

FROM THE DECK TO THE DOCK – ACHIEVING LEGAL FINISH UNDER INDIA’S MARITIME ANTI-PIRACY ACT, 2022

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Abstract

Legal finish in maritime security represents the complete process converting maritime law enforcement actions into enforceable judicial outcomes. This paper examines the concept of Legal finish under India’s Maritime Anti-Piracy Act, 2022 (MAPA). Drawing on lessons from Somali piracy prosecutions as well as from cases like MV Alondra Rainbow and Prantalay 14, the paper analyses MAPA’s provisions on jurisdiction, powers of search, punishment, immunity, presumption of guilt, bail, and extradition. MAPA marks India’s alignment with UNCLOS obligations. The Act addresses critical deficiencies such as extraterritorial jurisdiction over foreign nationals and evidentiary challenges on the high seas, while introducing presumptions of guilt and stringent penalties to deter piracy. Despite robust punitive frameworks, gaps persist in witness protection, training, and regional cooperation. The analysis critiques potential issues, including the constitutional validity of the death penalty and risks of overbroad immunity, balanced against operational necessities. The paper advocates interagency coordination, comprehensive training programs at maritime universities and judicial academies, enhanced evidence gathering with digital tools, expanded witness protection through MLATs and video testimony, and international mechanisms like joint investigation teams, to achieve effective legal finish. These measures aim to integrate naval operations with judicial processes, thereby ensuring legal finish in anti-piracy operations.

Keywords: Legal finish, Maritime piracy, MAPA 2022, UNCLOS, Law enforcement, Piracy prosecution, Witness protection, Training

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Introduction

1. The concept of legal finish in maritime security can be defined as the end-to-end process by which a law enforcement action at sea is converted into an enforceable legal outcome through formal domestic or international prosecution. The empirical experience from the Somali piracy crisis has proved that legal enforcement is indispensable to the sustained eradication of piracy. The 2011 United Nations report on Somali Piracy had highlighted the ‘catch and release’ practice by States, noting that 90% of the apprehended pirates are released without prosecution¹. Irrespective of the joint efforts by multinational navies, which included surveillance, frequent patrols, and escort of ship convoys, the absence of a legal finish had empowered pirates to act with impunity, and continue the piratical activities with little fear of any significant or long term repercussions.

2. As required by the United Nations Convention on the Law of the Sea (UNCLOS) Art 100, India has played a proactive role in combating maritime piracy. Since October 2008, the Indian Navy has continuously deployed a ship in the Gulf of Aden for anti-piracy patrols. INS Tabar’s neutralisation of a pirate mothership in November 2008, was among the first kinetic action by any navy in the region. The Indian Navy, has since shown sustained readiness to use proportionate force when required, as seen in the interdiction of *Prantalay 11*, *Prantalay 14*, and *Vega 5* in 2011. The Indian Navy apprehended over 120 pirates between 2008 and 2014. Due to the absence of a dedicated domestic law to prosecute these pirates, they were charged under various provisions of Indian law, including the Indian Penal Code (IPC), the Unlawful Activities (Prevention) Act (UAPA), the Indian Arms Act 1959, the Explosive Substances Act 1908, the Foreigners Act, 1946 and the Passport Act, 1967 and the prosecution was governed by the Code of Criminal Procedure (CrPC). A brief examination of these piracy prosecutions raises a fundamental question. Without corresponding legal and institutional mechanisms to achieve a definitive legal finish, can such operational successes ensure the permanent suppression of piracy?

¹ Special Adviser on Legal Issues Related to Piracy off the Coast of Somalia, *Report of the Special Adviser on Legal Issues Related to Piracy off the Coast of Somalia*, UN Doc. S/2011/30, January 25, 2011, United Nations Security Council, <https://docs.un.org/en/S/2011/30>

3. The absence of an adequate legal framework to prosecute piracy was first evident in the 1999 *MV Alondra Rainbow* case (*Christianus Aeros Mintodo v. The State of Maharashtra*)², which exposed serious lacunae in India's domestic law despite its international obligations under UNCLOS. This gap persisted even after the advent of Somali piracy, when the Indian Navy conducted extensive anti-piracy operations at sea and captured numerous pirates. The first attempt to create a domestic anti-piracy legislation was initiated in 2010, culminating in the introduction of 'The Piracy Bill, 2012' in Parliament on April 24, 2012. However, the bill lapsed with the dissolution of the 15th Lok Sabha. The legislation was re-drafted and re-introduced as 'The Anti Maritime-Piracy Bill, 2019' on December 9, 2019.³ The bill received Presidential assent on 31 January 2023, thereby becoming the Maritime Anti-Piracy Act, 2022 (MAPA)⁴. This marked a delayed yet essential step in aligning India's domestic law with international norms and in providing the necessary legal foundation to complement the navy's operational successes in the suppression of piracy. The Act also reflects India's commitment under Article 51(c) of the Constitution to foster respect for international law and treaty obligations, in fulfilment of its responsibilities arising from the ratification of UNCLOS.

Analysis of MAPA Provisions

4. Lessons learnt from the previous piracy prosecutions from the *Alondra Rainbow* case to the *Prantalay 14* case (*The State of Maharashtra v. Usman Salad & Others*)⁵ would reveal the critical systemic deficiencies that affect the legal finish of piracy prosecutions in India. The notable issues are the IPC's territorial limitations, the inability to prosecute foreign nationals for crimes committed beyond India's territorial waters, empowerment of law enforcement agencies, insufficient evidence to prove the crimes in court and absence of critical witnesses during prosecution. Lack of dedicated anti-piracy legislation had critically affected prosecution of pirates caught by Indian Navy in the past. In order to examine how MAPA aids in ensuring legal finish by addressing the above issues, we need to undertake a critical analysis of the MAPA provisions and deliberate on corresponding actions at sea.

² *Christianus Aeros Mintodo and Others v. The State of Maharashtra*, Criminal Appeal No. 54 of 2003 (CINO: HCBM010012802003), Interim Order No. 1, March 7, 2005, Bombay High Court, India.

³ Indian Express Online 'Rajya Sabha passes Maritime Anti-Piracy Bill' December 22, 2022, <https://indianexpress.com/article/india/parliament-passes-anti-piracy-bill-maritime-security-8337403/>

⁴ *The Maritime Anti-Piracy Act, No. 3 of 2023*. Gazette of India, Extraordinary, Part II, Section 1, December 29, 2022

⁵ *State of Maharashtra v. Usman Salad & Others*. Sessions Case No. 100425 of 2011 (CNR Number: MHCC020052482011).

5. **Jurisdiction.** Issues related to jurisdiction formed one of the major obstacle to successful piracy prosecution in India. For any incident that occurs beyond 12 nautical miles from the baseline, Indian courts had jurisdiction only over offenses committed by a citizen of India or a ship registered in India. Therefore, if the accused are of foreign nationality and the ship is also not registered in India, Indian courts do not have the extraterritorial jurisdiction to try such persons and hence the proceedings in the case are liable to be quashed. In the *Alondra Rainbow* case, the Mumbai High Court had acquitted the accused due to the lack of jurisdiction to prosecute them⁶. The lack of jurisdictional authority to prosecute foreign nationals for crimes committed beyond India's territorial waters was also highlighted in the *Raymund Genciano v State of Kerala*⁷ case, wherein the court observed that the Indian Courts have no jurisdiction to try an offence which is alleged to have been committed by a foreign national in a foreign vessel outside the territory of India.

6. Enactment of MAPA effectively addresses this issue of jurisdiction. Section 1(3) of MAPA, along with Section 2(1) (e), clearly defines the scope of jurisdiction. Officers and sailors of the Indian Navy and the Indian Coast Guard assigned to the respective ships or aircraft, or officers of the Central or the State Government authorised for any ship or aircraft clearly marked and identifiable as being on Government service, are now empowered to combat piracy on the high seas, including the EEZ and all waters beyond the EEZ. This effectively gives the right to conduct anti-piracy operations in all waters beyond the territorial seas of any State. Section 9 of MAPA states that the Designated Court shall have jurisdiction to try an offence punishable under this Act where such offence is committed by a person who is apprehended by, or is in the custody of, the authorized personnel or the police, regardless of the nationality or citizenship of such person, as well as by a person who is a citizen of India or a resident foreign national in India or any stateless person.

7. **Powers of Visit and Search.** As per Section 7 of MAPA, authorised personnel have the authority to board a pirate ship and apprehend the pirates or seize the pirate ship and its contents if there is a suspicion or belief that the ship is involved in piracy on the high seas. This provision aligns with Article 110 of UNCLOS, which provides the right of visit onboard a ship on the

⁶ Report no. 16, “*The Piracy Bill, 2012*”, Standing Committee on External Affairs 2011-12, Ministry of External Affairs, August 14, 2012, https://prsindia.org/files/bills_acts/bills_parliament/2012/SC_Piracy_Bill_2012.pdf

⁷ *Raymund Genciano v. State of Kerala*, 2003 (3) KLT 174 (Ker. H.C. June 26, 2003)

high seas without Flag State consent, provided there are reasonable grounds to suspect its involvement in maritime piracy. Such suspicion may arise from factors such as the erratic navigation patterns, presence of armed personnel onboard, concealed transponders, not flying a flag or display of false flag, or other suspicious operations in piracy-prone areas. Once boarded, authorised personnel may verify the ship's registry, inspect its documents, and, if suspicion persists, conduct a search of the entire ship. During the search onboard a suspect vessel, particular emphasis must be placed on the collection and preservation of both physical and digital evidence. This includes meticulous documentation of all actions taken, along with maintenance of a log of events, audio recordings of all communication between the pirate ship and the law enforcement agencies and the photography or videography of any suspicious cargo, gears, or personnel onboard the ship. Statements of witnesses or ship's crew members should also be formally recorded in accordance with evidentiary protocols. These measures are essential to ensure the integrity and admissibility of evidence during subsequent judicial proceedings. Such meticulous actions at sea, while undertaking anti-piracy operations, would significantly strengthen the prospects of legal finish in piracy prosecutions. If the suspicions prove unfounded, the vessel must be released immediately, thereby preserving the balance between freedom of navigation and legitimate law enforcement authority under the law of the sea.

8. **Punishment.** Section 3, 4 and 5 of MAPA establishes a rigorous punitive framework for acts of piracy and associated offences. Section 3 prescribes death or imprisonment for life as punishment, in cases where the act of piracy results in death or an attempt thereof. This is the gravest punishment under Indian criminal law and signals MAPA's intent to treat maritime piracy with utmost severity. Section 4 stipulates imprisonment for a term which may extend to ten years or with fine or with both, for pirates who attempts to commit the offence of piracy or aids or abets or conspires or procures for the commission of piratical actions at sea. As per Section 5 of MAPA, whoever participates or organises or directs other person to participate in an act of piracy shall be punished with imprisonment for a term which may extend to fourteen years or with fine or with both. The primary aim of criminal punishment is to safeguard society by deterring criminal behaviour, punishing offenders, and rehabilitating them to prevent future offences and it is evident that the stipulated punishments creates the necessary deterrence. However, the practical application of this provision remains to be watched closely for the following:-

8.1. **Constitutional Validity of Death Penalty.** The inclusion of the death penalty under Section 3 for those who, while committing an act of piracy causes death, or attempts to cause death, was severely debated in the Lok Sabha when the bill was tabled⁸. The provision has also come under severe criticism from the human rights organisations⁹. The human rights organisations debate that the provision of the death penalty in the Act contradicts the Indian Constitution's Article 14 and Article 21 which guarantee the right to equality and the right to life, respectively. It was further observed during parliamentary deliberations that under the existing domestic law, Section 307 of the IPC dealing with attempt to murder, does not prescribe a death penalty¹⁰. The Indian jurisprudence has consistently stated that life imprisonment is the rule and death penalty is an exception. However, the Supreme Court of India in *Bachan Singh v. State of Punjab (1980)*¹¹ case, had upheld the constitutional validity of the death penalty, holding that it does not violate Article 14, 19 or 21 of Indian Constitution, provided it is awarded after necessary judicial scrutiny and only in the 'rarest of the rare' cases, where the gravity of the crime irretrievably shakes the collective conscience of society. The Supreme Court upheld the principle in the subsequent cases like *Machhi Singh v. State of Punjab (1983)*¹² and *Dhananjay Chatterjee v. State of West Bengal (1994)*¹³, establishing the high threshold for imposition of the death penalty.

8.2. **Effectiveness of Sections 4 and 5.** From the perspective of effectiveness of piracy prosecutions, Sections 4 and 5 addresses the evolving nature of modern maritime piracy. Section 4 targets direct actors and provides a maximum penalty of life imprisonment, a fine, or both for those committing the act of piracy. Conversely, section 5 provides a maximum penalty of 14 years' imprisonment for those involved in organising, participating in, or directing piracy. The challenge for courts lies in discerning the degree of culpability among arrested suspects, especially when apprehensions are made at sea, while principal organisers and masterminds of modern

⁸ Lok Sabha Secretariat. "Anti-Maritime Piracy Bill, 2019," Parliament Digital Library. <https://eparlib.sansad.in/bitstream/123456789/1472341/1/10248.pdf>

⁹ Shamas, Qazi Furooz. "The Maritime Anti-Piracy Act, 2022." *IMPRI Impact And Policy Research Institute*. December 7, 2024, <https://www.impriindia.com/insights/maritime-anti-piracy-act/#:~:text=However%2C%20the%20provision%20of%20the,criticism%20from%20human%20rights%20organisations>

¹⁰ *ibid*

¹¹ *Bachan Singh v. State of Punjab*, AIR 1980 SC 898 (Supreme Court of India)

¹² *Machhi Singh v. State of Punjab*, AIR 1983 SC 957 (Supreme Court of India)

¹³ *Dhananjay Chatterjee v. State of West Bengal*, 1994, 2 SCC 220 (Supreme Court of India)

piracy operations often operates remotely and beyond the immediate reach of enforcement agencies. In light of the increasingly transnational and networked nature of modern piracy, the long-term effectiveness of Section 5 will depend upon India's ability to leverage international cooperation, track global financial transactions especially in the dark web, and implement mechanisms for the apprehension and prosecution of piracy masterminds operating from extraterritorial jurisdictions.

9. **Legal Immunity to Law Enforcers.** Granting legal immunity to law enforcement personnel is crucial to ensure that they can discharge their duties at sea without the constant fear of facing legal action or harassment for actions carried out in good faith. By such immunity, the law reinforces operational confidence, allowing them to act decisively and lawfully in volatile maritime environments, where real-time judgments often determine the safety of hostages, ship crews, and naval personnel. In the past, States have refrained from prosecuting detained pirates due to legal uncertainties surrounding the immunity of foreign naval forces involved in capture operations. The United Nations Office on Drugs and Crime (UNODC) Piracy Prosecution Model evolved partly to mitigate this challenge by requiring detailed evidence-sharing agreements and testimony protocols from capturing navies¹⁴, ensuring that lack of immunity did not translate into evidentiary silence. Section 15 of MAPA provides protection to authorised personnel from legal proceedings or lawsuits, provided their actions are performed in good faith. The provision ensure that legitimate operational decisions such as the use of force during interdictions, boarding, seizure, or detention of suspected pirates etc. are not later subjected to frivolous or retaliatory claims.

10. However, while such immunity clauses are indispensable for facilitating bold and timely action at sea, jurisprudence from piracy and counter-terrorism prosecutions demonstrates that excessive or poorly defined immunity can hinder the judicial process and undermine accountability, thereby obstructing the principle of legal finish. The good faith standard that defines the protective boundary in Section 15 requires rigorous judicial interpretation to ensure balance between operational necessity and the rule of law. Indian jurisprudence also cautions against blanket application of immunity. The Supreme Court's decision in *Kartar Singh v. State of Punjab* (1994)¹⁵ case confirms that governmental immunity must always yield to

¹⁴ United Nations Office on Drugs and Crime. *Annual Report 2017*. Vienna: United Nations, 2017, https://www.unodc.org/documents/Maritime_crime/UNODC_ANUAL_REPORT_2017_web.pdf

¹⁵ *Kartar Singh v. State of Punjab*, AIR 1994 3 SCC 569 (Supreme Court of India)

accountability in cases of mala fide intent or reckless disregard for the law. This principle should guide the application of Section 15 of MAPA to prevent the shield of good faith from becoming a cloak for impunity. A judicious balance between granting legal immunity and ensuring procedural safeguards for accountability, is essential to uphold both maritime security and the rule of law.

11. **Presumption of Guilt.** By introducing the ‘presumption of guilt’, Section 11 of MAPA tackles a fundamental challenge unique to maritime prosecutions. It addresses the difficulty of recovering admissible evidence from incidents that occur on the high seas, often in hostile and rapidly changing conditions. Pirates routinely destroy or discard weapons, navigation instruments, and communication devices prior to interdiction. The vastness of the high seas, weather and the complexities of operations further limit the scope for on-scene investigation and forensic recovery. Section 11 empowers the Designated Court to presume the guilt of an accused, where factual circumstances strongly indicate involvement in acts of piracy. Such circumstances include situations where the accused is found in possession of arms, ammunition, explosives or similar equipment that could be used in a piracy attack. They also include cases where there is credible evidence of the use of force or intimidation against the crew or passengers of the ship. Additionally, the provision applies where evidence exists of a planned threat of using bombs, arms, firearms, explosives or committing any form of violence against the crew, passengers or cargo of a ship. Once these facts are established, then the Designated Court shall presume that the accused has committed the offence unless proven otherwise.

12. Section 11 of MAPA, by advocating a ‘presumption of guilt’ rather than a ‘presumption of innocence’, has drawn criticism that this would prove inimical to international cooperation at large and the extradition process in particular. The ‘Presumption of Innocence’ or the right to be presumed innocent until proven guilty is a universally recognised human right, and could even be argued to be customary international law¹⁶. However, it is important to note that the presumption of guilt established by section 11 only applies to the specific offences under the Act and not to any other offences that may be charged in the same trial. The presumption of innocence for other offences charged in the same trial will still apply, and the prosecution will still be required to prove the accused's guilt beyond a reasonable doubt. Section 11 serves as a tool to facilitate prosecutions of pirates found in possession of weapons or who use force or

¹⁶ Fair Trials, *Innocent Until Proven Guilty: Safeguarding Pre-Trial Rights in Europe*, Fair Trials, June 03, 2019, <https://www.fairtrials.org/articles/publications/innocent-until-proven-guilty-report/>

intimidation against crew or passengers. However, it is important that this presumption does not infringe upon the accused's right to a fair trial. The accused must be given a genuine opportunity to challenge or disprove the presumption. When judiciously administered, Section 11 exemplifies the balance between maritime security imperatives and constitutional fairness.

13. **Grant of Bail.** Section 12 of MAPA institutes stringent conditions for the grant of bail stating that anyone accused of an offence punishable under this Act and in custody cannot be released on bail or on their own bond unless two conditions are met: the Public Prosecutor has had the opportunity to oppose the request for release, and if they do oppose it, the Court must have reasonable grounds to believing that the accused is not guilty of the offence and will not commit any crime while on bail. However, these restrictions does not curtail the High Court's special powers to grant bail under section 439 of the CrPC. Since modern maritime piracy is transnational and organised in nature, this provision of Bail in the Act strengthens it by ensuring that the accused does not flee the jurisdiction and avoids trial. MAPA's approach mirrors other statutes meant to protect national security, public order or economic stability, such as the UAPA, Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), Protection of Children from Sexual Offences Act, 2012 (POCSO Act) or the Prevention of Money Laundering Act, 2002 (PMLA). However, the imposition of statutory bail restrictions in the Act does not place them beyond constitutional scrutiny. Contemporary jurisprudence, including the *Union of India v. K.A. Najeeb*, 2021¹⁷ and *Manish Sisodia v. ED*, 2024¹⁸ case, reaffirms that Article 21 of the Constitution mandates a balance between the demands of criminal justice administration and right to personal liberty of the accused. The Supreme Court has also recognised the right of an accused to be released on bail where proceedings are unduly delayed or continued detention would cause clear injustice.

14. **Extradition.** Extradition is a powerful instrument in combating international crime, and it is governed by international laws and accords. Extradition clauses in laws or treaties can strengthen them by providing a way to enforce the law or treaty across boundaries. The UNODC counter piracy program has emphasized the importance of extradition in the process of revising national legislation. Section 14 of MAPA significantly strengthens India's framework for international cooperation in the suppression of piracy by expressly designating all offences under the Act as extraditable offences. Piracy charges would now be included in all extradition

¹⁷ *Union of India v. K.A. Najeeb*. (2021) 3 SCC 713 (Supreme Court of India)

¹⁸ *Manish Sisodia v. Directorate of Enforcement*. [2024] 8 SCR 1061 : 2024 INSC 595 (Supreme Court of India)

treaties made by India with any other State¹⁹. In the absence of a bilateral extradition treaty, the extradition of the offenders alleged to have committed offences under MAPA shall be based on the principle of reciprocity between India and other countries²⁰.

15. A notable innovation in Section 14 is the clarification that, for the purpose of applying the provisions of the Extradition Act, 1962 to the offences under this Act, any ship registered in another State shall be deemed to be within the jurisdiction of that State. This applies regardless of whether the ship was also within the jurisdiction of any other State at the time the offence was committed. This key provision closes jurisdictional loopholes that pirates and their facilitators might exploit, while also simplifying the process of cooperation between States, in prosecuting acts of piracy perpetrated on the high seas. Effective implementation of Section 14 would facilitate the mutual surrender of offenders and sharing of vital evidence, while creating a strong deterrent against piracy networks operating from safe havens across jurisdictions. However, its continued effectiveness will depend on establishing clear extradition procedures, timely diplomatic engagement, strong mutual legal assistance, and the maintenance of constitutional safeguards for all extradited persons.

Way Ahead

16. Legal finish²¹ means that the suspected persons are duly prosecuted and convicted by a court of law, if found guilty. The steps that leads towards legal finish comprises of secure apprehension, preservation of evidence, lawful transfer or disembarkation, charging under an appropriate criminal statute, fair trial and, where conviction follows, enforcement of sentence. In practice, successful legal finish also depends on regional cooperation in operational legal arrangements such as extradition and prosecution agreements and capacity building partnerships. Common obstacles to legal finish are evidentiary gaps created by shipboard environments, unclear jurisdictional grounds, and insufficient national laws or prosecutorial capacity. Does mere enactment of domestic legislation guarantee legal finish? How could we facilitate legal finish by acting in addition to MAPA?

¹⁹ Section 14 (1), The Maritime Anti-Piracy Act, No. 3 of 2023.

²⁰ *ibid*, Section 14 (2)

²¹ United Nations Office on Drugs and Crime. *Flag State Jurisdiction and Transnational Organized Crime at Sea*. Global Maritime Crime Programme. Vienna: United Nations, 2020, https://www.unodc.org/documents/Maritime_crime/UNODC_GMCP_Flag_State_Jurisdiction_and_transnational_organized_crime_at_sea.pdf

17. **Interagency Coordination.** Effective interagency coordination is critical to ensure legal finish. Therefore, collaboration between all concerned agencies should be continued till completion of the investigative and prosecutorial process. The challenges of lack of coordination between various law enforcement agencies was highlighted during the trials of the *Prantalay* case. The court observed that “*weapons seized from accused in all the four operations must have been collected at one point and the said weapons must have been shown in other two or three offences.*”²² indicating that weapons seized during the anti-piracy operation were not properly handed over to the Yellowgate Police station at Mumbai. This lack of coordination prevented the court from convicting the accused under the Indian Arms Act, 1959 demonstrating how procedural lapses can undermine otherwise successful naval operations. The case also revealed the absence of standardised protocols for maintaining chain of custody when evidence transitions from naval custody to police investigation, a critical gap that allowed defence counsel to challenge the integrity of crucial evidence.

18. The appointment of a National Maritime Security Coordinator (NMSC) in February 2022 marked a momentous leap for interagency cooperation at the operational end. The NMSC's mandate encompasses coordination between the Indian Navy, Indian Coast Guard, coastal police forces of 13 coastal States and Union Territories, various ministries including Defence, Home Affairs, Shipping, Fisheries and other ministries of the government concerned with maritime governance. The Joint Operation Centres (JOC), established at Mumbai, Visakhapatnam, Kochi and Port Blair under the respective Naval Command, serve as command and control hubs for maritime security and are manned jointly by the personnel from Indian Navy, Indian Coast Guard and coastal police²³. Information sharing between agencies is enabled through the National Command, Control, Communication and Intelligence Network (NC³I) while the Information Management and Analysis Centre (IMAC) at Gurugram serves as the central fusion point, disseminating a Common Operating Picture (COP) to the JOCs. The Information Fusion Centre – Indian Ocean Region (IFC-IOR), established in December 2018, further enhances the Maritime Domain Awareness (MDA) through participation of

²² Para 36, Judgment in Sessions Case No. 425/2011 (C.C. No. 63/PW/2011) *The State of Maharashtra v. Usman Salad & Others*, 2011

²³ Press Information Bureau, Government of India. “*Initiatives to Strengthen Coastal Security*” November 25, 2014. Ministry of Defence, <https://www.pib.gov.in/newsite/PrintRelease.aspx?relid=111871>

International Liaison Officers from 12 partner nations and maintaining over 65 international working-level linkages²⁴.

19. Though there is substantial progress in interagency coordination at the operational front, the integration between judicial processes and maritime law enforcement operations remains inadequate. This gap is primarily due to the limited domestic jurisprudence on piracy prosecutions and absence of well-established procedural precedents in India. The judicial and prosecutorial familiarity with the unique complexities of maritime offences remains limited. There is also little structured coordination between operational commanders and prosecutorial authorities during the evidence collection and documentation phases. These gaps would critically affect the process of legal finish in piracy prosecutions. In order to address the shortfalls in interagency coordination, the following is recommended:-

19.1. **Special Units for Maritime Crime Investigation.** State governments should establish specialised maritime crime investigation units within coastal police force, with officers specifically trained in handling evidence from naval operations. These officers should have qualified certification programmes as recommended in para 20.1 and familiar with the unique requirements of piracy prosecutions.

19.2. **Evidence Transfer Protocols.** Comprehensive evidence transfer protocols must be developed with clearly defined chain of custody from the navy to civil authorities, to enhance accountability and mitigate procedural challenges during trial.

19.3. **Legal Advisor at JOC.** All JOCs should have a designated maritime law advisor to provide real time legal guidance to maritime law enforcement personnel. The timely guidance on procedural compliance during anti-piracy operations in respect of interdictions, arrest and evidence handling, would go a long way to ensuring successful prosecution of pirates.

²⁴ Press Information Bureau, Government of India. “*Maritime Security: Memorandum of Understanding (MoU) between the Information Fusion Centre – Indian Ocean Region (IFC-IOR) and Regional Coordination Operations Centre (RCOC)*” Press release, February 22 2023. Ministry of Defence, <https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=1901371>

20. **Training.** Systematic and coordinated training at all levels, on operational, investigative, prosecutorial and judicial matters, for all concerned personnel, including legal professionals and law enforcement agencies, is critical for swift and effective piracy prosecution. All stakeholders including naval officers, coast guard personnel, coastal police officers, prosecutors and judicial officers are to have a shared understanding of the legal and procedural requirements that govern maritime anti-piracy operations. While an integrated training program that brings together all these diverse agencies would be the ideal solution, it may not be practically feasible. Therefore, it is essential to design a training syllabus that bridges the operational-legal divide through separate courses or programmes. Towards this, the following is recommended:-

20.1. **Certification Programmes.** Maritime universities like Gujarat Maritime University (GMU) and Indian Maritime University (IMU) should be mandated to develop and conduct specialised certification programs on maritime law enforcement. These courses should comprehensively address the operational and legal aspects of maritime security with special focus on the enforcement of international and domestic legal instruments. Authorised personnel are to be trained under domestic procedural criminal law, the law of evidence, nuances of criminal trials and evidentiary rules. Collaboration with international organisations like the UNODC and the United Nations Development Programme (UNDP) would enhance the quality of curriculum and introduce global best practices. It is further recommended that, as mentioned in para 19.1, State Governments should make such certification programmes an essential qualification for police officers deputed to coastal police stations, thereby ensuring a uniform baseline of professional competence.

20.2. **Judicial Training.** The National Judicial Academy and the respective State Judicial Academies of the coastal States should develop a comprehensive maritime law and piracy prosecution curriculum specifically tailored for Judges appointed to courts designated under MAPA for piracy prosecution. Training should include comprehensive training on MAPA provisions and comparative analysis of how other States have interpreted piracy law provisions, with specific reference to landmark cases from Kenya, Mauritius, Seychelles and other States that have adequate precedence in maritime piracy prosecution. Understanding the *jus cogens* nature of piracy prohibition

and its implications for domestic prosecution is essential for judges handling maritime piracy cases.

20.3. Seminars and Conferences. Regular seminars, workshops and conferences should be organised under the aegis of relevant ministries to promote interagency dialogue among stakeholders involved in maritime law enforcement. These should include members of legislative drafting committees, judicial officers, maritime law scholars, practising maritime lawyers, and personnel from the navy, coast guard, and coastal police. Such interactions would facilitate the identification and resolution of procedural bottlenecks in the prosecution process, promote uniform interpretation of maritime legal frameworks, and help institutionalise best practices for achieving legal finish in piracy prosecution.

21. Evidence Gathering. The nature of evidentiary issues in maritime piracy cases, from the initial investigation to the courtroom proceedings is challenging. Physical evidence such as skiffs, weapons, equipment, ammunition, DNA samples, witness testimony, audio/video recordings, surveillance footages, and photographs are crucial for successful prosecution. In the *Prantalay* case, the court could not indict the accused under section 3 r/w 25 & 27 of the Indian Arms Act, 1959 as the weapons onboard the pirate ship were not seized²⁵. Modern pirates have been trained to destroy evidence to avoid prosecution, further complicating the process. Several cases, such as the Danish Navy's encounter in 2008²⁶ and the Kenyan court ruling in 2010²⁷, demonstrate the challenges faced by prosecutors in proving intent and securing convictions due to insufficient evidence²⁸. Accused individuals often claim to be innocent fishermen carrying arms for self-defence against other pirates in the region, emphasising the need for substantial evidence to establish their true intent. It is therefore critical that sufficient evidence is gathered by the ship while undertaking an anti-piracy operation.

²⁵ Ibid, *The State of Maharashtra v. Usman Salad & Others*, 2011

²⁶ The Guardian, "Royal Navy Delivers Captured Somali Pirates to Kenya" November 18, 2008 <https://www.theguardian.com/world/2008/nov/18/piracy-somalia-kenya-royal-navy>

²⁷ Capital FM Kenya, "Kenyan Court Frees Somali Pirates", 2010 <https://www.capitalfm.co.ke/news/2010/11/kenyan-court-freessomali-pirates/>

²⁸ Hiiraan Online, "Kenyan Court Frees 17 Suspected Pirates Arrested by US Navy for Lack of Evidence", 2010 <https://hiiraan.com/news4/2010/Nov/16553/kenyan-court-frees-17-suspected-pirates-arrested-by-us-navy-for-lack-of-evidence.aspx>

22. **Witness Protection.** The protection and availability of witnesses remain a critical component in achieving legal finish in piracy prosecutions. In the *Prantalay* case, though the court acknowledged the efforts of the prosecution to bring the witnesses from foreign countries to the witness box, court insisted on the requirement of ‘strict proof’ for verifying the charges under 364-A of IPC. In the absence of these foreign witnesses who were either unavailable or unwilling to travel due to fear, logistical constraints, or lack of protection, the prosecution was unable to present substantive evidence sufficient to secure conviction²⁹. This case exposed the vulnerability of piracy prosecutions to witness absenteeism and highlighted the absence of a structured framework to facilitate foreign crew testimony in Indian courts.

23. While India’s Witness Protection Scheme, 2018³⁰, recognised by the Supreme Court in *Mahender Chawla v. Union of India*³¹ case, affirms protection of witnesses as a fundamental element of fair trial under Articles 14 and 21 of the Constitution³², its implementation remains limited to domestic witnesses. The scheme envisages measures such as confidentiality of identity, relocation, change of contact information, and in-camera proceedings. However, it provides no procedural pathway for the protection or facilitation of international witnesses, such as seafarers, victims, or third-country nationals, who constitute the majority of witnesses in piracy trials.³³ For India to aim for legal finish in piracy prosecutions, witness protection arrangements must evolve. Towards this, the following is recommended:-

23.1. **Mutual Legal Assistance Treaties (MLATs).** Given the diversity of nationalities involved in any maritime piracy case, India must adapt its witness protection mechanisms to account for transnational witnesses. India presently has formalised MLATs with at least forty States³⁴. However, there is a need to establish additional MLATs or bilateral arrangements with States whose nationals have been

²⁹ Para 32, Judgment in Sessions Case No. 425/2011 (C.C. No. 63/PW/2011) *The State of Maharashtra v. Usman Salad & Others*, 2011

³⁰ Gargi Ojha, “Witness Protection Scheme, 2018- A Step Towards Witness Protection”, Vol. I-III, 2021, <https://www.uniquelaw.in/post/witness-protection-scheme-2018-a-step-towards-witness-protection>

³¹ *Mahender Chawla v. Union of India* Ministry of Home Affairs \ Secretary. Writ Petition 156/ 2016. Supreme Court of India, April 13, 2018, <https://www.supremecourtcases.com/mahender-chawla-v-union-of-india-ministry-of-home-affairs-secretary/>.

³² Shrivastava, Ishika. “Judicial Analysis of Witness Protection Scheme, 2018.” *International Journal of Law, Policy and Social Review* 6, no. 4 (2024): 71-75, <https://www.lawjournals.net/assets/archives/2024/vol6issue4/6137.pdf>

³³ Rama, and Rahul Varshney. “A Study on Witness Protection Laws in India and the USA: A Comparative Perspective.” *ShodhKosh: Journal of Visual and Performing Arts* 5, no. 5 (May 2024): 1171-1182, <https://www.granthaalayahpublication.org/Arts-Journal/ShodhKosh/article/view/5061/4589>

³⁴ Central Bureau of Investigation. “MLATs - List” Government of India, <https://cbi.gov.in/MLATs-list>

commonly involved in acts of maritime piracy. These frameworks would facilitate remote video testimonies, witness depositions abroad under judicial warrant, and safe passage guarantees for witnesses travelling to testify in India. These measures are strongly endorsed by United Nations Convention against Transnational Organized Crime (UNTOC) and UNODC's Guidelines on Victim and Witness Protection, which recognise them as essential for effective maritime and cross-border criminal prosecutions³⁵.

23.2. Incorporation of Modern Technology. Incorporating modern technology into judicial processes can mitigate the logistical obstacles often encountered in piracy prosecutions. Witnesses should be permitted to testify through secure video conferencing platforms, ensuring real-time cross-examination while avoiding the risks and costs associated with international travel. Such measures have proven effective in piracy prosecutions in Kenya, Mauritius and Seychelles, where frameworks supported by UNODC enabled crews of captured merchant ships to testify remotely from their home ports under judicial supervision³⁶. India's judicial infrastructure, now equipped with e-courts and digital evidence systems, is well positioned to institutionalise similar procedures for MAPA prosecutions. Sections 65A and 65B of the Indian Evidence Act, 1872³⁷ already recognises electronic records as admissible evidence. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)³⁸ explicitly embeds modern technology to streamline criminal prosecution. Section 530 of BNSS allows for all trials, inquires and proceedings to be held in electronic mode, by use of audio-video means while section 105 provides for recording of search and seizure through audio video electronic means.

23.3. Administrative Support. Establishment of dedicated administrative support structures under the Ministry of External Affairs (MEA) and Ministry of Home Affairs (MHA) is essential for coordinating witness logistics in piracy prosecutions. These structures should manage the issuance of travel documents, ensuring protection during

³⁵ United Nations Office on Drugs and Crime. "Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organised Crime". Vienna: United Nations Office on Drugs and Crime, 2008, <https://www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf>

³⁶ United Nations Office on Drugs and Crime. "Indian Ocean Division", <https://www.unodc.org/unodc/en/piracy/indian-ocean-division.html>

³⁷ Government of India, *The Indian Evidence Act, 1872*, https://www.indiacode.nic.in/bitstream/123456789/15351/1/iea_1872.pdf

³⁸ Government of India, *The Bharatiya Nagarik Suraksha Sanhita, 2023*, https://www.mha.gov.in/sites/default/files/2024-04/250884_2_english_01042024.pdf

trial proceedings, and provide financial and psychological support to witnesses. These measures are currently lacking in India's legal enforcement landscape. The existing witness protection cells, established under the Witness Protection Scheme, 2018 could be expanded to include dedicated maritime crime divisions with authority to liaise with shipping companies, flag registries, and foreign missions for effective witness support and cooperation.

24. **Regional and International Cooperation.** Lessons from successful piracy prosecutions in Kenya, Seychelles, and Mauritius highlight that effective prosecution of maritime piracy cannot be achieved in isolation, but requires robust regional and international cooperation grounded in shared legal frameworks and operational trust. Two recent piracy prosecution challenges in India highlight this learning. When the Indian Navy rescued the Iranian fishing vessel *Al Kambar 786* from nine Somali pirates and freed 23 Pakistani fishermen in March 2024, Mumbai police could not record victim statements from the Pakistani nationals despite seeking assistance through the MHA, as Pakistan provided no communication channel for witness access³⁹. Similarly, in the *Prantalay* case, decided prior to the enactment of MAPA, and arising out of a piracy related incident, the prosecution's inability to secure testimony from Thai and Myanmar crew members, resulted in acquittal of the accused on the serious charge of kidnapping for ransom. These cases demonstrate that without formalised mechanisms for cross-border witness testimony and protection, even successful naval interdictions fail to achieve sustainable legal finish. The following measures are recommended to improve the regional and international cooperation in the region:-

24.1. **Bilateral Legal Cooperation Mechanisms.** The establishment of bilateral MLATs with States whose nationals have been commonly involved in acts of maritime piracy, as recommended earlier, offers a viable solution to this challenge. Such treaties should explicitly incorporate provisions for prompt responses to diplomatic requests for legal assistance and provide for witness testimony through secure video conferencing technology under judicial supervision. The Seychelles model of prisoner transfer agreements facilitated by UNODC remains worth emulating, enabling convicted pirates

³⁹ Hindustan Times. "4,000-Page Charge-sheet: 35 Somali Pirates Hijacked MV Ruen Vessel to Demand ₹500 Crore Ransom" August 27, 2024, <https://www.hindustantimes.com/cities/mumbai-news/4000page-chargesheet-35-somali-pirates-hijacked-mv-ruen-vessel-to-demand-500-crore-ransom-101724699621203.html>

to serve sentences in their home countries, thereby addressing both prosecuting States' detention burden and rehabilitation objectives.

24.2. **Legal Liaison Cell.** The IFC-IOR proactively shares information with respect to White Shipping and Vessels of Interest (VoI) with partner States to combat maritime crimes. India could work in collaboration with UNODC and create a legal liaison cell within the IFC-IOR framework. This cell would serve as an interface between operational and judicial authorities, tasked with verifying, documenting, and converting operational intelligence into admissible evidence for use in investigations and prosecutions, thereby ensuring timely preservation and legal continuity of material gathered at sea.

24.3. **Joint Investigation Teams (JIT).** The concept of legal finish is aimed at the eradication, rather than mere suppression of piracy. Since modern maritime piracy has slowly evolved into a form of transnational organised crime, its eradication requires dismantling shore-based logistical, financial and facilitation networks that support and sustain it. Section 5 of MAPA already addresses such conduct by providing that any person who participates in, organises, or directs another person to participate in an act of piracy shall be punished with imprisonment for a term which may extend to fourteen years, or with fine, or with both. However, since the networks facilitating maritime piracy operate across multiple jurisdictions, effective enforcement of this provision requires close coordination with foreign investigative and prosecutorial authorities. Towards this, creation of JITs with partner States, supported by the International Criminal Police Organisation (INTERPOL) and UNODC would be critical. These teams should be tasked with tracking the ransom payments, sharing real-time intelligence, targeting bank accounts and commercial conduits, and executing synchronized asset freezes and arrests to disrupt the financial architecture underpinning piracy.

Conclusion

25. Achieving legal finish in maritime piracy prosecutions requires a continual interplay between robust domestic laws, meticulous operations at sea, systematic capacity building and international cooperation. The analysis of MAPA provisions in the light of past piracy prosecutions reveal that while the Act effectively addresses jurisdictional limitations, empowers

law enforcement agencies, establishes stringent punishments and facilitates extradition, its practical efficacy will depend upon the operational and institutional ecosystem within which it functions.

26. Through concerted global efforts, Somali piracy had declined from a staggering 141 piracy attacks in 2008⁴⁰ to zero incidents in the Gulf of Aden by 2022⁴¹. The resurgence of Somali piracy in 2024, following the diversion of multinational navies to Red Sea following Houthi attacks on commercial shipping in 2023, reaffirms that mere suppression of piracy, creates only a temporary respite. Indian Navy's commendable naval interventions in rescuing *MV Lila Norfolk*⁴², *MV Ruen*⁴³ and *Al Kambar 786*⁴⁴ earned international recognition⁴⁵, but the ongoing prosecutions of apprehended pirates from these operations will ultimately determine whether these tactical successes translate into strategic deterrence. The concept of legal finish is fundamentally aimed at eradication, rather than mere suppression of piracy, requiring dismantling of the shore-based logistical, financial and facilitation networks that support and sustain it as a form of transnational organised crime. To achieve this objective, we need to cooperate with States whose nationals have been commonly involved in acts of maritime piracy, in the form of coordinated joint operations, MLATs and JITs.

27. The designation of pirates as *hostis humani generis* and maritime piracy as an offence *contra omnes*, reflects the universal contempt attached to acts of piracy, which threaten the freedom of navigation upon the high seas, disrupt international trade, and undermine the collective interests of all States. The effectiveness with which India implements MAPA and overcomes the institutional, procedural and diplomatic challenges identified in this paper will shape its credibility as the preferred security partner in the region. The quest for legal finish

⁴⁰ James Kraska, "Coalition Strategy and the Pirates of the Gulf of Aden and the Red Sea", Comparative Strategy, Vol 28 Issue 3, Routledge 2009, 198 <https://www.tandfonline.com/doi/epdf/10.1080/01495930903025250?needAccess=true>

⁴¹ ICC IMB, "IMB Piracy and Armed Robbery Report Against Ships" 2022 <https://www.icc-ccs.org/reports/2022%20Jan%20-%20Sept%20IMB%20Piracy%20and%20Armed%20Robbery%20Report.pdf>

⁴² Gloria Aradi, "Indian navy rescues sailors on board a ship attacked by pirates off Somali coast" BBC News, January 05, 2024 <https://www.bbc.com/news/world-africa-67889662>

⁴³ Press Release, Press Information Bureau, "Antipiracy operations against pirate ship MV Ruen by Indian Navy", Ministry of Defence, Government of India, March 16, 2024 <https://pib.gov.in/PressReleasePage.aspx?PRID=2015285>

⁴⁴ Manjeet Negi, "Indian Navy intercepts hijacked Iranian vessel, crew of 23 Pak nationals rescued" India Today Online, March 30, 2024 <https://www.indiatoday.in/india/story/indian-navy-operation-rescue-hijacked-iranian-vessel-in-arabian-sea-2520985-2024-03-29>

⁴⁵ International Chamber of Commerce – Commercial Crime Services. "New Report Highlights Continued Threat of Somali Piracy" April 10, 2024, <https://icc-ccs.org/new-report-highlights-continued-threat-of-somali-piracy/>

demands that operational commanders understand evidentiary requirements, prosecutors comprehend the limitations at sea while undertaking anti-piracy operations, judges receive specialised training in piracy prosecution and that diplomatic channels facilitate witness access and evidence sharing. Legal finish is, therefore a complete team effort.