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To study Country's Border Security has been Jeopardised by Customs' Emphasis on trade Facilitation and Revenue

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ABSTRACT

The Customs Act stipulates that the maximum sentence for smuggling any item that could jeopardise national security is seven years. The maximum penalty stipulated by the Customs Act is imprisonment for a maximum of seven years, regardless of the goods involved, whether they fall under the SCOMET list, atomic substances or minerals, the import and/or export of which is prohibited, explosives, prohibited arms, weapons of mass destruction, or FICN. A Customs officer may use the provisions of the Customs Act to stop the illegal movement of such commodities on international borders or at authorised entry/exit points. This could result in the seizure of the products, the arrest of the person concerned, and other legal actions. After then, he may carry out an investigation in accordance with the Act's guidelines and provide the parties concerned a Show Cause Notice. While the departmental action is handled by the adjudication of the matter (by confiscating the seized goods, demanding the appropriate Customs duty, if any, and/or imposing penalties as the case may be), the Customs Officer may prosecute the individuals involved in accordance with the Act after receiving the required sanction from the appropriate authority. However, the maximum penalty that can be given to the perpetrator following the trial is up to seven years in prison. It is evident that the smuggling of counterfeit Indian currency notes (FICN) has recently been classified as a terrorist crime under the UAPA. Therefore, if someone is found guilty of importing any FICN that falls within the UAPA's criteria, they might face life in jail. However, the UAPA does not give Customs authorities the authority to bring charges against any smugglers. As a result, when such cases are discovered, they are always turned over to the National Investigation Agency, the FICN's nodal agency, which has the authority to take action under the UAPA, for additional investigation, primarily to ensure harsher punishment.

Keyword*: Customs Act, Penalties, Punishment, Authorised, Products*

1. INTRODUCTION

"Every kind of smuggling activity is devastating to the economy, but the smuggling of dangerous arms and ammunitions causes wreckage not only to the economy but also to people's lives," the Hon'ble Supreme Court said in the infamous Mumbai blast case. Furthermore, the Hon'ble Apex Court has highlighted the crucial responsibility of Customs Department officials and stated that any absence could have disastrous repercussions. While reviewing the aforementioned case, the Hon'ble Supreme Court noted that maintaining a high level of morale among Customs agents is necessary to protect our maritime borders from terrorist attacks. The supreme court has correctly noted the significance of customs along the nation's extensive coastline and maritime borders. This must be interpreted in conjunction with the fact that, following Liberalization-Privatization-Globalization (LPG), the department stopped being as vigilant about maritime borders as they had previously been, believing that smuggling would be significantly decreased in the nation because there would be less demand for consumer durables and gold since they could be imported. However, since 26/11, coastal patrols has resumed in a number of locations, including the coasts of Mumbai, in collaboration with the Coast Guard and Coastal Police divisions, among others. From a business perspective, it is evident that the shift in government policy has significantly altered society by raising the average person's purchasing power and, consequently, his standard of living.[1]

[1] VK Shashi Kumar, *Gaps in Maritime Security*, 24, IN DEFENCE REV' 150, 151-156 (2009).

A society's standard of life is strongly correlated with its economic power, wealth generation, and employment opportunities—all of which can be considered byproducts of increased trade activity. As is the case with societies, even in

The same criteria are applicable in the case of nations. As a result, it makes sense when a certain nation strives for a greater portion of global trade, and there is nothing wrong with a healthy competition between nations to have the largest possible share of global trade. In the past, India was renowned for its extensive history of foreign trading. But in terms of trade, India has gradually lost its shine throughout the lengthy British rule. It is difficult for Indian trade to have an advantage in the global market in this liberalised era of fierce competition. Therefore, the government should provide the utmost facilitation15 in order to promote commerce and industry and support their efforts to maintain quality and competitiveness.

Without a doubt, Customs is a well-known government organization with the authority to control and oversee all commodities entering the nation (import) and leaving it (export) in accordance with the terms of the Customs Act, 1962. The agency has the authority to seize anything that is brought into the country or attempted to be transported out of it in violation of the Customs Act or any other applicable law across any portion of the nation's boundaries, including the coastline region. Therefore, it is essential that Customs have a clear vision for border management in order to balance the facilitation of legitimate cross-border trade with the protection of the nation's borders from potentially unfriendly interests.[2]

As is well known, the primary goal of India's customs laws and policies is to raise money for the government coffers. However, from a wider angle, national security should be given equal weight with revenue collection in a nation's customs legislation. Since the Customs Act governs the movement of all types of goods across borders and Customs is the primary agency tasked with enforcing the Customs Act and other Acts that restrict or forbid the importation or exportation of any goods in accordance with the relevant Act, lawmakers and policy makers should keep the nation's sovereignty in mind when creating the pertinent laws and policies. The Customs Act, which governs the transportation of products across borders, does not seem to be sufficient to ensure that trade facilitation is prioritised, even though the Army and Security Forces are responsible for maintaining sovereignty across borders. The Customs Act's provisions are enforced at the borders by Customs outposts. However, the reality is that they are preoccupied with both facilitating trade and implementing the Customs Act in terms of revenue collection. Therefore, national security inevitably takes a back seat when trade facilitation and revenue collection are given significant emphasis. Trade facilitation refers to little or no intrusive verification by the government in order to prevent trade obstacles, as was previously mentioned in the preceding paragraphs.

In contrast to the days of the protected economy, when every container entering or leaving the nation underwent extensive, 100% verification, we now live in a time when exporters are permitted to self-seal, and only Risk Management System (RMS)16-based checks are performed on imported containers. Exporters who have chosen to self-seal can use the containers, which were previously completely controlled by Customs, for the transportation of goods across borders without any limitations. Once the department grants approval, it will remain in force until it is revoked. However, the increasing number of commercial fraud cases following liberalisation shows that there are black sheep in the trade and that we have not made sure that our business and trade are developed enough to adhere to the law. Such actions will, in a sense, amount to jeopardising our economic security in the name of liberalisation if they fail to provide sufficient infrastructure for non-intrusive checks and insufficiently improve intelligence mechanisms. As of right now, there is no infallible way to guarantee the integrity of the different chains engaged in international trade, such as purchasing agents, warehousing agents, transport operators, etc., all of which play crucial roles in the completion of a transaction. These factors didn't really matter because the containers were previously just being transported under a Customs seal. Even with Customs-factory sealing, there have been cases where the sealed container's screws were taken out and illegal products were packed inside for export. There have been numerous reports of such concealments in the export containers.

These occurrences cannot be dismissed as individual cases or as simple business fraud. The relevant authorities have not investigated the potential harm to national security in these situations. Only the aforementioned RMS direction is used to analyse the imported containers. [3]It indicates that containers imported by a reputable importer with RMS-compliant criteria are not examined. A terrorist group might easily find such "reputed" importers and pack them with explosives or other illegal goods from the African nations that produce cashews. For instance, if a terrorist group finds a reputable cashew importer in Mangalore, they can quickly fill the container with explosives or other contraband, such Research Department eXplosive (RDX), by threatening the exporter in Africa with a gun. Additionally, the container would move straight to the importer's godown without any problems, provided that the departmental officers verified the documentation. By intimidating the importer, the receiving terrorist can obtain the contraband at the importer's

[2] Ministry of Finance, Department of Revenue, CBEC, Notification No. 47/2007-Cus. (N.T.), Dated May 08, 2007.

[3] Jack Dyer, *Forming A Response to Global Maritime Security Challenges*, 94, MAN IN INDIA, 501, (2014).

godown. Since the importer would not divulge these details to anyone out of fear for his life, it might be challenging for anyone to learn about such smuggling. As a result, there is a possibility that dishonest people in the industry will use this. Therefore, in terms of international trade, containers are practical, cost-effective, and time-saving for the transportation of cargo, but they can also present significant security issues. To make sure that the facility provided to legitimate traders is not abused, it may be possible to thoroughly scan the containers.[4]

2. SCOPE OF THE STUDY

When discussing the safeguarding of India's national security, the importance of the Customs department and its laws is rarely mentioned. The Customs Act is seen as a law that solely governs foreign trade, and Customs is typically regarded as the Government of India's revenue collection department. The Central Board of Indirect Taxes and Customs (CBIC) refers to Customs as the "sentinels of the Economic Frontiers" at most. As a result, it is evident that even the highest authority overseeing Indian customs administration and law does not consider customs in terms other than income and economy. However, the regulations pertaining to customs actually have considerably more to do with revenue collection. A fundamental shift in the dynamics of revenue collection has also been noted with the introduction of LPG. The department's function has shifted from collecting revenue to just keeping an eye on it. The department should give national security considerations equal weight with revenue collection monitoring. It is crucial to make sure that national security is not jeopardised in the liberalised era, where aggressive anti-smuggling operations are significantly less than in the preceding era. The goal of this study is to investigate this facet of national security and look at strategies and actions to make the law better in this area.[5]

3. OBJECTIVES OF THE STUDY

1. To assess whether the country's border security has been jeopardised by Customs' emphasis on trade facilitation and revenue.
2. To recommend changes to the current Customs Act in order to guarantee sufficient safeguards for national security.

4. METHODOLOGY

For the immediate research, both doctrinal and non-doctrinal approaches were used. The doctrinal method was used to thoroughly examine the legal framework of Customs regulations, numerous case laws related to Customs, etc. When possible, primary and secondary sources were used to get the data. As primary documents, a number of laws, government regulations, rulings from the Hon'ble Supreme Court of India, rulings from several state High Courts, and more were examined. Reports from different ministries, the Comptroller and Auditor General of India, Trade Associations, and other ministries were among the secondary sources cited. On the non-doctrinal front, the targets were divided into three distinct groups in order to gather primary data using the stratified random sampling method. Cluster two comprised domain experts, such as departmental seniors and advocates, while cluster one comprised regular Customs officers who were asked to respond to specific closed-ended questions. Additionally, data was gathered from the general public in cluster three, with the majority of respondents being advocates and the remainder being government employees, businesspeople, private sector workers, etc. Additionally, a variety of literary works, such as books, articles, published research papers, reports, etc., were used as secondary sources for data collecting. The researcher also visited a number of libraries as part of the investigation.[6]

5. RESULT AND DISCUSSION

Customs has a complex role in both a nation's social life and the defence of its sovereignty. The two most crucial facets of customs are the nation's foreign commerce operations and tax collection for the government exchequer. Customs plays a crucial role in safeguarding the nation's security when it comes to the transportation of products that are prohibited or restricted, such as illegal drugs, Fake Indian Currency Notes (FICN), other counterfeit goods, weapons, and ammunition. Similar to this, Customs' duty to society is highlighted while managing consumer goods, other food items, etc. across international boundaries. In India, many rules are in place to address these issues. In many instances, these laws require customs agents stationed at authorised entrance and exit points to execute the relevant laws whenever any linked commodities are transported across borders. With the Customs officer on duty, the associated parties are expected to comply with the law and submit the relevant declarations regarding the items they carry abroad. Therefore, a strong legal framework for customs is required to guarantee correct customs compliance by everyone involved in many associated activities. It is widely acknowledged that traders who exhibit high levels of compliance are

[4] The Arms Act, 1959, S. 10(2), No. 54, Acts of Parliament, 1959 (India).
[5] Melanie Brown et al., *Customs Law*, 42 INT'L L. 267 (2008)
[6] David Widdowson, '*Managing Customs Risk and Compliance: An integrated Approach*', 14, WCJ (2014)

subject to less scrutiny than those who exhibit low levels of compliance138. To guarantee all of these elements and to strike a balance between the interests of the country and trade, a robust legal system must be in place. The agency must cooperate with many laws and occasionally enforce them in order to carry out all of the aforementioned responsibilities. The primary law that governs the transportation of goods across international boundaries and imposes the proper customs duty on them in accordance with the government's current policy is the Customs Act of 1962. Section 11 of the Customs Act addresses restricted and forbidden commodities as well as any other goods that could jeopardise national security. Additionally, section 12 is the charging section of the law, which permits the Department of Customs to collect duties on commodities that cross international boundaries. The Customs Tariff Act, 1975, as amended from time to time140, specifies the rates of duties at which the customs duty must be computed and charged, even though section 12 is the charging provision. The Customs Tariff Act of 1975, which contains a detailed description of the Customs Duty structure, will therefore be the basis for revenue collection under the Customs Act.

Customs duty can be collected in two ways: particular and ad valorem. A certain amount is collected as duty based on a specific quantity of the goods exchanged when the duty is computed on a specific rate. "Ad-valorem"141 refers to the collection of duties based on the worth of the products. The assessable value of the items being imported or exported, depending on the situation, is the basis for calculating customs duty. "Ad valorem" refers to the computation of obligation based on the assessable worth. According to the Brussels definition, the assessable value is often determined using the transaction value. On December 15, 1950, the relevant parties in Brussels signed the Brussels Definition of Value (BDV), which became operative on July 8, 1953. "The price that a good would fetch in an open market between a buyer and seller independent of each other142" served as the foundation for the BDV. Every product is assigned a specific code known as Harmonised System (HS) Code 143 for the purpose of duty assessment. An internationally recognised system of nomenclature for traded goods is the HS Code. The World Customs Organization created this code based on the debates that took place during the General Agreement on Tariffs and Trade (GATT). This eight-digit code is known as the HS code. For instance, the HS Code for a fully automatic washing machine is 84501100, the HS Code for a household refrigerator is 84182900, and the HS Code for televisions with screens between 74 and 87 cm is 85287215. The Indian Customs Tariff Act of 1985 has all of this information.

CUSTOMS ACT, 1962 AND CUSTOMS TARIFF ACT, 1975 – A SYMBIOSIS

The movement of people, goods, vessels, etc. across the nation's international borders is governed by the Customs Act, 1962, which was introduced as a comprehensive customs law taking into consideration the provisions of the Sea Customs Act 1878, the Land Customs Act 1924, and the Aircraft Act, 1934 related to air customs. The aforementioned Act, which went into effect on February 1st, 1963, covers the entire nation, including territorial waterways. The 161 sections that make up the seventy-seven chapters of the Customs Act address a variety of topics related to import, export, clearance of goods, crimes, etc., which are covered in the parts that follow.

The Act starts with the appointment of Customs officers and gives the government and the Board the authority to enforce its provisions. The authorised entry-exit points—such as ports, airports, other boarding stations, etc.—that are intended for the transportation of products across borders are then covered. Additionally, a whole chapter—albeit a single section—is devoted to discussing prohibitions and other restrictions that may be placed on the import and export of products, along with the justifications for them. The Act also addresses the discovery of illicitly imported products and the prevention of their disposal, as well as the detection or suppression of illicit exports.

In terms of collecting customs duty on commodities that travel across borders, the Act allows for both the imposition of duty and, in certain situations, the exemption from charge. There is a provision to reimburse any excess customs duty collected from any trader. Under trade agreements, provisions are also included for the administration of rules of origin. The Act allows for advance rulings in specific situations by an entity designated for that purpose in order to expedite trade. The applicant may request clarification beforehand regarding the items' classification, the applicability of any notifications, the guidelines for valuing the goods, etc.

Even the regulation of ships, aeroplanes, and other vehicles that transport products into the nation is covered by the Customs Act. All such ships, aeroplanes, etc. are expected to record the specifics of the cargo they transport as well as the personnel on board. Only until the appropriate Customs official has given the go-ahead should items be loaded or unloaded. In order to facilitate trade, the clause stating that "loading and unloading should be under the supervision of a Customs officer" has been removed. Additionally, no vehicle that transports products into or out of the nation may depart without the customs officer's approval. Nonetheless, some types of transportation are not subject to these regulations. The Act specifically allows for the clearance of both export goods (known as "Let Export Order") and imported goods (known as "granting Out of Charge"). There is a facility for holding the unloaded items in case the importer wants to clear them later. Customs used to control all of these warehouses, but in order to facilitate trade, these restrictions have been lifted. The Act requires all Customs duty payments to be made by electronic transmission in order to keep up with technological advancements. The Customs Act allows for the clearance of passenger baggage, products sent by mail or courier, the transfer of stores intended for crew members, and more in addition to standard import and export. The Act also addresses issues related to coastal commodities and vessels that transport them.

In order to effectively execute the Act's provisions, the Customs Act gives officers the authority to perform audits, searches, stop and check vehicles and vessels, examine or arrest individuals, summon and record evidence, seize goods, release such seized goods, etc. Additionally, the officers have the authority to impose penalties and seize illegally imported or smuggled products. The departmental officers have the authority to decide these matters and to prosecute only if the Commissioner of Customs deems it essential. After adjudication, any party who feels wronged by the order issued by the responsible officer may seek an appeal. The Act describes how to petition the Supreme Court, High Court, tribunal 145, etc. Originally called the Customs, Excise and Gold (Control) Appellate body (CEGAT), the body later changed its name to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT). The Customs Act also allows for the settlement of some disputes, as determined by the settlement panel established for that purpose, in an effort to reduce litigation.

The Act stipulates penalties for a number of violations in the event that someone who violates its provisions is punished. Additionally, the statements made by Customs officials are acceptable as evidence in court and the accused's culpable mental state may be assumed in certain situations. The Act also envisions corporate offences and incorporates appropriate provisions. The Act allows for the recovery of Customs income, even by attaching properties, in the event that a demand for Customs duty is not paid even after all appeals. As a result, it is evident that the Act has sufficient protections to safeguard the revenue and addresses every facet of tax collecting.

The 13-section Customs Tariff Act of 1975 covers a number of topics, including the authority of the central government to impose protective duties and the length of those duties, the emergency power of the government to impose or raise import and export duties, and the levy of additional duties equal to excise, sales, and local taxes (now known as GST). Additionally, the Customs Tariff Act's first schedule addresses import tariffs, while the second schedule addresses export tariffs, which are the basis for calculating and collecting duties on cross-border trade. The Indian government repealed the Indian Tariff Act of 1934 and the Indian Tariff (Amendment) Act of 1949 before introducing the Customs Tariff Act of 1975.

Therefore, the proper operation of the Indian Customs administration and the efficient collection of income for the government exchequer depend on two significant pieces of legislation: the Customs Act 1962 and the Customs Tariff Act 1975. In order to control the import and export of products and services in India, both of these Acts are essential. The Customs Tariff Act of 1975 establishes the rates of customs charges that apply to both imported and export goods, while the Customs Act of 1962 is the main piece of legislation that controls the collection of customs duties. The classification of commodities for the purpose of imposing customs charges is another feature of the Customs Tariff Act. It is evident that the Customs Tariff Act, 1975, which is enforced through the Customs Act, reflects government decisions regarding raising or lowering customs taxes on certain items.

CONCLUSION

According to the current research, the Customs Act is a comprehensive act designed to protect national security, regulate international trade, collect revenue for the exchequer from international trade, and monitor the flow of goods across borders. The Act also aims to safeguard the nation's social life by limiting the importation of products that are detrimental to the public's health. Along with rules and regulations enacted in this regard, the Act includes detailed provisions for revenue collection under several sections. The Act further stipulates that violations of the Act may result in sanctions for both individuals and commodities. Furthermore, the Act allows for the prosecution of those who violate specific legal restrictions without receiving prior approval from the appropriate government; otherwise, no court may consider any violation under the Customs Act. Additionally, the Act specifies specific protocols that must be adhered to during the trial. However, the study has shown that the penalties and prosecution provisions under the pertinent sections are insufficient to contain the threats to national security. Consequently, it is determined that the Customs Act needs to be amended in order to add specific measures to reinforce the law in light of the research.

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