





# International Maritime Law Association (IMLA) Relooking Regulations for Fast tracking Growth



## INAUGURAL SESSION

L to R: Capt. J. C. Anand, Mr. Julian Michael Bevis, Mr. Shardul J Thacker, Mr. A. K. Gupta, Chief Guest - Hon'ble Justice Shri K. R. Shriram, Guest of Honour-Shri Deepak Shetty, Dr. B. S. Bhesania-President, IMLA & a Dignitary

## 1ST BUSINESS SESSION

L to R: Mr. Hormazdiyaar Vakil, Capt. BVJK Sharma, Capt. Dinesh Gautama, Mr. Umesh C Grover, Capt. Sunil Thapar, Mr. P Jairaj Kumar, Mr. Shardul J Thacker,



## 2ND BUSINESS SESSION

L to R: Mr. T S Balasubramanian, Mr. Rajjeev Krishnan, Mr. K K Sinha, Mr. Rajeeva Sinha, Mr. Saibal K De, Mr. Vishal Kalantri, Mr. Shardul J Thacker

## 3RD BUSINESS SESSION

L to R: Mr. Sailesh Bhatia, Capt. Dinesh gautama, Mr. Girish Mistry, Mr. Samir J Shah,





# International Maritime Law Association (IMLA) **Relooking Regulations for Fast tracking Growth**

International Maritime Law Association (IMLA) held its conference on "Relooking Regulations for Fast tracking Growth" in Mumbai. The conference topic was of immense importance to the maritime industry in particular and the country in general.

IMLA was envisaged and promoted by late **Mr. Subramaniam Venkiteswaran**, who keenly propagated the need for updating Indian laws, particularly maritime laws to bring them in line with international laws. He worked hard to create a common platform for Maritime Industry. IMLA was formed to serve this purpose. **Mr. Venkiteswaran**, who was founding president of IMLA, held this position till his demise on 21<sup>ST</sup> December 2013.

Hon'ble Mumbai High Court Judge, **Mr. K.R. Shriram**, Chief Guest at the conference, was highly appreciative of the role **Mr. S. Venkiteswaran** played in pushing for reforms in Indian laws. Concluding his brief address he said "let this be a good beginning."

Guest of Honour, Jt. Director General of Shipping, Directorate General of Shipping, **Mr. Deepak Shetty** underscored the need for legislative rehash, process simplification and transaction simplification in the backdrop of world economy that is getting flat with reliance on knowledge economy that is interconnected and interdependent.

Talking of Merchant Shipping Act, he said that though it had stood the test of time, there was need to relook at MSA. He informed the audience of the work done by **Mr. Venkiteswaran** in drafting a revamped MSA, which unfortunately is yet to see the light of the day. He urged all stakeholders to engage in a long haul collaborative effort so as to see recast MSA in 3-5 years time.

Momentum is gathering to repeal 100 odd laws, he informed, adding that DGS had identified 5 portions of MSA that had outlived their time. He pointed to a plethora of DGS circulars that are a maze with many of them cross referencing others.

Turning to piracy and its impact on seafarers, **Mr. Shetty** said seafarers held captive are pretty much on their own and need our assistance.

He urged all present to introspect in this regard.

He urged industry to actively participate in the pre-consultative process on new legislation.

**Mr. A.K. Gupta**, Chairman and Managing Director, underscored the need for policy measures to protect Indian fleet which is vital for the growth of the country's economy. He pointed out that the share of Indian companies in carrying Indian cargo has been falling and this needed introspection.

He said stagnation of Indian tonnage was a result of non-competitive fiscal regime, which had undermined the benefits accruing from Tonnage tax. There was a need to provide national cargo support, which is lacking. Taking a cue from PM's call for 'Make in India' he said at least 30% of cargo support should be provided to Indian companies. He informed that they were talking to Ministry of Shipping in this regard.

Talking of maritime law he said there was dearth of colleges teaching maritime law in India. Referring to anomalies in law, he said Pilotage Rules held the master of the vessel responsible for an incident, such as the vessel running aground, even if the vessel was under control of the pilot. Citing the example of Italian Marines, he said, our domestic legal system was unprepared in many ways. Talking of our laws being outdated and sometimes in conflict with international laws, he said, our Admiralty laws rely on 163 year old statute, which will remain in force until repealed/replaced. He added India is yet to adopt Geneva Convention on 'Arrest of Ships'.

In the given scenario, he expressed fears of cartels dictating freight rates from weak shipping countries.

Speaking of the importance of harmonious rules he said non-adoption of IMO rules at national levels negated the gains achieved by agreements arrived at after years of efforts. Citing problems due to non harmonious rules, he said, US and some other countries have their own standards on sewage treatment, causing difficulties for ship operators.



Another difficulty due to multiplicity of rules he said was increasing work load on seafarers. Underscoring the importance of the discussions he said these can throw up the required changes.

**Mr. N.N. Kumar**, Chairman, JNPT in his speech highlighted the existence of plethora of laws and multiplicity of agencies that monitored the functioning of the ports.

Mr. Kumar lamented that Ports have to deal with as many as 6 ministries including Ministry of Finance, Ministry of Health, Ministry of Environment, Ministry of Commerce, Ministry of Food. **It doesn't end here, there are State departments to contend with. What's more some of these could sometimes work at cross purposes. Besides, he spoke 5 uniformed agencies that visit the port.**

He cited a sad incident, where **Food Safety and Standards Authority of India's (FSSAI) stand on the labeling, that did not meet their requirement led to the entire stock of chocolates spoiling within the port.**

For making India a maritime hub, he opined that, **India needed to have a common platform. Sagar Mala was a good beginning he said. A single maritime planning authority needed to look at the redundant rules and scrap them. Updating laws in the backdrop of changes in geopolitical situation, technology, port's working, multi modal transportation was critical, he said. Citing a piquant situation that arises from old laws he said containers are not recognized in law as they didn't exist when the century old laws came into existence.**

Complying with port requirements involves huge costs. **He informed that in JNPT one had to fill up 34 forms. Ships berthing in the port had to provide 12 documents some of them being same ones provided on earlier visits. He therefore highlighted the tremendous importance of simplifying ports processes. He said we need to understand international practices and change our laws accordingly. He also spoke of studying transshipping business in countries such as Sri Lanka.**

He said there is a big need to apply mind to reduce repeated compliance, wherever it occurs. **Besides he said administrative and legal reforms are a must.**

I wouldn't paint a gloomy picture said **Mr. Julian Bevis**, Senior Director, Group Relations, South Asia, Maerskline India Pvt. Ltd. **expressing positive sentiments on the Indian economy and**



the new government. He said the government is open to change and it is set to lift the economy now it was for the industry get clarity on commercial aspects. He opined, **"We need to collectively work with the government"**.

Highlighting the key issues facing the logistics industry he said the key economic challenges are: logistics in the country is relatively expensive, it is inefficient and is a high percentage of GDP. This has implications for the manufacturing sector and the 'Make in India' initiative. He asked the industry to articulate the problems clearly for the government to act in the matter.

He said the perception about investment climate outside the country was not good. There is a need to let market forces work and reap economies of scale.

Legislative infrastructure is as important as physical infrastructure, he stressed. It is importance to put up infrastructure before its demand gets urgent, he stressed.

Presenting investors view point he said PPP model should balance risk and reward. He felt it was presently skewed in favour of the government ports.

He called for consistency and simplification of our policy measures. He cautioned, we live in an interconnected world and are competing with other countries.

Concluding on an upbeat note he said **"there was no need to be gloomy" and that he had observed "enormous change for the positive". He added "working together with clarity and focus we can make a difference."**

Following the above keynote addresses by speakers, the first business session focused on the theme 'Pitfalls of Indian Shipping'.

The session was moderated by **Capt Dinesh Gautama**, President, Navkar Corporation Limited. In a brief introductory talk **Capt. Gautama** instantly highlighted the complexity and absurd situations arising from application of multiple laws.

The topics of discussion during the session were **"The archaic shipping laws of India – An overview"; "Archaic Laws: The adverse effect on India's foreign trade"; "How do we now update the shipping laws – Amend? Suspend? Re-Vamp?"**;

**"IMO's FAL (Facilitation) Convention – Has India amended its regulations to comply?" and**



**“Shipping Bye-laws, Procedures, Rules & Regulations – Do they make matters worse?”**

The panelists during this session were: **Capt B V J K Sharma**, JMD & CEO, JSW Infrastructure Limited; **Mr Shardul J Thacker**, Partner, Mulla & Mulla & Craigie Blunt & Caroe; **Mr Umesh C Grover**, Chief Executive Officer, INSA; **Capt Sunil Thapar**, Director (Bulk Carriers and Tankers, The Shipping Corporation of India Lt; **Mr P Jairaj Kumar**, Chairman & M, Ocean Sparkle Limited.

Speaking on what ails Indian shipping **Mr. Umesh Grover** pointed to the lack of level playing field as the most important factor in keeping Indian shipping shackled. **There is a need for level playing field in terms of Shipping policy, Shipping finance, Shipping taxation, Shipping laws, Acts and rules.**

He informed Indian ship owners are burdened with higher Manning requirements. They have to pay higher lending rates. They have to bear service tax, which globally is zero.

Unlike London, which is a maritime hub, India lacks maritime clusters.

Ship purchase in India is cumbersome and difficult. Profit on sale of ships subjected to MAT. While operating profits portion is transferred to tonnage tax. Citing example of tax regime being unfavorable to Indian ship owners he said INSA is fighting a tax notice for excluding bunker cost from charter cost. Indian ship owners have difficulty in raising finance for ship purchase.

**Capt. Sunil Thapar**, Director, SCI had a bag full of worries to share with the audience. He said “I wish Lehman crisis had never happened. I haven’t slept peacefully for a single night after that. I have operated VLCCs paying out of my pocket not even covering my operating expenses. Growth cycle has still not started but if bunker prices remain as today, and scrapping continues we will come out stronger. We have learnt a lot in this intervening period after 2008.”

In this backdrop he questioned the IMO convention on Ballast Water which forced shipping companies to shell out a million dollar on the treatment plants. **He lamented that ship owners views were not being given due importance. Shipping companies he said were burdened with high insurance premiums due to piracy.**

Speaking on the challenges of building infrastructure, **Mr. B.V.J.K. Sharma**, Jt. MD & CEO, JSW Infrastructure Ltd., made an interesting

observation. Describing our approach to private investors, **Mr. Sharma** said it was like father of a married daughter being jealous of his son in law. **He stressed on the need for convergence of laws, as anomalies of different State Acts created hurdles for the investors to invest.**

“Our logistics costs are very high at 14%” he said barring small stretches, road and rail infrastructure was not adequate for a growing economy. PPP in road sector was in shambles he said. Average speeds on roads, he said, was 35 kms/hr while on rail it was lower at 30 kms/hr. He stressed on the importance of integrated approach and a National Transport Policy, taking care of multi modal considerations. Climate, environment issues was blocking road infrastructure growth, he said. Solutions were needed for infra growth even as we stayed on the right side of the environment, he stressed.

Port capacity needs to be doubled with 4-6 mega ports, an integrated connectivity approach that takes care of vessels such as ro-ro. Government must look at ‘Transport Governance’ for State and Central levels. A National Safety Board headed by professionals, a research focus, solution tax issues, HR development, getting higher private investment, were some of his other suggestions.

He said Mars Orbiter Mission (MOM) was good for the country but Dedicated Freight Corridor was important.

In his presentation on ‘Pitfalls of Indian Shipping’, **Mr. Shardul J. Thacker**, Partner, Mulla & Mulla & Craigie Blunt & Caroe spoke about positive measures undertaken by the government and those that are proposed to be undertaken in the shipping industry.

Among the measures he outlined were:

- Permitting local shipping firms to operate ships with foreign flags
- A one-time licensing policy for ships, which provides relief from tedious documentation
- Ports plan to go paperless, which will not only reduce logistics costs but also cut bureaucratic delays
- A comprehensive policy for promoting shipbuilding in India, including financial assistance in the range of 5% to 25% to shipbuilding companies to spur local ship making industry
- Starting a Shipbuilding Development Corporation
- Setting up of a Centre for Excellence in Ship Design and Research
- Setting up a fund of Rs. 15,000 crores to extend low-cost loans to shipbuilders
- Extending the shipbuilding subsidy
- New Guidelines for Coastal Shipping including priority berthing of coastal vessels.



Mr. Thacker also highlighted some major concerns and reservations. **About the initiative to permit local shipping firms to operate ships with foreign flags, he expressed doubts whether this would solve the problem.**

Talking of the problems created by labeling requirements under the The Food Safety and Standards (Packaging and Labelling) Regulations, 2011 (FSS Packaging Regulations), he said branded food products worth Rs. 25000 Crore are reportedly stuck in India's various ports even after being cleared by customs. Rs. 65-70 Crore worth imported liquor have been held up at country's ports since February 2014 for not meeting mandatory labeling requirements. FSSAI Labeling requirement and food approval process has reportedly caused processing industry a loss of Rs. 15000 Crores. Almost 11,000 applications are pending approval from the FSSAI.

**Turning to our shipping laws** Mr. Thacker said "The Admiralty Courts in India follow the Admiralty Act, 1840 read with Admiralty Act, 1869 which define jurisdiction of the Admiralty Court for arrest of vessels for enforcement of various claims against the vessels. These old Acts have their limitations," he said. Supreme Court, 20 years ago had observed *"Indian statutes lag behind the development of international law in comparison to contemporaneous statutes in England and other maritime countries"*

He further added *"India has also not adopted the International Convention relating to the Arrest of Sea-going Ships, Brussels, 1952. Nor has India adopted the Brussels Conventions of 1952 on civil and Penal jurisdiction in matters of collision; nor the Brussels Conventions of 1926 and 1967 relating to maritime liens and mortgages. India seems to be lagging behind many other countries in ratifying and adopting the beneficial provisions of various conventions intended to facilitate international trade"*.

Mr. Thacker said "In 2003, the Supreme Court of India in the matter of *m.v Sea Success* held that the Geneva Convention on arrest of ship, 1999 was also applicable to India for enforcement of maritime claims." He added "Armed with these two judgments, Indian Courts now follow the principles of Brussels Convention, 1952 and Geneva Convention on arrest of ship, 1999."

He said "There are a serious federal question which are to be settled. There are conflicting views of various High Courts on the issue of jurisdiction for arresting the vessel."

He further said "There are a serious federal question which are to be settled. There are conflicting views of various High Courts on the issue of jurisdiction for arresting the vessel."

"The Admiralty Bill, 2005 though drafted has yet to be passed by the Parliament and until then the different interpretation by the various Admiralty Courts in a federal set up are multiplying," he lamented.

"The 'Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act 1976', protects India's natural resources within the 200 miles seabed," he said. Adding "However, legislation has not kept pace with the growing activities in this region whereby private entities can enforce their rights against other private parties for tortuous acts or for breach of contracts within the EEZ."

The result "High Courts of various coastal States have no jurisdiction, to consider disputes between private parties in contracts/ torts committed in the EEZ."

The difficulty in dealing with legal situations arising in EEZ can be appreciated by the fact that "The recent Supreme Court judgment in the *Enrica Lexie* case set up a Special Court to try the Italian marines."

Mr. P. Jairaj Kumar, Chairman & MD, Ocean Sparkle Ltd., highlighted the difficulties of coastal operators due to our legal system. He said their vessels were covered under Merchant Shipping Act despite operating in coastal waters. He pointed out that most countries have separate Coastal Act for these vessels.

"We face several operational and taxation issues because of this," he said. "Safe manning documents are required even while on salvage mission," he said. We are forced to pay light house dues, have difficulty in getting crew for our vessels, registration of vessel takes a month and it becomes operational only after 2-3 months. Service tax and sales tax have to be paid the moment the bill is raised.

**Urging for infrastructure industry status to shipping he said "it would open doors for easier and low cost Indian funding for coastal shipping."**

**He appealed for a separate 'Coastal Act' to deal with coastal vessels.**