

**RESOLVING ONE CONUNDRUM, CREATING ANOTHER: A CRITICAL EXAMINATION
OF MARITIME ANTI-PIRACY ACT, 2022**

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ABSTRACT

This paper presents a deep dive into the Maritime Anti-Piracy Act, 2022, (MAPA) focusing majorly on its legislative framework, its key features, and the implementation challenges. It traces the evolution of the Act to highlight its efforts to align with India's obligation under UNCLOS. It evaluates the need for the Act and its core elements, including definitions, jurisdictional overreach, provisions for arrest and bail, and enforcement provisions. This paper raises key concerns such as death penalty, presumption of guilt and unclear sentencing guidelines. It concludes by proposing primary and ancillary solutions, which, if implemented effectively, can strengthen procedural safeguards, enhance the enforcement capacity, and ensure that the Act upholds the constitutional principles contributing to the regional maritime security efforts.

Keywords: Maritime Piracy, UNCLOS, extraterritorial jurisdiction, presumption of guilt, international cooperation.

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1. INTRODUCTION

The oceans and seas have always long served as cost-effective routes for the transportation of both goods and people. However, historically, such movement of vulnerable assets has attracted pirates, predatory groups similar to William H. McNeill's concept of "microparasites," who live off the labor and resources of others without providing anything in return.² This is a form of maritime exploitation, also known as Piracy. Piracy has often disrupted trade and hindered economic productivity in ways that were not always fully acknowledged.

Stretching from the eastern coast of Africa to the Indian coastline, the whole Indian Ocean Region has always been a hotspot for piracy. While the Indian Navy and Coast Guard have carried out anti-piracy operations in the past, the lack of a dedicated legal framework posed significant challenges to the effective execution of these operations.

To boost and strengthen India's anti-piracy efforts and further implement the provisions of the United Nations Convention on the Law of the Sea,³ (UNCLOS) ratified by India back in 1995, the Maritime Anti-Piracy Act was finally enacted in 2022 after a long wait of over three decades. It relates to the matters of repression of piracy on the high seas and other connected matters. Further, the chief of the Indian Navy hailed this Act as a "great enabler" highlighting its contribution to the success of recent missions such as Operation Sankalp in the Gulf of Aden.⁴

On December 9, 2019, Mr. Subrahmanyam Jaishankar, the Minister of External Affairs presented the Anti-Maritime Piracy Bill, 2019,⁵ in the Lok Sabha. The bill was then referred to the Standing Committee. It was reintroduced with changes in December 2022 after the Standing Committee recommendations. It was passed by Lok Sabha on December 19, 2022 and then by Rajya Sabha on December 21, 2022. The Presidential Assent was given on December 26, 2022. It came into effect in January 31, 2023.

The original title of the Bill, Anti-maritime Piracy Bill, 2019 was proposed with the intention to establish a legal framework for the prosecution and punishment of acts which are occurring

² William H. McNeill, *The Human Condition: An Ecological and Historical View* 6–8 (Princeton University Press, Princeton, 1980).

³ The United Nations Convention on the Law of the Sea, 1982, art. 12.

⁴ Navy, Indian. "Indian Navy's 'Op Sankalp'."

⁵ The Anti-Maritime Piracy Bill, 2019, Bill No. 370 of 2019, Lok Sabha, 17th Lok Sabha (India).

in international waters, in accordance with UNCLOS. However, during the course of its legislative journey, the nomenclature of the bill was modified to Maritime Anti-Piracy Act.⁶

This revision in the title does not signify a significant shift in the scope or the content of the draft bill but it was rather intended to align more appropriately to the core purpose of the act, providing more semantic clarity and precision to the title of the bill. The title “Anti-Maritime Piracy” was somewhat ambiguous and it could have easily been misconstrued as opposing the whole maritime activity itself, instead of specifically dealing with piracy.

The Standing Committee emphasized that the nomenclature of the bill should align with the legislative intent and hence recommended that the term “Anti-Piracy” be placed at the center of the title. It ensures a clearer and more coherent expression of the objectives. In line with this recommendation, the committee further proposed amending Clause 1(1) of the Bill,⁷ to refer to the legislation as the “Maritime Anti-Piracy Act” rather than the “Anti-Maritime Piracy Act”.

Therefore, the introduction of the bill laid down the groundwork for what eventually became the Maritime Anti-Piracy Act, 2022.

2. NEED FOR THE ACT

In the contemporary times, the cases of sea piracy have risen. Piracy is no longer confined to some isolated regions; it has become a widespread threat in the sea zones. Recent incidents of piracy and kidnapping have been noted in areas such as the Red Sea, the Gulf of Guinea, Somali waters, and Malacca Strait,⁸ with pirates more frequently targeting the ships to loot, hijack and abduct the crew members.

Post 2008, the Gulf of Aden has witnessed a sharp increase in such activities by the Somali pirates. It is significant to note that the Gulf of Aden is a vital trade route linking Asia and Europe.⁹ In response to such activities, the naval forces have intensified surveillance in the area, leading to a shift of pirated operations towards the wider Indian Ocean, including regions

⁶ Standing Committee on External Affairs, 17th Lok Sabha, *Sixth Report: The Anti-Maritime Piracy Bill, 2019* 22, Recommendation No. 5 (2021) (Government of India).

⁷ The Anti-Maritime Piracy Bill, 2019, Bill No. 370 of 2019, cl. 1(1), Lok Sabha, 17th Lok Sabha (India).

⁸ James Kraska, “Coalition Strategy and the Pirates of the Gulf of Aden and the Red Sea” 28 *Comparative Strategy* 197–216 (2009).

⁹ Farah Robleh Hamza and Jean-Philippe Priotti, “Maritime Trade and Piracy in the Gulf of Aden and the Indian Ocean (1994–2017)” 13 *Journal of Transportation Security* 141–158 (2020).

near Mauritius, Seychelles, and even India's western coast. The Indian Navy and Coast Guard have ramped up their anti-piracy efforts.

The International Maritime Organization (IMO) data between 2009 and 2019 reveals that a total of 1,173 piracy and armed robbery incidents were reported in West Africa alone.¹⁰ Over 500 Indians were taken hostage globally during this period.¹¹ In 2021, according to the International Maritime Bureau (IMB), globally a total of 132 incidents of piracy were recorded, however, it marked a decrease from 195 cases reported in 2020.¹² The data from IMB's Piracy Reporting Centre (PRC) further reveals that in the previous year, the pirates successfully boarded the vessels in 88% of the reported attacks.¹³ The UNSC through the resolutions since 2008 has urged the states to criminalize piracy in their domestic laws and collaborate in prosecution efforts to address this rising threat.¹⁴

In the absence of a specific statute on this area, the authorities have relied on provisions of the Indian Penal Code and admiralty jurisdiction. However, these provisions were inadequate because of the absence of explicit reference to piracy. The increasing number of arrests and growing incidents including within India's Exclusive Economic Zone (EEZ) has led to a realization that an explicit legal framework is essential. Consequentially in 2011, the Ministry of External Affairs (MEA) began coordinating the drafting of the legislation.

The MEA highlighted the difficulty in legal procedures during the 2020 briefing, citing the Alondra Rainbow operation.¹⁵ The trial court granted conviction, but on appeal, the High Court overturned this decision citing a want of jurisdiction. There was no clear definition of "piracy" in Indian law which has made the prosecutions ineffective. On Extradition, the MEA states that India currently relies on bilateral treaties or a case-to-case basis. Extradition is also possible under UNCLOS, though its use remains limited without the support of domestic legislation.

¹⁰ Helen Canton, "International Maritime Organization—IMO", in *The Europa Directory of International Organizations 2021* 338–342 (Routledge, 2021).

¹¹ Gwyn Campbell, "Piracy in the Indian Ocean World" 16 *Interventions* 775–794 (2014).

¹² Ercan Akan, Tunahan Gültekin, and Sibel Bayar, "Statistical Analysis of Maritime Piracy Cases in World Territorial Waters" 15 *Journal of Transportation Security* 263–280 (2022).

¹³ International Maritime Bureau, "The 5th Tri-Annual IMB Meeting on Piracy and Maritime Security, Kuala Lumpur, Malaysia, 29 and 30 June 2004" 140 *Maritime Studies* 22–27 (2005).

¹⁴ UN Security Council, *Security Council Resolution 1918*, SC Res 1918, SCOR, UN Doc S/Res/1918 (Apr. 27, 2010).

¹⁵ Maximo Q. Mejia and Roland Akselsson, "A Maritime Security Incident Map of the Alondra Rainbow Hijacking", in *Human Systems Integration to Enhance Maritime Domain Awareness for Port/Harbour Security* 2940 (IOS Press, 2010).

3. SALIENT FEATURES OF THE ACT

The Maritime Anti-Piracy Act 2022,¹⁶ was enacted by the Parliament of India to implement the provisions of the UNCLOS. The Act comprises a total of 15 Sections, and although the Act does not follow formal chapterisation, the structure still flows sequentially through these sections.

3.1 Focus on Definitions and Their Analysis

Section 2 of the Act provides the definition clause. Section 2(h) of the Act defines “*piracy*” as:

“Piracy means –

- (i) any illegal act of violence or detention or any act of depredation committed for private ends by any person or by the crew or any passenger of a private ship and directed on the high seas against another ship or any person or property on board such ship;
- (ii) any act of voluntary participation in the operation of a ship with knowledge of facts, making it a pirate ship;
- (iii) any act of inciting or of intentionally facilitating an act described in sub-clause (i) or sub-clause (ii); or
- (iv) any act which is deemed piratical under the international law including customary international law;”¹⁷

This is drafted in accordance with Article 101 of UNCLOS, 1982.¹⁸ This enshrines that Piracy is not merely limited to physical violence but also includes acts of detention, depredation, and incitement, committed for private ends by the individuals who are aboard a private ship which is directed against another ship or persons/property aboard.

There is a clear emphasis on “private ends” which distinguishes piracy from maritime terrorism which is politically motivated. It situates it within the scope of criminal activity rather than warfare. It further criminalizes “voluntary participation” in operating the pirate ship and any form of incitement or facilitation. Hence, it widens the net of culpability which not only

¹⁶ The Maritime Anti-Piracy Act, 2023 (Act 3 of 2023).

¹⁷ Id, s. 2.

¹⁸ The United Nations Convention on the Law of the Sea, 1982, art. 101.

includes perpetrators but also the accomplices. The physical presence of accomplices is not necessary as per the definition.

Section 2(i) of the Act defines “*pirate ship*”, it refers to any vessel which is previously used or intended for the use to commit piratical acts or to be controlled by the pirates.¹⁹ It means as long as the ship is under the control of the pirates, it can be called a pirate ship. This makes it easier for law enforcement agencies to take action on the pirate ship even if there is no crime happening on that ship at that moment, as long as the purpose of the ship is meant for piracy. Section 2(j) of the Act defines “*ship*” which includes all vessels and even seaplanes or aircraft which can be used for operations at sea. This covers unconventional maritime threats such as airborne piracy or hybrid attacks, etc.²⁰

¹⁹ The Maritime Anti-Piracy Act, 2023 (Act 3 of 2023), s. 2(i).

²⁰ Id, s 2(j).

3.2 Extent and Jurisdiction

Section 2(e) of the Act defines “high seas” which includes not only the international waters but also the Exclusive Economic Zone (EEZ) areas which are just beyond a country’s coastline.²¹ This aligns with Article 86 of UNCLOS,²² which also treats EEZ as high seas for the purpose of piracy. This is done keeping in mind the increasing number of attacks in these zones and busy trade routes. Including EEZs will make sure that Indian authorities can take action even outside our territorial waters.

Section 9 of the Act gives the Designated Courts power to deal with cases related to piracy.²³ The nationality of the accused is immaterial in such cases as long as they are captured by the authorized officers. They can be Indian citizens, foreign citizens in India, or even stateless person. It is important to note that this Act does not apply to acts involving navy ships or government vessels used for official government purposes.

This aligns with Section 208 BNSS (earlier 188 CrPC) which allows Indian courts to try individuals for offences committed outside the country. Section 1(4) BNS (earlier Section 3 IPC) extends the application to crimes committed by Indian citizens or on Indian-registered ships even beyond Indian territory.²⁴ Additionally, the Suppression of Unlawful Acts (SUA) Act²⁵ strengthens the jurisdiction of India by covering offences in EEZ and other maritime zones. These provisions together reinforce the core objectives of the Act.

3.3 Inter-Ministerial Coordination

Section 6 of the Act allows the Central Government to confer power to Navy officers, Coast Guard, and other agencies as notified, to arrest, investigate, and prosecute the pirates.²⁶ This demonstrates that many government departments have to work together in such cases.

This is a complex issue, so different ministries handle various parts:

²¹ Id, s 2(e).

²² The United Nations Convention on the Law of the Sea, 1982, art. 86.

²³ The Maritime Anti-Piracy Act, 2023 (Act 3 of 2023), s. 9.

²⁴ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 1(4).

²⁵ The Suppression of Unlawful Acts Against the Safety of Maritime Navigation and Fixed Platforms on the Continental Shelf Act, 2002 (Act 69 of 2002).

²⁶ The Maritime Anti-Piracy Act, 2023 (Act 3 of 2023), s. 6.

- The MEA is the nodal ministry that works with other countries for international cooperation and coordination in piracy-related matters which includes provisions of extradition.
- The Ministry of Defence provides operation responses such as apprehending the pirates at sea through the support of the Indian Navy and Coast Guard.
- The Ministry of Ports, Shipping, and Waterways handles the welfare of seafarers, shipping insurance matters, and most importantly hostage situations through the support of the Directorate General of Shipping.
- The Ministry of Home Affairs along with the concerned State Government are tasked with prosecution and detention of pirates.

This inter-ministerial coordination provides a comprehensive approach to preventing and responding to the acts of piracy.

3.4 Provision of Arrest and Seizure

Section 7 of the Act allows authorized personnel (under Section 6) to arrest and seize the pirate ship on the high seas and any property which is on board.²⁷ The scope of powers given to the authorized personnel is broad because it allows arrest and seizure generally or on suspicion that a ship is engaged in piratical acts.

It is aligned with Article 105 UNCLOS— *“On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.”*²⁸ It states that on the high seas or any area which is not controlled by any country, any country can conduct operations to seize a pirate ship or aircraft, the property thereof, and arrest the people who are on board. It ensures swift preventive action against piracy.

²⁷ Id, s 7.

²⁸ Id.

3.5 The Right to Bail and Extradition Procedures

The general bail provision given under BNSS does not apply to offences of piracy. Section 12(1) of the Act provides specific conditions for granting bail in such cases. The conditions are as follows –

1. The Public Prosecutor must be given a reasonable opportunity to oppose the bail application.
2. The court must be satisfied that there are reasonable grounds to believe that prima facie no offence has been made out against the accused and he is unlikely to commit the offence while on bail.²⁹

However, it is important to note that the High Court continues to have the power to grant bail under Section 483 BNSS (earlier Section 439 CrPC) in the cases of piracy. The Act states that offences under it shall be automatically treated as extraditable offences under all the bilateral extradition treaties of India. The Act further clarifies that in order to apply the Extradition Act, 1962,³⁰ to piracy cases, a ship which is registered in a foreign state will be considered under the jurisdiction of the state during the operation, even if it is present in another state at that time. It provides more clarity in cases where an act of piracy involves foreign-flagged vessels. It allows Indian authorities to proceed with extradition requests more effectively and smoothly. UNCLOS lacks explicit provisions on extradition. India has astutely addressed this legislative gap and incorporated the extradition clause in the Act. This marks a legal foresight, a commitment to international cooperation, and leadership in shaping global maritime security norms.

4. CRITICISM OF THE ACT

3.6 Presumption of Guilt

Section 11 of the Act is a deviation from the basic principle of criminal law which is “Presumption of Innocence”. As a general principle, in all criminal law proceedings, the accused is presumed to be innocent until he is proven guilty beyond reasonable doubt by the prosecution. Section 11 deflects from this standard practice by allowing the court to presume

²⁹ The Maritime Anti-Piracy Act, 2023 (Act 3 of 2023), s. 12(1).

³⁰ The Extradition Act, 1962 (Act 34 of 1962).

guilty if specific evidentiary conditions are met which includes recovery of arms or explosives or threat to life or property aboard a ship.

This reverse onus provision provides that once all these conditions are fulfilled, the burden of proof shifts to the accused to prove their innocence. In criminal jurisprudence, the presumption of guilt is considered as an exception.³¹ It is justified only under a strict scrutiny and in very limited circumstances where the nature of the offence justifies such an approach.³²

Adding a presumption clause in broadly defined and extraterritorial law, the Acts creates a problem where individuals specifically foreign nationals and stateless persons find it difficult to rebut this presumption because of legal, linguistic and evidentiary disadvantages. This onus on the accused to “disprove the intent or involvement” could lead to unjust convictions or even prolonged pre-trial detentions.³³ Therefore, while this section was introduced to act as a deterrent against piracy, its implementation needs careful judicial interpretation in order to ensure that it does not undermine the principle of natural justice.

3.7 Concerns regarding Death Penalty

Section 3(ii) provides that the individuals who are found guilty of committing piracy resulting in death or an attempted act causing death may be punished with either life imprisonment or death penalty.³⁴ This provision is a departure from the originally introduced bill which proposed a mandatory death sentence for such offences.

There is a shift to a discretionary framework, which allows the courts to choose between life imprisonment and capital punishment based on the circumstances. It is a welcome move and aligns more closely with the evolving standards of constitutional and human rights jurisprudence in India. However, considering the complexities and varying degrees of culpability in piracy operations, especially a lack of witnesses, even the revised provision continues to raise concerns about proportionality and fairness.

Various human rights organizations, NGOs and Legal scholars have criticized the death penalty provision in the Act as excessive and inconsistent with the international framework.³⁵ Although

³¹ Ashutosh Sahu, “Presumptions under Indian and Common Law” 1 *Jus Corpus Law Journal* 323 (2020).

³² Id.

³³ Pooja Amaravathi and Ananya Mishra, “The Presumption of Innocence and its Role in the Criminal Process” 3 *International Journal of Law, Management and Humanities* 1128 (2021).

³⁴ The Maritime Anti-Piracy Act, 2023 (Act 3 of 2023), s. 3(ii).

³⁵ S. Muralidhar, “Hang Them Now, Hang Them Not: India’s Travails with the Death Penalty” 40 *Journal of the Indian Law Institute* 143–173 (1998).

Piracy is a serious offence, it has a different standard because it is often economically motivated rather than ideologically driven. Imposing capital punishment in the cases where intention to kill is not clear may be disproportionate. Even globally, many countries are stepping away from the capital punishment for “non-terror crimes”³⁶ and therefore applying it in piracy cases can isolate India from the emerging human rights standards.

The Supreme Court of India in *Mithu v State of Punjab*, held that mandatory capital punishment is against fundamental rights. While the Act now allows judicial discretion between life imprisonment and death penalty, the mere inclusion in a law with global outreach can face legal and constitutional challenges.³⁷

3.8 Ambiguity in Sentencing Structure

The Act provides different sentencing provisions based on the involvement and role of the accused but it lacks clarity on how these degrees are to be applied in practice. The direct acts of piracy are punishable with life imprisonment or a fine or both,³⁸ and the indirect acts such as organizing, directing, colluding, etc. are punishable with a lesser sentence of max. of 14 years.³⁹

The Act also fails to define the threshold or the evidentiary criteria on how to distinguish between a principal offender and someone who merely facilitated or harboured. This creates an ambiguity for the court to determine the degree of involvement and proportionate punishment.

3.9 Enforcement Challenges

Although the Act has a robust framework, its enforcement faces operational limitations. The Naval and Coast guard forces of India are proactive in anti-piracy operations but they are often stretched thin because of the vastness of the Indian Ocean and the competing demands of maritime security.

There is a manpower shortage, limited deployment capacity, and inadequate surveillance infrastructure which makes it difficult to maintain a continued presence in piracy-prone

³⁶ Andrew Novak, *The Global Decline of the Mandatory Death Penalty: Constitutional Jurisprudence and Legislative Reform in Africa, Asia, and the Caribbean* (Routledge, 2016).

³⁷ AIR 1983 SC 473.

³⁸ The Maritime Anti-Piracy Act, 2023 (Act 3 of 2023), s. 3(i).

³⁹ Id, s 5.

zones.⁴⁰ This problem is seen specially in distant sea lanes where India has high commercial interest.⁴¹

Piracy is a transnational crime which often times involves well-coordinated networks operating beyond the national jurisdictions. Therefore, this requires not just domestic capability but also international collaboration, logistical collaboration and real-time intelligence sharing with other nations.

4. WAY FORWARD

4.1 Introduce Judicial Oversight and Review Mechanism

There should be an amendment to introduce a statutory review and oversight mechanism. It can be either through designated High Court benches or a specialized appellate panel. This mechanism would work as follows:

- It will scrutinize the application of Section 11 in cases involving foreign nationals, stateless persons ensuring that there are fairness and procedural safeguards.
- It should issue clear sentencing guidelines to distinguish between the principal offender and other offenders so that proportionality can be ensured in punishments.
- It should ensure that capital punishment is applied only in “rarest of rare” cases, making it at par with the global human rights standards

In the author’s opinion, this approach combines oversight with structured discretion upholding natural justice, mitigating arbitrary punishments, and increasing uniformity.

4.2 Dedicated Anti-Piracy Task Force

A dedicated Anti-Piracy Task Force must be established under the Ministry of Defence or Ministry of Home Affairs which should coordinate with MEA and the Indian Navy. This force should work as follows:

- It should be equipped with modern surveillance technologies, trained personnel, and long-range vessels which are capable of sustained deployment in piracy-prone zones.

⁴⁰ Abhishek Mishra, “Piracy and Armed Robbery in Indian Ocean Region: Assessment, Challenges and the Way Forward”, in *Contiguity, Connectivity and Access* 123–137 (Routledge, 2022).

⁴¹ Id.

- It should facilitate real-time intelligence sharing and a joint maritime operation with other international maritime forces strengthening international cooperation. This can be done through regional bodies like IORA or RECAAP.
- It should develop a standard operating protocol for international cooperation and extradition which can help mitigate the diplomatic or legal friction during the cross-border anti-piracy operations.

This will bridge the enforcement gaps and support credible & consistent implementation of the Act on the high seas.

5. CONCLUSION

This Act fills a critical gap in India's legal framework. It provides necessary tools to combat piracy in the Indian Ocean region. The legislation defines piracy, establishes jurisdiction and extent, and also creates mechanisms for the arrest and prosecution of accused. However, it is important to note that the Act has flaws including its presumption of guilt provision, the inclusion of the death penalty, ambiguous sentencing structure, and enforcement challenges.

The true effectiveness of the Act will ultimately be determined by its practical implementation. The deployment of naval resources across the vast Indian Ocean presents a considerable logistical challenge that requires substantial investment in both technology and personnel.

The Act's provision on presumption of guilt deserves special scrutiny. While expediting the prosecution of pirates is important, this must be balanced against the principles of natural justice. Similarly, the inclusion of the death penalty can create diplomatic complications with countries that have abolished capital punishment, hampering the international cooperation in anti-piracy operations.

India's leadership in creating this comprehensive and strong legal framework could inspire similar legislation across the region, particularly among other the Indian Ocean Rim nations facing similar security challenges. Regular review and amendment of the Act based on operational experience would ensure it remains effective in addressing evolving piracy tactics and emerging maritime security threats.

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