. In prioritising speed over deliberation, the government forfeited a crucial opportunity to incorporate feedback from coastal states, legal experts,

and industry participants, resulting in several unintended consequences.

While reform must often move swiftly to meet strategic goals, speed alone is no substitute for sound governance. Diligence is the elixir that ensures laws are not only effective but equitable. India’s maritime ambitions are commendable but to truly chart a steady course, the legislative process must be recalibrated to restore transparency, balance, and trust.

Financial Autonomy and Tariff Reform under the MPA Act, 2021

The Major Port Authorities Act 2021 marked a significant shift in how India’s major ports manage their finances and set tariffs. For the first time, Port Authority Boards were empowered to raise the capital independently, both domestically and internationally, for infrastructure and operational needs. This financial latitude is intended to support ambitious development projects. However, it is subject to oversight: any borrowing that exceeds half of the Board’s capital reserves must be approved by the Central Government, ensuring

that fiscal autonomy is tempered by oversight on high-stakes decisions.

Arguably the most groundbreaking change lies in the tariff-setting regime. The Act dismantled the previous centralised model, effectively sidelining the Tariff Authority for Major Ports (TAMP) from its role as the rate-setter. In its place, individual port boards now have the authority to establish their own pricing structures for services and asset usage. This shift is governed by the Tariff Policy for Major Port Authorities, 2021, which introduces a formulaic approach to prevent exploitative pricing.

Under this policy, each port must calculate its Annual Revenue Requirement (ARR), based on the average expenditure over the past three years, plus a fixed Return on Capital Employed (ROCE), currently pegged at 16%. The ARR acts as a cap on the total revenue a port can earn through tariffs, while allowing flexibility within that ceiling to respond to market conditions and competition.

Yet, this framework may inadvertently encourage inefficient spending.

Because the revenue ceiling is tied to the capital employed, ports could be incentivised to inflate their capital base, investing in oversized or overly expensive infrastructure, to justify higher tariffs. This phenomenon, often dubbed “gold-plating,” risks undermining cost-efficiency and could run counter to national objectives like lowering logistics costs.

Unless accompanied by rigorous scrutiny of capital investment decisions—a safeguard not clearly outlined in the current policy—this model may reward excess rather than prudence. While speed in reform is often essential, diligence remains the cornerstone of sound governance. Without it, financial autonomy may drift into fiscal imprudence.

Market-Driven Tariffs and Dispute Resolution under the MPA Act, 2021

A pivotal element of India’s revamped port finance framework is its approach to Public-Private Partnership (PPP) ventures. Under the Major Port Authorities Act 2021, private operators managing terminals and berths are now granted full autonomy to set their

Overview of Key Legislative Shifts and Risks:

Act	Replaced Law	Major Change	Intended Benefit	Emerging Concern
Indian Ports Bill	Indian Ports Act, 1908	MSDC vested with authority over state boards	Unified port development strategy	Undermines fiscal autonomy of states; May politicises investment decisions
		Civil courts excluded from port disputes	Faster resolution	Weakens judicial independence; discourages private investment
Merchant Shipping Act 2025	Merchant Shipping Act, 1958	Foreign ownership permitted, thresholds unclear	Attracts foreign capital	Regulatory ambiguity; risk of “flag of convenience” status
		BBCD leasing formally recognised	Flexible fleet expansion	Potential for indefinite foreign control without safeguards
Coastal Shipping Act 2025	N/A	DG granted broad licensing discretion	Protects domestic trade, allows strategic leeway	Vague “national security” criteria unsettle local operators

own tariffs, guided solely by market forces. This marks a decisive shift away from the previously centralised pricing model and is designed to entice private investment and operational expertise into the sector.

By allowing concessionaires to tailor charges to commercial realities, the policy aims to stimulate competition, enhance service delivery, and align Indian port operations with international standards.

To oversee this liberalised environment and address any disputes that may arise—whether over tariffs, contractual terms, or other provisions, the Act introduces a dedicated Adjudicatory Board. This body assumes the dispute resolution role formerly held by the Tariff Authority for Major Ports (TAMP), ensuring that regulatory oversight keeps pace with the sector's evolving commercial landscape.

A Call for Resilience and Equity

Modernising India's maritime infrastructure is not merely a policy choice; it's a strategic necessity for realising the nation's ambition of becoming a \$30 trillion economy by 2047. The legislative overhaul introduced in 2025 reflects a bold commitment to this vision. Yet, despite its promise, the current framework is riddled with structural vulnerabilities that could undermine its long-term viability.

At present, the reforms risk fostering financial instability due to inconsistent governance, legal uncertainty stemming from diminished judicial independence, and unfair burdens placed on smaller domestic operators. While recent improvements in port efficiency and cargo handling are commendable, they rest on a foundation that may not endure without

deeper institutional safeguards.

What's needed is not a retreat from reform, but a thoughtful recalibration. India must reaffirm its commitment to legal clarity, restore independent adjudication mechanisms, and embrace genuine cooperative federalism. These steps are essential to build investor confidence, ensure fair deployment of capital, and create a maritime ecosystem that benefits all participants, whether large-scale operators or smaller regional players.

Only through such reforms can India secure the financial strength and strategic coherence needed to navigate the future. A resilient maritime sector will not only attract investment, it will ensure that prosperity flows evenly across the industry, lifting every vessel on the tide of national progress ■



HOT NEWS

MISSILE STRIKE ON DUTCH CARGO SHIP IN GULF OF ADEN RAISES MARITIME SECURITY CONCERNS

A severe escalation in maritime tensions unfolded on **September 29**, when a Dutch-flagged cargo vessel, **MV Minervagracht**, was struck by missiles launched by **Houthi forces** in the **Gulf of Aden**. The attack caused significant damage, injuring two crew members and forcing the ship's evacuation.

The **EU Naval Mission – Operation Aspides** led a rescue operation, successfully transferring all crew members to **Djibouti**. The vessel, however, remains adrift and on fire, marking one

of the most serious Houthi-led attacks on commercial shipping this year.

The incident highlights the growing risk to commercial vessels transiting the Red Sea and Gulf of Aden, a key artery for global trade. With Houthi missile systems now covering critical maritime lanes, ship operators and insurers are facing heightened security alerts and rising premiums for vessels navigating the region.

Industry experts warn that if such

attacks persist, shipping companies may be forced to reroute vessels around the Cape of Good Hope, increasing both transit time and freight costs.

For maritime stakeholders, this event underscores the urgent need to reassess voyage planning, insurance coverage, and regional compliance requirements. Security advisories and updated risk protocols will be key to maintaining operational continuity in affected zones ■

Courtesy : www.maritime-executive.com

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