RGICS

RAJIV GANDHI INSTITUTE FOR CONTEMPORARY STUDIES
JAWAHAR BHAWAN, DR. RAJENDRA PRASAD ROAD, NEW DELHI-110001

RGICS LEGISLATIVE BRIEF

(January 17, 2017)

The Major Port Authorities Bill, 2016

Prepared By:

Niharika Bapna
(Under the guidance of Ms. Barkha Deva)

KEY MESSAGES

- No mention of trade unions, hinting at subsequent privatization of ports
- Central and not the State Government to formulate master plan for major ports
- Reduced role of Central Government in sanctioning loans
- Lack of proper tariff oversight with Tariff Authority for Major Ports (TAMP) removed
- Unclear definition of ‘independent member’ in the Board
- No distinction in quorum for different decision making

PART I. INTRODUCTION

India has has 12 major (PSU) ports and 187 non-major ports; of the latter, about 50 are operational as commercial ports while the remaining are fishing hubs. While the non-major ports have been able to steadily increase their market share owing to their autonomous decision making on investment, raising equity and debt resources from the market, entering into contracts and also the freedom to set tariff; the major ports have faced certain bureaucratic and regulatory difficulties posed by the Port Trust under the Major Port Trusts Act 1963.[i]

In the second week of December the Cabinet approved the draft of the Major Port Authorities Bill, 2016, which would replace the 1963 Act with the aim of bringing greater efficiency and professionalism in governance of ports by providing greater autonomy in decision making.

PART II: MAJOR PROVISIONS

Following are some of the major changes introduced by this Bill:

- **Greater autonomy and flexibility in decision making**: One important reason this Bill is being lauded is once the bill is passed it will give port boards more autonomy and flexibility since the future public-private partnership (PPP) operators will now be free to fix tariffs based on market conditions and would simply need to inform the port authority.[ii]

- **Corporatisation of ports:** The Bill aims to make the major port authority aligned with the management practices with corporate sector. Part III of the Bill, which deals with the management restructuring of port authority, is on "conversion of Port Authority from trust to company" as "the Port Authority of each Major Port operating as a trust may change its structure and become a company subject to prior approval of the Central government and passing of special resolution through its Board in that behalf."[iii]

- **Composition of the Trustee Board is 'simplified':** The composition of a port board has been simplified and it will now consist of 10 members, including 3-4 independent members, instead of 17-19 under the current model.[iv] The Bill seeks to induct Independent Members although the qualifications, experience and manner of appointment of Independent Members remains to be formulated.[v]

- **Independent review board:** An Adjudicatory Board is to be constituted under the Bill, comprising of a presiding officer and two other members appointed by the Central government resolve disputes with the public private partnership (PPP) investors and users.

- **TAMP removed**: The regulation of tariff by Tariff Authority for Major Ports (TAMP) has been removed. The future PPP operators will be free to fix tariff based on market conditions and notify the Port Authority. The Board of the Port Authority has been delegated the power to fix the scale of rates for other port services and assets like land.

PART III: CONCERNS AND CRITICISMS

No mention of trade unions, hinting at subsequent privatisation of ports: Primarily the Port employees have been unhappy with the current bill which envisages minimal labour representation likely to be an impediment in future grievance redressal.[vi] In a resolution passed at the 9th National Conference of Water Transport Workers Federation of India held here recently, the trade union leaders demanded the Union government withdraw the decision in the interest of the nation. It has been opined that this bill hamper public sector ports.[vii]

The previous law allowed for not less than two persons to represent the 'labour employed in the port' to constitute the Board of trustees and the decision of choosing such persons was to be made in consultation of the trade unions.[viii] On the contrary the new law restrictively allows for only one such representative and that too such person would represent 'the interests of the employees of the Major Port Authority' and not the *labour employed in the port*, which was the term used earlier.

Reduced role of Central government in sanctioning loans: Under the previous law, all loans raised by the Board required the prior approval of the Central government.[ix] Even borrowings by the Boards through temporary overdraft, pledging securities in its reserve funds or in the security of the fixed deposits had to be sanctioned by the Central government.[x] However, the present Bill allows the Board to raise loans for capital expenditure and working capital requirements as well as borrow moneys by means of temporary overdraft, pledging the securities in reserve funds or on the security of the fixed deposits without the previous sanction of the Central government, unless the loan amount exceeds 50 percent of the capital reserves of the Board.[xi] Yet again this is a step towards reduced influence of the State towards the ports.

Lack of proper tariff oversight with TAMP removed: It has been argued by investors that India's ability to attract private funds into its state-run ports would depend to a large extent on freeing rates from regulatory control. With replacement of TAMP with an adjudicatory board cargo-owners and their trade bodies have raised some issues regarding the present Bill. Their concerns relate to the possibility of covert collusion of container terminals at ports to control tariffs and the absence of oversight to prevent this occurrence. The Bill partially addresses this concern through the adjudicatory board who should performing functions envisaged to be carried out by TAMP arising from the tariff-setting guidelines of 2005, 2008 and 2013, and the tariff orders issued by TAMP. Any party dissatisfied with the order of the Board can resort to any other legal remedy. But since the provision specifically states the Board will look into complaints received from port users against 'services and service terms' of ports and private terminal operators without specifically mentioning rates, the shippers remain distrustful of what the lack of a tariff watchdog will result into.[xii]

Central government to formulate master plan for major ports: The Bill does not take into regard local or State government regulations of any authority while creating specific master plan for any infrastructural development within the port limits of major ports.[xiii] This can be a cause of concern especially since the vast coastline of India is dictated by various ecological factors. How well the authorities at the Centre will be aware of the impact infrastructural development will have on the ecological diversity, lives of the dependent population like fishermen communities etc. is not hard to guess. Therefore, this proposition to keep the reins of port development completely with the Centre could prove detrimental for want of specific knowledge of the local conditions.

Unclear definition of independent member in the Board: The qualifications, experience and manner of appointment of Independent Members is not laid down in the Bill as it will be prescribed later in the rules. Considering that majority of the members of the Board of Trustees represent the government, it is important that the remaining three/four Independent Members are selected in an unbiased manner to ensure fairness in decision making. The presence of an Independent member is important to ensure unbiased decision making. Considering that even the Labour Member will be appointed by the Central Government the interests of the labour working on the ports may not be represented to challenge the Central Government.

No distinction in quorum for different decision making: All decisions at the board are to be adopted by a simple majority with no distinction in quorum between major decisions. This practice undermines the graded importance of issues and it would be prudent to assign specific quorum requirements in accordance with the importance of issues.[xiv]

PART IV. CONCLUSION

During the last 10 years, the capacity utilization of major ports has decreased from 92.85% to 62.82% and this declining trend does not support such restrictive practices as the monopoly policy.[xv]

The Major Port Authorities Bill, 2016 would be important for the success of the ambitious Sagarmala program of the present government with an objective of promoting "port-led development" along India's 7,500-km long coastline for which the shipping ministry has been appointed as the nodal authority. Union Minister Nitin Gadkari has stated that of the Rs 12 lakh crore being planned for investment under the Sagarmala programme, Rs 4 lakh crore will go to port rail and port road connectivity, mechanization and modernization of ports. Thus, it is obvious that ports need to attract more private investment and business if this programme has to be successful. For this reason flexibility, autonomy and quick decision making powers to the major ports has been emphasized under the new Bill.[xvi]

However, the sustained protests of fishermen and other coastal communities against the commercialization of coastal zones under Sagarmala project; possibility of exploitation of labor employed within the port limits owing to the lack of say trade unions will now have with the Board of trustees; and the threat from privatization of a national resource raising concerns about the consequences of larger public interest, adverse ecological impact and security issues – indicate that this Bill must be thoroughly debated in the Parliament to bring forth perspectives from all stakeholders.

PART V. BACKGROUND INFORMATION/REFERENCE DOCUMENTS

[i] "Sagarmala and Major Port Authorities Bill", December 25, 2016 Available at: http://www.neoias.com/index.php/neoias-current-affairs/598-sagarmala-major-port-authorities-bill Accessed on 27.12.2016

[ii] "New Ports Bill: Workers Union Smell Rat", The Hans India, December 24, 2016 Available at: http://www.thehansindia.com/posts/index/Andhra-Pradesh/2016-12-24/New-ports-bill-Workers-unions-smell-a-rat/270149 Accessed on 27.12.2016

[iii] "Suggestions Invited on Port Authority Bill", The Hindu, November 26, 2016 Available at: http://www.thehindu.com/news/cities/Kochi/suggestions-invited-on-port-authority-bill/article7914666.ece Accessed on 28.12.2016

[iv] "Govt Clears New Bill to Empower Major Ports", The Livemint, December 15, 2016 Available at: http://www.livemint.com/Companies/P7n8w639i5umBcSrC9vZ8N/Govt-clears-new-bill-to-empower-major-ports.html Accessed on 27.12.2016

[v] Clause 4(3)

[vi] "Port Employees Oppose Major Port Authorities Act", The Hindu, November 28, 2016 Available at: http://www.thehindu.com/news/national/tamil-nadu/port-employees-oppose-major-port-authorities-act/article7926475.ece Accessed on 28.12.2016

[vii] "New Ports Bill: Workers Union Smell Rat", The Hans India, December 24, 2016 Available at: http://www.thehansindia.com/posts/index/Andhra-Pradesh/2016-12-24/New-ports-bill-Workers-unions-smell-a-rat/270149 Accessed on 27.12.2016

[viii] Section 3, 1963 Act

[ix] Section 66, 1963 Act

[x] Section 85, 1963 Act

[xi] Clause 30

[xii] "Shippers Turn Cautious as the End of Port Rate Regulator TAMP Nears", The Livemint, October 28, 2016 Available at: http://www.livemint.com/Opinion/KJ9e9jv4kHSi6btxO5EULK/Shippers-turn-cautious-as-end-of-port-rate-regulator-TAMP-ne.html Accessed on 28.12.2016

[xiii] Clause 27 of the Bill

[xiv] "A Lowdown on the Major Ports Bill", The Hindu Business Line, July 24, 2016 Available at: http://www.thehindubusinessline.com/portfolio/macro-view/a-lowdown-on-the-major-ports-bill/article8894142.ece Accessed on 27.12.2016

[xv] "Shipping Ministry Moves to Scrap Monopoly Policy for Major Ports", The Livemint, October 17, 2016 Available at: http://www.livemint.com/Politics/n0ntZpPFdzi7Er68Rhw6cI/Shipping-ministry-moves-to-scrap-monopoly-policy-for-major-p.html Accessed on 28.12.2016

[xvi] "Government to Execute Rs 5 Lakh Crore Sagarmala Projects by May, 2019", The Economic Times, December 26, 2016 Available at: http://economictimes.indiatimes.com/news/economy/infrastructure/government-to-execute-rs-5-lakh-crore-sagarmala-projects-by-may-2019/articleshow/56182330.cms Accessed on 28.12.2016