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MARITIME LAW

INTRODUCTION

Shipping of all industries is the most international. The maritime law has to do with the status and governance of the seas and oceans which cover over 70% of the Earth. It provides the regulatory framework for the growing number of human activities in the marine environment. It affects the political, strategic, economic and other important interests of States. It is one of the oldest parts of the law of nations, having developed slowly through the practice of States over the centuries. The international law of the sea is one of the oldest branches of public international law. Thus, it must be examined from the perspective of the development of international law. Originally the law of the sea consisted of a body of rules of customary law. Later on, these rules were progressively codified. 2 COURSE OBJECTIVE At the end of this unit, you should be able to Account for the historical background of maritime law Differentiate between maritime and admiralty law, though as we know it today, the two terms are used interchangeably; Nature of admiralty law Sources of admiralty law and maritime law Know the maritime jurisdiction of our courts 3.0 MAIN CONTENT 3.1 HISTORICAL BACKGROUND Maritime law is an ancient legal system deriving from customs of the early Egyptians, Phoenicians and Greeks who carried an extensive commerce in the Mediterranean Sea. Special tribunals were set up in the Mediterranean port towns to judge disputes arising among seafarers. This activity led to the recording of individual judgments and the codification of customary rules by which courts become bound. 3.3 NATURE OF ADMIRALTY LAW The rules governing practice and procedures of admiralty courts constitute the admiralty law. The term maritime is also used comprehensively to include admiralty law, being its procedural or adjective part. Though maritime law is municipal law is municipal in the sense that its authority and enforceability to a national sovereign power and it can be altered, added to or abrogated by a sovereign law making agency, the bulk of its established norms and principles have originated from necessities of sea-borne trade and commerce involving transnational transactions. Maritime law has been developing customs and rules of its own, independently of peoples, sovereign and nation-states, and as such it has grown up as a system by itself to be adopted by all civilised maritime nations of the world. There always existed a common law of sea which did not owe its

authority to any superior sovereign power enforcing obedience upon nations of the world, but hic was recognised and treated as binding by courts in dealing with maritime cases. The modern instance of recognition by courts of existence of a common law of the sea is to be found in the case of *United Africa Co.Ltd. v. Owners of MV Tolten*. In that case the Court of Appeal in England refused to apply in an admiralty case the common law that English Courts shall not entertain action to recover damages for trespass to land situated abroad demonstrating the incongruity of the rule of common law with the essential nature of admiralty jurisdiction. Maritime law -is a complete system of law, both public and private, substantive and procedural, national and international, with its own courts and jurisdiction, which goes back to Rhydian law of 800 B.C. and pre-dates both the civil and common laws. Its more modern origins were civilian in nature, as first seen in the Rôles of Oléron of circa 1190 A.D. Maritime law was subsequently greatly influenced and formed by the English Admiralty Court and then later by the common law itself. That maritime law is a complete legal system can be seen from its component parts. For centuries maritime law has had its own law of contract: -contract of sale (of ships), -contract of service (towage), -contract of lease (chartering), -contract of carriage (of goods by sea), -contract of insurance (marine insurance being the precursor of insurance ashore), -contract of agency (ship chandlers), -contract of pledge (bottom and respondent), -contract of hire (of masters and seamen), -contract of compensation for sickness and personal injury (maintenance and cure) and -contract of risk distribution (general average). It is and has been a national and an international law (probably the first private international law). It also has had its own public law and public international law. DIFFERENCE BETWEEN ADMIRALTY LAW AND MARITIME LAW The terms admiralty and maritime law are sometimes used interchangeably, but admiralty originally referred to a specific court in England and the American colonies that had jurisdiction over torts and contracts on the high seas, whereas substantive maritime law developed through the expansion of admiralty court jurisdiction to include all activities on the high seas and similar activities on Navigable waters because water commerce and navigation often involve foreign nations, much of the U.S. maritime law has evolved in concert with the maritime laws of other countries. The federal statutes that address maritime issues are often customized U.S. versions of the convention resolutions or treaties of international maritime law. The United Nations organizes and prepares these conventions and treaties through branches such as the International Maritime Organization and the International Labor Organization, which prepares conventions on the health, safety, and well-being of maritime

workers. The substance of maritime law considers the dangerous conditions and unique conflicts involved in navigation and water commerce. Sailors are especially vulnerable to injury and sickness owing to a variety of conditions, such as drastic changes in climate, constant peril, hard labor, and loneliness. ADMIRALTY LAW AS A PART OF THE LAW OF MERCHANT Maritime and admiralty law, is from the historical standpoint, a part of what is known as law of merchant-universal rules and customs of commerce applicable to all merchant, native or foreign. The law merchant is divisible into two categories: maritime law (including admiralty law) and commercial law; and it is a body of law distinct from common law. The law merchant of primitive times comprised both maritime and commercial law as modern code. Both laws were administered in either the same or similar courts which were distinct from ordinary courts. The similarity of the surroundings in which both maritime and commercial laws grew up and of the tribunals in which they were administered has tended to foster a close and intimate relationship between the two. In England, they gradually came to be administered in different courts, but even the connections seem to have been maintained. English judges have regarded them as two species of jus gentian rather than laws of a particular state. In course of time, a separation came about between the two in a formal sense, with the establishment of a court under Lord High Admiral of England claiming specialization in maritime matters. Whereas the local mercantile courts, such as "pie powder courts" were reckoned as king's courts subject to the writ jurisdiction of High Court in London, the admiralty court under the Lord Admiral tended to steer clear of the course of the common law jurisdiction of the High Court. The spirit and jurisprudence of admiralty law has greater affinity with law merchant than with common law. Having its origin n law merchant, admiralty law pertains to the domain of private law it deals with rights, duties liabilities or obligations of individuals or bodies of individuals engaged in maritime commerce and merchant shipping.

ADMIRALTY LAW IN RELATION TO COMMON LAW AND CIVIL LAW

Most nations today follow one of two major legal traditions: common law or civil law. The common law tradition emerged in England during the Middle Ages and was applied within British colonies across continents. The civil law tradition developed in continental Europe at the same time and was applied in the colonies of European imperial powers such as Spain and Portugal. Civil law was also adopted in the nineteenth and twentieth centuries by countries formerly

possessing distinctive legal traditions, such as Russia and Japan, that sought to reform their legal systems in order to gain economic and political power comparable to that of Western European nation-states. Common Law Civil Law, in contrast, punishment for each offense. Such codes distinguish between different categories of law: substantive law establishes which acts are subject to criminal or civil prosecution, procedural law establishes how to determine whether a particular action constitutes a criminal act, and penal law establishes the appropriate penalty. In a civil law system, the judge's role is to establish the facts of the case and to apply the provisions of the applicable code. Though the judge often brings the formal charges, investigates the matter, and decides on the case, he or she works within a framework established by a comprehensive, codified set of laws. The judge's decision is consequently less crucial in shaping civil law than the decisions of legislators and legal scholars who draft and interpret the codes. Civil Law Civil Law, in contrast, is codified. Countries with civil law systems have comprehensive, continuously updated legal codes that specify all matters capable of being brought before a court, the applicable procedure, and the appropriate punishment for each offense. Such codes distinguish between different categories of law: substantive law establishes which acts are subject to criminal or civil prosecution, procedural law establishes how to determine whether a particular action constitutes a criminal act, and penal law establishes the appropriate penalty. In a civil law system, the judge's role is to establish the facts of the case and to apply the provisions of the applicable code. Though the judge often brings the formal charges, investigates the matter, and decides on the case, he or she works within a framework established by a comprehensive, codified set of laws. The judge's decision is consequently less crucial in shaping civil law than the decisions of legislators and legal scholars who draft and interpret the codes. Relation of Admiralty Law Admiralty and jurisdiction in India has been kept separate from the ordinary civil jurisdiction by the provisions of section 4(1)1 and section 112(2)2 of the Code of the Civil Procedure. Section 1403 of the Code of Civil

Procedure. In the case of M.V. AlQuamarv.Tsalvliris Salvage (International) Ltd.,4 the Supreme Court of India, while holding that a judgement of the High Court in England in an Admiralty action in persona may be executed in India under Section under Section 44A5 of the Code of the Civil Procedure Proedure,1908, proceeded from the major premises in India that all the provisions of the Code, except those in Part VII, are applicable in the admiralty jurisdiction. 1Secction 4 provides, " Savings-(1) In the absence of any specific provision to the contrary, nothing in this Code shall be

deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time in force. (2) In particular and without prejudice to the generality of the proposition contained in sub-section (1) nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land". 2 Section 112(2) provides that "(2) Nothing herein contained applies to any matter of criminal or admiralty or viceadmiralty jurisdiction or to appeals from orders and decrees of Prize Courts". 3Section 140, "Assessors in causes of salvage etc. — (1) In any admiralty or vice-admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction may, if it thinks fit, and shall upon request of either party to such cause, summon to its assistance, in such manner as it may direct or as may be prescribed, two competent assessors; and such assessors shall attend and assist accordingly". 4(2000)6 SCC 278: AIR 2000 SC 2826 5Section 44A provides that," Execution of decrees passed by Courts in reciprocating territory. -(1) Where a certified copy of a decree of any of the superior courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court. (2)Together with the certified copy of the decreeshall be filed a certificate from such superior court stating theextent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive SOURCES OF MARITME

LAW AND ADMIRALTY LAW Primary Sources 1 . Written law In early times Hammurabi's Babylonian laws of 1700 B.C., preserved in cuneiform characters, contained maritime regulations concerning care of goods confided for transport. No traces of similar maritime law subsist from the days of the great Phoenician voyages on the Mediterranean and outside that sea. From the eastern Mediterranean, however, the first known rule concerning general average is preserved, the so-called Rhodian law concerning jettison of cargo. This rule was in time incorporated into Roman law. The hegemony of Athens on the Mediterranean, which reached its peak during the 5th century B.C., left few and indirect traces in the history of maritime law. Some of Demosthenes' speeches. from a somewhat later period show indirectly that Greek maritime law had reached an appreciable development. The maritime legal institution known as bottomry was, for instance, not unknown in Greek law. Roman law, which influences European jurisprudence in so many fields, has not had

the same importance in respect of maritime law. The Roman doctrine of the master's responsibility for damage suffered by goods confided to him-a damage for which he was liable only if the loss was not due to damnum fatale or vis major -has, however, not been without influence on the formation of present-day maritime law. An illustration of this fact is found in the exception clauses in present bills of lading, relieving shipowners from liability for damage due to an "Act of God." During the Middle Ages the special characteristics of maritime law received stronger impetus, especially during the latter part of the period. Increased trade on the Mediterranean meant the gradual development of a specialized legal practice in the field of maritime commerce. The problem of conflict of laws -that is, which national law shall govern in a certain case -was not as important during the Middle Ages as it was later on, especially after the creation in the 17th century of various national maritime codes. There was evidently no objection during the Middle Ages to adopting and applying a practice that was gradually developing within the common field of navigation, although this practice was not "national" legislation in the modern sense. Certain legal rules or decisions existing on the French Atlantic coast were compiled by an unknown author during the 11th and 12th centuries. It is not known for certain why this compilation got the name of R61es d'Oleron, after the Island of Oleron, situated off the west coast of France near the Charente. Perhaps the explanation, as has been suggested, is simply that the authority of a manuscript was confirmed by some magistrate of the law court of that island. These Ru1es d'Oleron, according to one author, met with such approval that they became general rules for the settlement of maritime legal questions. They were accepted not only in France as a common maritime law, but also in one form or another in other European countries. While the development of maritime law in Western and later in Northern Europe was chiefly influenced by the Ru1es d'Oleron the traders of the Mediterranean soon obtained a collection of rules of their own, which became just as famous. The legal practices that had developed in the Italian republics of Genoa, Pisa, Venice and above all in Amalfi, with its Tabul Tabula Analphitan, from the middle of the 14th century, and in Spain and on the French Mediterranean Coast, were recorded during the latter part of the 14th century by a law clerk in Barcelona. In doing so he also considered the R6les d'Olgron. This recording in Catalan was given the name of Consoato del Mar and soon became the only maritime law in use in the South. The Consolato del Mar exercised a great influence on later maritime legislation and was directly applied by the law courts. It is well known that the inhabitants of Scandinavia were, even in early times, skil ful sailors. The art of shipbuilding reached a high

standard, as did the art of navigation. Looting and war were not the only objects of the Viking expeditions.

2) Custom- The foregoing outline of the history of maritime law indicates that the rules of maritime law were in the beginning largely built on custom. In spite of the fact that so much contemporary maritime law is codified, custom still plays an important part as a supplementary source of law.

Frequent references to legally binding local custom, "custom of the port," are met, but a law court would hardly accept these claims without further proof. A custom must be an accepted local usage and practice in order to become binding in law. It should not represent only what, for instance, the local shippers have found to be in accordance with their interests and declare in writing as "custom of the port." First of all a custom must be so well known that everybody who is affected by it knows about it or ought to know about it. However, a law court would certainly be reluctant to alter a prevalent linguistic usage or increase a contract liability because of a claim of custom, if this custom should seem unreasonable or unfair in the eyes of the court. 3) Modern Conventions International organizations, states and classification societies put enormous efforts into prevention of maritime risks. Their efforts are reflected in undertaking various measures and actions, inter alia, in the adoption of technical regulations on the construction and equipment of merchant ships. All of these regulations make a whole and represent the general regime of ship safety. Technical inventories are largely contained in international conventions, but also in regulations of classification societies. The most important conventions adopted by the IMO relating to the safety of ships are: –International Convention for the Safety of Life at Sea (SOLAS Convention), 1974 with amendments; –International Convention on Load Lines, 1966, (LL Convention) and the 1988

Protocol and –The International Convention for the Prevention of Pollution from Ships 1973/78 (MARPOL Convention).
In addition to these conventions, a significant one for safety of ships is also the International Convention on Tonnage Measurement of Ships, 1969, and as regards fishing vessels the 1977

Torremolinos , International Convention for the Safety of Fishing Vessels occupies a special place. International Convention on Safety of Life at Sea, 1974, SOLAS Convention The SOLAS convention with numerous changes and amendments is the most important and the most

comprehensive international instrument on maritime safety. At the initiative of the British government, in 1913, an international conference attended by representatives of the thirteen states was held. Conference resulted in the adoption of the International Convention for the Safety of Life at Sea in 1914. The Convention has never entered into force due to the outbreak of the First World War. Once again, at the initiative of the British government in 1929, the second convention was convened and was attended by representatives from eighteen countries. At this conference the second International Convention for the Safety of Life at Sea was adopted. The Convention came into force in countries that have acceded to it and has undergone several changes and amendments. Therefore, in 1948 and 1960 a new convention under the same namewas adopted, except that the 1960 Conventions was repeatedlyamended, As follows: in 1968, 1969, 1971 and in 1973. In 1974, the fifth SOLAS Convention was signed, which entered into force on 25 May 1980 and has been in force since then, naturally with numerous changes and amendments. This Convention was amended with two protocols: Protocols of 1978 and 1988. The Protocol of 1978 was adopted at the International Conference on Tanker Safety and Pollution Prevention and became an integral part of the Convention. It entered into force on 1 May 1981. Soon after, the International Conference on the Harmonized System of Survey and Certification was held. At this conference, on 11 November 1988, the second Protocol was adopted, which entered into force on 3 February 2000. The main objective of the SOLAS Convention is to ensure minimum standards regarding construction of ships, their equipment and usage in accordance with their safety. According to the SOLAS Convention the flag States are responsible for ensuring that ships under their flag comply with the requirements of the Convention and a number of certificates are prescribed in the Convention as proof that this had been done. Especially significant are the control provisions, which stipulate that States Parties have the right to inspect ships of other Contracting states, if thereseveral changes and amendments. The SOLAS Convention contains twelve chapters followed by an Annex with certificates, as well as annexes of resolutions and recommendations. Chapters of the SOLAS Conventions are as follows: Chapter I – contains general provisions, i.e. provisions concerning the survey of the various types of ships and the issuing of documents (certificates) signifying that the ship meets the requirementsof the Convention, as well as the provisions for the control of ships in ports of other Contracting Governments; Chapter II 1. Construction (subdivision and stability, machinery and electrical installations); 2. Construction (Fire protection, fire detection and fire extinction); Chapter III – Life-saving appliances and arrangements; Chapter IV –

Radiocommunications; Chapter V – Safety of navigation; Chapter VI – Carriage of Cargoes; Chapter VII – Carriage of dangerous goods; Chapter VIII – Nuclear ships; Chapter IX – Management for the Safe Operation of Ships (ISM Code); Chapter X – Safety measures for highspeed craft (HSC Code); Chapter XI – 1. Special measures to enhance maritime safety, 2. Special measures to enhance maritime security; Chapter XII – Additional safety measures for bulk carriers. The SOLAS Convention has still been changed and amended. IMO Regulations stipulate that the Convention may be amended also without convening international conferences. Namely, amendments to the SOLAS Convention are accepted in the process of tacit acceptance, which means that all changes enter into force on a specified date, unless an agreed number of States Parties object within the term of one year. In this way all States Parties of the SOLAS Convention are able to monitor all innovations and overall development in the field of safe and secure construction of ships. International Convention on Load Lines, 1966 and the Protocol of 1988, LL Convention One of the most effective ways to improve safety of ships is the limitation of draught on which the ship can sail. In fact, every merchant ship must have a load line assigned. Load line is a marking indicating the extent to which the weight of a load may safely submerge a ship. In ancient times, many shipwrecks were caused by the negligence and it could be said by the greed of shippers, who overloaded their ships with the aim to increase its exploitation disregarding their safety. Therefore, the need for adoption of certain regulations that would regulate these issues emerged. In the nineteenth century, in England, a member of the Parliament Samuel Plasmon, promoting his national campaign against the so-called coffin ships, fought for passing the Law in the Parliament. In fact, at that time, the practice of overloading of cargo ships was widespread. Unscrupulous owners of such boats would subsequentlyoverinsure their boats, securing at the same time extraprofits for themselves from maritime voyages, thus exposing the ship's crew to mortal danger. The adoption of such regulations continued in 1930when the first International Convention on Load Lines, LLConvention was adopted. The aim of its adoption was improvingsafety of ships, preventing overloading cargo onboard, as well as preventing forcing the ship into danger.In 1966, at the international conference held in London,the regulations of 1930 LL Convention were reviewed and modified and a new LL Convention was adopted on 5April 1966. The Convention entered into force on 21 July1968. The Convention was amended six times, as follows:1971, 1975, 1979, 1983, 1995 and in 2003. Amendmentsadopted in 1971, 1975, 1979 and in 1983 have never enteredinto force, since they were not accepted by the requirednumber of states. Two-thirds of the

state Partieswas needed to accept the amendments to come into force. The Convention states ships it obliges, as well as determinationand control of freeboard. The LL Convention includes threeannexes:

UNIT – II MARITIME BOUNDARY AND DELIMITATION

.1 INTRODUCTION Maritime law is an ancient legal system deriving from customs of the early Egyptians, Phoenicians and Greeks who carried an extensive commerce in the Mediterranean Sea. Special tribunals were set up in the Mediterranean port towns to judge disputes arising among seafarers. This activity led to the recording of individual judgments and the codification of customary rules by which courts become bound. The world of international shipping is peopled by individuals from many profession engaged in various and diverse activities. Almost every commodity is capable of being moved by sea, and immerse quantities and variety of goods are daily purchased and sold on terms which include sea borne transportation. Maritime organizations are organizations established by national and international legislative instruments that enabl them to provide policies, formulated into laws, rules, regulations, guidelines, standards, codes that are binding or obligatory on member nations internationally and domestically.

2.2 HISTORY OF ADMIRALTY LAW IN ENGLAND AND OTHER PARTS OF WORLD

Eleanor of Aquitaine, ordered records to be made of judgments of Maritime Court of Oleron to serve as law amongst mariners of Western Sea. Earliest collection of “Laws of Oleron,” is described in Black Book of the Admiralty. In England, justiciaries of the King were instructed to declare and uphold laws and statutes, made to maintain peace and justice amongst people of every nation passing through ‘Sea of England’. An English translation made by a Registrar of the court, was introduced into ‘Black Book of the Admiralty’. This manuscript came into the College of Advocates in 1685 but was lost. Re discovered much later, it was placed in archives of the Admiralty Court. Sea Laws of Oleron were translated into Castilian by order of King Alphonso VI.

chancery of Lubeck, in the Old Saxon tongue. A manuscript of 1533 has been found in Guildhall of Lubeck. It contains a low German version of this collection, “the water law or sea law, which is

the oldest and highest law of Visby." Word "belevinge" (judgment) appears in front of each article. Introductory clause to its thirty-seventh article says "This is the ordinance which community of skippers and merchants have resolved upon, amongst themselves as ship law, which the men of Zeeland, Holland, Flanders hold, with the law of Visby, which is the oldest ship law." After the seventy-second article is written, "Here ends the Gotland sea law, which community of merchants and mariners have ordained and made at Visby, that each may regulate himself by it". Thus it appears that the Visby sea laws, like the Oleron sea laws, have gathered bulk with increasing years. Earliest historical records of Rhodian Law include Law and customs of the Hanseatic League. Exhaustive criticism of Rhodian sea law dated 1909 is valuable material not only on the Rhodian sea law, but on various other sea laws in force in the Mediterranean. Admiralty Courts originated in England in Saxon times. Admiralty law was introduced into England by Eleanor of Aquitaine while she was acting as regent for her son, King Richard the Lionhearted.

She had earlier published admiralty law in Oleron Island in 1160. Article VI of 'Rolls of Oleron' contains the doctrine of maintenance and cure and requires a ship owner to provide free medical care to an injured seaman serving the ship. Obligation of "maintenance" also involves providing a seaman basic living expenses while convalescing. Authority of kings to administer justice in respect of piracy, or other offences on the high seas was well established in time of Edward III in mid-14th century. Islamic law also influenced international Maritime Law including derivations from civil Law but is not rooted in it.

Term Admiralty law is peculiar to UK and some countries of former British Empire where separate courts may exist to administer laws governing maritime activities. Admiralty courts in UK are civil law courts largely based on Law of Justinian. They handle all admiralty cases in England and try to steer away from British common law. This includes relations between entities which operate ships across oceans for transportation, commerce and trade. Though each legal jurisdiction is governed by its own legislation on maritime matters, some features exist in all countries pertaining to law governing sea and ships. Significant volume of International Maritime Law has been developed recently through many conventions and multilateral treaties. It covers Maritime and commercial activities but differs from country to country. Today, Admiralty law is a body of both domestic law governing maritime activities, and private international law governing relationships

between private entities which operate ships on the oceans. It deals with transportation of passengers and goods by sea, shipping, maritime commerce, navigation and seafarers and covers commercial activities even if land based but maritime in character.

HISTORY AND ADMIRALTY JURISDICTION OF THE HIGH COURTS

The historical development of admiralty jurisdiction and procedure is of practical as well as theoretical interest, since opinions in admiralty cases frequently refer to the historical background in reaching conclusions on the questions at issue. The special jurisdiction of admiralty has a maritime purpose, different from the common law. It is not exclusively rooted in the civil law system, although it includes substantial derivations there from. It has a strong international aspect, but may undergo independent changes in several countries. Certain universal features exist in all countries that have admiralty law and such international features are given serious consideration by admiralty courts. By the end of the seventeenth century the admiralty jurisdiction in England was restricted, it was not as extensive as compared to other European maritime countries due to a long standing controversy in which the common law courts with the aid of the Parliament had succeeded in limiting the jurisdiction of admiralty to the high seas and as such excluded admiralty jurisdiction from transactions arising on waters within the body of a country. A suit against a foreign ship owned by a foreign company not having a place of residence or business in India is liable to be proceeded against on the admiralty side of the High Court by an action in rem in respect of the cause of action alleged to have arisen by reason of a tort or a breach of obligation arising from the carriage of goods from a port in India to a foreign port. Courts' admiralty jurisdiction is not limited to what was permitted by the Admiralty Court, 1861 and the Colonial Courts of Admiralty Act, 1890. Prior to the decision of m.v Elisabeth-v-Harwan Investment & Trading Pvt Ltd., Goa, the courts exercising Admiralty Jurisdiction statutorily in India were the three High

Courts at Calcutta, Madras and Bombay. The High Courts of the other littoral states of India, viz. Gujarat, Karnataka, Kerala, Andhra Pradesh and Orissa, do not possess Admiralty jurisdiction, albeit there have been instances of the High Courts of Gujarat, Andhra Pradesh and Orissa having entertained Admiralty causes apparently on a perfunctory consideration of the various States Reorganization Acts enacted by the Indian Parliament.

IMMUNITY OF GOVERNMENT SHIPS A

government merchant ship may be defined as a merchant ship owned or operated by a state. Immunity of a ship here means the exemption of a government ship from the jurisdiction of any state other than the flag state. This term also connotes the immunity of the flag state from the jurisdiction of the tribunals of foreign states in respect of proceedings connected with such a ship. Immunity of persons means the exemption of persons in the service of a government ship, or other persons on board her, from the jurisdiction of any state other than the flag state. The doctrine of sovereign immunity (also known as "jurisdictional immunity") is an "amalgam of two quite different concepts, one applicable to suits in the sovereign's own courts and the other suits in the courts of another sovereign". In simplest terms, the doctrine provides an exemption from the exercise of court jurisdiction and enforcement against a sovereign entity. This immunity also extends to the property belonging to the sovereign.1 A government ship is a special type of property that is afforded immunity under treaty, customary international law, and domestic statute. Sovereign immunity is based upon principles that each nation possesses equal exclusive, absolute power, rights, and independence that cannot be restrained or restricted by any individual or another nation in the absence of an express waiver of immunity or voluntary submission. The exercise of authority by one nation-State over another nation-State implies hostility or superiority that might potentially impair foreign relations. While the origins of sovereign immunity are debatable, the modern doctrine represents the bedrock of international relations and is believed to trace back to 1648 with the signing of the Treaty of Westphalia thereby marking the end of the Thirty Years War between the Roman Empire, France, and their respective allies.2 Sovereignty and the State Defined.

THE DOCTRINE OF ABSOLUTE IMMUNITY

The doctrine of absolute immunity, in its purest form stems from the maxim par in parem non habet imperium. It means simply that no state shall lay claim to exercise any jurisdiction whatsoever over any other state, including all the various persons, bodies, agents, corporations and instrumentalities which may purport to represent it on the international plane. It would be an overstatement, and incorrect in law, to suggest that the doctrine of absolute immunity could claim to form part of customary international law, and thus be an immutable principle which states would be obliged to

follow. The very fact that many states have departed from the doctrine indicates an absence of overall consent on the international level. The doctrine is based upon international comity. Thus, if a state whose representative had been denied the benefit of the immunity in the courts of another state, attempted to bring suit before the International Court of Justice based upon such denial, as a violation of a rule of customary international law, there is no doubt that the claim would be rejected. In the days when the relations between states were confined to political and diplomatic activities, there was good reason for the wholesale application of the doctrine. But since the time when states acting in the name of agents began to engage in various forms of commercial activity, albeit well concealed beneath the trappings of sovereignty, the basis of the doctrine that nothing must be allowed to be done to impair (or seem to impair) the three virtues of statehood, dignity, equality, and independence, has come to be questioned more closely. As states encroached into the spheres of national life hitherto reserved for the individual, or the individual in association with others, so did the doubts increase as to the practical validity of the doctrine. This century has witnessed the entry of the sovereign state into international trade and commerce in a manner which Chief Justice Marshall would hardly have believed possible. Sometimes this has happened by means of government-owned shipping, sometimes by bulk buying and selling of raw materials and manufactured goods, sometimes by other means. Generally speaking, all governments, to a varying degree, have taken a greater control over the economic life of their respective countries than was scarcely conceived of fifty years ago. The public corporations which have been formed as a result of the nationalization of industries have had effects not only on the domestic life of the states concerned, but also on their international relations. These relations have become increasingly diverse and today extend into every sphere of economic activity carried on over national boundaries. The representation of states abroad, by agencies, corporations and the like, has inevitably raised the question of the legal status of such bodies. It has been persuasively argued for well over a quarter of a century that no valid reason remains for continuing to grant full jurisdictional immunity to foreign states, when, acting or operating through agencies or instrumentalities created for this purpose, they engage in commercial or so-called non-sovereign.

THE DOCTRINE OF RESTRICTIVE IMMUNITY

The fundamental basis of this doctrine, theory, or practice (whichever appellation be preferred), is the assumption that a legally significant distinction can properly be made between the sovereign (jure imperii), and non-sovereign (jure gestionis) activities of a state, or as they are allegedly distinguished in French, between "actes de puissance publique," and "actes de gestion private." Thus, the workability of the doctrine necessarily depends on the soundness of this assumption, for its essence is contained in the fact that full or absolute immunity should be granted to a state-or to an agency thereof-when what is involved in the case is the exercise of a sovereign function of the state; but that immunity should be denied whenever a non-sovereign function is concerned. It is generally agreed that another way of expressing this latter form of activity is to use the phrase "commercial activity".

Any claim for damage done by any ship "(d) Any claim for damage done by any ship". The High Court on its Admiralty side has exclusive jurisdiction in respect of damage caused by a ship to property on the high seas; a suit for damages for loss of life or personal injuries as a result of a collision on the high seas falls within the section by virtue of the Maritime Conventions Act, 1911. The Maritime Conventions Act, 1911, in so far as it extended to and operated as part of the law of India, was repealed by Section 46(2) of the Merchant Shipping Act, 1958, with effect from 1 January, 1961 and whether from such date such a claim for damages, for loss of life or personal injuries will fall within the section may require to be considered. (e) Any claim for damage received by any ship or sea-going vessel "(e) Any claim for damage received by any ship or seagoing vessel whether such a ship or vessel may have been in India or upon the high seas when the damage was received"

CONCLUSION The Indian law permits criminal prosecution of seafarers under the provisions of the Merchant Shipping Act, 1958, the Indian Ports Act, 1908 and general environmental laws and the Indian Penal Code, 1860. One of the deficiencies identified is that, the sea farer involved in the marine casualty should face double trial-one under the shipping legislations and the other under

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the Penal code. This has created delay in closing the investigation proceedings on time and there are instances when mariners had to undergo trial for several years. The enquiry under MSA and Indian Ports Act are administrative enquiries. Therefore, marine casualties in India face huge investigative delays and nothing is put to the ordeal of the court finally. India lacks a consolidated law for dealing with marine pollution from collisions at sea. The existing law is too inadequate to deal with marine casualty incidents. The MSA is not enough to fix the quantum and liability in marine casualty cases. Vessel detentions are temporary solutions since, the ship owner may abandon the vessel and the government will be left with the job of cleaning up the shores.