PIRATES IN THE INDIAN OCEAN-NEED FOR AN ANTI-PIRACY LEGISLATION IN INDIA: WAY FORWARD

By Subash P
Research Scholar, Department of International Law and Organisations, The Tamilnadu Dr. Ambedkar Law University, Chennai.

Abstract:
The crime of maritime piracy is similar in nature to robbery. Since, international trade and commerce are predominantly based on sea routes. The offence of piracy becomes a menace for humankind and international trade and commerce. Subsequently, it was added to the list of universal jurisdictions to prosecute the pirates by any country in the United Nations Convention on Law of Seas, 1982. However, the absence of national legislation in India governing the offence of piracy creates a legal vacuum for the effective dispensation of justice to the victims. So, the increasing need for legislation cannot be over looked. This paper critically analyses the Piracy Bill of 2012 and 2019 and its compliance with United Nations Convention on Law of Seas, 1982.

Keyword: Piracy, Human Right, Bail, mandatory Death Penalty.

1. Introduction:
India is centrally located in the middle of the international maritime trade route. Particularly, the Gulf of Oman and Gulf of Aden is geo-strategically located near to Indian Subcontinent. These regions are important for their natural resource i.e. Exporting crude oil. Also, the presence of Somalia and other small islands in these region favours sea pirates and such island becomes their stronghold. This menace of sea pirates severely affects commercial and other merchant ships passing through this region. Further, most of the ships from Europe to South-East Asia and vice versa passes through Suez Canal and subsequently through the Gulf of Aden which is next to Somalia. So naturally, there is a high probability of pirate attacks on these passing ships. Therefore, there is a strong need for India to have anti-piracy legislation to effectively tackle this menace of the sea.

The Anti-Maritime Piracy Bill, 2019 is the newly proposed anti-piracy Indian legislation. Still, there is no specific anti-piracy legislation in India and the void is felt with the ever-increasing pirate attacks. To note here, the West Indian Ocean is infamous for its notorious pirate attacks. Currently, India is prosecuting pirates under Armed Robbery, the Indian Penal Code, 1860, and Admiralty Jurisdiction of certain High Courts. Therefore, the proposed bill is to comprehensively deal with the offence of piracy and to safeguard the maritime interest of India.

In geographical terms, India is located in the nerve of world trade through sea. Thus, any strict anti-piracy measures taken in the Gulf of Aden will push the Pirates towards the Indian side of the Ocean. Therefore, we need strong policy directions, legislation, and effective mechanism to eliminate the

---

1 Read, Need to have national Anti-piracy legislation in India which is available at https://thewire.in/security/urgent-need-for-
problem of piracy. The Gulf of Aden is important in the commercial World due to its connectivity. It connects the Indian Ocean to the Red Sea which in turn connects with the Mediterranean Sea and then to the Atlantic Ocean. Thus, the American Continent, European Continent, North African, Middle Eastern, South Asia, and East Asia are connected by this cruel Suez Canal and the Gulf of Aden.

The Preamble of the Bill states the basic tenets of the proposed legislation i.e. to repress and punish for the act of piracy in the high sea. As of now, there is no specific legislation in India to prevent and eliminate the crime of piracy in the Indian waters and nearby High Seas. It is obligatory on the part of India to incorporate the international law on piracy into the Indian statutory law. The United Nations Convention on the Laws of Sea (Hereinafter to be referred as 'UNCLOS') is the applicable international law on piracy. Also, the preambular recital mandates all States to cooperate to the fullest possible extent for repressing piracy in the high seas and outside the national jurisdiction of States. This proposed bill is applicable beyond the limit of contiguous zone i.e. the Zone of High Sea. In this piece of research, the author tries to assess the legislative effectiveness and its compatibility with the international legal obligations.

2. Historical Background:

In the context of the Indian Ocean in general and India in particular, piracy is a menace to both commercial trade and human rights. Piracy affects human rights in terms of loss of life, property, and livelihood of people who depend on sea-borne trade and commerce. The geographical closeness of India to the hotspot of pirate attacks i.e. Somalia is the great concern for the Government of India to safeguard and protects its commercial and other interest in the Western Indian Ocean Region. We have maritime co-operation with the littoral States of the Indian Ocean, thereby enhances maritime domain awareness. The State of Somalia is turned into the motherland of pirates controlling the Horn of Africa and East African Coast and West Indian Ocean. Therefore, to end pirate attacks in the Indian Ocean region, we need to end pirates operating from Somalia and to establish a stable government in Mogadishu, Somalia.

In 1995, India ratified the 1982 UNCLOS. The Piracy Bill, 2012 extended the scope of the bill to the Exclusive Economic Zone too. However, the 2019 Bill applies only to the High Sea or any areas outside the territorial jurisdiction of any States.

3. International Law on Piracy:

The UNCLOS which is considered as an ‘Constitution of the Ocean’ provides the international framework to combat and

---


eliminate the international crime of piracy.\(^4\) The definition of piracy is provided under Article 101 of the UNCLOS which is verbatim to the definition provided under the Piracy Bill, 2019. It includes the warship and government-owned non-commercial ship, if the crew mutinyed and took control of the ship and committed the act of piracy.\(^5\) Retention or loss of nationality of the ship is determined by the laws of the flag State.\(^6\) A right has been bestowed on every State to seize the ship, aircraft and things on board. The Court of the seizing State decides on the penalty to be imposed. If a seizure is made without any reasonable grounds, that State is liable to pay damage to the flag State. Article 110 provides the right to visit the suspected ships to verify whether it is a pirate ship or not.

4. Definition of Piracy:

Section 2 (f) of the Bill defines piracy as any illegal act of violence or detention or deprivation committed for private ends by the crew or passenger of a private ship or aircraft. These acts are directed against another ship or aircraft or person or property on it. This act of violence is prosecutable even committed outside the Indian jurisdiction i.e. the high seas. The criminal territorial jurisdiction of India can be based on the principle of universal jurisdiction to prosecute the pirates.\(^7\)

Any act of voluntary participation in the operation of the ship or aircraft with the knowledge that the ship is being used for piracy shall amount to piracy. It includes an act of inciting or of intentionally facilitating the offence of piracy. Any act which is considered as piratical under international law including customary international law. Thus, the definitional scope of the Act is very wide to cover any act of piracy.

It is important to understand the instrument (ship and aircraft) by which the act of piracy is committed. Any ship or aircraft is considered as a pirate ship or aircraft if the person is in the dominant position intending to use it for piratical acts.

5. Administration of Justice:

The Centre, after consultation with the Chief Justices of the Concerned High Court designated one or more Court of Session to expedite the trial process for piracy and also it specifies the territorial jurisdiction of such Courts. There shall be no question of nationality in the trial for the offence of piracy. The jurisdiction cannot be exercised, if the pirate attacked ship is a foreign ship. However, if the owner of the ship or master of the ship or anyone from the ship requests the law enforcement agency or public authority of the port or place where the ship is located, then the jurisdiction can be exercised. The Designated Court is empowered to try the ‘proclaimed offender’ in absentia. Further, warships, auxiliary ships, government non-commercial owned ships or government-controlled ships are exempted from this Act.

\(^6\) Ibid, Article 104.
\(^7\) Refer, Alondra Rainbow Case, Mumbai High Court, 1999. This case demonstrates the Indian jurisdiction over pirate attacks in the High Seas. It is available on https://theprint.in/pageturner/excerpt/when-indian-navy-helped-catch-japans-stolen-ship-and-what-vajpayee-did/294520/.

PIF 6.242 www.supremoamicus.org
Under Section 167 (2) and (2A) of the CrPC, persons charged under the offence of piracy are sent to 15 days of judicial custody in whole, if the magistrate is a Judicial Magistrate. If the Magistrate is an Executive Magistrate, custody is only for 7 days in total. The terminology ‘as he thinks fit’ in Section 10 (1) (b) of the Piracy Bill bestows judicial discretion to the Magistrate to ensure the human rights of the alleged pirates.

The accused may be tried along with other charges under others laws in force. The provision of the CrPC applies to the trial for the offence of piracy, if otherwise provided by the piracy Bill. Section 15 provides legal protection to the officers for anything done in furtherance of this Bill and any damages caused in good faith in pursuance of this Bill.

1. Statutory Presumption of Committal Offence:

Section 11 takes about the presumption against the accused on the charge of piracy. There is a presumption of piracy, if the following conditions are satisfied.

1. If the authorized officer recovers from the accused possession the arms, ammunitions, explosives and other pieces of equipment or if any reasonable ground to believe that such arms to be used for piracy.

2. Evidence of use of force, the threat of use of force, or any form of intimidation directed towards the crew or passenger for the piratical act.

3. Evidence of intended use of the bomb, arms, firearms, explosives or any form of violence against the crew, passenger or cargo.

2. Punishment for the Offences of Piracy:

Section 3 provides two kinds of punishment. They are (1) Lifetime imprisonment or (2) Death, if death is caused or attempted during the act of piracy. In addition to it, criminal proceeds shall be forfeited. The mandatory death penalty is laid down for the pirate, if they caused any death during the pirate attack.\(^8\) The Supreme Court has held that the provision of prescribing mandatory death sentence is unconstitutional under Articles 14 and 21. The outright death sentence restrains the Court to apply its mind to the facts and circumstances of the Case. Thus, it creates arbitrariness and unfairness towards the ultimate goal of rendering justice. However, there are few legislations which provides for mandatory death sentence.\(^9\) Even an attempt to murder is punishable with death sentence is absolutely unfair and arbitrary in any legal system.

Further, any attempt to commit the offence of piracy; persons aiding; abetting; counseling; procuring for the commission of piracy shall be punished with 14 years and also with a fine. Also, persons participating, organizing, directing others to participate shall be punished with 14 years and a fine. The Central Government can empower the Gazetted officer or Gazetted officer of the

---


State Government to arrest, investigate the crime of piracy.

The pirate boats, ships and aircraft or under the control of the pirates may be seized, the pirates on board may be arrested and the property on board may be seized. The word 'may' indicate the discretion vested in the authority. However, seizure, arrest and confiscation shall be made by the warship, naval aircraft, Indian Coastal Guards or other ships or aircraft as designated by the Central Government. Such ships and aircraft shall be clearly marked and identifiable on Government service.

3. Right to Bail:

The bail provision of CrPC is not applicable for the offence of piracy. The right to bail is dependent on certain conditions laid down in Section 12 (1) of the Bill. They are (1) The Public Prosecutor must be given a chance to oppose the bail application and (2) The Court has to satisfy that there are reasonable grounds that he is not guilty of piracy or no likelihood to commit piracy on his bail period. However, the inherent rights of the High Court to grant bail under Section 439 of the CrPC is continue to apply to the charge of piracy.

4. Obligation to Extradite:

The Bill includes the offence of piracy to the list of extraditable crimes from the commencement of this Bill. It is possible to extradite by way of a bilateral treaty mechanism or based on the principle of reciprocity.

6. Conclusion:

The absence of national legislation on piracy creates a grey area in the effective prosecution of pirates in the Indian judicial system. Therefore, the Piracy Bill of 2012 and followed by another Bill in 2019 is in the right direction. However, the bill is pending in the parliament without realizing it's important to safeguard our seafarer community and our national maritime interest. However, the mandatory death penalty violates the human rights of the accused. So, it must be omitted in the Bill.

*****