



# A CRITICAL APPROACH TO CONTEMPORARY MARITIME PORT SECURITY IN INDIA

SHIVAM KUMAR PANDEY, ANTIMA SINGH  
RESEARCH SCHOLAR, LL.M.  
RASHTRIYA RAKSHA UNIVERSITY

**Abstract:** The Indian subcontinent, sandwiched between the Arabian Sea, the Indian Ocean, and the Bay of Bengal, has historically been the hub of the world's most important trade routes. The development of the Harappa civilisation and the spread of its culture depended heavily on the Sindhu River. Numerous Indian kingdoms have a long and distinguished history of accomplishment with their naval forces. Although possibilities may be found in the ocean, which is also essential to many people's daily lives and a country's security, national policies, economical movements, and international political manipulations and variations all influence security issues across nations.

The maritime security sector ensures the preservation of maritime law and the ongoing freedom of navigation, a significant component of Indian security. India promotes close connections with its neighbours and other nations while preserving world peace and maritime stability. The international maritime community should concentrate on crucial areas where maritime security is inadequate or non-existent and work closely with regional groups to improve the local capability for maritime security. This will facilitate the safe and secure use of the oceans for international trade, economic development, and national security.

**Keywords:** Maritime security, safety, ISPS, SUA, UNCLOS, IPC, Sea Port, Maritime zone

## INTRODUCTION

Everyone knows that the oceans encompass around 70% of Earth's surface. Marco Polo, Vasco da Gama, Faxian, etc., were able to discover new territories and continents thanks to the oceans, which facilitated trade and ultimately brought people from all over the world together. Famous ancient empires like the Roman, Egyptian, and Persian ones show how civilizations developed in the past. Since the Indian subcontinent is sandwiched between the Bay of Bengal, the Arabian Sea, and the Indian Ocean, it has always been at the centre of humankind's most important trading routes. Regarding geography, the banks of the Sindhu (Indus) River were essential in the rise of the Harappa civilization and the expansion of its culture. The naval forces of several Indian kingdoms have a long and illustrious history of achievement. Kautilya's Arthashastra has in-depth discussions of Chola's most prominent maritime power and the strategic importance of marine canals and navies. Thus, India's nautical ties

have deep historical roots. National policies, economic shifts, and international political manipulations and variances all impact security concerns across states while adding complexity to the issue.

Opportunities can be found in the ocean, which is vital to many people's everyday lives and a country's security (Bueger, 2015). “Energy security, seaborne trade, crude oil and liquefied hydrocarbon imports, fishing and shipping, export of refined products, offshore developments, and economic relationships worldwide are all part of the broader maritime security sector. Trade and energy security, deep-sea mining area development, and the scientific and research station in Antarctica are only some aspects of Indian security that rely on the country's Sea Lines of Communications (SLOCs).”<sup>1</sup> ‘It guarantees the protection of maritime law and the continuity of freedom of navigation because every nation deserves safe and secure access to the seas for commerce, economic growth, and national defence. India makes a point of maintaining cordial ties with its international neighbours and beyond. Maintaining international peace and stability at sea is technically straightforward, requiring little more than solid agreements and treaties between nations to address shared maritime security issues.

“Problems with maritime security can't be fixed by the military alone; rather, they require a concerted, multi-sectoral effort. However, naval forces play a significant role in ensuring safety at sea (Chaudhury, 2000). To strengthen local capacity for maritime security, the international maritime community should consider concentrating on critical regions where maritime security is weak or non-existent and working closely in conjunction with regional organisations.”<sup>2</sup>

## I. MARITIME JURISDICTION UNDER INDIAN LAW

The position of India's territorial sea was identical to that of the United Kingdom until 1947 when India gained independence from the British Empire. The Indian courts had previously supported the three-mile norm for the territorial sea before the British Parliament established the Territorial Waters Jurisdiction Act of 1870. In 1871, the Bombay High Court found jurisdiction over crimes committed within a 3-mile marine zone. In any case, the three-mile restriction, or any limit, was never universally agreed upon. To justify setting the limit at four miles, the Nordic countries cited historical titles; nevertheless, Portugal, Spain, and Uruguay also claimed a long tradition of rejecting the marine league rule as obligatory. Countries as diverse as Italy and Russia took a similar stance.<sup>3</sup>

At the Hague Conference, two groups opposed a proposal to recognise a wider belt for some governments but not others. Unfortunately, not all states were ready to consider waivers to the three-mile rule. Others who claimed a broader belt said that the three-mile power was too arbitrary and refused to accept any preferential treatment that might be granted to them as part of an agreement. The size of the territorial sea was discussed openly and honestly on all sides, but no agreement could be reached. As a British colony, India attended the conference at The Hague. The United Kingdom's requirements and interests were reflected in this participation, which advocated for a three-

<sup>1</sup> “Jofin Joy, *Maritime Security of India: Capabilities and Challenges*, ISSN ONLINE, (Dec 20, 2021), [https://www.ejsss.net.in/uploads/172/13501\\_pdf.pdf](https://www.ejsss.net.in/uploads/172/13501_pdf.pdf).”

<sup>2</sup> Ibid.

<sup>3</sup> “Admiral Pradeep Chauhan, *AVSM & Bar, VSM, IN (Retd), PHYSICAL PROTECTION OF INDIA'S CRITICAL MARITIME INFRASTRUCTURE: PART 3: MARITIME TRANSPORT: SHIPPING*, NATIONAL MARITIME FOUNDATION (Feb 14, 2020), <https://maritimeindia.org/physical-protection-of-indias-critical-maritime-infrastructure-part-3-maritime-transportation-shipping/>.”

nautical-mile territorial sea apart from any other zone. The Indian Fisheries Act of 1897, as revised, contains the oldest known legal recognition of India's territorial waters.<sup>4</sup> An offence committed "in the such sea may be tried, punished, and dealt with in all respects as if it had been committed on land abutting on such coast," as stated in the law, "in which use of dynamite or other explosive substance was prohibited included the sea within a distance of one marine league of the seacoast."

The government of India made the first moves towards protecting its citizens' interests concerning the size of its territorial sea with the four Presidential Notifications listed below. Since independent India no longer had to toe the line of the United Kingdom, it was free to keep its interests in mind and change its stance on the length of the territorial sea. Perhaps a contributing factor to the change was Pakistan declaring a territorial sea of six miles.

1. "On August 30, 1955, claiming complete and exclusive sovereignty over the seabed and subsoil of the continental shelf adjoining the coast but beyond territorial waters. Neither depth of the frame nor distance from the shore was indicated.
2. On March 22, 1956, claimed territorial waters of six-nautical miles from appropriate baselines;
3. On November 29, 1956, claiming a fishing conservation zone of 100 nautical miles from the outer limit of territorial waters;
4. On December 03, 1956, claiming a contiguous zone of twelve nautical miles from the baselines of territorial waters."<sup>5</sup>

These alerts were empty proclamations, and no action was ever taken in response to them. The lack of decisiveness delayed India's entry into the Geneva Convention on the law of the sea. Later, a presidential proclamation expanded the Indian territorial sea to include 12 nautical miles.

When universal agreement on the EEZ concept was reached, underfunded international law, India also decided to assert sovereignty over these waters. As a result, the Indian Parliament approved a measure to alter marine boundaries under Article 297 of the Constitution. As stated in this article, all resources in India's EEZ shall likewise become Union property and be kept for Union purposes.<sup>6</sup>

Parliament has the authority to define the boundaries of this zone by law (see Article 297, Section 3). The Parliament passed the "Maritime Zone Act, 1976" (also known as the "Territorial Water, Continental Shelf, Exclusive Economic Zone, and Other Maritime Zones Act"). The 267 Maritime Zone Act of 1976 is a general law that declares the nature of the jurisdiction and the sovereign rights of various coastal states. Since it lacks essential provisions for confiscating boats used in illegal fishing or other operations, additional law was needed to fill the void. A new law, the Maritime Zones of India ("Regulation of Fishing by Foreign Vessels") Act of 1981, was consequently enacted to address this issue.<sup>268</sup> The Ministry of Agriculture issued comprehensive regulations on this topic on August 26, 1982.<sup>269</sup> The government of India and the Coast Guard or Navy have issued additional notices to facilitate the enforcement process. In addition to these, numerous water-related legislation

<sup>4</sup> Ibid.

<sup>5</sup> "Ruhul, Sanjeet, *International maritime security laws with special reference to India a critical appraisal*, SHODHGANGA (2018), <https://shodhganga.inflibnet.ac.in/handle/10603/371689>."

<sup>6</sup> "Rahul Roy-Chaudhury, *India's maritime security*, JSTOR (1999), <https://www.jstor.org/stable/23005537>."



exists. Merchant Shipping Act of 1958, the Indian Act of 1909, and the 1974 Act for the Prevention and Control of Pollution. India was in a privileged position to gain the EEZ, which is the twelfth largest in the world. About 2.02 million square kilometres were added to her landmass. Sixty per cent of the total land area was purchased.<sup>7</sup>

While coastal states have sovereign rights in the EEZ thanks to UNCLOS, they must keep a few things in mind when enforcing those rights against foreign ships. Article 73 emphasises the need for conformity with UNCLOS in using enforcement measures such as boarding, inspection, arrest, and court processes. It further emphasised that vessels and their crews must be released as soon as possible after being apprehended, provided suitable security or a bond is posted. For violations of its fishery legislation, the coastal state may not include the use of corporal punishment in its penal code. Since enough security has been provided, the detained crew members and captured vessels of foreign vessels should be freed without further delay. Immediately upon taking any action against the crew and ship, the flag State must be notified.<sup>8</sup>

Incorporating mandatory jail time for breaking fisheries law into the Foreign Fisheries Vessels Act of 1981 was a calculated decision after considering several states' everyday practices. Several countries, including “Norway, New Zealand, Sri Lanka, Bangladesh”, and others, had provisions for awarding imprisonment for violation of fisheries regulations in territorial waters and EEZ. These were taken as models for regulating the Fishing by Foreign Vessels Act 1981. To be safe, however, legislators differentiated between illegal fishing in the territorial sea and EEZ while deciding on punishment. For any violation of Indian law within EEZ, the legislature has chosen to keep the sentencing rules in place. As mentioned, the only recourse for breaches under EEZ under the law is a monetary fine. However, the act provides for imprisonment up to one year and a fine exceeding Rs. 50,000 or both in the event of a failure to stop the vessel, produce a licence, permit, or log book; afford reasonable facilities to board the ship; provide adequate security to authorised officers; or obstruct the way to perform his duties.

The application of Indian criminal law to the newly established marine zones was the first roadblock in the implementation of maritime legislation. Similarly, provisions have been created for identifying the venue of the trial, the trial's judicial form, and related matters. The following procedures need to be carried out<sup>9</sup>:

1. Extension of Penal Laws: The following procedures needed to be carried out: Indian law, including the Penal Code and the “Code of Criminal Procedure of 1973”, has been extended to the “Exclusive Economic Zone per a notification issued by the Ministry of Home Affairs”. It was said that a new section, referred to as Section 188A, would be introduced to the Criminal Procedure Code at a later date. 270 Critics have claimed that the challenged laws violate freedom of the high seas and privileges provided in UNCLOS because of a fundamental loophole that allows any statute in force in India to apply to EEZ. Critics have argued that including the EEZ in the scope of these regulations is tantamount to recognising Indian sovereignty there.

<sup>7</sup> “Nikita Marwaha Kraetzig, *An overview of maritime and port security*, UP42 (Mar 22, 2021), <https://up42.com/blog/an-overview-of-maritime-and-port-security>.”

<sup>8</sup> “Anurag Bisen, *India's Maritime Security: Five Concerns*, IDSA (May 18, 2022), <https://www.idsa.in/issuebrief/indias-maritime-security-five-concerns-abisen-180522>.”

<sup>9</sup> “RK Dhowan, *Ensuring Secure Seas: Indian Maritime Security Strategy*, INADAIN NAVY (Oct 10, 2015), [https://www.indiannavy.nic.in/sites/default/files/Indian\\_Maritime\\_Security\\_Strategy\\_Document\\_25Jan16.pdf](https://www.indiannavy.nic.in/sites/default/files/Indian_Maritime_Security_Strategy_Document_25Jan16.pdf).”

2. Place of Trail: Under these statutes, the federal government has issued a notification designating thirteen locations for the trial of criminal cases. Nabibandar Coastal Police Station Porbander (Gujrat), Yellow Gate Police Station Mumbai, Harbour Coastal Security Police Station Mormugao, Goa; Fort Kochi Coastal Police Station Kochi; B5 Harbour Police Station, Chennai, Gilakaladindi Distr. Recently received authority from the government of India under “section 13 of the Maritime Zone Act” read with paragraph 2 of Part II of the Gazette as mentioned earlier Notification of the Government of India.

3. “Cognizance of the offence: “The Act also specified that any magistrate below a Metropolitan Magistrate or Judicial Magistrate First Class was prohibited from taking cognizance of any offence that would be considered a violation of the Act.”<sup>10</sup> Despite the cap outlined in “Section 29 of the Code of Criminal Procedure of 1973”, the authority to impose fines was significantly increased in defined cases. Rather than guidelines, the Act established the range of possible penalties for infractions, from 50,000 to 10,000,000.

4. Delegation of Power to naval and police officers as authorized officers: “When it was first established, the Coast Guard lacked the resources it would need to carry out its many responsibilities. As a result, it was decided that not only Coast Guards but also officials from the navy and police should have the authority to detain and seize suspects.”<sup>11</sup>

5. Power of such authorized officers: The authority of the authorised officer to decide whether or not the requirements have been fulfilled is spelt out in the “Regulation of Fishing by Foreign Vessels Act of 1981”. The authorised officer has been permitted to use force however they see fit.

6. Adjudication of such matters: To ensure a high level of openness in resolving disputes under the Acts, the jurisdiction to do so has been given to the court rather than any administrative institution. Under the Regulation of Fishing by Foreign Vessels Act of 1981, supplementary rules were drafted and issued to detail procedures for inspecting and clearing fishing trawlers, issuing warnings to vessels in suspected poaching zones, collecting evidence, detaining vessels, and notifying their crews of the basis for their arrest.

7. The arrest of Vessel: “Any vessel used in or in connection with the conduct of the offence, along with its fishing gear, equipment, and any proceeds from the sale of these items, shall vest in the Central Government according to the provisions of the Regulation of Fishing by Foreign Vessels Act of 1981.”<sup>12</sup>

<sup>10</sup> Ibid.

<sup>11</sup> “Prabakaran, P, *Changing concept of national security and a maritime model for India*, SHODHGANGA (Feb 2002), <https://shodhganga.inflibnet.ac.in/handle/10603/78981>.”

<sup>12</sup> “Robinson, K., *Sino Indian relations a study of maritime security*, SHODHGANAGA (2019), <https://shodhganga.inflibnet.ac.in/handle/10603/324710>.”

## II. OTHER CRIMINAL LAWS RELATING TO MARITIME JURISDICTION

### A. The SUA Act, 2002<sup>13</sup>

To implement the IMO International Convention and Protocol on the same issue and for matters linked to that, the “Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002” was passed. Under Article 5 of the 1988 SUA Convention, this law was enacted to fulfil a global commitment. Punishment for violating the SUA Act is severe, as Section 3 details specific offences against safe navigation and offshore platform on the Indian continental shelf. The following acts of unlawful and purposeful conduct are defined as crimes in this act by section 3 (1):

(a) “Anyone who (a) commits an act of violence against another person while on board a fixed platform or ship that is likely to endanger the safety of the fixed platform or (as the case may be) safe navigation of the ship, while on board said platform or ship, shall be punished by incarceration for a term which may extend to ten years and is additionally liable to fine”;

(b) “destroys a fixed platform or ship, or damages a fixed platform or ship, or the cargo of the ship, in a manner likely to compromise the safety of such platform or safe navigation of the such ship, shall be punished with life in prison”<sup>14</sup>;

(c) “seizes or exercises control over a fixed platform or a ship by force or threatens or in any other form intimidates shall be punished with imprisonment for life;”<sup>15</sup>

(d) Anyone who knowingly or recklessly places or causes to be placed on a fixed platform or ship any device or matter that is likely to seriously harm that fixed platform or that ship, or cause damage to that fixed framework or that ship, or its cargo that endangers or is likely to risk that ship's safe navigation, shall be punished with imprisonment for a term that may extend to fourteen years.;

(e) Anyone intending to impair the safe passage of a ship, destroys, ruin, or interfere with marine navigational facilities or their functioning faces a maximum sentence of fourteen years in jail.

(f) Sends out incorrect information that could compromise a ship's ability to navigate safely and is subject to a fine and possible prison sentence of up to fourteen years.

<sup>13</sup> “The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002”

<sup>14</sup> Supra No. 10

<sup>15</sup> Ibid.

(g) “Communicates information which he knows to be false, thereby endangering the safe navigation of a ship, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine;

(i) causes death to any person shall be punished with death;

(ii) causes grievous hurt to any person shall be punished with imprisonment for a term which may extend to fourteen years;

(iii) causes injury to any person shall be punished with imprisonment for a term which may extend to ten years;

(iv) seizes or threatens a person shall be punished with imprisonment for a term which may extend to ten years;

and (v) threatens to endanger a ship or a fixed platform shall be punished with imprisonment for a term which may extend to two years.”

### **B. Weapons of Mass Destruction Act, 2005<sup>16</sup>**

In May 2005, Parliament passed the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act of India (hereafter referred to as the WMD Act). Resolution 1540 (2004) from the “Security Council” and the General Assembly's resolution on nuclear terrorism from April 13, 2005, were inspirations. Chapter VII of the United Nations Charter authorised the passage of Security Council Resolution 1540 (2004). “As a result, all signatory states were obligated to put its provisions into effect. State Parties had to pass laws prohibiting the production, acquisition, possession, development, transport, transfer, and use of nuclear, chemical, or biological weapons and their delivery systems.”<sup>17</sup>

The purpose and reach of the WMD Act 2005 are defined in Section 3<sup>18</sup>. It states that the Act applies to the entire territory of India, including its EEZ, and that anyone who commits a crime in India is subject to the Act's penalties. The Act's extraterritorial application for crimes committed by Indian nationals or Indian legal entities, such as Indian-registered ships or planes, is also discussed. It applies to everyone working for the Indian government wherever in the world, including foreign nationals visiting India.

The Act's provisions apply to the export, transfer, re-transfer, transit, and trans-shipment of any substance, equipment, or technology that has been identified, designated, categorised, or considered necessary by the Central Government as pertinent or relevant to India as a Nuclear Weapon State, to the safeguarding of India's security, to the advancement of the foreign policy of India, or the achievement of India's international objectives, as outlined in Section 3(5) of the Act. “The sovereignty of the State is guaranteed by Section 5, which provides that the Central Government may categorise and regulate the export, transfer, re-transfer, trans-shipment, and transit of any item relating to the relevant activity in such a way as may be regulated.”<sup>19</sup>

<sup>16</sup> “The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005.”

<sup>17</sup> “Explained Desk, *Explained: What are Weapons of Mass Destruction, the existing law on which India now wants to amend?*, THE INDIAN EXPRESS (Apr 9, 2022), <https://indianexpress.com/article/explained/everyday-explainers/explained-weapons-of-mass-destruction-law-amendment-7856169/>.”

<sup>18</sup> “The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 section 3.”

<sup>19</sup> “The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 section 5.”



Section 8 prohibits the unauthorised creation, acquisition, possession, development, or transit of nuclear, biological, chemical, or other explosive devices and their delivery systems. It forbids the illegal transfer of missiles meant for mass destruction to anyone.

Section 9 of the Act prohibits technology transfer to non-State actors, including terrorists. Section 12 forbids significant brokering. Section 13 states that no notified object may be exported, transferred, re-transferred, brought in transit, or transhipped without complying with this Act or any other relevant Act—sections 10–13 address WMD-related terrorism.

The penalties for breaking the terms of India's WMD Act, 2005, range from moderate to severe. Violators of Section 8 or 10 of the Act are subject to penalties and imprisonment terms of 5 years to life under Section 14 of the Act. The same punishment for breaking Section 9 is outlined in Section 15. Unauthorised export carries a fine of between Three and Twenty Million Indian Rupees. Repeat offenders face a six-month to five-year jail sentence in addition to the penalty. If the offender is a corporation, all its officers, directors, managers, and employees share responsibility for the crime and should be brought to justice along with the organisation. Those who may have taken action in good faith under this Act are shielded from liability and immunity under Section 24<sup>20</sup>.

### III. CONTEMPORARY MARITIME PORT SECURITY IN INDIA

“To further the existing maritime safety and security cooperation, IFC-IOR signed an MoU on 21 Feb 2023 with Regional Coordination Operations Centre (RCOC), Seychelles. The MoU signed by Captain Rohit Bajpai, Director, IFC-IOR and Capt Sam Gontier, Director, RCOC, aims to promote collaboration between the two Centres towards enhancing maritime domain awareness, information sharing and expertise development.”

Indian Navy-hosted IFC-IOR was founded by the Government of India on 22 December 2018 in Gurugram to promote maritime security cooperation in the Indian Ocean Region under India's vision of Security and Growth for All in the Region (SAGAR). International Liaison Officers (ILOs) from partner countries are also housed at IFC-IOR to facilitate improved correlation, shortened information cycles, and timely inputs. “Australia, France, Italy, Japan, Maldives, Mauritius, Myanmar, Sri Lanka, Seychelles, Singapore, the United Kingdom, and the United States are just a few of the 12 partner countries whose ILOs have visited the Centre so far.”<sup>21</sup>

The latest project will allow for closer cooperation between the IFC-IOR and RCOC, building on the foundation of previous work that created links with many global maritime security centres. By working together, the Centres will be better equipped to combat transnational security threats in the Western Indian Ocean, including piracy and armed robbery, human and contraband trafficking, Illegal Unregulated and Unreported (IUU) fishing, arms running, poaching, maritime terrorism, etc.

“The Directors of RCOC and IFC-IOR” signed the MoU because they agreed that better information sharing and analysis are essential for guiding activities at sea. They also noted that the improved trust and synergy between

<sup>20</sup> “Indian Employees, *Weapons Of Mass Destruction And Their Delivery Systems (Prohibition Of Unlawful Activities) Act, 2005*, INDIAN EMPLOYEES ( Jun 6, 2005), <https://www.indianemployees.com/acts-rules/details/weapons-of-mass-destruction-and-their-delivery-systems-prohibition-of-unlawful-activities-act-2005>.”

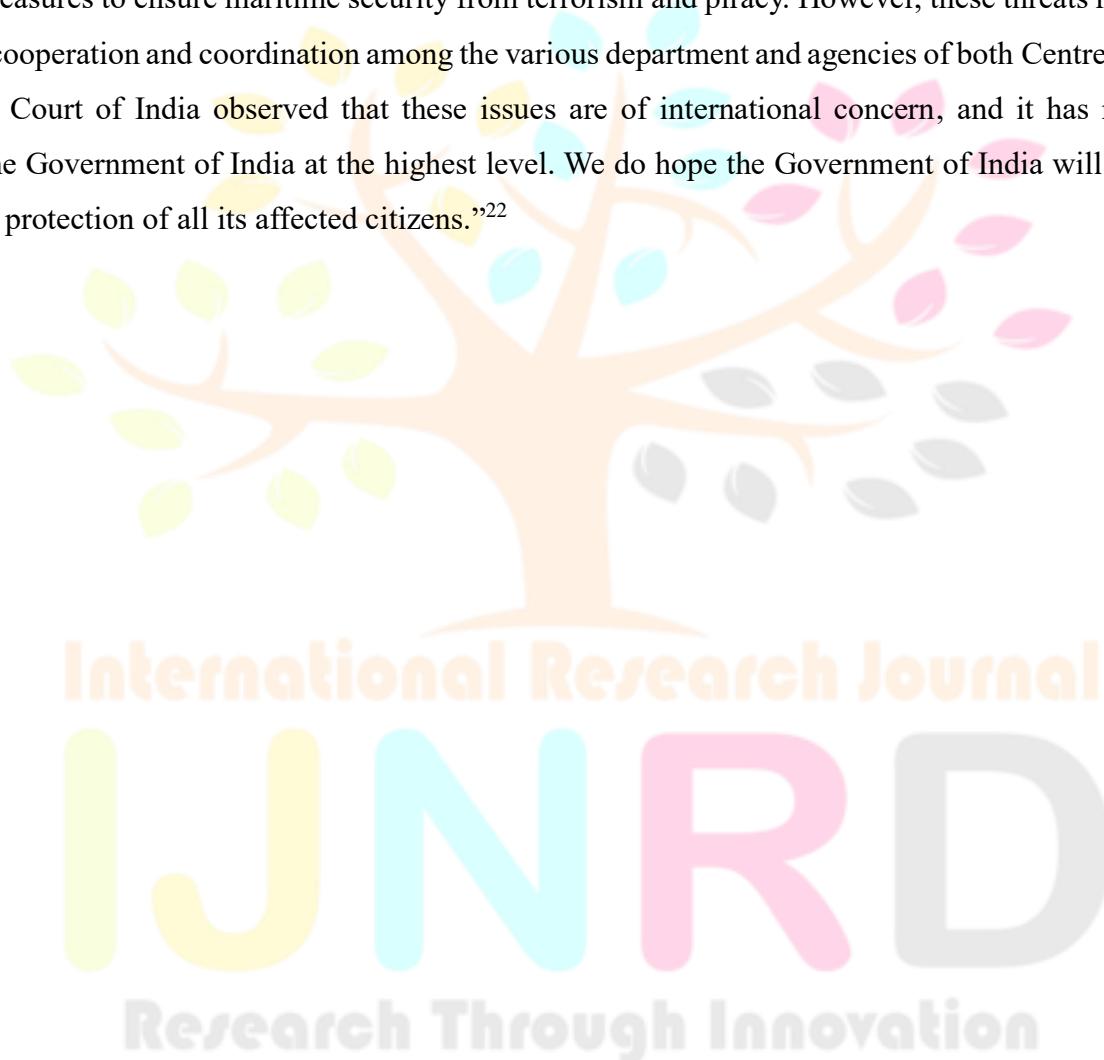
<sup>21</sup> Ibid.



the Centres due to this MoU would help advance cooperative maritime safety and security in the Indian Ocean Region. Secretary General and IOC delegations were there, as well as the “High Commissioner of India to Seychelles and high-ranking officials from the Indian Navy”.

## CONCLUSION

“International trade and transportation through the land are almost impossible since India has a hostile neighbourhood. It is more appropriate to say India is an island nation; seas have become the most important communication medium, and almost all its trade and energy supply are done through sea routes. It is inevitable for her to secure her entire coast, checkpoints, and vast sea space. It appears that coastal security has improved after taking measures to ensure maritime security from terrorism and piracy. However, these threats require more international cooperation and coordination among the various department and agencies of both Centres and States. The Supreme Court of India observed that these issues are of international concern, and it has received the attention of the Government of India at the highest level. We do hope the Government of India will continue its efforts for the protection of all its affected citizens.”<sup>22</sup>



<sup>22</sup> “Ruhel, Sanjeet, *International maritime security laws with special reference to India a critical appraisal*, SHODHGANAGA (2018), <https://shodhganga.inflibnet.ac.in/handle/10603/371689>.”