

Bill Summary

The Merchant Shipping (Amendment) Bill, 2015

- The Merchant Shipping (Amendment) Bill, 2015 was introduced in Lok Sabha on August 10, 2015 by the Minister of Shipping, Mr. Nitin Gadkari. The Bill amends the Merchant Shipping Act, 1958 to ensure compliance with the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001. The Convention ensures that adequate, prompt, and effective compensation is available to persons who suffer damage caused by oil spills, when carried as fuel in ships' bunkers.
- The Bill also makes amendments to bring provisions of the Act in line with the Nairobi International Convention on the Removal of Wrecks, 2007, and the International Convention on Salvage, 1989. Key provisions of the Bill include:
 - **Liability for bunker oil pollution:** The ship owner's liabilities will include: (i) any pollution damage caused outside the vessel by contamination resulting from the discharge, (ii) the cost of any measures taken for preventing or minimising any pollution damage, and (iii) any damage caused by any such preventive measures. For government (Indian or foreign) owned ships being used for commercial purposes, the concerned government will be liable for pollution damage.
 - **Exemption from liability:** A ship owner will not be liable for pollution damage if he proves that the damage: (i) resulted due to an act of war, hostilities or an inevitable natural phenomenon, (ii) was wholly caused by an act with the intent to cause such damage, by any person other than the employee or the agent of the owner, or (iii) was wholly caused by the negligence or wrongful act of the government. The owner may also be exempt from any liability if he proves that the pollution damage resulted wholly or partially through the wilful act, or omission, or negligence by the person who suffered damage.
 - **Determination of claims:** Under the Act, ship owners are eligible to limit their liability in case of certain damages. Under the Bill, when a claim regarding bunker oil pollution has been raised against a ship owner, he may make an application to the High Court to determine the limitation of his liability. The High Court will determine the claims amount in accordance with the limitations and distribute it among the claimants. The right to claim compensation will be extinguished within three years of the incident (and in no case can be extended beyond six years from the date of the incident).
- **Insurance or financial security:** Every owner of a ship with more than 1,000 gross tonnage will be required to maintain compulsory insurance coverage or financial security, as may be prescribed. The Director General will issue a certificate to all such ships that maintain the required insurance or financial security.
- **Reporting and determination of wrecks:** When any Indian ship is involved in a wreck, the master and operator of the ship will report such incident to the Director General. Whether a wreck poses a hazard will be determined on the basis of several criteria which include: (i) type, size and construction of the wreck, (ii) proximity of shipping routes or established traffic lanes, (iii) submarine topography of the area, (iv) nature and quantity of the wreck's cargo and oil, and (v) proximity of offshore installations, pipelines, telecommunication cables and similar structures.
- **Liability of owners in case of wrecks:** The ship owner shall be liable for the costs of locating, marking and removing the wreck unless he proves that the wreck: (i) resulted from an act of war, or a natural phenomenon of an inevitable character, (ii) was caused by wilful acts or omission of a third party, or (iii) was caused by the negligence or wrongful act of the government.
- **Salvage operations:** Salvage operation means any activity undertaken to assist a ship in danger in navigable waters. Salvage operations which have had a useful result have right to a reward (salvage). Salvage will be payable by the owner of a vessel when services are rendered: (i) in saving life from any ship in the territorial waters of India, (ii) in assisting a ship which is wrecked or stranded, or (iii) by any person other than the receiver of wreck in saving any wreck.
- The Bill also has provisions regarding insurance and determination of claims in case of wrecks and salvage operations.

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Prachee Mishra

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prachee@prsindia.org