



SHIP-RECYCLING IN INDIA
AND
THE RECENT ENACTMENT
OF
THE RECYCLING OF SHIPS ACT, 2019

When ships reach the end of their operational lives, they need to be disposed of and the most environmentally friendly and economically sound way to do this is through ship recycling (as opposed to sinking or abandonment). Shipowners sell their end-of-life vessels to cash buyers who specialize in scrap trade. These traders then often change the registration, flag and name of the vessel for its final voyage (in order to avoid any legal or reputational risks) and have it sent to ship-breaking yards for to be grounded, pulled and taken apart. Around 70% of all end-of-life vessels are dismantled at rudimentary “beaching yards” in South Asia with Alang in India, Chattogram in Bangladesh and Gadani in Pakistan being the most popular destinations, despite protection of the environment and workers’ health and safety being poor at these places.

Ships contain numerous toxic materials such as asbestos, polychlorinated biphenyl (PCBs), oil residues and heavy metals which, if not properly managed, can harm both workers and the environment. Furthermore, as it is conducted by unskilled migrant workers on tidal beaches without any proper infrastructure, ship-breaking is considered by the International Labour Organisation (ILO) as one of the most dangerous jobs in the world.

For more information/statistics on the ship-breaking industry see latest annual report published by NGO SHIPBREAKING PLATFORM accessible [here](#).

Regulation in India prior to the Act

Contamination risks involved in ship breaking came into focus in India after certain High-Powered Committees submitted reports on the disappearance of hazardous wastes from various ports and container depots (the most shocking of these being the 2002 report submitted by the AC Wadhawan Committee which reported that about 23,707 containers and drums of hazardous waste lay at Indian Ports with no procedure in place to dispose of them) and questions were raised relating to the working conditions of the workmen who handle such hazardous wastes.

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India has ratified both the Basel Convention and the MARPOL Convention and is therefore, under an obligation to ensure that the same are duly implemented in relation to import of hazardous wastes into the country. Basis a public interest litigation filed by various stakeholders, the Supreme Court of India in *Research Foundation for Science Technology and Natural resource policy v. Union of India* AIR 2012 SC 2973 held that shipbreaking operations cannot be permitted to continue without concerned authorities strictly adhering to all precautionary principles and that a vessel containing toxic or hazardous waste be required to strictly comply with statutory provisions as well as the norms laid down in the Basel Convention before entering Indian territorial waters.

As the provisions of the Hazardous Wastes (Management & Handling) Rules, 1989 were found to be insufficient and not in line with the Basel Convention, the regime was revamped in 2016. The Hazardous and Other Wastes (Management and Transboundary Movement) Rules 2016 regulates the disposal of hazardous waste in a scientifically sound manner and provides for financial liability for causing contamination due to improper handling, storage, transport or disposal of hazardous substances. However, as neither the Basel Convention nor The Hazardous and Other Wastes (Management and Transboundary Movement) Rules 2016 were specifically drafted to govern ship-recycling, certain practical difficulties were experienced.

Immediately prior to the enactment of the Act, the ship recycling industry in India was governed by the Ship-Breaking Code, 2013 (the “**Code**”). While the Code lays down certain standards for environmental protection and safety of workers, it neither provided penalties for breach of such standards nor dealt with prohibitions on use of hazardous materials onboard ships and was generally not in line with the Hong Kong International Convention for the safe and Environmentally Sound Recycling of Ships, 2009 (“**Hong Kong Convention**”). Therefore, the Act has been introduced with the aim to fill these lacunae and regulate the recycling of ships by setting certain standards and laying down statutory mechanisms for enforcement of such standards in line with internationally accepted principles.

The Recycling of Ships Act, 2019- Salient Features

The Act received the assent of the President on 13 December 2019 and thereafter came into force.

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Applicability of the Act:

The provisions of the Act as per section 1(3) have been made applicable to i) existing ships registered in India, ii) any new ship which requires to be registered in India, iii) any ship entering a port, shipyard or off-shore terminal or any place in or within the territorial waters or Exclusive Economic Zone of India, iv) any warship, naval auxiliary or any other ship owned or operated by an Administration and used on Government non-commercial service and which is destined for recycling in a ship recycling facility operating in or within the territorial jurisdiction of India and to v) all ship facilities operating in India or within any area falling under the exclusive territorial jurisdiction of India.

However, certain ships such as warships, naval auxiliary, other ships owned or operated by the Government or used by the Government for non-commercial purpose or ships of less than five hundred gross tonnage have been exempted from complying with certain provision of the Act including that of installation or use of prohibited hazardous materials. Further, the Central Government has the power to exempt any vessel, or class thereof, or ship recycling facility or ship recycler from any specific requirement in the Act or dispense with the observance of any such requirement after taking into account the specific circumstances of the case.

Powers and Functions of National Authority and Competent Authority:

Under the Act, the Central Government shall designate an officer to act as the “*National Authority*”, who would be responsible for administering, supervising and monitoring all activities related to the recycling of ships. Additionally, an authority known as a “*Competent Authority*”, would be designated to perform specific duties relating to a specified geographical area or area of expertise.

These Authorities have been given the power to enter and search any ship recycling facility or inspect any ship (while it is at any Indian Port or within Indian waters) to ensure that the requirements of the Act are being complied with. In case the ships fail to comply with the provisions of the Act, the National Authority has been endowed with the power to dismiss, exclude or detain such a ship.

Any person aggrieved by any decision made by the Competent Authority may file an appeal with the National Authority within a period of 30 days. Likewise,

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any person aggrieved by a decision made by the National Authority may file an appeal with the Central Government.

Controlling the usage of Hazardous Materials on Ships:

The Act prohibits the ships from installing or using such hazardous materials that have been prohibited by the Central Government. In order to ensure that the ships are complying with the restrictions and conditions imposed under the Act, the National Authority or any such person/ organization authorized by the National Authority shall conduct periodical surveys of the ships and issue a certificate on inventory of hazardous materials in accordance with the provisions of the Act.

The owner of a new ship, on which the provisions of the Act are applicable, will have to make an application to the National Authority to obtain a certificate on the inventory of hazardous materials on board the ship. The existing Ship-owners will be required to apply for the Certificate within five years of the commencement of the Act.

The National Authority or the authorized person/ organization shall carry out an initial survey of the ship to verify the requirements before the issuing the certificate on inventory of hazardous materials and thereafter follow up with renewal surveys at intervals not exceeding 5 years. A general or partial additional survey may also be undertaken at the request of shipowner, if any change, replacement or significant repair of the structure, equipment, systems, arrangements, fittings or material of the ship has been done. Lastly, a final survey shall be undertaken before the ship is taken out of service and recycled.

The Certificate will be specific to each ship and has to be renewed every five years updating through the life of the ship to reflect changes in the ship's structures and equipment. However, in the peculiar case of expiry of the validity of the Certificate at a time when the ship is not in the port where it was to be surveyed, the Administration, i.e. the Government of the country whose flag the ship is entitled to fly or under whose authority it is operating, may extend the validity of the Certificate in cases where the Administration deems fit to do so.

Finally, the National Authority also has the power to suspend or cancel these certificates in circumstances described under Section 10 of the Act, which inter alia include, improper maintenance of the hazardous materials, or if there is a

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transfer of the ship to a flag of another State or if surveys have not been completed within the specified period.

Authorization to the Ship Recycling Facility:

The Act also stipulates the procedure to be followed by a ship recycling facility in order for it to receive authorization from the Competent Authority to recycle a ship. No authorization shall be granted unless the Competent Authority is satisfied that the facility maintains the requisite standards and equipment, measures for emergency preparedness and individual or comprehensive insurance coverage for the regular and temporary workers.

The Ship Recycler is to prepare a “ship recycling facility management plan” and thereafter apply for a certificate of authorization for ship recycling facility to the Competent Authority. Existing ship recycling facilities have been directed to apply for such authorization within sixty days of commencement of the Act. Every ship recycling facility shall cease to carry out any recycling on the expiration of six months from the date of commencement of the Act unless they have applied for authorization and is so authorized or till such application is disposed of.

Whilst the authorization is valid for a term of five years, the Competent Authority will undertake an annual audit of every ship recycling facility to ensure that they comply with all requirements and this report would then be forwarded to the National Authority. If the Competent Authority is satisfied that there has been a breach of the provisions of the Act, it may suspend or cancel the authorization of the errant ship recycling facility.

Process for Recycling of Ships:

Now, in order to have a ship recycled, the vessel owner has to separately obtain a “ready for recycling certificate” from the National Authority which will be issued after a survey is conducted and shall be valid for a period of 3 months (subject to extension). Further, the owner intending to recycle their ship will have to give an advance intimation to the Maritime Rescue Co-ordination Centre and the Competent Authority regarding the arrival of the ship and also clear all port dues, clear the ship of cargo residues and minimize fuel oil and wastes on board.

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The Ship Recycler, holding a certificate of authorization, will not be allowed to recycle ships without preparing a ship recycling plan in accordance with the guidelines of the National Authority and having it approved by the Competent Authority. The Competent Authority shall grant permission for recycling only after physical inspection of the ship and shall do so within 15 days of receipt of the application failing which permission shall be deemed to have been granted.

The ship recycler, having received the permission to recycle, has to issue a statement of acceptance to the shipowner and the ship may thereafter be deregistered. At the time of recycling, the ship recyclers have to ensure that all hazardous material has been removed safely and that there is safe disposal of the hazardous material in order to circumvent any damage to the environment. Finally, the last step in the procedure for recycling the ships is the “statement of completion” submitted by the ship recycler to the Competent Authority after the ship is recycled.

Offences, Penalties and Compensation:

The Act not only restricts the usage of hazardous material and stipulates the rigid procedures to be carried out at the time of recycling of ships, but also introduces penalties in case these procedures are not complied with by the shipowners or the Ship Recyclers. These offences are non-cognizable, bailable and compoundable and the court will only take cognizance of an offence if the complaint has been made by the Central Government or National Authority or Competent Authority or an officer authorized on their behalf. We have prepared a table, annexed to this article as **Annexure A**, for the ease of your reference setting out the offences under the act along with the respective penalties.

As can be seen, the penalties are substantial and the punishments strict which hopefully will ensure adherence.

Conclusion

The Act has been enacted with the primary intention of regulating the recycling of ships and minimizing its impact of the environment. Regulation of this previously unregulated, informal sector is a welcome change and will hopefully impel the industry into operating in line with international human rights standards without causing any substantial harm to the environment.

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It is yet to be seen how the Government will ensure implementation of this law to actually provide for safe and environmentally sound ship breaking rather than just “greenwashing” the industry as it exists today. Even before the Act came into force, over 90 ship breaking yards at Alang have claimed that they meet the requirements of the Hong Kong Convention through privately issued “Statements of Compliance”. The need of the hour is actual change which will guarantee that ship breaking being carried out is actually safe and environmentally sound and not a “checklist approach” to thwart public scrutiny and mislead stakeholders into believing that operations are sustainable/ compliant with International Standards.

This change in the legal landscape will have to be accompanied with a change in the mindset of the stakeholders/ shipowners who will have to consciously choose, despite lesser returns, to recycle their ships at shipyards who follow the statutory norms and ensure that the demolition is carried out in a safe and responsible manner. Currently, and quite unsurprisingly, the highest prices are offered by the worst yards.

--Amitava Majumdar (Raja), Rahul Miranda & Tripti Sharma

Important Note - Please note that whilst the Recycling of Ships Act, 2019 has received the assent of the President on 13 December 2019, it is yet to be notified as required under Section 1(2) of the Act and as such, its provisions are yet to come into force. We understand that the Act is likely to be notified by the Central Government once the Hong Kong Convention enters into force.

By way of further information, the Hong Kong Convention will come into force 24 months after ratification by 15 States, representing at least 40 per cent of world merchant shipping by gross tonnage, combined maximum annual ship recycling volume not less than 3 per cent of their combined tonnage. With India's ratification on 28 November 2019 the number of States required has now been reached with there also being a significant leap towards the parameter of ship recycling volumes although the gross tonnage threshold is yet to be achieved.

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ANNEXURE-A

Offence	Penalty
Installing or using any prohibited hazardous material	Imprisonment which may extend to 3 months or fine which may extend to five lakhs rupees or both
Violating the provisions for procedure for authorization for ship recycling facility and ship recycling facility management plan	Imprisonment which may extend to 1 year or fine which may extend to ten lakhs rupees or both
Violating the provisions of ship recycling plan	Imprisonment which may extend to 1 year or fine which may extend to ten lakhs rupees or both
Recycling ship without written or deemed permission of the Competent Authority	Imprisonment which may extend to 1 year or fine which may extend to ten lakhs rupees or both
Violating provisions relating to safe and environmentally sound removal and management of any hazardous material from ship	Imprisonment which may extend to 6 months or fine which may extend to five lakhs rupees or both
Not responding to notice issued for oil spill issued under Section 22(2)	Fine upto 5 lakhs in case of non-response within 12 hours of issuance of first notice Fine upto 10 lakhs in case of non-response within 24 hours of issuance of second notice Imprisonment upto 3 months and fine upto 10 lakhs in case of non-response beyond 24 hours of issuance of third notice
In case there is no specific punishment for contravening a provision of this Act, such an offence shall be punishable with an imprisonment upto 3 months or fine upto 2 lakhs or both.	
In case of continuing contravention, an additional fine upto Rs. 5,000 may be charged everyday till the contravention continues.	