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09th December 2017

**Ministry of Shipping
401, Transport Bhavan
Sansad Marg
New Delhi, Pin: 110 001
India**

Email: secyship@nic.in

Kind Attention: Mr. Gopal Krishna, Secretary (Shipping)

Dear Sir,

Subject: Concerns and suggestions relating to proposed extension of cabotage provisions to cover Mobile Offshore Drilling Units (MODUS) by treating drilling as “Coastal Trade”

The International Association of Drilling Contractors (IADC) is a trade association representing the interests of drilling contractors, onshore and offshore, operating worldwide. Our Association serves as a forum for all oil & gas drilling industry stakeholders to connect, share knowledge, tackle common problems and develop solutions to critical issues. To focus the Association’s efforts we support, and are supported by, regionally-organized Chapters across the world.

Our Association, in coordination our regional Chapters like the South Central Asia (SCA) chapter for India, has been instrumental in facilitating impactful advocacy and by engaging with government officials and regulators, strives to develop a dialogue on issues critical to the industry and advocates for better regulatory practices.

IADC has been pleased to note that India has been implementing major reforms in various sectors in the past few years, with a view to increase the “ease of doing business” in the country and this has resulted in India being recognized as one of the top 10 improvers and moving up 30 positions to the 100th rank, as per the World Bank’s recent Doing Business 2018 report.

Along with the IADC SCA Chapter, IADC has been regularly following the developments in India relating to the proposed amendments in the Merchant Shipping Bill, 2016 (MS Bill 2016). During the recently held IADC Annual General meeting in Austin, Texas, we were updated about the present stand taken by the Ministry of Shipping (MoS) through its arm, Directorate General of Shipping (DGS).

It was noted that the IADC SCA Chapter had made a representation requesting DGS to “exclude all offshore drilling activities performed by Mobile Offshore Drilling Units (MODUs) from the definition of Coasting Trade as the nature of services of MODUs are very different from the services performed by Ships and other vessels used in trade.”, in the proposed MS Bill 2016.

Subj: Concerns and suggestions relating to proposed extension of cabotage provisions to cover Mobile Offshore Drilling Units (MODUS) by treating drilling as “Coastal Trade”

IADC SCA Chapter had also pointed out that, “At present, the non-self-propelled MODUs are not required to obtain a Specified Period Licence (SPL). However, as per Clause 240 of Part XII of MS Bill 2016, it appears that SPL may be required to be obtained by all foreign flagged MODUs even if they have no self-propulsion”, and “if such a requirement is imposed for Non-Self Propelled, foreign flagged MODUs like Jack-Up rigs, or semi-submersible rigs, it can have unintended consequences.”

However, through the Rajya Sabha Report No. 249 dated 18th July 2017, available in the RS website, it was seen that DGS has rejected the request of IADC SCA Chapter and has stated its view that “providing services using vessels are covered in the coastal trade of India and need to be protected by way of principles of cabotage.”, and had not specifically addressed or responded to the query relating to requirement of SPL for non-self-propelled foreign flagged MODUs.

Copies of the IADC letter to Rajya Sabha Secretariat and relevant extracts of the above referred Rajya Sabha report are attached herewith, for ready reference.

This is a matter of major concern to IADC. It is IADC’s long-standing position that our industry is improved by open competition. Competition not only promotes economic efficiency, it is necessary if our members’ clients, the oil and gas development companies, are going to be allowed to select the most suitable equipment for their intended operations. Mobile offshore drilling units are not simple merchant vessels moving cargo between ports, but complex and specialized industrial facilities with technical limitations, which will impact their suitability to drill a specific well at a specific location.

In the context of the above background, we would like to highlight the following:

India joined the WTO's General Agreement on Tariffs and Trade Uruguay Round ("GATT 1994") on 1st January 1995.

One of the agreement's bedrock principles is National Treatment ("NT"), as articulated in GATT Article III. The NT requirement ensures that WTO members will not accord foreign companies less favorable treatment than it accords to its domestic companies.

Although India and other GATT Members are covered by an NT exemption for cabotage in GATT 1994, Paragraph 3(a), which is not absolute. It provides that “This exemption is limited to measures taken under legislation described above that is notified and specified prior to the date of entry into force of the WTO Agreement. If such legislation is subsequently modified to decrease its conformity with Part II of GATT 1994, it will no longer qualify for coverage under this paragraph.” **Neither India, nor any other Member may introduce legislation or regulations that decrease its conformity with GATT 1994.**

The Paragraph 3(a) exemption essentially freezes protectionist cabotage measures at the 1994 levels.

Subj: Concerns and suggestions relating to proposed extension of cabotage provisions to cover Mobile Offshore Drilling Units (MODUS) by treating drilling as “Coastal Trade”

The proposed extension of the MS Bill 2016’s cabotage provisions to non-self-propelled vessels would significantly alter India’s cabotage legislation affecting services historically provided by non-Indian and non-self-propelled vessels.

The proposed extension of the MS Bill 2016’s cabotage provisions to non-self-propelled vessels would decrease conformity with GATT 1994, and place India in breach of its WTO commitments regarding NT.

In view of the above, IADC joins the SCA Chapter and hereby submits the following requests to Ministry of Shipping (MoS) and its arm the Directorate General of Shipping (DGS), for kind consideration, so that the legislation or regulations being enacted by India, is maintained at the levels prior to GATT 1994:

- 1) Not to classify offshore drilling activities as “Coasting Trade”; and
- 2) Not to extend ‘cabotage’ to any of the MODUs including ‘non-self-propelled’ MODUs.

IADC also recognizes the need for increased security measures for vessels entering or working in Indian waters and hence, has the following suggestions to address the needs of DG Shipping to regulate MODUs operating in Indian waters:

- 1) Formulate, in consultation with the IADC SCA Chapter, rules and regulations for various types of MODUs, to facilitate the deployment of MODUs in Indian waters and also work towards simplifying the various compliance requirements in India; and
- 2) Open ‘single window’ compliance centres to facilitate meeting of the various offshore drilling industry compliance requirements, which will further increase the “ease of doing business” in India.

We will request our colleagues from the IADC-SCA Chapter in India to be in touch with your good offices for any interactions or further details or clarifications, which may be desired in this regard and they are willing to depute a team from the working group, at a mutually convenient date.

We will be very thankful if the above suggestions are considered in the right spirit and implemented at the earliest.

Yours sincerely,



Alan Spackman
Vice President, Policy, Government & Regulatory Affairs

Subj: Concerns and suggestions relating to proposed extension of cabotage provisions to cover Mobile Offshore Drilling Units (MODUS) by treating drilling as “Coastal Trade”

Attachments:

- 1) IADC-SCA Chapter letter dated 21st April 2017, sent to the Rajya Sabha Secretariat.
- 2) Extracts from the Rajya Sabha Report No. 249 dated 18th July 2017, with IADC comments and DGS responses highlighted on Pages with Serial Numbers 26 & 27.

Copy to:

Mr. Kapil Dev Tripathi
Secretary, Ministry of Petroleum & Natural Gas
A Wing Shasrti Bhawan, Dr.
Rajendra Prasad Road, New Delhi – 110001
India

Email: sec.png@sb.nic.in



INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS

South Central Asia Chapter

21st April 2017

To,

**Shri. Swarabji B.
Director, Rajya Sabha Secretariat
Parliament House / Annexe,
New Delhi – 110 001**

Respected Sir,

Subject: Comments and suggestions regarding Merchant Shipping Bill 2016

We are in receipt of the letter dated 5th April 2017, inviting comments from various stakeholders associated with the Merchant Shipping Bill 2016 (MS Bill 2016) to be sent to Department-related Parliamentary Standing Committee on Transport, Tourism and Culture.

We sincerely thank the Parliamentary Standing Committee for giving IADC an opportunity to provide comments and suggestions relating to the proposed MS Bill 2016.

We wish to bring to your kind notice that on 15th and 16th of September 2016, the offices of Directorate General of Shipping at Mumbai had organised a joint review and discussion about the draft MS Bill 2016 with all stakeholders including the IADC team.

Upon comparison of the copy of the proposed MS Bill 2016 provided by your office, with the provisions of the earlier draft version of the MS Bill 2016, which was reviewed in September 2016 with DG Shipping officials, it is noticed that there are some significant changes in the provisions especially in Part XIII which may impact the non-self-propelled Mobile Offshore Drilling Units (MODUs).

As we received the letter from your office only on the 20th April 2017, additional time is required to complete a detailed in-depth study in order to assess the impact of these changes especially on non-self-propelled MODUs. We will therefore appreciate if we are allowed to submit a more detailed response at a later date, if required, in addition to this preliminary response.

During the meetings with DG Shipping officials in September 2016, IADC had raised the primary concern that the MS Bill 2016 is very broad-based and has most provisions relevant to the Shipping Industry and many of these provisions can have unintended consequences if they are made applicable to the MODUs, which have peculiar constraints, due to the highly specialised nature of services rendered by them.

In response, the DG Shipping officials clarified and reassured that the offshore drilling industry specific rules and regulations would be framed at a later date and we were given to understand that IADC will be provided an opportunity to be involved during the formulation of the rules and regulations, which are relevant to MODUs.

IADC is looking forward to this opportunity to be involved in the formulation of the MODU related rules and regulations, so that the overall objectives of DG Shipping & Government of India is met, without adding to the existing burden of multiple ministries and agencies regulating/monitoring the industry and complex compliance requirements the drilling contractors have to meet, which has a significant impact on the ease of doing business in India.

For instance, contractors are presently required to regularly interact with multiple government bodies including Ministry of Home Affairs, Ministry of Defence/Navy, Ministry of Finance (Customs Department & Income Tax Departments), Ministry of Shipping (DG Shipping & Indian Register of Shipping-IRS), Ministry of Petroleum & Natural Gas (Oil Industry Safety Directorate – OISD & DGH), for a plethora of approvals and/or statutory clearances.

Therefore, in a broader perspective, IADC seeks simplification and formulation of new processes under the proposed MS Bill 2016, to facilitate “Single Window Clearances” from the multiple government bodies involved and also division of authority/jurisdiction between various bodies in inspecting and/or monitoring compliances.

For example, it is desired that OISD be involved in monitoring safety of operations when the MODU is stationary at a drilling location and is attached to the seabed, while the DG Shipping/IRS can monitor safety of movement of MODUs between any two locations. However, if representatives of both these government bodies can be co-located in a place like Mumbai, where a majority of the drilling contractors are having their offices, it would help in ease of operations and movement of MODUs.

Keeping the above background in view, we have provided below our preliminary feedback about a few significant issues, along with comments and suggestions, as per the format provided:

Sr. No.	Views / Major Concerns of IADC	Comments & Suggestions of IADC
1)	The definition of Coasting Trade has been expanded to include “performing any service within waters in the jurisdiction of India includingEEZ.....”.	<p>IADC requests to exclude all offshore drilling activities performed by MODUs from the definition of Coasting Trade as the nature of services of MODUs are very different from the services performed by Ships and other vessels used in trade.</p> <p>To illustrate some of the differences, it may please be noted that:</p> <ol style="list-style-type: none"> 1) Self-propelled MODUs are attached to the seabed at a given drilling location and stays there for a few months, before moving to a new location and are not involved in any transport of goods or passengers. 2) Most of the crew on-board are highly trained and specialised in their respective areas and even the marine crew are trained to respond to emergencies in a different manner as compared to any other passenger or cargo ship/vessel. 3) The crew are replaced every 28 days by means of a helicopter, from which they are trained to escape even underwater, in case of any mishap.

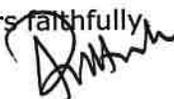
2)	<p>At present, Non-Self Propelled MODUs are not required to obtain a Specified Period Licence (SPL).</p> <p>However, as per Clause 240 of Part XII of MS Bill 2016, it appears that SPL may be required to be obtained by all foreign flagged MODUs even if they have no self-propulsion.</p>	<p>Non-Self Propelled MODUs cannot move from one drilling location to another location unless towed by a vessel which has self-propulsion capability.</p> <p>Hence, if the requirement to obtain a Specified Period Licence (SPL) is imposed for Non-Self Propelled, foreign flagged MODUs like Jack-Up rigs, or semi-submersible rigs, it could have unintended consequences.</p>
3)	<p>It is also seen that "vessels without mechanical means of propulsion" are covered in Part XIII and that most of the other parts of the MS Act would not be applicable to such vessels.</p> <p>Hence, it is not clear at present as to which all provisions will be made applicable for Non-Self Propelled, foreign flagged MODUs.</p>	<p>Clarification from DG Shipping about the applicability of various Parts / provisions of the proposed MS Bill 2016, for Self-propelled and Non-Self-propelled MODUs, is desired.</p>

As stated earlier above, these comments and suggestions are not exhaustive and are provided for kind consideration.

We once again request that IADC be given an opportunity for involvement during formulation of the rules and regulations, as assured by DG Shipping, so that we can provide constructive suggestions, relevant to MODUs.

We trust that this preliminary feedback provided above will be considered in right earnest and IADC looks forward to further interactions with DG Shipping or the nominated agencies.

Thanking you,

Yours faithfully,


**Authorised Signatory
IADC – SCA Chapter**

REPORT NO.

249



PARLIAMENT OF INDIA

RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE
ON TRANSPORT, TOURISM AND CULTURE

TWO HUNDRED FORTY NINTH REPORT

The Merchant Shipping Bill, 2016

(Presented to the Rajya Sabha on 18th July, 2017)

(Laid on the Table of Lok Sabha on 18th July, 2017)



Rajya Sabha Secretariat, New Delhi

July, 2017/ Ashada 1939 (Saka)

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PARLIAMENT OF INDIA RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON
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RAJYA SABHA SECRETARIAT

NEW DELHI

July, 2017/ Ashada, 1939 (Saka)

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* To be appended at printing stage.

**COMPOSITION OF THE COMMITTEE
(2016-2017)**

1. Shri Mukul Roy - Chairman

Rajya Sabha

2. Shri Ritabrata Banerjee
3. Dr. K. Chiranjeevi
4. Dr. Prabhakar Kore
6. Shri Kiranmay Nanda
7. Shri Rangasayee Ramakrishna
8. Kumari Selja
9. Shri Rajeev Shukla
9. Shri Narendra Kumar Swain
10. Shri Lal Sinh Vadodia

Lok Sabha

11. Shri Subrata Bakshi
12. Shri Ram Charitra Nishad
13. Shri Vinod Chavda
14. Shri Rajeshbhai Naranbhai Chudsama
15. Kumari Arpita Ghosh
16. Shri Rahul Kaswan
17. Shri P. Kumar
18. Shri Harish Chandra Meena
19. Yogi Aditya Nath
20. Shri Kristappa Nimmala
21. Shri Rajesh Pandey
22. Shri Rajesh Ranjan
23. Shri P. Srinivasa Reddy
24. Shri Ram Kumar Sharma
25. Shri Prathap Simha
26. Shri Dushyant Singh
27. Shri Kunwar Haribansh Singh
28. Shri Rakesh Singh
29. Shri Shatrughan Sinha
30. Shri Manoj Tiwari
31. Shri K. C. Venugopal

SECRETARIAT

Shri J.G. Negi, Joint Secretary
Shri Swarabji B., Director
Shri Arun Kumar, Deputy Secretary
Smt. Catherine John L., Under Secretary
Shri P.P. Raumon, Committee Officer

(i)

INTRODUCTION

I, the Chairman, Department-related Parliamentary Standing Committee on Transport, Tourism and Culture, having been authorized by the Committee, do hereby present on its behalf this Two Hundred Forty Ninth Report on "The Merchant Shipping Bill, 2016* ".

2. The Bill was introduced in Lok Sabha on the 16th December, 2016. In pursuance of rules relating to the Department-related Parliamentary Standing Committees, the Hon'ble Chairman, Rajya Sabha referred** the Bill to the Committee on the 12th January, 2017 for examination and report within three months. On the request being made by the Chairman of the Committee, Hon'ble Chairman had granted extension of time for a period of three months , *i.e.*, upto 12th July, 2017.

3. The Committee took oral evidence of the Secretary, Ministry of Shipping, Director-General (Shipping) and other senior officers of Ministry of Shipping and Ministry of Law and Justice in its meeting held on the 12th May, 2017. The Committee during its study visit to Ahmedabad, Mumbai and Kochi, heard the views of all the Major Ports, seafarer representatives and other stakeholders on the Bill. The Committee also received written memoranda from various stakeholders and individuals.

4. The Committee considered and adopted the Report in its meeting held on the 12th July, 2017.

5. The Committee wishes to express its thanks to the Officers of Ministry of Shipping and Ministry of Law and Justice for placing before the Committee the material and information desired in connection with the Merchant Shipping Bill, 2016. The Committee also acknowledges the contribution of representatives of various stakeholders and individuals who submitted their valuable suggestions on the provisions of the Bill.

Mukul Roy

NEW DELHI;
July, 12, 2017
21 Ashada, 1939

*Chairman,
Department-related Parliamentary Standing
Committee on Transport, Tourism and Culture,
Rajya Sabha.*

* Published in Gazette of India Extraordinary Part-II, Section-2, dated 16th December, 2016.

Rajya Sabha Parliamentary Bulletin Part-II No **56225, dated 13th January, 2017.

ACRONYMS

BBCD	:	Bareboat-Charter cum Demise
CBA	:	Collective Bargaining Agreement
CMMI	:	Company of Master Mariners of India
COC	:	Carrier Owned Container
COP	:	Customs of the Port
EEZ	:	Exclusive Economic Zone
<u>GMDSS</u>	:	Global Maritime Distress and Safety Systems
IALA	:	International Association of Marine Aids to Navigation and Lighthouse Authorities
IMU	:	International Maritime Organisation
INSA	:	Indian National Shipowners Association
ISPS	:	International Ships and Port Security
LLMC	:	Convention on Limitation of Liability for Marine Claims
LLP	:	Limited Liability Partnership
M.S. Act	:	Merchant Shipping Act, 1958
MARPOL	:	International Convention for Prevention of Pollution from Ship (Marine Pollution)
MLC	:	Maritime Labour Convention
MMD	:	Mercantile Marine Department
MODU	:	Mobile Offshore Drilling Limited
NSB	:	National Shipping Board
NWBS	:	National Welfare Board for Seafarers
SOLAS	:	Safety of Life at Sea
STCW	:	Seafarers Training Certification and Watch keeping
VTS	:	<i>Vessel Traffic Service</i>
WCA	:	World Cargo Association

REPORT

The Merchant Shipping Bill, 2016 (Annexure-I) was introduced in Lok Sabha on the 16th December, 2016. The Hon'ble Chairman, Rajya Sabha, in consultation with Speaker, Lok Sabha on 12th January, 2017, referred the Bill to the Department-related Parliamentary Standing Committee on Transport, Tourism and Culture for examination and report within three months. The Committee could not take up the Bill immediately for discussion due to the reasons that works related to examination of Demands for Grants 2017-18 of the Ministries of Civil Aviation; Culture; Road Transport and Highways; Shipping and Tourism were under consideration by the Committee during that time. The Committee in its meeting held on 10th April, 2017 decided to get extension of time for submission of the report on 'The Merchant Shipping Bill, 2016' to the Parliament from the Hon'ble Chairman of Rajya Sabha. Accordingly, the Committee placed the request before the Hon'ble Chairman of Rajya Sabha for extension of time and he granted extension for a further period of three months, i.e., upto 12th July, 2017 for submission of the report to Parliament.

2. The Merchant Shipping Act, 1958 governs matters relating to merchant shipping in India. The Act, *inter alia*, provides for registration, certification, safety and security of Indian ships, prevention of marine environmental pollution as well as for promotion of seafarer's welfare. The Act has been amended from time to time in the light of experience gained in its implementation and also to give effect to the provisions of various International Conventions to which India is a party.

3. The Merchant Shipping Act, 1958 had become a bulky piece of legislation as a result of seventeen amendments made to the Act between 1966 and 2014. The Act consisted of 461 sections spread over XVIII Parts and, as a result of amendments, the number of sections subsequently increased to more than 560 sections. The Act had also become cumbersome for stake-holders. Besides, the Act contained sections on procedural and process aspects which require frequent upgradation in tune with modern business practices and uniformity with international usage thereby causing implementation bottlenecks. To set right these bottlenecks further amendments to the Act became inevitable.

4. Certain provisions of the 1958 Act are considered to have become obsolete and needed revision, for example, the provisions relating to pilgrimage by sea (now undertaken principally by air), nuclear ships etc (4 sections consolidated to 1 section). Some other provisions such as trading licenses for Indian vessels and port clearances relating to such licences, crew engagement and discharge before the Shipping Master etc have become redundant. More importantly, the provisions of 1958 Act required consolidation and simplification for promoting an ease of doing business.

5. In the existing regulatory regime, introducing a set of reforms was felt to be crucial for growth and development of Indian maritime sector. Reforms were indispensable on aspects relating to augmenting Indian tonnage and promoting coastal shipping. It was also necessary to usher in a legislative framework which facilitates compliance by the industry and implementation by the government. To strengthen the security of Indian coast, it was necessary

to enable registration of all seagoing vessels. Further, there was a need to legislate on measures relating to facilitate seafarers' welfare. The existing penalty provisions, particularly the monetary penalty, were meagre and warranted enhancement to ensure effective compliance. Besides, a set of international maritime conventions, to which India has already become a party or those to which India proposes to become a party were also to be incorporated in the Merchant Shipping Act, 1958, in force.

6. Therefore, the Government has decided to introduce a fresh legislation in the form of Merchant Shipping Bill, 2016 in supersession of the Merchant Shipping Act, 1958.

7. In the Bill it is proposed to repeal two legislations namely the Merchant Shipping Act, 1958 and the Coasting Vessels Act, 1838. The Coasting Vessels Act, 1838 is a legislation of the British era which provides for registration of non-mechanically propelled vessels to a limited jurisdiction of Saurashtra and Kutch. The Coasting Vessels Act already stands partially repealed by the Merchant Shipping Act, 1958. Since provisions have been introduced in the Bill for registration of all vessels, including those non-mechanically propelled vessels covered under the Coasting Vessels Act, 1838, a provision is made in the Bill for repeal of the Coasting Vessels Act, 1838 as a whole.

8. In order to save all actions taken under the Merchant Shipping Act, 1958, provision has been made in the Bill to that effect.

9. In the Statement of Objects and Reasons, the Ministry of Shipping stated that in order to ensure that old and redundant provisions of the laws are replaced with contemporaneous provisions, it has been decided to consolidate and amend the laws relating to merchant shipping to ensure compliance with the country's obligation under the International Conventions and maritime treaties to which India is a party and also to ensure the efficient maintenance of Indian mercantile marine in a manner best suited to serve the national interest.

10. The Merchant Shipping Bill, 2016, *inter alia*, seeks to provide for the following, namely:-

- (a) to register all seagoing vessels, whether propelled or not, including certain residuary category of vessels not covered under any statute;
- (b) to allow substantially-owned vessels and vessels chartered on Bareboat-Charter-cum-Demise(BBCD) contract by Indian entities to be registered as Indian flag vessels, to recognize Indian controlled tonnage as a separate category, and dispense with the requirement for issuing licences to Indian flag vessels for coastal operation, so as to facilitate augmentation of Indian tonnage and promotion of coastal shipping;
- (c) To simplify and consolidate the regime for survey, inspection and certification of vessels which are scattered in various Parts of the Merchant Shipping Act, 1958 by placing them together, for convenience of the Indian shipping industry;
- (d) to monitor the maritime education leading to grant of certificate of competency or certificate of proficiency in accordance with either the provisions of International Convention or otherwise to impart quality education to prospective seafarers, and to facilitate Indian seafarers to work onboard vessels with respective certificate and qualification;
- (e) to entitle the seafarers held in captivity of pirates to receive wages till they are released from captivity and reach home safely so as to ensure welfare of seafarers;

- (f) to make insurance compulsory for the crew engaged on vessels including fishing, sailing, non-propelled vessels and vessels whose net tonnage is less than fifteen and solely engaged in coasting trade of India, by the owner of the vessel;
- (g) to dispense with the requirement of signing of articles of agreement by the crew before the Shipping Master so as to facilitate early employment of seafarers;
- (h) to make provisions for security-related aspects with respect to vessels, which will enable identification and ensure coastal security;
- (i) to make provisions so as to give effect to seven Conventions of International Maritime Organisation, namely, (i) the Intervention Convention, 1969, (ii) the Search and Rescue Convention, 1979, (iii) the Annex VI to the International Convention on Prevention of Pollution from Ships, (iv) the Convention for Control and Management of Ships Ballast Water and Sediments, 2004, (v) the Nairobi Wreck Removal Convention, 2007, (vi) the Salvage Convention, 1989 and (vii) the International Convention for Bunker Oil Pollution Damage, 2001;
- (j) to repeal the Coasting Vessels Act, 1838 and the Merchant Shipping Act, 1958.

11. The Ministry of Shipping informed the Committee that the following changes and reforms were introduced in the Bill:

(i) For augmentation of Indian tonnage vessels

a) Ownership requirement for registration under Indian flag has been changed from 'wholly owned' to 'substantially owned'. Substantially owned means, ownership of more than fifty percent shares of the vessel. Vessels owned by joint owners, where Indian owners have a majority stake in the vessel, will be able to be registered under Indian flag. This will encourage vessels owned jointly by Indian and foreign entities to be registered under Indian flag, and it will be easy for small ship-owners to acquire and register the vessels. It will facilitate development of tonnage under Indian flag.

b) New Chapter on registration of Bareboat Charter-cum-Demise (BBCD) vessels introduced in the Bill. The objective is to promote an increase in the tonnage under Indian flag, as small ship-owners or entities who cannot invest a huge sum of money for purchase of vessel, may charter/hire the vessel on BBCD basis having an intention to transfer the ownership to an Indian owner, and register such vessel as an Indian vessel.

c) Indian controlled tonnage vessels have been recognised as a distinct category of vessels. Vessels owned by Indian entities may be allowed to be registered outside India (foreign flag) subject to certain conditions and such vessels will be known as Indian controlled vessel. This will promote the Indian tonnage by way of controlled tonnage mechanism, where Indian Government can put certain conditions like placement of Indian seafarers on vessels allowed to be registered under foreign flag and thereby increasing employment opportunities for Indian seafarers. These vessels are owned by Indian entities, but are registered under foreign flag (s). These vessels can be strategically available to India for requisition by the Indian government for energy, fuel and food security reasons apart from other national contingencies.

d) The scope of the definition of coasting trade of India has been broadened to include services/activities in as much as they relate to shipping activities within territorial waters / exclusive economic zone (EEZ). Government can regulate the coastal trade of India by way of cabotage and licensing provisions contained under Part XII. Indian Coastal ships (899 as on

31.01.2017) will get first right of refusal against the foreign vessels coming to India for coastal trade /services in Indian coastal waters.

(ii) **To promote coastal shipping and facilitate ease of doing business**

e) Registration of all seagoing vessels under single legislation. All sea-going vessels irrespective of their size [gross tonnage], regardless of their area of operation & whether propelled or not are mandated to be registered under this proposed Bill. This provision has been introduced to give effect to the recommendations of the National Committee for Strengthening Maritime and Coastal Security for ensuring the security of Indian coasts.

f) Requirement of general trading license for Indian ships to engage in Indian coastal trade has been done away with. Indian vessels will no longer be mandated to have a license from the Directorate General of Shipping for engaging themselves in the coasting trade of India which will provide an ease of doing business to Indian vessels and in turn promote coastal shipping in India. Further, this will enable Indian vessels to obtain port clearance without trading licence or other statutory certificates required under the Bill since the issuance of port clearance through customs authorities currently provisioned under the existing Act has been done away with.

g) For framing separate rules for coastal ships, provision has been added in the relevant parts for safety, pollution prevention, manning, survey and certification. The simpler regulatory regime for Indian coastal vessels shall benefit Indian coastal ships.

h) Consolidation of provisions related to survey and certification done to provide a simple regime for convenience. The ship-owners will have single Chapter/Part to look for application of regulations w.r.t survey and certification.

i) Clarity introduced between the terms ‘seagoing’ and ‘inland’ vessel. The term ‘sea-going’ has been redefined to align with the definition of inland waters as defined in the proposed draft Inland Vessels Bill, 2016 as “sea-going”, in relation to a vessel, means a vessel proceeding to sea beyond waters declared to be inland waters by the Central Government or State Government by notification. This will remove the ambiguity between the applications of the proposed Bill to vessels operating in the sea vis-à-vis vessels operating in the inland waters of India.

(iii) **Measures for welfare of seafarers:**

j) The seafarers and ship-owners will no longer be required to visit the Shipping Master office for entering into agreement of employment. Now both parties may enter into agreement and submit the copy of the same to the Shipping Master. This will provide an ease of business to the ship-owners and the seafarers.

k) Recruitment of seafarers by authorised persons has been made mandatory to protect Indian seafarers from being exploited by unscrupulous persons/entities. Indian seafarers will now be recruited only through the owners or the registered entities thereby rights of seafarers in emergency situations like death or distress will be protected.

l) The extant powers of hearing grievances of seafarers by the Shipping Masters have been debottlenecked and their powers for the redressal of seafarer’s grievances have been enhanced. The present cap of 5 lakh rupees for hearing a grievance of seafarers related to wages by Shipping Master has been removed and now seafarers may approach the Shipping Master for grievance redressal of any amount, thereby giving a platform to Indian seafarer for approaching the Government machinery before resorting to the court proceedings.

(1) "1992 Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1992;

(2) "Anti-Fouling Systems Convention" means International Convention on control of harmful antifouling systems on ships, 2001;

(3) "audit" means a systematic and independent examination to determine whether the Management System as provided in safety convention complies with the planned arrangements and such arrangements are implemented effectively and are sufficient to achieve the desired objectives;

(4) "Ballast Water Management Convention" means the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004;

(5) "certificate of competency" or "certificate of proficiency" means the certificate of competency or certificate of proficiency, as the case may be, granted under subsection (1) of section 52;

(6) "coasts" include the coasts of creeks and tidal waters.

Explanation.—For the purposes of this clause, the expression "tidal waters" means any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tides and not being a harbor;

(7) "Coasting trade of India" means,—

(a) the carriage by sea of goods, passengers from any port or place in India to any other port or place in India, or

(b) performing any service within waters in the jurisdiction of India, including the zones as defined under the Territorial Water, Continental Shelf, Exclusive Economic Zones and other Maritime Zones of India Act, 1976;

(8) "company" means a company as defined in clause (20) of section 2 of the Companies Act, 2013;

(9) "convention" means any International Convention or Treaty or Agreement in relation to maritime matters and their Protocols to which India is a party;

(10) "convention certificate" means a certificate issued under the provisions of any convention;

(11) "court", in relation to any proceedings, includes any court having jurisdiction in the matter to which the proceedings relate;

(12) "Director-General" means the Director-General of Shipping appointed under sub-section (1) of section 6;

(13) "distressed seafarer" means a seafarer engaged under this Act, who has been discharged or left behind or abandoned including by reason of any captivity not in accordance with law, or shipwrecked, is in distress;

(14) "equipment", in relation to a vessel, includes boats, tackle, machinery,

boilers, cargo handling gear, pumps and any fitting, anchor, propeller, apparels, furniture, life-saving appliances of every description, spars, masts, rigging and sails, fog signals, lights, shapes and signals of distress, medicines and medical and surgical stores and appliances, charts, radio installations, appliances for preventing, detecting or extinguishing fires, buckets, compasses, axes, lanterns, loading and discharging gears and appliances of all kinds and all other stores and spares or articles belonging to or to be used in connection with or necessary for the navigation, propulsion, security, pollution prevention and safety of the vessel;

(15) "family" means: —

(i) in the case of male, his wife, his children whether married or unmarried, his dependent parents and his deceased son's widow and children:

Provided that if a person proves that his wife has ceased under the personal law governing him or the customary law of the community to which the spouses belong, to be entitled to maintenance, she shall no longer be deemed to be a part of such person's family for the purposes of this Act, unless such person subsequently intimates by express notice in writing to the Central Government that she shall continue to be so regarded; and

(ii) in the case of female, her husband, her children, whether married or unmarried, her dependent parents, her husband's dependent parents and her deceased son's widow and children:

(53) "seafarer's employment office" means the seafarer's employment office established under sub-section (1) of section 11;

(54) "seafarer's welfare officer" means the seafarer's welfare officer appointed under sub-section (1) of section 12;

(55) "seaworthy", in respect of a vessel, means, if she is in possession of all valid certificates required under this Act and is in a fit state as to the material, construction, condition of hull and equipment, and machinery; management of safety, security and pollution prevention, the stowage of ballast or cargo, the number, and in every other respect, fit for the voyage or service including with the living and working conditions on board the vessel to not pose a threat to the health, safety or welfare of the vessel's seafarers;

(56) "ship" means any watercraft, used or capable of being used in navigation by its own propulsion, in, above, or under the water, but does not include fishing vessels or sailing vessels;

(57) "ship owner" means the owner including the registered owner, bareboat charterer, manager and operator of the vessel;

(58) "shipping master" means the shipping master appointed under section 10; Provided that in relation to any seafarer for the purposes of section 89, means a shipping master referred to in that section,—

(a) for the port at which the seafarer entered into, or is believed to have entered into, an agreement, or

(b) where the seafarer did not enter into his agreement in India, for the port to which the seafarer has returned, or is expected to return, on the completion of his latest voyage;

(59) "shipping office" means the shipping office established under section 10;

(60) "special trade" means the conveyance of large number of passengers by sea within the areas specified in the STP Agreement;

Explanation:—The expression "STP Agreement" means the Special Trade Passenger Ship Agreement, 1971 and Protocol on Space Requirement for Special Trade Passenger Ships, 1973;

(61) "special trade passenger" means a passenger carried in special trade passenger vessel in spaces on the weather deck or upper deck or between decks which accommodate more than eight passengers;

(62) "special trade passenger ship" means a mechanically propelled ship carrying more than thirty special trade passengers;

(63) "STCW Convention" means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978;

(64) "surveyor" means a person appointed under sub-section (1) of section 7;

(65) "tanker" means a vessel constructed or adapted primarily to carry liquid or gas in bulk in its cargo space and includes combination carriers and any other type of vessel when it is carrying a cargo or part cargo of liquid or gas in bulk;

(66) "tindal" means the person in command or charge of a sailing vessel;

(67) "Tribunal" means the Tribunal constituted under sub-section (1) of section 83;

(68) "unseaworthy vessel" is a vessel which is not seaworthy;

(69) "vessel" includes every description of water craft used or capable of being used in the marine environment, such as ship, boat, sailing vessel, fishing vessel, submersible, semi-submersible, hydrofoils, non-displacement crafts, amphibious crafts, wing-in-ground crafts, pleasure crafts, barges, lighters, Mobile Offshore Drilling Units, Mobile Offshore Units, or of any other description;

(70) "wages" include emoluments;

(71) "wreck" includes the following on a maritime casualty, namely:—

(a) a sunken or stranded vessel;

(b) any part of a sunken or stranded vessel, including any object or goods or cargo that is or has been on board such a vessel;

- (c) any object or goods or cargo that is lost at sea from a vessel and that is stranded, sunken or adrift at sea;
- (d) a vessel that is in distress or is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the vessel or any property in danger are not already being taken; or
- (e) a vessel abandoned without hope or intention of recovery.

22. The Clause 3 of the Bill contains definitions of various expressions used in the Bill. It defines the expressions, *inter alia*, “costs”, “coasting trade of India”, “convention”, “distressed seafarer”, “family”, “Indian controlled tonnage vessel”, “port of registry”, “sailing vessel”, “ship”, “special trade”, “vessel”.

23. Some of the stakeholders in their written memoranda have furnished the following suggestions in the definitions and the committee sought the opinion of the Ministry of Shipping in this regard. The suggestions put by the stakeholders and the reply furnished by the Ministry of Shipping are given in the following table:

Views of the individual/organization	Views/comments of the Ministry of Shipping
<p>3. Part 1 Section 3 (7). The definition of Coasting trade should be reworded follows; — 1) Coasting trade – the carriage by sea of goods, Excluding export or import containerized cargo and empty containers originating from any port in India or destined to any port in India or transshipped at any port or place in India, passengers from any port or place in India to any other port or place in India or....</p> <p>Views: It is suggested and in view that the export/import container are not cargoes and are exempt from Import duty unless domesticated and are the assets of the shipping Company. Further, the issue is whether export containers cleared by customs at a destination port in India and transshipped through another Indian port (Export containers) or import containers received from a foreign port and transshipped through an Indian port to another Indian port where it is customs cleared and duty paid (import containers) should fall under the definition of coasting trade. These are NOT COASTING TRADE but foreign trade and therefore should be excluded from definition of coasting trade and should not be brought under the purview of cabotage. Moreover, as to ensure Ease of Doing Business and to</p>	<p>Not accepted. The carriage of cargo from one Indian port to other Indian port is covered in the coastal trade of India and such is protected by way of principles of cabotage. The protection is required for development of coastal shipping and coastal trade of India. The inclusion of EXIM cargo in ‘Coasting trade’ is as per the existing policy which has consciously been adopted to protect India’s shipping industry and such policy is adopted by most of the countries to protect their domestic shipping industry. Foreign container shipping lines already transship more than 98% of the EXIM container cargo. Acceptance of CSLA’s views will enable foreign container shipping lines to transport EXIM containers from one Indian port to another Indian port, without obtaining any license for Coasting Trade from the Directorate General of Shipping. As per the existing policy, Directorate General of Shipping grants licence for coasting trade to foreign flag ships if no Indian ship is available to transport goods at a price being offered by the foreign vessel. Further, Clause 240(5) of the Bill also empowers the Central Government to exempt any class of vessel from the provision of licensing for coasting trade if</p>

Views of the individual/organization	Views/comments of the Ministry of Shipping
<p>Clause 3, point 7, Definition to be amended as follows: In this Act, unless the context otherwise requires, (7) "Coasting trade of India" means,— the carriage by sea of goods, passengers from any port or place in India to any other port or place in India, or performing any service within waters in the jurisdiction of India, including the zones as defined under the Territorial water..... Reasons: The issue is whether EXIM traffic i.e. export containers cleared by customs at a destination port in India and transhipped through another Indian port (Export containers) or import containers received from a foreign port and transhipped through an Indian port to another Indian port where it is customs cleared and duty paid (import containers) should fall under the definition of coastal traffic. These are NOT COASTING TRAFFIC but foreign trade and therefore should be excluded from definition of coasting trade and should not be brought under the purview of cabotage. Water, Continental Shelf, Water, Exclusive Economic Zones and other Maritime Zones of India Act, 1976, Provided that the carriage of export or import goods whether containerized or not including empty containers, originating from any port in India or destined to any port in India or transhipped at any port or place in India or performing any service related to above within waters in the jurisdiction of India, including the zones as defined under the Territorial Water, Exclusive Economic Zone and other maritime Zones of India Act, 1976 will not be treated as Coasting Trade of India.</p>	<p>given under the MLC.</p> <p>Not accepted. The carriage of cargo from one Indian port to other Indian port is covered in the coastal trade of India and is protected by way of principles of cabotage. The protection is required for development of coastal shipping and coastal trade of India. The inclusion of EXIM cargo in ‘Coasting trade’ is as per the existing policy which has consciously been adopted to protect India’s shipping industry and such policy is adopted by most of the countries to protect their domestic shipping industry. Foreign container shipping lines already transship more than 98% of the EXIM container cargo. Acceptance of CSLA’s views will enable foreign container shipping lines to transport EXIM containers from one Indian port to another Indian port, without obtaining any license for Coasting Trade from the Directorate General of Shipping. As per the existing policy, Directorate General of Shipping grants licence for coasting trade to foreign flag ships if no Indian ship is available to transport goods at a price being offered by the foreign vessels. Further, Clause 240(5) of the Bill also empowers the Central Government to exempt any class of vessel from the provision of licensing for coasting trade if required for promotion of coasting trade.</p>
<p>95. The definition of Coasting Trade has been expanded to include "performing any service within waters in the jurisdiction of India including EEZ....". Views: IADC</p>	<p>Not accepted. The carriage of cargo from one Indian port to other Indian port or providing services using vessels are covered in the coastal trade of India and</p>

Views of the individual/organization	Views/comments of the Ministry of Shipping
<p>requests to exclude all offshore drilling activities performed by MODUs from the definition of Coasting Trade as the nature of services of MODUs are very different from the services performed by Ships and other vessels used in trade. To illustrate some of the differences, it may please be noted that: Self-propelled MODUs are attached to the seabed at a given drilling location and stays there for a few months, before moving to a new location and are not involved in any transport of goods or passengers. Most of the crew on-board are highly trained and specialised in their respective areas and even the marine crew are trained to respond to emergencies In a different manner as compared to any other passenger or cargo ship/vessel. The crews are replaced every 28 days by means of a helicopter, from which they are trained to escape even underwater, In case of any mishap.</p>	<p>need to be protected by way of principles of cabotage. The protection is required for development of coastal shipping and coastal trade of India. The foreign flag vessel including MODU will be required to have license from DGS. However, if such an Indian vessel is available and is willing to provide the service at the price offered by the foreign flag vessel, then license will not be issued to such foreign flag vessels. Clause 240(5) empowers the Central Government to exempt any class of vessel from the provision of licensing for coasting trade under Clause 240.</p>

24. **The Committee agrees with the views/comments of the Ministry of Shipping on the issues raised by stakeholders. However, Committee recommends that the necessary changes as accepted by the Ministry of Shipping may be carried out in the Bill.**

25. **Clause 4**

4. (1) The Central Government may, by notification, establish a National Shipping Board (hereinafter referred to as the Shipping Board) for the purposes of this Act.

(2) The Shipping Board shall consist of the following members, namely:—

(a) six members of Parliament of whom four shall be elected from amongst themselves by members of the House of the People and two from amongst themselves by the members of the Council of States,

(b) such number of other members, not exceeding sixteen as the Central Government may think fit to appoint to the Shipping Board, to represent,-

(i) the Central Government,

(ii) ship-owners,

(iii) seafarers, and

(iv) such other interest as in the opinion of the Central Government ought to be represented on the Shipping Board:

Provided that the Shipping Board shall include an equal number of persons representing the ship owners and seafarers.

(3) The term of a member elected under clause (a) of sub-section (2) shall come to an end as soon as he ceases to be a member of the House from which he was elected.

(4) The Central Government shall nominate one of the members of the Shipping Board to be the Chairperson of the Shipping Board.

(5) The Shipping Board shall advise the Central Government,-

(a) on matters relating to Indian shipping including the development thereof; and

(b) on such other matters arising out of this Act as the Central Government may

the consular officer to act as agent of owner for custody and disposal of the articles from wreck vessel on behalf of the country where the vessel is registered or, cargo owners belongs to that country within a period of one year for said claim.

208. As regards Pt XII, Clause 224 on control of ships on the coast the stakeholders suggested that this Clause should be removed or revised in the light of ICT, BBCD and policy of relaxed cabotage. This part from the erstwhile MS Act 1958 has not helped in growth of Indian domestic logistics industry.

209. The Ministry of Shipping not accepted this and stated that Clause 224 relates to claims of owners to wreck and not cabotage.

210. **The Committee notes the reply furnished by the Ministry of Shipping in this regard.**

211. **The Committee observes that there are lots of probabilities of a grievance that can arise at any stage of the salvage operation, wreck removal etc. The Committee, therefore, recommends that necessary provisions for redressal of grievances should be incorporated suitably in the Bill.**

212. **Clause 237**

237. Nothing in this Chapter shall affect,—

(a) any treaty or arrangement with any foreign country to which India is a party with reference to the disposal of the proceeds of wrecks on their respective coasts; or

(b) the provisions of section 29 of the Indian Ports Act, 1908, or any person to salvage in respect of any property recovered by creeping or sweeping in contravention of that section.

213. Clause 237 of the Bill seeks to provide that nothing in Chapter II of Part XI shall affect any treaty or arrangement with any foreign country to which Indian is a party with reference to the disposal of wrecks on their respective coasts or the provisions of section 29 of the Indian Ports Act, 1908 or any person to salvage in respect of any property recovered by creeping or sweeping in contravention of that section.

214. It was submitted by the stakeholders that under Clause 237 (after wordings —the provisions of section 29 of the Indian Ports Act 1908 the words —as may be amended thereafter. It is required as this will ensure that exemptions may be given to certain ships or class of ships or kind of cargo carried or type of passenger vessels. This will also ensure continuity with the current mechanism which is effective and expeditious.

215. The Ministry of Shipping replied that the suggestion may not be accepted as incorporation of the words —as may be amended thereafter is redundant as the amendments once done to a convention become part of the convention itself.

216. **The Committee notes the comments of the Ministry of Shipping in this regard.**

217. Clause 240

240. (1) No vessel, other than a vessel registered under this Act shall engage in the coasting trade of India or exploration, exploitation or research in the coastal waters of India except under a licence granted by the Director-General under sub-section (4).

(2) No other vessel chartered by a citizen of India or a company or a co-operative society other than vessel registered under this Act shall be taken to sea from a port or place within or outside India except under a licence granted by the Director-General under this section.

(3) An Indian controlled tonnage vessel may be granted a licence under this section subject to such conditions as may be specified by the Director-General.

(4) A licence granted under this section may be—

- (a) a general licence;
- (b) a licence for the whole or any part of the coasting trade of India; or
- (c) a licence for a specified period or voyage.

(5) A licence granted under sub-section (4), shall be in such form and shall be valid for such period as may be prescribed, and shall be subject to such conditions as may be specified by the Director-General:

Provided that the Central Government, if it is of the opinion that it is necessary or expedient in the public interest so to do, it may, by a general or special order, exempt any class of vessels from the provisions of this section.

218. Clause 240 of the Bill seeks to direct that any vessel engaged in coastal trade or exploration or exploitation or research in coastal waters of India shall require a licence and stipulates that no vessel chartered by an Indian citizen, company or cooperative society to be taken to a port or place within India or outside India without licence granted by the Director-General and the Indian controlled tonnage may also be granted licence subject to certain conditions. It further provides that the Central Government shall have the power to exempt any class of vessel by general or special order from the provision of this clause.

219. Under Clause 240 (5) It is suggested that after the proviso of Sub-section 5 of section 240 that the original section of section 407 (3) of the existing Merchant Shipping Act be maintained. The wordings that may be inserted after proviso may be read as —Further the Central Government may, by general or special order, direct that the provisions of this section shall not apply in respect of any part of the coasting trade of India or shall apply subject to such conditions and restrictions as may be specified in the order.

220. The Ministry of Shipping accepted the suggestions and stated that the proposed proviso after sub section (5) will be modified to include the suggestion suitably.

221. **The Committee recommends that the modifications to the Clause 240(5) may be made in the Bill as per the suggestion given by the stakeholder.**

222. Clause 243

243. (1) The Director-General may, if he is satisfied that in the public interest or in the interests of Indian shipping it is necessary so to do, give, by order in writing, such directions as he thinks fit,—

(a) in the case of a vessel which has been granted a licence under section 240, with respect to all or any of the following matters, namely:—

- (i) the ports or places, whether in or outside India, to which, and the routes by which, the vessel shall proceed for any particular purpose;
- (ii) the diversion of any vessel from one route to another for any particular purpose;
- (iii) the classes of passengers or cargo which may be carried in the vessel;
- (iv) the order of priority in which passengers or cargo may be taken on or put off the vessel at any port or place, whether in or outside India;

(b) in the case of a vessel which has been granted a licence under section 240 with respect to the order of priority in which passengers or cargo may be taken on the vessel at any port or place in India from which she is about to proceed for any port or place in India at which she is to call in the course of her voyage.

(2) The Director-General may, by notice, require,—

- (a) the owner, master or agent of any vessel in respect of which a licence granted under section 240; or
- (b) the owner, master or agent of any vessel in respect of which any directions have been or may be given under clause (b) of sub-section (1), to furnish within the period specified in the notice the information as to—

- (i) the classes of passengers and cargo which the vessel is about to carry or is capable of carrying or has carried during any specified period;
- (ii) any other matter which may be prescribed.

(3) Notwithstanding anything contained in any other law for the time being in force, the Central Government may, in public interest, by an order in writing, give such directions as it may deem appropriate to ban any vessel from entering any port, anchorage or offshore facility in India.

223. Clause 243 of the Bill seeks to empower the Director-General, in public interest or in the interest of Indian shipping if it is necessary, to give order in writing or notice for matters stipulated therein and also empowers the Central Government in public interest to ban any vessel from entering into India, anchorage or offshore facility in India.

224. It was submitted to the Committee that under Clause 243 (2) (b) the wordings —to furnish within the specified period specified in the notice the information as to —is formatted wrongly as it is read in continuation to 243 (2) (b). It can be corrected to move the said wordings to next line as it has bearing on both (a) and (b).

225. The Ministry of Shipping accepted the suggestions.

226. The Committee recommends that the suggestions on clause 243(2) (b) may be carried out in the Bill.

227. **Clause 244**

244. (1) If it appears to the Central Government,—

(a) that measures have been taken by or under the law of any foreign country for regulating or controlling the terms or conditions upon which goods or passengers may be carried by sea, or the terms or conditions of contracts or arrangements relating to such carriage; and

(b) that such measures, in so far as they apply to things done or, to be done outside the territorial jurisdiction of that country by persons carrying on lawful business in India, constitute an infringement of the jurisdiction which belongs to India, it may, by an order in writing, direct that this section shall apply to those measures either in whole or to such extent as may be specified in the order.

(2) Where an order issued under sub-section (1) is in force in relation to any measures, it shall be the duty of every person in India who carries on business consisting or comprising of the carriage of goods or passengers by sea to give notice to the Central Government of any requirement or prohibition imposed or threatened to be imposed on him pursuant to such measures so far as this section applies to him, including any requirement to submit any contract or other document for approval thereunder.

(3) Where a notice under sub-section (2) is received from any person or there are grounds to believe that a notice is likely to be received, the Central Government may, by an order in writing, give to such person directions prohibiting compliance with any such requirement or prohibition as it considers proper for maintaining the jurisdiction of India.

(4) If it appears to the Central Government that any person in India has been or may be required to produce or furnish to any court, or authority of a foreign country any commercial document which is not within the territorial jurisdiction of that country or any commercial information to be compiled from documents not within the territorial jurisdiction of that country and that the requirement constitutes or may constitute an infringement of the jurisdiction which belongs to India, the Central Government may, by an order in writing, give directions to that person, prohibiting him from complying with the requirement except to such extent or subject to such conditions as may be specified in that order.

228. Clause 244 of the Bill seeks to empower the Central Government to protect the interest of Indian shipping from undue foreign intervention and stipulates certain measures by a foreign country which infringes the jurisdiction of India and which can be brought to notice of the Central Government by the Indian citizen carrying business in that country and the Central Government may in turn give order in writing prohibiting Indian citizens from complying with such measure. It further provides that the Central Government may by order in writing refuse to give commercial information to any court or authority of a foreign country and prohibits any

person from complying with such an order by foreign authority or court subject to the conditions as specified in the said order.

229. The stakeholders suggested that Clause 244 to be deleted as it is obsolete as the competition law has evolved and Indian competition law has developed in line with other countries. The convention such as high seas Intervention, 1969 does not find place in the proposed Bill.

230. The Ministry of Shipping did not accept the suggestion and stated that Clause. 244 deals with the powers of central government to protect interest of Indian shipping from undue foreign intervention. This is an existing power of the central government under the MS Act, 1958 and is essential in the interest of Indian shipping.

231. **The Committee notes the explanation given by the Ministry of Shipping.**

232. Clause 246

246. (1) Save as otherwise provided, this Part shall apply to vessels of the following description, namely:—

(a) sailing vessel;

(b) fishing vessel;

(c) vessel without mechanical means of propulsion;

(d) vessel whose net tonnage is less than fifteen and is engaged solely in coasting trade of India.

Explanation.—For the purposes of this section, the words "net tonnage" means the measure of the useful capacity of a vessel determined in accordance with the rules made in this behalf.

(2) The provisions of this Act, other than those contained in Part I, Part II, Part III, Part X, Part XIV and this Part, shall not apply to vessels under sub-section (1):

Provided that the Central Government may, by notification direct that any other provisions of this Act shall also apply to such vessels subject to such conditions, exceptions and modifications as may be specified in the notification.

233. **Clause 246 of the Bill seeks to provide for application of Part XIII. It applies to sailing vessel, fishing vessel, vessel without mechanical of propulsion and vessel whose net tonnage is less than fifteen and engaged solely in coasting trade of India and the extent to which other provisions in the Bill to apply to such vessel.**

234. As regards this Clause 246 (2) the stakeholders submitted that The provisions of this Act, other than those contained in Part 1, II,III, X and XIV and this part shall not apply to such vessel subject to such conditions, exceptions and modifications as may be specified in the notification. They have suggested the following modifications:

Replace section 246 (2) with the following :

(2) Unless otherwise expressly provided, no provisions contained in any other part of this Act shall apply to vessels covered under this part.

(3) The Central Government may by notification in the official Gazette, direct that any provisions of this Act other than those contained in this part which do not expressly apply to these vessels shall also apply to these vessels subject to such conditions, exceptions and modifications as may be specified in the notification.

Additional Remarks: Vessels covered under this part include non-self-propelled vessels and hence provision of other parts of the Act should not apply to these vessels. Part XII should be a

code in itself which regulates non-self-propelled vessels as application of provisions of any other part to these vessels may lead to unwarranted anomalies.

By means of a notification, the provisions pertaining to 'Registration' and Mortgages' may be extended to vessels covered under this part.

235. The Ministry of Shipping furnished their comments which stated that

all the provisions contained in Part I, II,III, X and XIV shall apply to vessels under Part XIII, the suggestion may not be accepted.

236. Clause 256

256. (1) Any person who contravenes any provision of this Act or fails to comply with any provision thereof, which it was his duty to comply with, shall be guilty of an offence committed under this Act.

(2) The offences mentioned in column (2) of the Table below shall be punishable to the extent mentioned in column (4) of the said Table with reference to such offence respectively.

(3) Any person who contravenes any provision of this Act or fails to comply with any provision thereof, which it was his duty to comply with, shall be guilty of an offence, and if in respect of any such offence, no penalty is specially provided in sub-section (2), he shall be punishable with fine which may extend to fifty thousand rupees.

(4) The Principal Officer may, after giving the parties an opportunity of being heard, by order in writing, impose penalties as specified in column (4) of the said Table.

(5) Any person aggrieved by the order under sub-section (4), may, within a period of thirty days from the date of receipt of such order, prefer an appeal before the Director-General in such form and manner as the Central Government may specify in this behalf.

(6) The Director-General may, after giving the parties an opportunity of being heard, within a period of thirty days from the date of receipt of the order under sub-section (5), pass appropriate order which shall be final and binding on all parties.

237. Clause 256 of the Bill seeks to provide the penalties for the contravention of the provisions as specified therein. It empowers the Principal Officer to impose the monetary penalty, against which an appeal shall lie to the Director-General. It further provides that the competency to sentence the imprisonment has been vested with the Court only and the table, *inter alia*, indicates the contravention made and the penalty to be imposed and specifying the competent authority for imposing such penalty.

238. The stakeholders have submitted in their memorandum to the Committee that no specific penalty has been prescribed in the table under Sec. 256(2) for not complying with the above section. However Sec. 256(3) states that — Any person who contravenes any provision of this Act or fails to comply with any provision thereof, which it was his duty to comply with, shall be guilty of an offence, and if in respect of any such offence, no penalty is specially provided in subsection (2), he shall be punishable with fine which may extend to Rs.50000.

239. This means that for not complying with Clause 256 the master may be fined only Rs.50000. This penalty is far too inadequate for the stated offence.

240. In M.S. Act 1958, under Sec. 436(2) item No. 109, the penalty prescribed for the above offence is 3 months imprisonment or fine of Rs.3000 or both.

In view of the above a specific adequate penalty for not complying with Sec 150 needs to be prescribed in section 256(2) of the Bill.

241. The Ministry of Shipping has replied that the penalty in 256 (3) is a general penalty provision. Over and above the general provision, Cl. 209 has a specific provision which covers violation of Clause. 150.

242. As regards Clause 256 (6) the stakeholders suggested that the Director General may after giving the parties an opportunity of being heard, within a period of thirty days from the date of receipt of the order under sub-section (5), pass appropriate order which shall be final and binding on all parties. It should also be considered that there may be an appellate authority to hear any appeals from the order of the DG Shipping.

243. The Ministry of Shipping did not accept the suggestions. They have stated that it is not felt necessary to provide for a mechanism for second appeal in the administrative setup. The affected parties can take recourse to judicial remedy available to them.

244. **The Committee notes the reply and recommends that the penalty provisions may be revisited by the Ministry and suitable amendments may be carried out under the above clause.**

245. **Clause 260**

260. (1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of its business, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary, or any other officer of the company, such director, manager, secretary, or other officer shall also be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

(a) "company" includes a co-operative society, a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

246. Clause 260 of the Bill seeks to provide that in case the person committing an offence under this Bill is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of its business, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly and if such person proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence, such person need not to be subject to punishment and at the same time if it is proved that the offence was committed with the consent or connivance of, or is attributable to any neglect, such person shall be punished accordingly as per provisions.

247. The stakeholders have pointed out that 'Company' is defined in Section II and later in the Safety and Security section of the Bill, the definition of 'Company' under Penalty and Procedures section again is going to be conflicting.

248. The Ministry of Shipping replied that 'Company' as the word has been used generally and also in some specific part. Definition given in definition clause will be applicable in general while the definition given in a particular part will be specific to that part.

249. The term ‘company’ as defined in clause 2 (8) of the Bill will apply to other provisions except for Part VI and Clause 260 of the Bill wherein the term ‘company’ has been defined to be made applicable for that Part/Clause.

250. In Safety and Security Part VI clause 111 (a), the term ‘company’ covers owner of the vessel, other organization , etc who has assumed the responsibility of operation of the vessel and has agreed to take over all duties and responsibilities imposed by the international safety management code under the safety convention. This definition is as per the International Safety Management Code of IMO.

251. The term ‘company’ used in clause 260, which deals with offences committed by companies, includes offences committed by cooperative society, firm or other association of individuals.

252. The Committee notes the reply given by the Ministry of Shipping and understands that the definition of ‘Company’ in this clause is applicable to situations under the Clause 260 only.

253. The Committee approved other Clauses of the Merchant Shipping Bill, 2016 without any modification.

General Observations and Recommendations

254. Sections 40-43, 60-63, 101,115, 118, 120, 127, 145, 149, 150, 160, 190, 200, 209, 220, 253 and many others are too long, confusing, duplicating or containing details not fit for primary legislation. The Bill has been drafted in a hasty and perfunctory manner leading to many loopholes, lacunae and possibility of multiple interpretation. The Ministry of Shipping noticed the defects only when various representationists pointed out them. Therefore, the Committee recommends that all the clauses of the Bill may be revisited by the Ministry to ensure that the clauses are devoid of misinterpretation and loopholes.

255. The Committee feels that abundant precaution should be taken against all possible misuse of the provisions of the Bill, particularly dealing with inspection, control, detention, etc of the ships. The Committee strongly recommends that adequate safeguards and preventive mechanism should be built into the system sought to be put in place for this purpose.

RECOMMENDATIONS/OBSERVATION/CONCLUSIONS-AT A GLANCE

Clause 2

The Committee notes the explanation given by the Ministry of Shipping as regards the concerns raised by the stakeholders. The Committee recommends that the Ministry of shipping may clear all the ambiguities in this Clause in the final Bill.

(Para:20)

Clause 3

The Committee agrees with the views/comments of the Ministry of Shipping on the issues raised by stakeholders. However, Committee recommends that the necessary changes as accepted by the Ministry of Shipping may be carried out in the Bill.

(Para:24)

Clause 4

The Committee notes the issues raised by the stakeholders and the reply furnished by the Ministry of Shipping on certain sub clauses in the Bill. The Committee suggests that the Government of India should make all efforts to increase the employment avenues to Indian seafarers. The Committee recommends that while upholding the national interest National Shipping Board should be properly represented by all the important stakeholders in the Shipping sector.

(Para:29)

Clause 5

The Committee notes the reply furnished by the Ministry of Shipping.

(Para:34)

Clause 7

The Committee recommends that the duties and responsibilities of the Nautical Advisor and the Chief Surveyors and their eligibilities for selection to those posts should be clearly mentioned while making rules to this Clause.

(Para:39)

Clause 14

The Committee recommends that the Ministry of Shipping may have a relook into the amendments suggested by the stakeholders and make changes in the Bill wherever possible.

(Para:43)

Clause 15

The Committee notes the views of the Ministry of Shipping and recommends that necessary provisions may be incorporated while framing Rules/Regulations in order to address the concerns raised by the stakeholder.

(Para:49)

Clause 19

The Committee notes that the suggestions made by the stakeholders have certain merit. The Committee, therefore, recommends that Ministry of Shipping may include provisions for addressing the issues raised by the stakeholders regarding the vessels on cross trade.

(Para:56)

Clause 20

The Committee is of the view that the point raised by the stakeholders needs to be considered seriously and there should be some provisions/tools with the master of the Ship to verify the authenticity of the certificate, as the technology has so advanced that people misuses it and make documents which looks as perfect as the original ones.

(Para:61)

Clause 30

The Committee recommends that necessary provisions may be given while framing Rules so that there should not be any room for ambiguity as regards how a mortgagee should proceed with sale of vessel.

(Para:66)

Clause 34

The Committee recommends that necessary provisions regarding stamping of IMO number should be incorporated in the Rules.

(Para:71)

Clause 49

The Committee notes the concerns pointed out by the stakeholders regarding the BBGD vessels getting permission for costing trade in India. The Committee, taking into account, the reply given by the Ministry of Shipping, recommends that the concerns raised by the stakeholder should be addressed through secondary legislation to be made under Clause 50 (2) (a) of the Bill.

(Para:76)

Clause 50

The Committee notes the reply given by the Ministry of Shipping over the issue raised by the stakeholder.

(Para:81)

Clause 52

The Committee notes the reply furnished by the Ministry of Shipping on the point raised pertaining to the instant Clause and recommends that the procedural matters may be addressed at the secondary or tertiary legislations.

(Para:86)

Clause 53

The Committee recommends that the reasonable power should remain with the Government of India.

(Para:92)

Clause 57

The Committee notes the reply of the Ministry of Shipping and recommends that necessary amendments may be carried out to Clause 57 (1) & 57(3) to include the Indian vessels.

(Para:97)

Clause 61

The Committee recommends that "recruitment and placement service" may be clearly mentioned while framing the Rules and any ambiguity as pointed out by the stakeholders may be addressed properly.

(Para:102)

The Committee further recommends that while framing the recruitment and placement service rules (RPS Rules), abundant care should be taken to safeguard the welfare of the Indian seafarers working in outside Indian waters and also those working for foreign ship owners. The RPS rules should be in tune with the Maritime Labour Convention.

(Para:103)

Clause 62

The Committee agreed to the views expressed by Ministry of Shipping and recommends that stakeholders may be consulted while framing the Rules under this clause.

(Para:108)

Clause 63

The Committee notes the reply furnished by the Ministry of Shipping.

(Para:112)

Clause 64

The Committee observes the issues raised by the seafarer unions regarding the state of seafarers in the stranded ships where the seafarers are ill treated by the ship owners and masters. The Committee took a serious view of the matter. The Committee recommends that Ministry of Shipping should have some mechanism to consider and handle such instances seriously and the concerns as explained above may be rigorously addressed and necessary provisions may be included in the Bill.

(Para:121)

Clause 66

The Committee noted the apprehensions raised by the Trade Unions and replies furnished by the Ministry of Shipping. The Committee recommends that Ministry of Shipping in consultation with the trade unions of seafarers may reformulate Clause 66 so that the apprehensions raised by the unions are suitably addressed.

(Para:127)

The Committee takes a view that the role of the Trade Unions should be clearly recognized in the Merchant Shipping Bill, 2016 in the mutual interest of both seafarers and ship owners for which express provisions may be made in the M.S.Act.

(Para:128)

Clause 67

The Committee notes that the apprehension raised by the Seafarer Union appears to be a genuine one and the Committee recommends that this aspect may be considered seriously and necessary safeguards may be provided to ensure maximum job opportunities to Indian seafarers.

(Para:133)

Clause 69

The Committee recommends that the amendments as suggested by the unions may be suitably incorporated in the Bill.

(Para:138)

The Committee also recommends that the DG Shipping should be given powers to penalize the manning agents or the ship owners in case they fail to make due payment of wages to seafarers. The government should protect the seafarers from the exploitation by manning agents and the ship owners. The Committee recommends that necessary provisions may be incorporated in the Bill to safeguard the interests of the seafarers.

(Para:139)

Clause 83

The Committee notes the reply furnished by the Ministry of Shipping in this regard.

(Para:144)

Clause 90

The Committee notes the point raised and the reply furnished by the Ministry. The Committee recommends that there should be proper forum and procedure available for the seafarers to lodge their complaints and the provisions may be clearly mentioned in the Rules/Regulations.

(Para:149)

Clause 125

The Committee notes the reply given by the Ministry and recommends that necessary provisions as pointed out by the stakeholder may be considered at the time of framing of rules/Regulations.

(Para:154)

Clause 129

The Committee notes the points raised and the reply furnished by the Ministry. The Committee recommends that necessary provisions may be incorporated in the Rules/Regulations.

(Para:159)

Clause 140

The Committee notes the reply and recommends that necessary provisions may be provided under the rules to accommodate the suggestion on ship certificates under this clause.

(Para:169)

Clause 150

The Committee notes that there were instances of killing of fishermen of small fishing boats or collision of small boats along the Indian shores. The issues are serious and need to be addressed effectively. The Committee recommends that the Government should come out with proper policy in this regard and appropriate punishments provisions should be made in the Bill.

(Para:175)

Clause 169

The Committee recommends that provisions for international conventions may be incorporated in Clause 169.

(Para:180)

Clause 179

The Committee notes the reply furnished by the Ministry of Shipping.

(Para:185)

Clause 185

The Committee notes that due diligence and care was not taken while drafting the Bill. The mistake has been realized by the Ministry only when the stakeholders have pointed it out. The Committee notes the reply furnished by the Ministry and recommends that the provisions as mentioned by the stakeholders may be incorporated in the Bill under Clause 185.

(Para:190)

Clause 189

The Committee notes the reply furnished by the Ministry of Shipping, in this regard.

(Para:195)

Clause 207

The Committee agreed to the points as explained by the Ministry of Shipping in this direction.

(Para:200)

Clause 209

The Committee notes the assurance of the Ministry of Shipping that no order under this clause shall be passed unless the person concerned has been given an opportunity of making a representation against such order. The Committee recommends that the person

affected should be given every opportunity to ensure that due process of law is followed in letter and spirit.

(Para:205)

Clause 224

The Committee notes the reply furnished by the Ministry of Shipping in this regard.

(Para:210)

The Committee observes that there are lots of probabilities of a grievance that can arise at any stage of the salvage operation, wreck removal etc. The Committee, therefore, recommends that necessary provisions for redressal of grievances should be incorporated suitably in the Bill.

(Para:211)

Clause 237

The Committee notes the comments of the Ministry of Shipping in this regard.

(Para:216)

Clause 240

The Committee recommends that the modifications to the Clause 240(5) may be made in the Bill as per the suggestion given by the stakeholder.

(Para:221)

Clause 243

The Committee recommends that the suggestions on clause 243(2) (b) may be carried out in the Bill.

(Para:226)

Clause 244

The Committee notes the explanation given by the Ministry of Shipping.

(Para:231)

Clause 256

The Committee notes the reply and recommends that the penalty provisions may be revisited by the Ministry and suitable amendments may be carried out under the above clause.

(Para:244)

Clause 260

The Committee notes the reply given by the Ministry of Shipping and understands that the definition of 'Company' in this clause is applicable to situations under the Clause 260 only.

(Para:252)

The Committee approved other Clauses of the Merchant Shipping Bill, 2016 without any modification.

(Para:253)

General Observations

Sections 40-43, 60-63, 101,115, 118, 120, 127, 145, 149, 150, 160, 190, 200, 209, 220,

253 and many others are too long, confusing, duplicating or containing details not fit for primary legislation. The Bill has been drafted in a hasty and perfunctory manner leading to many loopholes, lacunae and possibility of multiple interpretation. The Ministry of Shipping noticed the defects only when various representationists pointed out them. Therefore, the Committee recommends that all the clauses of the Bill may be revisited by the Ministry to ensure that the clauses are devoid of misinterpretation and loopholes.

(Para:254)

The Committee feels that abundant precaution should be taken against all possible misuse of the provisions of the Bill, particularly dealing with inspection, control, detention, etc of the ships. The Committee strongly recommends that adequate safeguards and preventive mechanism should be built into the system sought to be put in place for this purpose.

(Para:255)
