

**RATIONALISING THE LAW AND PRACTICE RELATING TO PORTS  
IN INDIA-THE SAGARMALA PROGRAMME AND MAJOR PORTS  
AUTHORITIES ACT, 2021**

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**Abstract**

*If a country has a robust system of modern multimodal ports, its participation in international trade will be enhanced leading to progress in establishment of manufacturing hubs in the country, growth in domestic trade and enhancement of innovation in the country. Nearly 70 percent of the world trade is moved through maritime transport. India moves around 95 percent of her trade by volume and 68 percent by value through maritime transport. Multifarious connectivity, the urban planning around the port, adequate storage facilities, rail-road transportation aids and skilled labour force are necessary prerequisites for an efficient and developed port in a coastal area. Apart from the economic value, ports are very significant for defence preparedness too. Conventionally, Indian Ports Act, 1908, Coasting Vessels Act, 1838, Seamen's Provident Fund Act, 1966, Dock Workers (Regulation of Employment) Act, 1948 and Multimodal Transportation of Goods Act, 1993 are the prominent legislations regulating the ports and shipping system in India. Now with the new developments such as Sagarmala Programme and The Major Ports Authorities Act, 2021, a new epoch of awarding autonomy and more flexibility to ports has commenced. Under Sagarmala Programme, the Ministry of Ports, Shipping and Waterways has undertaken to complete 802 projects by 2035 involving Rs. 5.52 lakh crore investment. The Major Ports Authorities Act, 2021 would help to transform the Major Ports from 'service model' to 'landlord model'. It will enable ports to freely decide upon tariffs and port asset management. In this context, this research paper endeavors to analyze the scope of these latest regulatory and policy developments in maritime transport and their impact upon the future of ports. A brief discussion on relevant conventional law will enable the readers to assess the performance gaps of existing legislations and dwell upon the required reform agenda for overhauling ports in India.*

**Keywords-** Major Port, Maritime Transport, Landlord model, Board, Multimodal Transport, Tariff Authority

## **Introduction**

Distribution is very important factor of production which makes the goods and services reach to their intended consumers. Transportation is the means to achieve the end of optimal distribution. For transportation across seas, ports play a major role. Ports connect land and air transportation with the sea. Sea transport is safe and the cheapest method of transportation. Therefore, it is vital to create a robust port infrastructure in any country. Nearly 70 percent of the world trade is moved through maritime transport. India moves around 95 percent of her trade by volume and 68 percent by value through maritime transport<sup>1</sup>. All kind of connectivity, the urban planning around the port, adequate storage facilities at and around the port, all kinds of transportation aids and skilled labour force are necessary for an efficient and developed port in a coastal area. Apart from the economic value, ports are very significant for defence preparedness too. The safety and security of ports and the cargo must be ensured. Central Government's Ministry of Ports, Shipping and Waterways has been entrusted with the responsibility to formulate policies and programs on shipping and ports sector and their implementation. Conventionally, Indian Ports Act, 1908, Coasting Vessels Act, 1838, Seamen's Provident Fund Act, 1966, Dock Workers (Regulation of Employment) Act, 1948 and Multimodal Transportation of Goods Act, 1993 are the prominent legislations regulating the ports and shipping system in India, the working of which has been criticized by some stakeholders to be archaic and deficient in terms of requirement of modern multimodal port systems which India needs to build to achieve the goals of trillion dollar economy. Now with the new developments such as Sagarmala Programme and The Major Ports Authorities Act, 2021, a new era of awarding autonomy and flexibility to major ports has taken a flight. Government of India has regarded them to be new beginning in the process of rationalization of law and policy relating to maritime transport in India.

### ***Sagarmala Programme***

This programme was launched by the Government of India at the Maritime India Summit on 14<sup>th</sup> April, 2016 held in Mumbai. Sagarmala Programme aims to promote port-led development in the country<sup>2</sup>. The Ministry of Ports, Shipping and Waterways has undertaken to complete 802 projects by 2035 involving Rs. 5.52 lakh crore investment<sup>3</sup>. Port modernization,

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<sup>1</sup> RAJYA SABHA STANDING COMMITTEE ON TRANSPORT, TOURISM AND CULTURE, REPORT ON PROMOTION OF INFRASTRUCTURE IN INDIA'S MARITIME SECTOR 20 (2021), 300\_2021\_8\_13.pdf (rajyasabha.nic.in).

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

connectivity enhancement, port led industrialization and coastal community development are the major goals of this programme. The vision includes efforts to be made to reduce the logistic cost for EXIM and domestic trade by building industrial clusters, SEZ and smart port cities in places around the ports. The coastal community and fishermen skill development programmes shall be organized around ports. Private sector or PPP model projects are being given priority though the Central Government, State Governments, ports and other related agencies are actively engaged in resources management and utilization. Indian Port Rail Corporation Limited has been set up in 2015 to create efficient rail connectivity to ports. However, it is found that Sagarmala programme, particularly after covid-19, needs to be ramped up with greater fund utilization, better planning and fiscal discipline.

### ***Major Ports Authorities Act, 2021- The highlights and the Major Changes Introduced***

Enacted in February, 2021, The Major Port Authorities Act, 2021 is the latest regulatory development made applicable to major ports in India. The statement of objects and reasons making clear difference between the old Major Port Trusts Act, 1963 (which 2021 Act sought to replace) and the new Act, provides that it is an Act not only to constitute the port authority for routine port administration, but to regulate the planning, operation, and adjudication at the port level. The Major Port Trusts Act established the Board of Trustees for port management and Tariff Authority for tariff regulation. The 2021 Act establishes the Board of Major Port Authority for port management and the Adjudication Board as the tariff regulator and dispute resolution authority. Indian ports are old ports having less draft, old berths and incapacity to handle large ships and huge cargo. It is acclaimed that the new legislation would help to transform the Major Ports from 'service model' to 'landlord model' and provide them greater operational autonomy including decisions of tariff /SoR for services and usage of port assets, thereby ushering in more competitiveness and attracting investments for modernization. Modernization of institutional structure of Major Ports would help improve project execution capacity. Landlord Port model establishes a neutral public sector regulatory authority for owning the port and protecting the interests of port community which are general and involve public interest (such as bye laws relating to port, management planning, dispute resolution, port environment, port safety, basic infrastructure, and competition issues) and leaves the terminal operations, customized infrastructure development and capacity building to private

sector<sup>4</sup>. Additionally, major ports must follow Policy Guidelines for Land Management (PGLM), 2014 for better utilization of lands of and around the ports. The policy guidelines relating to Model Concession Agreement, 2018 (dealing with international terminal concession) are also in revision process to make it conducive to the goals of Major Port Authorities Act, 2021.

The 2021 Act purports to replace the large Board constituted under the Major Port Trusts Act, 1963 by a newly constituted compact Board of Major Port Authority to administer Major Ports in the country<sup>5</sup>. The Board under the new Act is more authoritative and directly accountable for its activities to the Central Government. Government retains the whole sole control on constitution of the Board and the provision for election of members (trustees under the old Act) has been omitted. The Chairman and Vice Chairman of the Board shall be appointed by the Central Government based on recommendations of a selection committee<sup>6</sup>. Apart from the port stakeholders, the Board shall have one representative from State Government, railway, defence, customs and two from employees of the port. There has been a lot of labour unrest at ports. The new Act does away the requirement of consultation with outside trade unions. The employee's representatives should be serving employees and trade union should be registered and consist of serving employees only<sup>7</sup>.

The Board is a permanent body having legal personality of its own. The Board under the old Act was to be constituted as per the pleasure of the Government and trustees were elected after every two years which weakened the resolute of the institution. The Chairperson and the Deputy Chairperson can now be appointed for five years term and other members can be appointed for three years term (subject to maximum two terms); however, the Board continues as a permanent body. The Board must dispose of all the questions which came up before any meeting within sixty days<sup>8</sup> making the decision-making process time bound which was missing under the old Act leading to inefficiency and resultant leadership gaps at ports. The Board shall have greater autonomy to make decisions as to port lands, property, and assets management. The transaction shall be regulated by the prescribed port rules overriding the jurisdiction of municipal, local or Government regulations. No State Government approval or licence is

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<sup>4</sup> CHRISTIAAN VAN CRIMPEN, REGULATION OF THE INDIAN PORT, WORLD BANK 38 (2011), <https://openknowledge.worldbank.org/server/api/core/bitstreams/21a71db8-a81d-5cee-8acd-1ef738860bff/content>.

<sup>5</sup> Major Ports Authorities Act, 2021, No.1 of 2021 §3.

<sup>6</sup> Major Ports Authorities Act, 2021, No.1 of 2021 §4.

<sup>7</sup> Major Ports Authorities Act, 2021, No.1 of 2021 §4(3).

<sup>8</sup> Major Ports Authorities Act, 2021, No.1 of 2021 §13.

required for constructing buildings or other structures at the major port. The master plan of the Board shall be executed even if there is a conflict with the state Government or local authorities<sup>9</sup>. Board has power to make exemptions or remissions from charges and development of port infrastructure. It can raise loans from banks more freely and make PPP model contracts for Major Ports. The Act abolishes Tariff Authority (tariff regulator) under the Major Port Trusts Act, 1963 which used to fix tariff rates at ports. The Authority had to publish all the tariff rates in official gazette. The Central Government had ample powers to modify the decisions of the Authority. There was lack of flexibility in tariff regulation. Now under the new regime, Ports will be free to fix tariffs and other charges as per the market conditions. It will increase competition amongst ports. An Adjudicatory Board will now investigate and decide upon the matters of tariff regulation, complaints against Port Authority Board and other port service renders and disputes arising out of PPP agreements and concession clauses<sup>10</sup>. The jurisdiction of courts is barred which was partially allowed in the earlier Act. The Adjudicatory Board does have the necessary powers of civil court and its proceedings shall be deemed to judicial proceedings, the appeal against which shall lie only in the supreme Court. The Presiding Officer of the Adjudicatory Board will now be the either the retired judge of the Supreme Court or the retired Chief Justice of a High Court. Presiding Officer can be suspended or removed only under the supervision of the Supreme Court. This position in the old Act was held by a senior bureaucrat. This new development empowers the judicial strength of the body and enforces certainty of law at the port level barring jurisdiction of lower courts. Parties are free to settle contractual disputes through arbitration also<sup>11</sup>. For offences, fines have been significantly increased and to punish for them, power of civil court has been retained as it was there under the old Act. If applicable, the Board shall discharge its responsibilities for corporate social responsibility undertaking certain works related to ports having socio-economic significance within the broader framework of section 135 of the Companies Act, 2013.

The new law and policies of the Ministry aim to make the Boards of Major Port Authority the owner of the port where private companies can build their own port related business structures independently and can use the port in return of sharing revenues with the Authority. The owner of port shall remain the Port authority but the infrastructure of the port shall be leased out to

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<sup>9</sup> Major Ports Authorities Act, 2021, No.1 of 2021 §25.

<sup>10</sup> Major Ports Authorities Act, 2021, No.1 of 2021 §58.

<sup>11</sup> Major Ports Authorities Act, 2021, No.1 of 2021 §59.

private firms. They shall have power to install their own technical capabilities at the port whereas the scheme under the old Act lays all responsibilities on the Board itself.

### **The Mechanism of Ports in India and Challenges Faced by Them**

Before going into further discussion about law and policies, it is important to know the existing system and mechanism of working of ports and the problems faced by port community. Shipping and ports have been into existence across the globe from centuries. Wadi Al Jarf was a very famous port in red sea in ancient civilization. Guangzhou in China, Lothal port in India in Gujrat, Athens' port of Piraeus, Zanzibar in Africa, Dejima port in Japan are a few examples of famous ancient ports<sup>12</sup>. Rye and East Sussex have been important English ports in medieval period. Tengier Med and Port Said in Africa, Port of Shanghai and Singapore in Asia, Port of New York and New Jersey and LA in America and Port of Rotterdam and Hamburg in EU are the major ports of the present times. Ports in India handle around 95 percent of EXIM cargo by volume and 68 percent by value. There are 13 major ports and 200 non-major ports (minor ports) in the country. Chennai Port Trust, Cochin Port Trust, Deendayal Port Trust, Jawaharlal Nehru Port Trust, Paradip Port Trust, Kolkata Port Trust, Mormugao Port Trust, Mumbai Port Trust, New Mangalore Port Trust, Visakhapatnam Port Trust and V.O. Chidambarnar Port trust are the Major Port Trusts in India

#### ***Kinds of Ports***

Different ports have different and specialized areas of operation and therefore their needs are to be separately addressed. Usually, the ports are classified into following categories: -

1. Cargo Ports- Cargo ports are used for transporting cargo only. They may be dealing in one or more than one type of cargo such as food grains, vehicles, chemicals, wood etc. These ports may be handling large number of containers and in such cases, they are named as container ports also.
2. Cruise Ports- Ports which are used for cruise ships used for passenger transport are called cruise ports. Passengers as well as supplies are board on the cruise.
3. Inland Port- The port situated in the lake or river connecting to sea is called inland port.
4. Warm Water Port- Ports where ice is not freeze in wintertime are called warm water ports.

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<sup>12</sup> Wikipedia, *Historical Ports*, WIKIPEDIA (Mar. 27, 2018) [https://en.wikipedia.org/wiki/Historical\\_ports#:~:text=Guangzhou%20was%20an%20important%20port%20during%20the%20ancient,Salamis%20against%20the%20Achaean](https://en.wikipedia.org/wiki/Historical_ports#:~:text=Guangzhou%20was%20an%20important%20port%20during%20the%20ancient,Salamis%20against%20the%20Achaean).

5. Major and Minor Ports- usually ports are classified into major or minor port on the basis of volume of trade or economic value, however in India this classification is more administrative in nature. According to the Ministry of Ports, Shipping and Waterways, “While the major ports are under the administrative control of Ministry of Ports, Shipping and Waterways, the minor ports are under the jurisdiction of respective State Maritime Boards/ State Governments. All the 13 major ports are functional. Out of 200 minor ports, around 65 ports are handling cargo and the others are ‘Port Limits’ where no cargo is handled and these are used by fishing vessels and by small ferries to carry passengers across the creeks”<sup>13</sup>.

### ***Problems Faced by Ports***

1. Ports are facing ecological challenges these days. Dredging and spills lead to pollution. India has faced 8 marine oil spill incidents in last five years. Rising sea level, cyclones and flooding in coastlines is making the port infrastructure building companies to rethink on construction models and coastal management. The quality of air and water in port area have been found to be deteriorated due to transport vehicles and loading and unloading practices.
2. Invasive species brought by ships sometimes, endanger the native species in sea life.
3. Due to change in transportation methods and economic slowdown, some ports loose importance and it becomes uneconomical to operate them. Large investments in port infrastructure are wasted.
4. Modern ports are super multimodal hubs. They need a large-scale multimodal infrastructure investment. It becomes difficult for public bodies to establish or maintain such ports and due to this, they lose a large amount of trade.
5. Attracting huge private investment in ports is a problem in India. Modern ports need a high-tech ICT system making them smart ports. The investment in such ventures, skilled workforce and infrastructure building becomes an additional challenge for port management authorities<sup>14</sup>.
6. The underutilization of other modes of transport which become linking chain for ports leads to underutilisation of ports too. It becomes imperative to make and properly implement a robust transport policy in the country.

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<sup>13</sup> MINISTRY OF PORTS, SHIPPING AND WATERWAYS, MAJOR PORTS AND NON-MAJOR PORTS, 12 (2022), Ports Wing | MINISTRY OF PORTS||SHIPPING AND WATERWAYS (shipmin.gov.in).

<sup>14</sup> India Infrastructure Research, *Ports in India 2021*, INDIA INFRASTRUCTURE BLOG, (Feb. 21, 2021) <https://indiainfrastructure.com/wp/content/uploads/2021/03>.

7. Legal and policy barriers also exist.

### **Conventional Regulation of Ports**

Ministry of Ports, Shipping and Waterways is the administrative department to establish the functional and regulatory framework for maritime transport in India. Indian Ports Act, 1908, Coasting Vessels Act, 1838, Seamen's Provident Fund Act, 1966, Dock Workers (Regulation of Employment) Act, 1948 and Multimodal Transportation of Goods Act, 1993 are the protuberant legislations regulating the ports and shipping system in India. However, The Indian Ports Act, 1908 and the Major Port Trusts Act, 1963 are the prominent legislation regulating the structure and functioning of ports and therefore they have been discussed hereunder.

### ***Salient Features of the Indian Ports Act, 1908***

1. Central Government, for major ports and State Government for minor ports, can regulate the working of ports including making rules relating to entry, exit, work hours, berths, stations, anchorages, striking the yards and top mast and for rigging in the booms and yards of vessels, taking in or discharging passengers and cargo, free passages, oil and fuel vessels, licencing, rates of equipment such as mooring etc<sup>15</sup>.
2. Government regulates the use of piers, jetties, landing places, wharves, quays, warehouses and sheds. Government makes rules for the fee charged for services, use of signals, crew, information to be supplied from vessels, medical inspection, inspections, provisions relating to safety, sanitation, disease control etc.
3. Port Conservators are appointed to implement the regulation on the port. They have the powers to issue directions relating to various matters such as to cut warps and ropes in specific cases, remove obstruction and recovery of expanses, raising or removal of wreck impeding navigation, board vessels and enter buildings, crew obligations etc.
4. The Act provides for indemnity by or against the Government for injury or losses to equipment or vessels etc.
5. The Act lays down the manners of discharge of responsibilities in relation to use of port infrastructure and emergency management. It provides for penalties for not observing the duties provided under the Act.
6. The Act also regulates the manner of receipt, expenditure and account of port charges.

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<sup>15</sup> Indian Ports Act, 1908, No.15 of 1908.

7. Magistrate has been given powers to enforce the orders relating to payment of compensation or fines under the Act.

### ***Major Port Trusts Act, 1963***

The Act purports to constitute port authorities for major ports in India. Board of Trustees is constituted which is responsible for administration of major ports, looking after the issues arising out of and connected with port and implementation of the regulations. Board of Trustees comprises of representatives of various stakeholders such as Government, labour of the port, Mercantile Marine Department, Customs Department, State Government, Defence Services, Railways, sailing vessels and ship owners. Terrif Authority fixes the tariff rates and conditionalities of rates on major ports. Terrif guidelines are issued by the Ministry of Shipping. The Act is based on agency approach and complete state regulation over establishment, operation and functioning of ports. It has not been successful in attracting private investment in the maritime sector. The Major Port Authorities Act, 2021 has been passed to do away the performance gaps created by the mechanism of this Act.

### **Multimodal Transport Contract and Multimodal Transport Operator**

Ports have now turned from simple unimodal harbours to the multimodal hubs. Multimodal ports use all means of transport for cargo movement such as land, rail, air and waterway transport systems. There are world class warehousing facilities in and around the port. Super container handlers, large ship movement facilities, shelter from wind and wave, regional distribution centers, freight forwarders, canneries, repair and maintenance services, smart port traffic management system, specialized cargo handling equipment and skilled workforce are important features of a modern multimodal port. The innovation and efficiency of multimodal logistics is the key for success of modern ports.

According to Vishvas, “Multimodal Logistics can be defined as the chain that interconnects different links or modes of transport – air, sea, and land into one complete process that ensures an efficient and cost-effective door-to-door movement of goods under the responsibility of a single transport operator, known as a Multimodal Transport Operator (MTO), on one transport document”<sup>16</sup>. There is one MTO and therefore goods can be properly tracked and traced and benefits of specialization accrue to traders. Traders do not need to have multiple legal

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<sup>16</sup> Badvar Dnyandev Vishvas, *Multimodal Transport in India- Issues and Opportunities*, RESEARCHERS ASIA (Sept. 2, 2022) <https://www.theresearchers.asia/papers/vol-i-,issueii/multimodaltransportinindia.pdf>.

documentation. It is time and cost effective<sup>17</sup>. Ports need to have such networks. Speaking internationally, United Nations Convention on International Multimodal Transport of Goods 1980 defines International Multimodal Transport as “the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery in a different country. The operations of pick-up and delivery of goods carried out in the performance of a Unimodal transport contract, as defined in such contract, shall not be considered as international multimodal transport”<sup>18</sup>. Indian major ports need a modern system of such multimodal ports.

### ***The Multimodal Transportation of Goods Act, 1993***

India has enacted this Act to create multimodal transport network in India. The Act provides for registration of MTO (Multimodal Transport Operator) for providing more than one type of transport service. There is a need of single multimodal transport contract for availing such services. It imparts great benefit to exporters by reducing cost of goods making them more competitive in the international market. Goods can be sent from any place of India to any place in the world. The Multimodal Transport Document (MTD) is a negotiable instrument, a document of title having terms and conditions as to the bankers, insurance covers and liability of MTO for loss or damage. It is very important step for growth of international trade and consequently the progress of ports.

### **Conclusion and Recommendations**

If a country has a robust system of modern multimodal ports, its increased participation in international trade will lead to progress of the economy, growth of employment, increase in revenue of the Government and enhancement of innovation in the country. There will be progress in transport infrastructure too. Allied industries will get a boost. The economy of local people will thrive. Ports are very significant for safety and security of the country too and should be a subject matter of strategic planning too. Unfortunately, ports are facing certain challenges these days. Natural calamities, air and water pollution created by port operations, soil erosion, intrusion of foreign species in inland waters and rising sea level are posing threats to ports. The stakeholders will have to think about environment friendly infrastructure and

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<sup>17</sup> *Ibid.*

<sup>18</sup> ASEAN, MULTIMODAL TRANSPORT LAW AND OPERATIONS, 6 (2022) [https://www.asean.org/storage/images/2015/september/transport-facilitation/batch-2/multimodal-transport-law-and-operations/chapter1\\_asean\\_disclaimer.pdf](https://www.asean.org/storage/images/2015/september/transport-facilitation/batch-2/multimodal-transport-law-and-operations/chapter1_asean_disclaimer.pdf).

operations of ports. Here there is a need of long-term policies and guidelines for port establishment and reconstruction. Ports need a long-term planning in which due importance should be given to development of other forms of transports too which will serve as a network for multimodal transport. The port infrastructure needs to be upgraded as per the change in circumstances as some famous ports have lost their significance in the world trade due to their inability to provide facilities for large ships and large containers. Port revenue needs to be increased making ports a partner in trade revenues. PPP models are already operating well in the port systems, however there is a need to attract more private sector investment and exchange of global capital should also be encouraged.

The existing framework of laws, particularly the Major Port Trusts Act is restrictive in nature. Indian ports are not efficient enough to operate in highly competitive market. The unduly large Board of Trustees led to delays and deadlocks in decision making. Commercial interests were sometimes ignored in its decisions. Ports have remained to be inefficient despite of giving broad powers to the Board<sup>19</sup>. Tariff Authority has been very slow in working and has been seen as a hurdle by PPP model port community. It is expected that the new Major Port Authorities Act, 2021 will professionalize Indian ports. They will be enjoying more autonomy and flexibility leading to increased efficiency in ports. The private players have been given liberty to establish terminal infrastructure and capacity building. However, the new Act also does not leave the tariff decision completely on market forces. It takes the middle way. There is no provision as to the role of state government, state rules and platform for conflict resolution with state Government for major ports. This aspect needs to be reexamined. There should be more trust on environment management at and around the ports.

The Transfer of Technology agreements should be made with global handlers for placement of modern technology at the ports. There should be deployment of Geographical Information System (GIS) and remote sensing technology to monitor the proper implementation of legislations at the coastal areas. Skill development and manpower capacity building should be enhanced by establishing new training and development centers across the coastal areas as well as in technical institutes such as IITs/NITs and IIMs. With these submissions, it can be precisely concluded that efficient implementation of the Sagarmala Programme and Major Ports Authorities Act, 2021 along with reforms in conventional legal and administrative framework

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<sup>19</sup> MINISTRY OF PORTS, SHIPPING AND WATERWAYS, MAJOR PORTS AND NON-MAJOR PORTS, MINISTRY'S WEBSITE PORT WING 1 (Aug. 5, 2022) <https://shipmin.gov.in/division/ports-wing>.

will certainly enable India to successfully achieve the goals set in the recently announced Maritime India Vision, 2030.