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LEGAL ASPECTS OF THE INDIAN PORTS SECTOR

-Yasaswini Vommi

Introduction

The ports sector in India is a major contributing factor to the country's trade and economic growth. It is responsible for nearly 95% of the total trade volume of the country and around 70% of the trade value. Based on its more than 7,500-kilometre-long coastline, India has built a wide network of ports that serves both the international and the domestic maritime markets. Being of great strategic and economic importance, ports are governed by a detailed legal and regulatory framework. The legal issues of the Indian ports sector include the provisions of the Constitution, legislations at the Centre and State levels, regulations concerning the environment, obligations arising out of contracts, and norms of the international maritime sector. This blog looks into the main legislations that regulate Indian ports and the difficulties met in their enforcement.

Constitutional Framework and Classification of Ports

It is a port regulation that is based on the constitutional distribution of powers in India, which can be seen in the Seventh Schedule of the Constitution of India. The question of port regulation transpires into the Central Government's responsibility for major ports according to Entry 27 of the Union List, whereas non-major (minor) ports, i.e., those under the jurisdiction of State Governments, are located as per Entry 31 of the State List.

Major ports are those, which, by definition, are of national importance such as the ports of Mumbai, Chennai, Kolkata, and Visakhapatnam. Non-major ports are the ones, which have been developed and managed by state maritime boards and are also open for private participation. The constitutional differentiation between the two is the basis for the dual regulatory framework that governs the Indian ports.

Major Port Authorities Act, 2021

The Major Port Authorities Act, 2021, revamps the regulation and management of major ports in India, replacing the outdated Major Port Trusts Act, 1963. It transitions from a bureaucratic, trustee-based model to a more flexible, commercially-oriented governance system, empowering port authorities with enhanced operational and financial capabilities. Authorities can now set tariffs, manage assets, enter contracts, and secure funding independently from governmental approval, fostering efficiency and competition among ports. The Act establishes a Board for each major port, comprising representatives from the central and state governments, port users, and other stakeholders. This Board is tasked with policy formulation, infrastructure development, asset monetisation, and overseeing operations, promoting democratic governance and aligning port functions with national and regional economic needs.

Introducing a landlord port model allows private companies to handle cargo and terminal operations while preserving the port authority's regulatory role. This model encourages public-private partnerships (PPPs), facilitating private investment in infrastructure and technology, enhancing service quality, and improving India's global trade competitiveness.

However, concerns have emerged regarding diminished regulatory oversight due to the weakened role of the Tariff Authority for Major Ports (TAMP). Labor unions also express apprehension about job security and rights, raising questions about transparency and public accountability, particularly concerning asset monetisation and long-term lease agreements with private entities.

Indian Ports Act, 1908

The Indian Ports Act, 1908 is one of the earliest legislations governing port administration in India and primarily applies to non-major ports, which fall under the jurisdiction of State Governments. The Act empowers states to regulate port operations, ensure the safety of navigation, control vessel movement, levy port dues, and maintain port infrastructure. Despite its colonial origins, the Act continues to serve as a basic legal framework for port governance at the state level.

Under the Act, State Governments are authorised to declare ports, appoint port authorities, frame rules for port management, and enforce safety measures within port limits. Provisions relating to port dues, pilotage, anchorage, and removal of obstructions are aimed at ensuring

smooth and safe maritime operations. The Act thus plays a crucial role in facilitating coastal trade and regional economic activity.

Recognising the limitations of the Indian Ports Act, 1908, several states have enacted State Maritime Board Acts to supplement and modernise port governance. Legislations such as the Gujarat Maritime Board Act, 1981 and the Andhra Pradesh Maritime Board Act, 1956 provide a more comprehensive framework for port development, including planning, infrastructure expansion, private sector participation, and revenue management. These state-specific laws have been instrumental in promoting private investment and the development of efficient non-major ports.

However, the outdated nature of the Indian Ports Act, 1908 presents significant challenges. The Act does not adequately address contemporary issues such as public-private partnerships, environmental compliance, digitalisation of port operations, or dispute resolution mechanisms. This often results in regulatory gaps and inconsistencies, particularly when private developers operate ports under concession agreements. The absence of a uniform, modern central legislation for non-major ports has led to variations in regulatory standards across states, affecting ease of doing business and investor confidence.

Conclusion

The Indian ports sector is crucial for the country's economy, linking domestic markets with global trade. Its legal framework includes constitutional provisions, central and state laws, and environmental regulations, creating a dual regulatory structure for major and non-major ports. The Major Port Authorities Act, 2021 promotes modern governance and private investment, while the Indian Ports Act, 1908 indicates the need for reform, especially for non-major ports. State maritime laws partly address these issues, but inconsistencies in regulations persist. As India pursues port-led development, balancing economic efficiency, regulatory oversight, and sustainability is essential for a competitive and adaptive legal framework for the ports sector.

References and citations

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