



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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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.

m) Provisions enabling seafarers held in captivity to get wages have been incorporated. Seafarer held in captivity including in piracy situations will receive wages till they are released and reach home safely. This will benefit Indian seafarers in case of unfortunate situations of hostages by pirates or otherwise.

n) Provisions introduced for insurance of crew engaged on fishing, sailing, vessels without mechanical means of propulsion and vessels with less than 15 net tonnage. Earlier there was a provision for framing a scheme for such crew, however, no such scheme was framed. Now, the owners of such vessels have been made responsible for taking an insurance policy for the crew of the vessels, for an amount, which is to be notified by the Central Government thereby benefiting the seafarers working on such vessels which are otherwise not covered under Maritime Labour Convention, 2006.

o) Provisions to give effect to the Seafarers Training Certification and Watchkeeping (STCW) Convention have been added in the Bill. Incorporation of the provisions of STCW Conventions, which were not adequately reflected in the Act earlier, will enable an effective monitoring of maritime training and education leading to grant of Certificate of Competency & Certificate of Proficiency in accordance with the mandate of the STCW Convention, 1978. This will improve the quality of Indian seafarers and make them more competitive in global market.

(iv) Requirement of reforms w.r.t. safety, security and environmental protections:

p) The provisions empowering the Central Government to give directions to the ship-owners for taking security measures as may be necessary have been added in the Bill, for ensuring the security of life, vessel, cargo and other properties.

q) The provisions of Annex-VI [Control of Air Pollution from ships] to International Convention for the Prevention of Pollution from Ships (MARPOL) have been incorporated in the Bill. It will facilitate the control of air pollution from ships and thereby contribute in clean and safe environment.

r) International Convention on Civil Liability for Bunker Oil Pollution Damage [Bunker Convention] has been incorporated. The Convention requires ships over 1,000 gross tonnage to maintain insurance or other financial security. It will ensure adequate, prompt, and effective compensation to persons who suffer damage caused by spills of oil in Indian waters, when oil is carried as fuel in ships' bunkers. India proposes to become a party to this Convention upon enactment of this Bill.

s) Nairobi International Convention on the Removal of Wrecks has been incorporated. The registered ship-owner is required to maintain compulsory insurance or other financial security to cover liability under the convention. It provides the legal basis for States to remove, or have removed, shipwrecks that may have the potential to affect adversely the safety of lives, goods and property at sea, as well as the marine environment. India is a party to this Convention.

t) International Convention on Salvage has been incorporated. It provides the salvage award taking into account the skill and efforts of the salvors in preventing or minimizing damage to the environment. India is a party to this Convention.

u) International Convention for the Control and Management of Ships' Ballast Water and Sediments has been incorporated. All ships will be required to have a Ballast Water and Sediments Management Plan and to carry a Ballast Water Record Book international ballast water management certificate. It will ensure the safe and clean marine environment and protect

Indian water from pollution. India proposes to become a party to this Convention upon enactment of this Bill.

v) International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties has been incorporated. It will give the Central Government the right to take such measures on the high seas as may be necessary to prevent, mitigate or eliminate danger to its coastline or related interests from pollution by oil or the threat thereof, following upon a maritime casualty on high seas. India is a party to this Convention.

w) For the purpose of safety and management, the provisions related to International Ships and Port Security [ISPS] and International Safety Management [ISM] code have been incorporated into the Bill. Such provisions will enable the safety and security management of Indian ships, thereby ensuring the safety and security.

(v) Provisions relating to effective compliance of the Act:

x) Amount of penalties has been revised with power of imposing the same through the Principal Officer [PO] of Mercantile Marine Departments [MMDs] with an appellate mechanism vested with DG Shipping. However, power of imprisonment to be vested with the courts only. For small violation, the action in the courts may delay the movement of the vessels, which will cause financial and other losses, hence imposition of fine by POs will facilitate the ship-owners from lengthy court proceedings

(vi) Other reforms introduced in the Bill:

i) Pilgrim ships are no longer relevant in the current context and those provisions being anachronistic now, have been deleted, after due consideration.

ii) The volume of the Bill (560 sections) have now been meticulously shortened to 280 sections in the Bill. Similarly, 25 Chapters/Parts have been reduced to 16 Chapters/Parts.

iii) Procedural matters have been delinked from the Bill and in lieu they are proposed to be prescribed through secondary legislations (Rules/Regulations) or tertiary legislations (executive instructions) drawing powers from the substantive provisions of the Bill.

(vii) Merchant Shipping Bill and its interface with the Ports:

a) Shipping and port facilities are closely related. The obligations of the member states relating to safety, security, reception facilities for vessels calling at the ports, safe navigation and control measures for the ships while in ports and welfare & re-creation of seafarers visiting the port area largely depend on the ports. Part VI of the Merchant Shipping Bill, 2016 deal with the safety and security management. This Part makes the ports responsible to comply with the requirements as may be prescribed for safety and security management in accordance with the ISPS Code. The Central Govt. has been authorized to set different levels of security and is responsible to provide information of the levels of security to all the port facilities and the vessels entering these facilities. This Part also provides for the audit of the port facility to see whether it complies to the ISPS Code. Part VI of the proposed Bill dealing with 'Safety and Security', empowers the ports, terminals, anchorages and port facilities to prevent any vessel from entering into their facility without proper insurance and certification relating to classification and condition of vessel or any other relevant requirements as may be prescribed.

b) Similarly, Part VII of the draft Bill deals with the reception facilities. This Part also states that the ports, offshore facilities and terminals shall provide such reception facilities and surveillance, supervision and guidance as may be prescribed. The Central Govt. can give

directions to the port facilities and terminals, for providing reception facility within its territory so that the wastes generated during operation, repair and re-cycling of vessels are collected, handled, treated and disposed of in a safe and environmentally sound manner. This Part also empowers the port to provide reception facilities in accordance with the requirements of the MARPOL Convention and impose such charges for the use of such facilities as notified, by the Central Govt.

c) India is also a party to the Safety Convention (SOLAS) which requires that obligations relating to Radio Communications and Safety of Navigation are complied by the ports in India. The SOLAS Convention deals with Global Maritime Distress and Safety Systems (GMDSS) and obligates the Member States to make arrangements for registering the Global Maritime Distress and Safety Systems (GMDSS) identities and for giving information about these identities to the rescue coordination centres on a 24 hour basis. The identities of these centres are also to be made available to the international organizations maintaining registration of these identities. This Convention also requires the contracting parties to establish Vessel Traffic Services (VTS) to provide safe and efficient navigation to the vessels for protection of the marine environment adjacent to shore areas. Establishment of VTS becomes the sole responsibility of the ports. The ports who plan and implement VTS have to follow the guidelines developed by the International Maritime Organization. The SOLAS Convention also requires the ports to provide such aids to navigation as the volume of traffic justifies and the degree of risk require. In order to achieve uniformity in the aids of navigation, the ports have to take into account the international recommendations and guidelines of IALA when establishing such aids. The ports have to also arrange to disseminate information relating to aids of navigation to all concerned. As far as practicable, the ports are also to avoid any changes in the position-fixing systems as they adversely affect the performance of receivers fitted in the ships.

(vii) Expected Benefits:

a) Through this Bill significant improvements are envisaged across the various operational areas such as maritime safety, maritime security, marine environmental pollution control, maritime education and training, seafarer's welfare etc. The provisions relating to substantial ownership, bare-boat charter-cum-demise, Indian controlled tonnage, *inter alia*, are expected to stimulate investment in the Indian shipping industry, leading to a potential rise in the Indian shipping tonnage/merchant shipping fleet. The British era enactment of Coasting Vessels Act 1838 will stand repealed as a whole and several archaic provisions will be dispensed with. The Bill is expected to usher in a more simpler, user-friendly, transparent, cost effect, stable system for sustainable development and growth of Indian shipping industry.

12. The Committee heard the views of the Secretary, Ministry of Shipping, and other senior officials of the Ministry on the provisions of the Bill 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. Besides, the individuals/organizations who submitted written memoranda to the Committee on different aspects to various clauses of the Bill are given in Annexure-II. The Committee also sought comments from the Ministry of Shipping on the points raised in various representations received by it. The Committee also considered the background note and replies to queries furnished by the Ministry of Shipping while preparing the report.

13. The Committee considered all the Clauses of the Merchant Shipping Bill, 2016 in details. The succeeding paragraphs will explain the views of various stakeholders interacted with

the Committee, the feedback received from the Ministry of Shipping, observations made by the Committee and its recommendations on various Clauses of the Bill.

14. **Clause 2**

2. (1) Unless otherwise expressly provided, the provisions of this Act shall apply to,—

(a) any vessel which is registered in India; or

(b) any vessel which is required by this Act to be so registered, wherever it may be.

(2) Unless otherwise expressly provided, the provisions of this Act which apply to vessels other than those referred to in sub-section (1) shall so apply only while any such vessel is within India or in waters within the jurisdiction of India.

(3) Subject to sub-section (2) and unless otherwise expressly provided, the provisions of this Act shall not apply to Indian controlled tonnage vessels.

Notes on Clauses

15. Clause 2 of the Bill seeks to provide for application of the Bill. It specifies the application of the Bill to the vessels registered, vessels required to be registered and vessels other than preceding two categories. It also specifies the extent of application of the Bill to Indian controlled tonnage vessels.

16. One of the stakeholder pointed out that Section 2 (1), (2), (3) brings in the expression, "unless otherwise expressly provided", which restricts the application of the provision of the Act left to varied interpretations and comes in the way of Ease of Business

17. However, the Ministry of Shipping did not accept this issue raised, and they have submitted to the Committee that apart from Indian vessels there are two other categories of vessels, that is foreign vessels and Indian controlled tonnage vessels. Clause 2 (2) will apply to foreign vessels and Indian controlled tonnage vessels while in Indian waters. Under clause 2 (3) the provisions of the Bill will not apply on Indian controlled tonnage vessels when they are not in Indian waters.

18. However, the term 'unless expressly provided' has been used to cover those Parts of the Bill where an express provision has been made for applicability of that part/section to foreign vessels and/or Indian controlled tonnage vessels. Therefore, it only removes ambiguity and does not create ambiguity. The Ministry of Shipping further submitted that this is the legal formulation for application of an Act and duly vetted by the Ministry of Law.

19. The Ministry of Shipping has further clarified that the purpose of clause 2(2) is to clarify the applicability of the provisions of the Bill to foreign vessels when they are in Indian waters. The purpose of Clause 2(3) is to clarify that the provisions of the Bill that are applicable to foreign vessels in Indian waters would also be applicable to Indian Controlled Tonnage vessels when they are in Indian waters. This is a definition clause for Indian Controlled tonnage vessel.

20. **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.**

21. **Clause 3**

3. In this Act, unless the context otherwise requires,—

(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:

Provided that if a person by notice in writing to the Central Government expresses her desire to exclude her husband from the family, the husband and his dependent parents shall no longer be deemed to be a part of such person's family for the purpose of this Act, unless such person subsequently cancels in writing any such notice.

Explanation.— In either of the above two cases, if the child, or, as the case may be, the child of deceased son of a person has been adopted by another person and if, under the personal law of the adopter, adoption is legally recognised, such a child shall be considered as excluded from the family of the first mentioned person;

(16) "fishing vessel" means a vessel which is exclusively engaged in fishing in the seas;

(17) "gross tonnage" means the measure of the overall size of a vessel determined in accordance with the rules made in this behalf;

(18) "High Court", in relation to a vessel, means a High Court within the limits of whose appellate jurisdiction,—

(a) the port of registry of the vessel is situate, or

(b) the vessel is for the time being, or

(c) the cause of action, wholly or in part, arises;

(19) "Indian consular officer" means the consul-general, consul, vice-consul, consular agent and pro consul appointed as such by the Central Government and includes any person authorised by the Central Government to perform the functions of consul-general, consul, vice-consul, consular agent and pro consul;

(20) "Indian controlled tonnage vessel" means an Indian vessel, other than an fishing vessel or sailing vessel, registered at a port or place in a country other than India under sub-section (2) of section 14;

(21) "Indian ship" or "Indian vessel" means a ship or a vessel, as the case may be, which is substantially owned by the person referred in sub-section (3) of section 14;

(22) "LLMC Convention" means the convention on Limitation of Liability for Maritime Claims, 1976;

(23) "Maritime Labour Convention" means the Maritime Labour Convention, 2006;

(24) "MARPOL Convention" means the International Convention for the Prevention of Pollution from Ships, 1973 and Protocols;

(25) "master" includes any person (except a pilot or a Harbour Master) having command or charge of a vessel;

(26) "notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;

(27) "owner", in relation to a vessel means the person to whom the vessel or a share in the vessel belongs;

(28) "passenger" means any person carried on board a vessel, except—

(a) a person employed or engaged in any capacity on board the vessel on the business of the vessel;

(b) a person on board the vessel either in pursuance of the obligations laid upon the master to carry shipwrecked, distressed or other persons or by reason of any circumstances which neither the master nor the charterer, if any, could have prevented or forestalled; and

(c) a child under one year of age;

(29) "passenger vessel" means a vessel carrying more than twelve passengers;

(30) "Pollution damage" means,—

(a) loss or damage caused outside the vessel resulting from the escape, emission or discharge of cargo, oil or any other material from the vessel, wherever such escape, emission or discharge may occur, or

(b) the costs of preventive measures and further loss or damage caused by preventive measures;

(31) "Pollution prevention convention" means any convention relating to prevention of pollution from vessels, to which India is a Party; including MARPOL

Convention, Anti-fouling Systems Convention and Ballast Water Management Convention;

- (32) "port" means the port as defined in clause (4) of section 3 of the Indian Ports Act, 1908;
- (33) "port authority" means,—
- (a) in relation to any major port, the Board of Trustees, or, as the case may be, the Board of Directors, in respect of that port constituted under any law for the time being in force;
- (b) in relation to any other port, the conservator of the Port appointed under section 7 of the Indian Ports Act, 1908;
- (c) in relation to any terminal or place not forming a part of a port, the person under whose supervision the terminal or place is operated;
- (34) "port of registry", in relation to a vessel, sailing vessel, fishing vessel or any other vessel, means the port at which she is registered or is to be registered;
- (35) "prescribed" means prescribed by rules made under this Act;
- (36) "Principal Officer" means an officer referred to in section 9 of this Act;
- (37) "proceeding" includes any suit, appeal or application under this Act;
- (38) "proper officer" means the officer designated by the Central Government to be the proper officer at the port or place and in respect of the matter to which the reference is made in the provision of this Act, in which the expression occurs;
- (39) "proper return port" means such port as is agreed upon by the seafarer, and his employer in the agreement or otherwise, or in the absence of agreement, the port where the seafarer was employed or joined the vessel;
- (40) "property", in relation to a seafarer, includes personal effects;
- (41) "reception facilities", in relation to a port, terminal ship yard, ship repair facility or ship recycling facility, means facilities for enabling vessels using the port, terminal ship yard, ship repair facility or ship recycling facility to discharge or deposit any substance subject to control by the Pollution prevention conventions;
- (42) "Registrar" means the Registrar referred to in section 15;
- (43) "registered owner" means the person or persons registered as the owner of the vessel;
- (44) "removal" means any form of prevention, mitigation or elimination of the hazard created by a wreck, and the expressions "remove", "removed" and "removing" shall be construed accordingly;
- (45) "rule" means the rule made under this Act;
- (46) "Safety Convention" means the International Convention for the Safety of Life at Sea, 1974 and its Protocols;
- (47) "sailing vessel" means any wooden vessel of primitive build provided with sufficient sail area for navigation under sails alone, whether or not fitted with mechanical means of propulsion, but does not include a pleasure craft.
- Explanation.*— For the purposes of this clause "wooden vessel of primitive build" means a wooden vessel of traditionally built not primarily propelled;
- (48) "Salvage" means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever;
- (49) "Salvage Convention" means the International Convention on Salvage, 1989;
- (50) "salvor" means any person rendering services in direct connection with salvage operation;
- (51) "sea-going", in relation to a vessel, means a vessel proceeding or intending to proceed beyond waters declared to be inland waters by the Central Government or State Government by notification;
- (52) "seafarer" means any person who is employed or engaged or works in any capacity on board a sea-going vessel, but does not include,—
- (i) a person who is in the employment or engagement or work on board in any capacity in a warship or any Government vessel used for military or noncommercial purposes, or
- (ii) any other person as the Central Government may, by notification, specify;

(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
reduce transport and logistics costs.	required for promotion of coasting trade.
110. Section 3-subclause 15 -definition of —family should be simplified & up dated. "Family means lawfully wedded spouse and children below 18 years and dependent parents for the purpose of this act.	Not accepted. This is an existing definition taken from the existing Act. The removal of provisos in this case may result in unintended legal complications.
Clause 3 (15): is unnecessary in MS Act.	Not accepted. Definition of the term ‘family’ in Cl. 3 (15) is essential as the term has been used in the Bill. This is an existing definition taken from MS Act, 1958 and is interpreted while dealing with issues relating to seafarers claims especially in case of some mishappenings.
Clause 3 (8) —company means a company as defined in clause (20) of section 2 of the Company Act 2013. Additional Comments: Does this agree with all conventions definition of company. Can a single person (a proprietor not own a ship?)	Not accepted. The specific definition of company for the purposes of Convention requirement has been incorporated in the specific Part eg. Part VI.
Clause 3(18). High court definition be expanded to be in line with the Admiralty bill and should be open to all high courts of the country.	Not accepted. Definition is as per normal practice followed in civil matters under Civil Procedure Code. The admiralty Bill gives power to coastal High courts only for specified maritime claims.
Clause 3(20) — Indian controlled tonnage vessel means an Indian vessel, other than a fishing vessel or sailing vessel, registered at a port or place in a country other than India under	This is a definition clause for Indian Controlled tonnage vessel.
Clause 3 (22) LLMC Convention should read as "means the Convention on Limitation of Liability for Maritime Claims, 1976, as may be amended thereafter. Views: The LLMC has gone through various changes, new one being 1996 which India is party to. Similarly wherever, the Conventions are listed elsewhere in the definition wordings "as may be amended thereafter.	Not accepted. 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.
Clause 3 - subsection 28- -Passenger. Why only child below one year of age? Para C - any child under 18 years of age, unless one	Not accepted. This is an existing definition which has stood the test of time. The minimum age of seafarer/trainee is as per

Views of the individual/organization	Views/comments of the Ministry of Shipping
is more than 16 years of age and is employed as trainee / apprentice on board the ship and is duly bound by the terms of employment.	Maritime Labour Convention.
Clause 3 (31) the definition reads as India is a party, including Marpol..." may be amended to read as "... India is a party, and shall include but not limited to Conventions as Marpol..." Views: The drafting in such a manner shall ensure the new Conventions that India is party to can be included too.	Not accepted. The term ‘pollution prevention convention’ is defined in Cl. 3 (31) as ‘any convention relating to prevention of pollution from vessels to which India is a party’. This is an inclusive definition and any new pollution prevention convention to which Indian may become a party shall be covered
33. Views: Section 3 The term ICTL has to be defined through the rules and hence the subsection may be modified to bring in clarity. In the present condition, it is not clear whether the ICTL vessel will have Indian Flag or foreign flag so that the Indian Seafarers interests can be protected.	Not accepted. It appears that ICTL is referred for Indian Controlled Tonnage Vessels. A term which is used in the Bill has to be defined in the Bill itself. Indian Controlled Tonnage vessel will be having a flag of the country in which it is registered.
Clause 3(46). To include amendments along with protocols.	Not accepted. Amendment is part of the principal Convention and are not required to be mentioned separately
Clause 3(47) Sailing vessel should include any other vessel including wooden vessel such as Fiber glass and any other such material allowed for ship.	Not accepted. As per the definition given under SOLAS Convention sailing vessels are wooden vessels of primitive construction.
Clause 3, (52). Seafarer definition is not in line with ILOs Maritime Labor Convention, it may be amended. (The present definition does not include Trainee, Cadet or any person, even though they are also engaged in ships by the shipowner).	Not accepted. The definition of seafarer is taken from the existing Act which was introduced taking into consideration the definition of ‘seafarer’ in the Maritime Labour Convention, 2006 (MLC). MLC defines ‘seafarer’ as —any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies”. The words —in any capacity cover trainee, cadet or any person engaged on the ships
Clause 3 - sub section 52- seafarer -there are dispute and arguments about cadets & trainees being a seafarer and not covered under MLC. These ranks must be covered under MLC to remove ambiguity. Do we still need to have indentures and shipping	Not accepted. Cadets and trainees are covered under MLC.

Views of the individual/organization	Views/comments of the Ministry of Shipping
<p>masters, when MLC is in place? Trainee seafarer —should include cadets and trainees, in any ship and any other person subject to tripartite exemption provisions.</p>	
<p>Clause 3 (52) — Seafarer means any person who is employed or engaged or works in any capacity on board a sea-going vessel, but does not include,- (i) a person who is in the employment or engagement or work on board in any capacity in a warship or any Government vessels used for military or noncommercial purpose, or (ii) any other person as the Central Government may, by notification, specify;</p> <p>Recommendations Trainees, special personnel and supernumerary etc. are not seafarers and accordingly proposed to be excluded. Explanatory remark Self explanatory. The concept of —trainees is absent in other countries and therefore they have not been referred to in their national legislation. Due to the tonnage tax scheme, the Indian ship-owners are training cadets to become officers. Legally and technically, a cadet can only become a seaman upon his or her completing the training. Therefore, even legally trainees cannot be called as ‘_seafarers’. The Maritime Union of India which represents officers have also agreed and submitted in writing that they have no objection to trainees not be classified as —seafarers This had been submitted to the office of the Director General of Shipping and</p>	<p>Not accepted. The definition of seafarer is taken from the existing Act which was introduced vide an amendment in December 2014. The said definition was introduced taking into consideration the definition of seafarer in the Maritime Labour Convention, 2006. Maritime Labour Convention defines seafarer as —any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies”. It further defines ship as a —ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply”. Maritime Labour Convention applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks. This Convention does not apply to warships or naval auxiliaries. Maritime Labour Convention applies to all the seafarers. MLC provides that in the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Convention, the question shall be determined by the competent authority in each Member after consultation with the shipowners‘ and seafarers‘ organizations concerned with this question. Accordingly in the proposed Bill the seafarer has been defined as any person who is employed or engaged or works in any capacity on board a sea-going vessel, but does not include,- (i) a person who is in the employment or engagement or work on board in any</p>

Views of the individual/organization	Views/comments of the Ministry of Shipping
	capacity in a warship or any Government vessel used for military or noncommercial purposes, or (ii) any other person as the Central Government may, by notification, specify. The present definition does not exclude the trainee cadet. Unless any category of person is specifically excluded same would be covered under the proposed Bill.
Clause 3(55). To include —securing of cargo	Not accepted. The definition of seaworthy is wide enough to cover any aspect which makes the vessel unfit for the voyage.
Unseaworthy vessel: Following new provision has been introduced in the Bill— Sec. 3(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. The following sentence should be added after the words —the number“ in the fourth line — "Description and qualifications of the crew including officers	Accepted. The definition will be accordingly modified.
Clause 3(57): Ownership definition is vague as it includes operator as well. As per the certificate of Registry issued to vessel, operator cannot be owner unless his name is in the COR, thus they are contradicting each other, and therefore this sub-clause may be amended.	Not accepted. Cl. 3 (57) defines the term ‘_ship owner’ and the term ‘_ownership’ is not defined in the Bill. Under the proposed Bill ‘_ship owner’ is defined as the owner including the registered owner, bareboat charterer, manager and operator of the vessel. As per the definition the operator of the vessel could be someone who is other than the registered owner which implies that his name would not be included in the certificate of registry. The proposed Bill intends to cover both the

Views of the individual/organization	Views/comments of the Ministry of Shipping
	registered owner and the operator of the vessel as it is considered to be the ship owner under the Maritime Labour Convention, 2006.
Clause 3 - sub clause 60, 61, 62 special trade and special trade passenger ships should be deleted, applying applicable provisions to this kind of category.	Not accepted. These are based on Special Trade Passenger (STP) Convention to which India is a party.
Clause 3 and sub clause 65 ---tanker should be further divided as per practice prevailing now.	Accepted. The definition will be re-examined in light of Chapter-I of SOLAS Convention and existing definition under MS Act, 1958.
Clause 3 (67) Tribunal defined under Section /Rule 83 does not take into consideration the tripartite requirement as per MLC Convention to which India is signatory.	Not accepted. Tribunal defined under Clause 3(67) is not related to MLC, 2006.
Clause 3 (70) - in present act wages is defined as —include emoluments. This is not correct and will affect many and clarity should be desirable. Normally owners pay as per CBA and then pay additional perks /allowances to retain the seafarer .WCA has its own definition we should follow MLC. Compensations should be linked to one of the following two definitions should be redefined in two parts or detail left for enabled rules: (i) Basic pay or wages means the pay, however composed, for normal hours of work; it does not include payments for overtime worked, bonuses, allowances, paid Leave or any other additional remuneration; (ii) Consolidated wage means a wage or salary which includes the basic pay and other Pay-related benefits; a consolidated wage may include compensation for all overtime hours which are worked and all other pay-related benefits.	Not accepted. This is an existing definition which covers both (i) and (ii) and is in the interest of seafarers.
37. Views: Section 3(70) wages definition must be aligned to the definition of the ILOs MLC.	Not accepted. This is a definition taken from the present Act. Emoluments will cover various requirements and aspects

Views of the individual/organization	Views/comments of the Ministry of Shipping
	given under the MLC.
<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 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 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>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

refer to it for advice.

(6) The Shipping Board shall have power to regulate its own procedure.

(7) The Central Government may make rules for all or any of the following matters, namely:—

(a) the term of office of members of the Shipping Board;

(b) the manner of filling vacancies in the Shipping Board;

(c) the travelling allowances and other allowances payable to the members of the Shipping Board;

(d) the manner of appointment of officers and other employees of the Shipping Board and the terms and conditions of their service.

26. Clause 4 of the Bill seeks to provide for establishment of the National Shipping Board. It provides for the composition of the Board, consisting of six members of Parliament; sixteen members to be appointed by the Central Government and equal number to be included in the Board representing the ship owners and seafarers; and the term of its members, its power to advise the Central Government.

27. In a written memorandum received by the Committee it was given that Clause 4 (2) for the Constitution of National Shipping Board, the Government, is trying to find ways and means to improve employment avenues for the nation's youth. There is a move to increase India's share in the global seafarer supply. Accordingly, representatives of foreign employers' associations should be included in the National Shipping Board or NSB constituents enabled by rules under this part. Clause 4(2) (5) the National Shipping Board should also advise the Government on how to increase employability of seafarers on foreign ships and thus increase India's share in the supply of seafarers to the world fleet.

28. However, the Ministry of Shipping did not accept this and clarified that in the national interest, it is not advisable to nominate a body representing foreign interest in the statutory policy making body. The inputs from these associations can always be obtained by NSB before making a recommendation. As regards clause 4 (2) (5) (a), the Ministry stated that this clause provides that the National Shipping Board (NSB) shall advise on matters relating to Indian shipping including development. Therefore, how to increase employability can be done by NSB within the existing provisions of the Bill.

29. **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.**

30. **Clause 5**

5. (1) The Central Government may, by notification, constitute a Seafarers Welfare Board (hereinafter referred to as the Welfare Board) for the purposes of advising the Central Government on the measures to be taken for promoting the welfare of the seafarer under this Act, generally and in particular the following matters, namely:—

(a) the establishment of hostels or boarding and lodging houses for seafarer;

(b) the establishment of clubs, canteens, libraries and other like amenities for the benefit of seafarer;

(c) the establishment of hospital and provision of medical treatment for seafarer;

(d) the provision of educational and other facilities for seafarer;

(e) the measures to be taken for welfare of distressed seafarer;

(f) the measures to be taken in the case of seafarer who is a foreigner but abandoned in the waters within the jurisdiction of India;

(g) any other measures to be taken for promoting the welfare of seafarer.

(2) The Central Government may make rules providing for,—

(a) the composition of the Welfare Board and the term of office of members thereof;

(b) the procedure to be followed in the conduct of business by the Welfare Board;

(c) the travelling and other allowances payable to the members of the Welfare Board;

(d) the rate of levy of fee payable by owners of vessels for the purposes of providing amenities to seafarer and for taking other measures for the welfare of the seafarer;

(e) the procedure by which any such fee may be collected or recovered and the manner in which the proceeds of such fees, after deduction of the cost of collection, shall be utilised for the purpose specified in clause (d).

31. Clause 5 of the Bill seeks to provide for the constitution of the Seafarer Welfare Board to advise the Central Government on the measures for promoting the welfare of the seafarers.

32. In a written memorandum, one of the stakeholders submitted to the Committee that this clause exclusively defines various aspects of National Shipping Board and gives independence for all its activity. Since the Seamen welfare board is also an important aspect dealing with welfare of seafarers, it is prudent that this section may also be re-written in line with the section related to NSB.

33. The Ministry of Shipping informed the Committee that the existing provisions with respect to National Shipping Board (NSB) and National Welfare Board for Seafarers (NWBS) have been retained in the proposed Bill from the present Act. The formulation in the Bill is as per the role and functions of each Board. The role, functions and composition of NSB are entirely different from that of NWBS and hence the parity is un-desirable.

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

35. Clause 7

7. (1) The Central Government may, by notification, appoint at such port or place as it may consider necessary, as many persons as it may think fit to be surveyors for the purposes of this Act.

(2) Without prejudice to the provisions of sub-section (1), in case of cargo vessel, the Central Government, may, by notification, authorise any person or body of persons, on such terms and conditions as may be specified therein, to be surveyor or surveyors for the purposes of this Act.

Explanation.— For the purposes of this sub-section, "cargo vessel" means a vessel which is not a passenger vessel.

(3) The surveyor shall be nautical surveyor, ship surveyor, engineer and ship surveyor or junior ship surveyor and includes Deputy Nautical Advisor, Deputy Chief Surveyor, Deputy Chief Ship Surveyor, Principal Officer, Chief Ship Surveyor, Chief Surveyor and Nautical Advisor.

(4) At any port or place at which no surveyor appointed under this section is available, the Central Government may, by notification, appoint any qualified person to perform the functions of a surveyor under this Act.

36. This clause of the Bill empowers the Central Government to appoint Surveyors at such port or place as it may consider necessary. It further empowers the Central Government to authorise any person or body of persons, as surveyor in case of cargo vessel.

37. The Committee was informed by a representationist that in clause 7 (3) the Nautical Advisor and Chief Surveyor should not be clubbed with other surveyors and their role should be specified in the Act.

38. Ministry of Shipping informed the Committee that Nautical Advisor and Chief Surveyor are nomenclatures used in the hierarchy of the post of Surveyor. The statutory function of survey is imposed on the Surveyor under the Bill whereas the role of Nautical Adviser/Chief Surveyor is overall supervision and responsibility in accordance with their Recruitment Rules.

39. **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.**

40. **Clause 14**

14. (1) Every Indian vessel, shall be registered under this Part at a port or place in India, as the Central Government may, by notification, declare to be a port of registry under this Act:

Provided that the vessels registered under the provisions of the Coasting Vessels Act, 1838 shall be re-registered under the provisions of this Part within a period of one year from the date of coming into force of this Part:

Provided further that any vessel registered on the commencement of this Act at any port in India under any enactment repealed by this Act, except the vessels registered under the Coasting Vessel Act, 1838, shall be deemed to have been registered under this Part and shall be recognised as an Indian vessel:

Provided also that, subject to any exemptions or modifications, as the case may be, made by the Central Government, all vessels belonging to the Government, other than vessels of the Indian Navy, Indian Coast Guard, Customs Authorities, Central Paramilitary Forces, Coastal Police and other Police Agencies, shall be registered under this Act.

(2) Notwithstanding anything contained in sub-section (1), an Indian vessel, may be, subject to such conditions as may be prescribed, registered in a country other than India.

(3) No vessel shall be an Indian vessel or an Indian controlled tonnage vessel unless such vessel is substantially owned by any of the following persons, namely,—

(a) a citizen of India; or

(b) a company or a body established by or under any Central Act or State Act which has its principal place of business in India; or

(c) a co-operative society registered or deemed to be registered under the Co-operative Societies Act, 1912 or any other law relating to a co-operative society for the time being in force in any State.

Explanation.—For the purposes of this sub-section, "substantially owned" means having more than fifty per cent. of the shares of the ownership of the vessel.

(4) If an Indian vessel is proceeding to sea without its valid certificate of registry, such Indian vessel shall be detained until it produces its valid certificate of registry to the proper officer.

41. Clause 14 of the Bill seeks to impose obligation for registration of every vessel. It provides that every Indian vessel shall be registered under Part III at such port or place of registry as may be notified by the Central Government. It further provides that the vessels registered under the Coasting vessels Act, 1838, which has been proposed for repeal by this Bill, shall be re-registered under the provisions of this Bill within one year of coming into force of the Bill and the vessels registered under the existing Act shall be deemed to be registered under this Bill. It also provides that all vessels belonging to the Government, other than vessels of the Indian Navy, Indian Coast Guard, Customs Authorities, Central

Paramilitary Forces, Coastal Police and other Police Agencies, shall be registered under this Bill.

42. Following are the crux of the various memoranda received by the Committee with respect to various provisions of the Clause 14 and reply furnished by the Ministry of Shipping to each point:

Views of the individual/organization	Views/comments of the Ministry of Shipping
Clause 14(2) — An Indian vessel, may be, subject to such conditions as may be prescribed, registered in a country other than India	This Clause enables the Government to prescribe conditions under which an Indian vessel can be registered outside the country.
Clause 14(2). Sec. 3(21) — Indian vessel means a vessel, which is substantially owned by the person referred in Sec. 14(3).	This Clause defines ownership requirement of an Indian vessel.
Clause 14(3) — No vessel shall be an Indian vessel or an Indian controlled tonnage vessel unless such vessel is substantially owned by any of the following persons, namely — A citizen of India, or (b) A company or a body established by or under any Central or State Act, which has its principal place of business in India, or (c) A co-operative society registered or deemed to be registered under the cooperative Societies Act 1912 or any other law relating to cooperative society for the time being in force in any State. Explanation-Substantially owned means having more than 50 % of the shares of the ownership of the vessels. Purpose of introducing the above provisions in the Bill is not Clear	This is an existing clause slightly modified to allow minority share holding in a vessel by foreign nationals/entities.
Clause 14 (3) a, b, c, are new sections, it is suggested that words after "unless such vessels is registered in India and is owned" may be added, to bring in clarity and such vessels under the ambit of the provisions of the Act.	Not accepted. Cl. 14 (3) (a), (b), (c) exists in section 21 of the present Act (i.e. Merchant Shipping Act, 1958). The only change is the new concept of substantially owned vessel incorporated in the Bill in place of wholly owned'.
In compliance with Clause 14(2), what shall be the conditions for permitting an Indian vessel to be registered outside India? Important conditions should be incorporated in the Act while the remaining conditions, if any, may be decided by the Central Government after consulting Indian shipowners' association, seafarers' unions and National Shipping Board.	As above.
Clause 14 (4) appears to be out of place. It	Not accepted. The sequence in the proposed

<p>should be separate clause after Clause 19 (1).(Basically, only after a vessel is registered can the act state the consequences of putting to sea without a valid certificate of registry.</p>	<p>Bill is in order as obligation comes first than grant of certificate.</p>
<p>Clause 14 (3) No vessel shall be Indian vessel or an Indian controlled tonnage vessel unless Such vessel is substantially owned by any of the following persons namely;- (a) a citizen of India; or (b) a company or a body established by or under any central Act or State Act which has its principal place of business in India; or (c) a co-operative society registered or deemed to be registered under the Co-operative Societies Act, 1912 or any other law relating to co-operative society for the time being in force in any State. Explanation - for the purposes of this sub-section, —substantially owned means having more than fifty percent of the shares of the ownerships of the vessel INSA recommendation: The Act should also permit a Limited Liability Partnership (LLP) as a person who can own and operate a shipping company. We recommend that we should add the following should be permitted as 14(3) (d). Clause 14(3) (d) a Limited Liability Partnership incorporated under the provisions of Limited Liability Partnerships Act 2008 or any amendments thereto.</p> <p>Explanatory remarks: An LLP is currently being promoted by the GoI as a easy and convenient method of a corporate business vehicle that provides the benefits of the limited liability but allows its member the flexibility of organizing their internal structure as a partnerships based on a mutually arrived agreement. It is a legal entity separate from its partners and has perpetual succession. Alongwith a citizen and a body corporate a coming together of citizens through an LLP should be permitted. An LLP is similar to a company and yet has ease in compliance (INSA note: Please not that the requirement is now to —Substantially own this earlier it was wholly.)</p>	<p>Not accepted. Limited Liability Partnership firms are not allowed to register a vessel as the liability of the partners in case of loss will be limited. For the same reason, it will not be advisable to include LLP's to be eligible to register the vessels in its name. Therefore, LLP was not included as a matter of conscious policy decision.</p>

43. **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.**

44. **Clause 15**

15. (1) At any port, the Principal Officer of the Mercantile Marine Department, shall be the Registrar of Indian vessels at that port, and at any other place in India such authority as the Central Government may, by notification, appoint, shall be the Registrar of Indian vessels at that place.

(2) Every Registrar shall keep a register book and entries in that book be made, and maintain the records of vessels registered under the provisions of this Act, in such manner as may be prescribed.

45. Clause 15 of the Bill seeks to appoint the Registrar of Indian vessels. It provides that at any port, the Principal Officer of the Mercantile Marine Department, shall be the Registrar of Indian vessels at that port, and at any other place in India such authority as the Central Government may, appoint, shall be the Registrar of Indian vessels at that place. It further provides that every Registrar shall keep a register book and shall make entries in that book be made, and maintain the records of vessels registered under this Bill, in such manner as may be provided by rules.

46. Indian National Ship Owners Association in their written memorandum has suggested that one more clause may be added to the Clause as 15(3) as given below:

(3) the entries in the register book shall be in accordance with the following provisions:-

(a) The property in a ship shall be divided into ten shares;

(b) subject to the provisions of this Act with respect to joint owners or owners by transmission, not more than ten individuals shall be entitled to be registered at the same time as owners of any one ship; but this rule shall come into affect the beneficial interest of any number of persons represented by or claiming under or through any registered owner or joint owner;

(c) A person shall not be entitled to be registered as owner of a factual part of a share in a ship, but any number of persons not exceeding five may be registered as joint owners of a ship or of any share or shares therein.

(e) A company, a co-operative society or a LLP may be registered as owner by its name.

47. The stakeholder has justified that these suggestions are in line with Clause 25 of Merchant Shipping Act, 1958, duly amended vide MS (Amendment) Act 40 of 2007. There is need to have clarity on the number of shares in ship. Reference to —share in the vessel is made in various clauses of the Act and within this section itself. Not including the number of share into the legislation will leave it open for change and interpretation and the number of shares is needed to be specified since this would also be related to provisions regarding mortgage of the vessel and providing security to the lender. This is also followed by various other legislation such as the United Kingdom and others.

48. The Ministry of Shipping in their reply to this suggestion, submitted to the Committee that the suggestions are in the nature of procedure which will be incorporated in the secondary legislation in consultation with the stakeholders.

49. **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.**

50. **Clause 19**

19. (1) On completion of the registry of an Indian vessel, the Registrar shall grant a certificate of registry containing the particulars respecting her as entered in the register book.

(2) A tonnage certificate shall be issued to every vessel, the gross tonnage and net tonnage of which have been determined in accordance with the provisions of this Act.

(3) In the event of the certificate of registry of an Indian vessel being defaced or mutilated, the Registrar of her port of registry may, on the delivery to him of that certificate or on submission of a declaration by the owner to the effect that certificate has been lost or destroyed, grant a new certificate in lieu of her original certificate.

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

51. Clause 19 of the Bill seeks to provide for grant of certificate of registry. It provides that on completion of registry, the certificate of registry shall be granted to Indian vessel. It also provides for issuance of tonnage certificate and granting of new certificate of registry in case it is defaced or mutilated or lost or destroyed.

52. One of the stakeholders in the Shipping industry pointed out that there are vessels which may continue on cross trades and may not come into India. It is important that the maritime administration does not make it compulsory for a vessel to come to India in order to get a Permanent Registry and hence the request that a Consular officer or any other person authorized by the Central Government should be empowered to issue Permanent Certificate of Registry while the vessel is in a foreign country. They have suggested that accordingly, the Clause 19 (1) to be amended as follows: (1) On completion of the Register of an Indian vessel, (a) the Registrar or (b) Indian Consular Officer, or (c) a person authorized by the Central Government shall grant a certificate of registry containing the particulars respecting her as entered on in the register book.

53. However, the Ministry of Shipping did not accept this suggestion. They have specified that the recommendation cannot be accepted as the permanent certificate of registry can only be issued by the Registrar of vessels of the port where the vessel is to be registered.

54. With respect to clause 19 (2) it was pointed out that states under this clause a tonnage certificate should be issued. This seems to be superfluous as Clause 112 states list of conventions a vessel needs to comply with- which includes tonnage as well as others.

55. Ministry of Shipping clarified that Issuance of tonnage figures is a prerequisite for registration of vessel.

56. **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.**

57. **Clause 20**

20. (1) The certificate of registry shall be used only for the lawful navigation of the vessel, and shall at all times remain in the custody of the person in charge of the vessel, and shall not be subject to detention by reason of any title, lien, charge or interest whatever, had or claimed by any owner, mortgagee or other person to, on or in the vessel.

(2) No person, whether interested in a vessel or not who has in his possession, or under his control the certificate of registry of a vessel, shall refuse or omit without reasonable cause to deliver such certificate on demand to the person entitled to the custody thereof for the purposes of the lawful navigation of the vessel, or to any Registrar or other person entitled by law to require such delivery.

(3) If the master or owner of an Indian vessel uses or attempts to use for her navigation a certificate of registry not legally granted in respect of the vessel, he shall be guilty of an offence under this sub-section and the vessel shall be liable to forfeiture.

58. Clause 20 of the Bill seeks to provide for custody and use of certificate. It provides that the certificate of registry shall be used only for the lawful navigation of the vessel, and shall at all times remain in the custody of the person in charge of the vessel; and shall not be subject to detention by reason of any title, lien, charge or interest whatever had or claimed by any owner, mortgagee or other person to, on or in the vessel and such certificate may be delivered to person entitle to demand the certificate. It further provides the possession of illegal certificate of registry as an offence.

59. In one of the representation on this Clause, it was pointed out that how does the Master of the Ship know that the certificate of registry is a genuine one and there should be provisions for Master to verify it (e.g. Master Checker).

60. The Ministry of Shipping explained that clause 20 (3) provides that if the master or owner of an Indian vessel, uses or attempts to use for her navigation a certificate of registry not legally granted in respect of the vessel, he shall be guilty of an offence under this sub-section and the vessel shall be liable to forfeiture. The master of a vessel has enough experience in the field of navigation and is expected to verify with the concerned authorities or the maritime administrator on the genuineness of the registration of the vessel. This provision already exists under section 35(4) of M.S Act, 1958.

61. 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.

62. Clause 30

30. (1) Where there is only one registered mortgagee of a vessel or share, he shall be entitled to recover the amount due under the mortgage by selling the mortgaged vessel or share without approaching the High Court:

Provided that nothing contained in this sub-section shall prevent the mortgagee from recovering the amount so due in the High Court as provided in sub-section (2).

(2) Where there are two or more registered mortgagees of a vessel or share they shall be entitled to recover the amount due under the mortgage in the High Court.

(3) Every registered mortgagee of a vessel or share who intends to recover the amount due under the mortgage by selling the mortgaged vessel or share under sub-section (1) shall give an advance notice of fifteen days relating to such sale to the Registrar of the vessel's port of registry.

(4) The notice under sub-section (3) shall be accompanied with the proof of payment of the wages.

63. Clause 30 of the Bill seeks to provide the rights of mortgagee. It provides that where there is only one registered mortgagee of a vessel or share, he shall be entitled to recover the amount due under the mortgage by selling the mortgaged vessel or share without approaching the High Court. It further provides that where there are two or more registered mortgagees of a vessel or share they shall be entitled to recover the amount due under the mortgage in the High Court.

64. One of the stakeholder pointed out that clause 30 (4) is not clear as to whom should the wages be paid when the notice of sale is issued by the mortgagee. Further, this clause need not be included in the act, but should be included in the rules as to how a mortgagee should proceed with sale of vessel. These rules currently exist.

65. The Ministry of Shipping did not accept the suggestion and stated that this is an existing provision. The onus is cast on the mortgagee to ensure payment of wages to seafarers. This aspect requires to be covered as a substantive provision in the Bill so that procedural aspects can be covered in the Rules.

66. 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.

67. **Clause 34**

34. Every Indian vessel shall be described by such name, call sign and official number in such manner as may be prescribed.

68. Clause 34 of the Bill seeks to provide that the Indian vessel shall be described by name, call sign and an official number for the purpose of proper identification of the vessel.

69. One of the individual stakeholders suggested that IMO number required for Indian flagged vessels to be stamped under this Clause.

70. The Ministry of Shipping informed the Committee that this is a procedural issue and will be suitably incorporated in the secondary legislation.

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

72. **Clause 49**

49. (1) The vessel chartered on bareboat charter-cum -demise by an Indian charterer may be registered under this Chapter.

(2) The procedure for registration of the vessel chartered on bareboat charter-cumdemise shall be such as may be prescribed.

(3) The bareboat charter-cum-demise contract shall include the following provisions, namely:—

(a) the period for hiring the vessel chartered on bareboat charter-cum-demise shall be for not less than three years;

(b) the possession and control of the vessel chartered on bareboat charter-cumdemise, including the right to appoint its master and other seafarers, shall vest with the Indian charterer; and

(c) the ownership of the vessel chartered on bareboat charter-cum-demise, after the charter period shall stand transferred to the Indian charterer.

(4)The registration of a vessel chartered on bareboat charter-cum-demise shall remain in force till the end of the charter period:

Provided that if any provision of this Act is violated, the registration of such vessel may be closed before the chartered period.

(5) The Registrar shall, after registration or closure of registration of a vessel chartered on bareboat charter-cum-demise contract, send the information of such registration or closure, as the case may be, to the authority of registration of the country where such vessel is registered.

(6) The vessel chartered on bareboat charter-cum -demise registered under this Chapter shall be an Indian vessel entitled to fly the Indian flag.

(7) If the bareboat charter-cum-demise contract is terminated before the charter period due to breach of the agreement or any other reason, the Indian charterer shall inform the Registrar and, on receipt of such information, the Registrar shall close the registry and forward the information to the authority of registration of the country where such vessel is registered.

(8) Notwithstanding anything contained in this Act, the provisions relating to the owner of an Indian vessel under this Act shall, subject to such modification as the Central Government may consider necessary, apply to the Indian charterer for the vessels registered under this Chapter.

73. Clause 49 of the Bill seeks to provide for registration of vessel chartered on bareboat charter-cum-demise contract and the procedure to be followed and the provisions of the validity of registration period, its closure with power to hoist Indian flag, etc.

74. In a written memorandum received by the Committee, it was stated that the Bareboat Charter-Cum-Demise by Indian Charterer under Clause 49, there is a potential mischief as the BBCD vessels are entitled to fly as Indian vessels and will be allowed to participate in Coasting Trade of India. Considering the BBCD vessels do not become Indian owned upon until the charter period is over and the right of termination remains, it is a possibility that the parties may take the vessels on BBCD and terminate the same stating breach of the intent of the policy makers for inserting BBCD vessels. It is suggested that a specific lock in period is stated and any exigencies that arise to terminate should be clearly demonstrated and subject to strict compliances.

75. The Ministry of Shipping however did not accept this suggestion and they have submitted to the Committee that the charterer is, under clause 49 (7), mandated to inform the Registrar when BBCD contract is terminated before the charter period. Default in compliance of this stipulation has been made punishable under the Bill. The Ministry of Shipping further stated that the concerns raised by the stakeholder will be addressed through secondary legislation to be made under Clause 50 (2) (a) of the Bill wherein rules can be made regarding the conditions for registration of an Indian vessel, under sub-section (2) of Section 14.

76. The Committee notes the concerns pointed out by the stakeholders regarding the BBCD 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.

77. Clause 50

50. (1) The Central Government may make rules to carry out the purposes of this Part.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the conditions for registration of an Indian vessel, under sub-section (2) of section 14;

(b) the manner of keeping the register book and making entries therein and maintenance of the records of vessels registered under this Act under sub-section (2) of section 15;

(c) the form and manner of making application for registry of an Indian vessel under section 16;

(d) the manner of marking, survey, measurement and ascertainment of tonnage of an Indian vessel under sub-section (1) of section 17;

(e) the other particulars descriptive of the identity of vessel under sub-section (2) of section 17;

(f) the manner of making endorsement under section 21;

(g) the procedure for issuing a provisional certificate of registry under sub-section (1) of section 23;

(h) the form of instrument for description of vessel under sub-section (5) of section 24;

(i) the form for making and signing a declaration under clause (a) of sub-section (1) of section 26;

(j) the form of mortgage under sub-section (1) of section 29;

(k) the form of instrument effecting the transfer under sub-section (1) of section 32;

(l) the manner of description of the name, call sign and official number of Indian vessel under section 34;

(m) the manner of registration of vessel anew under section 37;

(n) the fee for inspection of register book and a certified copy of any entry of the register book under sub-section (1) of section 45;

- (o) the procedure for registration of vessel chartered on bareboat charter -cumdemise under sub-section (2) of section 49;
- (p) any other matter which is required to be or may be prescribed.

78. Clause 50 of the Bill seeks to empower the Central Government to make rules to carry out the purposes covered under Part III of the Bill.

79. One of the stakeholders specified that if the Central Government is allowed to prescribe the conditions, then the power to do so should be incorporated in Sec. 50 - Power to make rules in respect of matters of Part III.

80. The Ministry of Shipping clarified that the provision already exist in Clause 50(2)(a).

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

82. Clause 52

52. (1) The Central Government shall, subject to the provisions of STCW Convention, grant a certificate of competency or certificate of proficiency, as the case may be, for such different grades of seafarers with such requirements and such procedures as may be prescribed.

(2) No certificate of competency or certificate of proficiency shall be granted, under sub-section (1) unless the seafarer fulfils the requirements in respect of service, age limit, medical fitness, training, qualifications and examination in accordance with the STCW Convention.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the Central Government may grant such other certificate of competency or certificate of proficiency with such requirements and procedures as may be prescribed.

(4) A certificate of competency or certificate of proficiency, as the case may be, granted under sub- sections (1), (2) and (3) shall be in such form and on payment of such fee and valid for such period as may be prescribed, and record of such certificate shall be kept in such manner as may be prescribed.

83. Clause 52 of the Bill empowers the Central Government to grant certificate of competency or certificate of proficiency subject to fulfillment of requirements in respect of service, age limit, medical fitness, training, qualifications and examination in accordance with the STCW Convention subject to payment of such fee.

84. Stakeholders submitted to the Committee that the word "documentary evidence" for completion of DG approved courses to be added after COC and COP and STCW 2010 has envisaged three types of Certificates and not just COC and COP. These two are granted by Government, whereas DoC evidence may be granted under a DGs approved process by MTI/RPS and on board vessels. For example completion of a Preparatory course like 2nd Mates, or Sea time is documentary evidence.

85. The Ministry of Shipping replied to the above point and stated that provision for recruitment and placement are adequately covered under Part V [Seafarer]. The procedural matters like documentary evidence may not be appropriate to be mentioned in the Bill. These may be taken care of secondary or tertiary legislations.

86. 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.

87. Clause 53

53. (1) The Director-General shall administer, supervise and monitor all activities relating to training and assessment for grant of certificate of competency or certificate of proficiency.

(2) The Director-General shall approve the training institute, training courses and method of conduct of such training course for grant of certificate of competency or certificate of proficiency under section 52:

Provided that no certificate of competency or certificate of proficiency shall be granted, unless the training required for such certificate has been imparted in accordance with the provisions of this section.

(3) The Director-General may, for the purposes of this Part authorise any person to inspect any maritime training institute and the person so authorised in this behalf shall submit the report to the Director-General.

(4) The Director-General may, after receipt of the inspection report under sub-section (3), if he is satisfied that the maritime training institute has contravened any provisions of this Part, after giving an opportunity of being heard, suspend or withdraw the approval granted to such maritime training institutes under sub-section (2).

88. Clause 53 of the Bill seeks to empower the Director-General to administer, supervise and monitor all activities related to training and assessment for grant of certificate of competency or certificate of proficiency and to approve training institute, courses and the method of conducting training for granting such certificates and also with power to authorize any person to conduct inspection and submit report to him.

89. Regarding the provisions of this Clause, one of the stakeholders in their written memorandum submitted that the objective of the Bill is to empower the Central Government to discharge the functions as agreed to by the Honorable Members of Parliament; however it is noted that in many sections the authority has been vested on to Executives (DG Shipping) whereas at other sections it is vested to the Central Government. There is lack of uniformity in delegation of power which needs be addressed. In Clause 53 (1), the Director General shall administer, supervise and monitor all activities relating to training and assessment for grant of certificate of competency or certificate of proficiency. Documentary Evidence as defined by STCW 2010 amendments may be included.

90. Another stakeholder also commented on this provision that far sweeping powers have been vested in the Director General to the extent that it could be construed as tail wagging the dog. Instead of DG, it should be Central Govt, (with powers vested under these rules) who should be administering, supervising etc.

91. Ministry of Shipping replied to these points and submitted that Director General of Shipping is a statutory authority under this Bill for the purpose of exercising or discharging the powers, authority or duties conferred on or imposed under the Bill (Clause. 6). There is one statutory provision in the Bill where the powers have been granted to Director-General directly i.e. Clause 53 which relates to administering, supervising and monitoring of training and assessment for grant of certificate of competency or certificate of proficiency. As these are purely operational and technical matters, it is felt Director-General, the maritime administrator in India, will be the appropriate authority for the same.

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

93. **Clause 57**

57. (1) Every master of a foreign vessel shall, before proceeding to sea from any port or place in India, ensure that the vessel has the requisite numbers of seafarer of appropriate grades as specified in the Safety Convention and STCW Convention.

(2) A surveyor or any person authorised in this behalf by the Central Government may, at any reasonable time, go on board a vessel for the purpose of ensuring that the seafarers holding certificates issued in accordance with the Safety Convention and STCW Convention are actually appointed and are present, and satisfy himself about the adequacy of such seafarers for the watch keeping duties in ports and at sea.

(3) If any report made under sub-section (2) by a surveyor or any person authorized in this behalf by the Central Government, reveals any deficiency in a foreign vessel in relation to the requirements of the Safety Convention and STCW Convention and the Central Government is satisfied that it shall be unsafe for such vessel to proceed to sea, that vessel may be detained by the proper officer till such requirements are fulfilled.

94. This Clause 57 of the Bill seeks to provide that foreign vessel shall not proceed to sea from any port or place of India without the requisite number of seafarers of appropriate grades and empowers the surveyor to board the vessel for the purpose of ensuring that the seafarers holding certificates are actually appointed and are actually present and are adequate in number for the watch keeping duty in ports and at sea. It also empowers the Central Government to detain a foreign vessel in case of deficiency on the report of the surveyor.

95. One of the memoranda received by the Committee suggested that in Clause 57 (1) & 57 (3) it would incorporate the word "Indian" before the word "foreign vessel" wherever it appears in this clause.

96. The Ministry of Shipping accepted the suggestion and informed the Committee that Clause 57 (1) & 57(3) will be suitably modified to include Indian vessels also.

97. **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.**

98. **Clause 61**

61. In this Part, unless the context otherwise requires,—

(a) "Maritime Labour Certificate" means a Certificate issued by the Central Government or any officer, authority or organisation authorised by it in this behalf, in accordance with the provisions of the Maritime Labour Convention;

(b) "recruitment and placement service" means any person, company, institution, agency or other organisation, in public or private sector which is engaged in recruiting seafarers on behalf of employers or placing seafarers with the employers.

99. Clause 61 of the Bill seeks to define certain expressions which are specified Part V.

100. Memorandum received by the Committee from the Seafarer unions suggested that under clause 61 (b) "recruitment and placement service" may be defined properly as the clause is incomplete and should apply to —engaged in recruiting seafarers on behalf of employers or placing seafarers with employers on board their ships. (Else it could be construed that any employment ashore is also covered by this rule).

101. However, the Ministry of Shipping did not accept their suggestion and explained that Part V [seafarers], under which clause 61 falls, deals with the seafarer to be placed onboard ships, hence there appears to be no ambiguity.

102. **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.**

103. **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.**

104. **Clause 62**

62. (1) The Central Government may make rules for the classification of seafarers into different categories, the minimum manning scale of seafarers of such categories, and the different scales for different classes of ships.

(2) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to the seafarer employed or engaged as a member of the crew of a ship.

105. Clause 62 of the Bill seeks to empower the Central Government to make rules for the classification of seafarers into different categories, minimum scale and the different scale for different classes of ships and application of the provisions to the seafarer employed or engaged as a member of the crew of a ship.

106. The stakeholders have suggested that it should be ensured that as provided in international instruments dealing with fixing minimum manning scale the most representative organization of ship-owners and seafarers should be consulted.

107. However, the Ministry of Shipping not accepted this point and submitted to the Committee that it is a matter of policy that any change in the Act/Rules/Regulations is carried out only after consulting all the stakeholders as per the policy of compulsory pre-legislative consultation. Therefore, all Rules, including under 62 (1) will be formulated only after pre-legislative consultation with all stakeholders including ship-owners and seafarers.

108. **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.**

109. **Clause 63**

63. (1) The provisions relating to maritime labour standards as contained in the Maritime Labour Convention, shall apply to all seafarers and ships registered under this Act, but does not include,—

(a) ships which navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where any law for the time being in force relating to ports apply;

(b) ships engaged in fishing activities;

(c) traditionally built ships such as dhows and junks;

(d) ships of war or naval auxiliaries.

(2) Subject to the provisions of sub-section (1), the Central Government may, on the recommendation of the Director-General, by order, extend the provisions of the said sub-section to any category of ship with such exceptions and modifications as it may consider necessary.

(3) Every Indian ship referred to in sub-section (1), wherever it is, and every ship other than an Indian ship while within the jurisdiction of India shall, subject to such conditions as may be prescribed, be in possession of a certificate issued in accordance with the provisions of the Maritime Labour Convention.

(4) No ship shall proceed to sea unless it is in possession of certificate issued under

110. Clause 63 of the Bill seeks to provide for application of maritime labour standards to seafarers and ships registered under this Bill, except ships which navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where any law for the

time being in force relating to ports apply; ships engaged in fishing activities; traditionally built ships such as dhows and junks and ships of war or naval auxiliaries. It further provides that the Central Government shall have power on recommendation of the Director-General to extend the provision of this clause to any category of ships and the ships to possess certificate in accordance with the provisions of the Maritime Labour Convention and also prohibits the ships to proceed to sea without possessing the certificate.

111. Stakeholders sought clarification regarding clauses 63(3) and 63(4) as regards which type of vessels can call at Indian ports as per the above Clauses to which the Ministry of Shipping replied that Vessels registered in a country not party to Maritime Labour Convention (MLC) can call on Indian ports provided they meet the prescribed conditions and are also in possession of a certificate issued in accordance with the provisions of Maritime Labour Convention.

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

113. **Clause 64**

64. It shall be the duty of shipping masters,—

(a) to monitor the engagement and discharge of seafarer in the manner provided under this Act;

(b) to issue such continuous discharge certificate and seafarer's identity document as may be prescribed;

(c) to hear and decide disputes between a master, owner or agent of ship and any of the crew of the ship including those under section 77;

(d) to transmit the complaint of any dispute of a foreign seafarer of a ship, registered in a country other than India, in Indian territorial waters, with the master, owner or agent to the competent authority of the country of registration and to forward a copy of such complaint to the Director-General of International Labour Organisation;

(e) to perform such other duties relating to seafarers and merchant ships under this Act as the Central Government may, by general or special order, specify.

114. Clause 64 of the Bill seeks to enumerate the duties of the shipping master.

115. Memorandum received from the Seafarer association in connection with this Clause pointed out an incident that the duties of the Shipping Master is lacking teeth in as much as there are so many cases of unpaid wages and Indian seafarers serving even on Indian flag ships are stranded. For example, presently 9 ships of Gol Offshore are at anchorage points in Mumbai and there is absolutely no movement forward as far recovering the wages of such seafarers are concerned in spite of repeated complaints to the Shipping Master. The seafarers are left stranded without food or water and the association supplied cooked food and water to around 100 seafarers on 9 ships. They have also supplied provisions on their own accord and forced the company to supply fuel. The association on its own volition is planning to have the ships arrested in Mumbai High Court for recovery of wages. Had there been no such efforts, the recovery by such blatant defaulters will still continue.

116. They have also requested that the Shipping Master or the Maritime Administration should be given the powers to do something practical, efficiently under the revised Merchant Shipping Act to give justice to seafarers against the defaulters. The individual seafarers do not have financial status to incur heavy legal expenses to take matters to the Courts.

117. Therefore, they suggested that Section 64 (a.) - Duties have been imposed -for monitoring but the prescribed procedure is not mentioned, which will leave room for

interpretation, therefore such delegation of responsibility may be made with prescribed procedures of rules.

118. The Ministry of Shipping did not accept the suggestion above. The Ministry has furnished to the Committee that the term ‘prescribed’ means prescribed by rules made under this Act as defined in Cl. 3 (35) of the Bill. Duties of Shipping Master are clearly indicated under this clause which envisages that due procedure will be followed by such officers. The Central Government may also by general or special order under this clause assign/specify duties to him.

119. The Ministry of Shipping has further submitted that the Shipping Master under clause 64 and 77 has the power to decide on the dispute between the seafarer and the owner or agent. The earlier limit of 5 lakhs for submission of dispute to the Shipping Master has been removed and seafarers may now approach the Shipping Master for redressal of grievances related to wages for any amount.

120. Further, an award made under clause 77 may be enforced by a Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be, in the same manner as an order of payment of wages made by such Magistrate under the proposed Bill. It is also mentioned that the provision of Maritime Labour Convention 2006 has been incorporated in the MS Bill. As per the said Convention, the ship owners are required to place a proof of financial security on board to ensure repatriation of stranded seafarers. The amount of such financial security should also cover four months of wages of the entire contingent of the crew on board. The financial security can be en-cashable by the Maritime Administration. This provision is expected to take care of such situations in the future.

121. 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.

122. Clause 66

66. (1) The seafarer shall be engaged only by,—

(a) recruitment and placement service possessing the licence issued under the provisions of section 65; or

(b) owners in the case of Indian vessel for the vessel owned by them.

(2) No person, other than an owner of Indian vessel in respect of the vessel owned by him, shall carry on the business of recruitment and placement service unless he is in possession of a valid licence issued under section 65.

(3) No person shall engage any seafarer under this Act in any ship, unless the seafarer is in possession of a continuous discharge certificate and seafarer’s identity documents issued under sub-section (4) except as otherwise exempted.

(4) The continuous discharge certificate and seafarer’s identity document referred to in sub-section (3) shall be issued in such form and manner and on payment of such fees as may be prescribed.

(5) No person under the age of sixteen years shall be engaged or carried to sea to work in any capacity in any ship.

(6) The Central Government may, by order, direct that the seafarers generally or any category of seafarers in particular shall not be engaged or carried to sea to work in any capacity in any ship or in any class of ships so specified, unless each one of them possesses such qualifications as may be prescribed.

(7) Except as otherwise provided under the rules made under sub-section (6), no person shall engage or carry to sea any seafarer to work in any capacity in any ship or in any class of ships specified in this behalf by the Central Government, unless the seafarer is in possession of a certificate to the effect that he is medically fit to be employed in that capacity granted in such form by such authority as may be prescribed.

(8) Any person who claims to represent the interests of seafarers shall not demand or receive, either directly or indirectly, from any seafarer or person seeking employment as seafarer or any person on his behalf, any

remuneration or donation or fees or compulsory subscription of any kind attributable from such seafarer or person's employment as seafarer, other than the fees authorised by this Act.

(9) There shall be no discrimination between seafarers,—

(a) on the ground of their membership in any particular union claiming to represent the interests of seafarers and membership in such union shall not be a pre-condition,

(b) on the basis of training institute from where they obtained training or place of issue of their continuous discharge certificates, for their recruitment and engagement on board any ship.

(10) The Central Government or any officer authorised by it in this behalf, if satisfied that in the national interest or in the interest of seafarer it is necessary so to do, may, by order in writing, prohibit the master or owner or his agent of any ship other than an Indian ship specified in the order from engaging any person to serve as a seafarer on such ship.

(11) The Central Government may, by notification, fix the fees which shall be payable upon all engagements and discharges of the seafarer.

(12) The services of the seafarer engaged in contravention of sub-section (1) shall not be recognised for the purposes of certification under Part IV.

123. Clause 66 of the Bill seeks to provide for the engagement of seafarer by licensed recruitment and placement service and the owners of Indian vessels. It prohibits a person other than the owner of the vessel to carry on the business of recruitment and placement of service without license; to engage the seafarers without possession of continuous discharge certificate and identity documents; and the person under sixteen years for engagement or carried to sea to work in any capacity without such qualifications specified by the Central Government. It also prohibits the engagement of seafarer in a ship without possessing a medical fitness certificate and any person who claims to represent the interests of seafarers shall not demand or receive, either directly or indirectly, from any seafarer or person seeking employment as seafarer or any person on his behalf, any remuneration or donation or fees or compulsory subscription of any kind attributable from such seafarer or person's employment as seafarer, other than the fees authorised by the provisions of this Bill.

124. Clause 66 also provides that the Central Government may, by notification, fix the fees which shall be payable upon all engagements and discharges of the seafarer and the services of the seafarer engaged in contravention thereof shall not be recognised for the purposes of certification under Part IV.

125. The Seafarers associations represented that Clause 66(8) says 'any person who claims to represent the interests of seafarers'. This word 'any person' may mean only 'individual' or also includes 'company' or 'organization'. Only a trade union claims to represent the interest of seafarers. The Trade Unions suggested deletion of the words "who claims to represent the interests of seafarer", "donations", "fees" and "compulsory subscription" from this clause. They further stated that every trade union has financial expenses which are met by donations and membership subscription from its membership it represents. It is a fundamental principle permissible under the Trade Union Act also under which the trade unions are registered. This formulation of words is only in the Shipping sector and in no other sector. The Hon. Supreme Court has also allowed Trade Unions to receive donations in *Balmer Lawrie Workers' Union,...* vs *Balmer Lawrie And Co. Ltd. And Ors* on 21 December, 1984. They alleged that the intent is to stop the exploitation of seafarers as due to shortage of jobs, lot of money changes hands. But in the bargain, the legitimate finance of a registered trade union should not be scuttled under this section. This should be safeguarded. They proposed the following wordings after deletions as follows: Clause 66(8) 'No person shall demand or receive, either directly or indirectly, from any sea farer or person seeking employment as seafarer or any person on his behalf, any of any kind

attributable from such seafarer or person's employment as seafarers, other than the fee authorized by this Act'.

126. The Ministry of Shipping partially accepted the suggestions given by the trade unions. The Ministry further submitted that in the existing formulation the restriction is only on donation/subscription relating to employment of seafarers. However, to clear any ambiguity or unintended restriction on Trade Unions in collecting subscriptions this Clause will be suitably reformulated.

127. 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.

128. 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.

129. **Clause 67**

67. (1) The master of an Indian ship, or owner of every Indian ship or his agent shall enter into an articles of agreement in such form and manner as may be prescribed with every seafarer whom he engages and shall submit a copy thereof to the shipping master.

(2) Notwithstanding anything contained in any other provisions of this Act, the master of an Indian ship registered at a port outside India, or owner of such ship or his agent who has an agreement with the seafarer made in due form according to the law of that port or of the port in which her seafarer were engaged, may engage in any port in India—

(a) a seafarer who is not a citizen of India and who holds a continuous discharge certificate or any other similar document of identity issued by the competent authority of the country in which the ship is registered or, as the case may be, of the country in which the said agreement was made, or

(b) a seafarer who is a citizen of India and who holds a continuous discharge certificate issued under this Act, and any seafarer so engaged under clause (a) or clause (b) may sign the agreement aforesaid and it shall not be necessary for him to sign an agreement under this Act.

(3) A seafarer's right,—

(a) to wages and provisions shall be taken to begin either at the time at which he commences work or at the time specified in the agreement for his commencement of work or presence on board whichever first happens;

(b) of wages shall not depend on the earning of the freight and seafarers are entitled to demand and recover the same notwithstanding that freight has not been earned.

(4) A seafarer shall not by any agreement forfeit his lien on the ship or be deprived of any remedy for the recovery of his wages to which, in the absence of the agreement, he shall be entitled, and shall not by any agreement abandon his right to wages in case of the loss of the ship or abandon any right that he may have or obtain in the nature of salvage, and every stipulation in any agreement inconsistent with any provisions of this Act shall be void.

130. Clause 67 of the Bill seeks to provide that every master or owner or his agent shall for the purpose of engagement of seafarer enter into an articles of agreement with the seafarer and submit a copy of such agreement to the shipping master. It specifies certain provisions therein for engagement of a seafarer who is not a citizen of India. It further specifies the time when the wages and provisions shall be taken to begin, and provides that no agreement shall forfeit the lien on the ship or deprive of any remedy for recovery of wages of the seafarer and every stipulation inconsistent with the provisions of this Bill will be void.

131. The stakeholders submitted that Clause 67(a) leaves room for interpretation of employment of foreigners on board Indian ships at the expense of Indian Seafarers. The ship owners may employ this section for their gain and exploit cause unemployment of Indian seafarers, thus request deletion.

132. The Ministry of Shipping has replied that the apprehension of the seafarer Union that Indian vessel may employ foreign seafarers has been taken care of under clause 51. Indian vessels will be manned by Indian seafarers except as prescribed under the rules by Central Government.

133. 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.

134. **Clause 69**

69. (1) Where the service of any seafarer engaged under this Act terminates before the date specified in the agreement by reason of the wreck, loss or abandonment of the ship or by reason of his being left on shore at any place outside India under a certificate granted under this Act of his unfitness or inability to proceed on the voyage, the seafarer shall be entitled to receive,—

(a) in the case of wreck, loss or abandonment of the ship,—

(i) wages at the rate to which he was entitled at the date of termination of his service for the period from the date his service is so terminated until he is returned to and arrives at a proper return port:

Provided that the period for which he shall be entitled to receive wages shall be not less than one month, and

(ii) compensation for the loss of his effect,—

(A) in the case of a seafarer employed on a ship engaged for coasting trade, of not more than one month's wages; and

(B) in the case of a seafarer employed on a foreign-going ship, of not more than three month's wages;

(b) in the case of unfitness or inability to proceed on the voyage, wages for the period from the date his service is terminated until he is returned to and arrives at a proper return port.

(2) A seafarer shall not be entitled to receive wages under sub-clause (i) of clause (a) of sub-section (1) in respect of any period during which,—

(a) he was, or could have been, suitably employed; or

(b) through negligence he failed to apply to proper authority for relief as adistressed or destitute seafarer.

(3) Any amount payable by way of compensation under sub-clause (ii) of clause (a) of sub-section (1) shall be deposited with the shipping master at the port of engagement in India for payment to the seafarer, or, in the case of deceased seafarer, to the person nominated by him in this behalf under section 85 or if he has not made any such nomination or the nomination made by him is or has become void, to his legal heirs.

(4) A seafarer shall be entitled to continue receiving the wages at the same rate till such time he returns home, if such seafarer is held in the captivity including in case of piracy in the course of his employment.

Explanation.—For the purposes of item (B) of sub-clause (ii) of clause (a) of subsection (1) of this section, "foreign-going ship" means a ship employed in trading between any port or place in India and any other port or place outside India, or between ports and places outside India.

135. Clause 69 of the Bill seeks to entitle the seafarer to receive wages or compensation for loss of effects in case or wreck, loss or abandonment of the ship or by reason of his being left on shore at any place outside India under a certificate granted under this Bill for his unfitness or inability to proceed on the voyage however he shall not be entitled to receive wages if through

negligence he failed to apply to proper authority for relief as a distressed or destitute seafarer. It further provides the amount of compensation shall be deposited with the shipping master at the port of engagement in India for payment to a seafarer or in the case of a deceased seafarer with the person nominated by him or in case he has not made any nomination or nomination has become void, to his legal heirs. The seafarer is entitled to receive wages during captivity including incidence of piracy in the course of his employment.

136. Under Clause 69. (4) the seafarer associations have suggested that a seafarer shall be entitled to continue receiving the wages at the same rate till such time they return home, if such seafarers is held in the captivity including in case of piracy in the course of his employment.

(i) Any dispute on an Indian seafarer, on a vessel registered in a country other than India, in Indian territorial waters, with the master, owner of the ship or his agent may be submitted to the shipping master.

(ii) The shipping master shall hear and decide the dispute submitted under

Sub-section (1) and (2) and make an award which shall be conclusive to the rights of parties and any document relating to such dispute on award itself shall be prima facie evidence thereof.

137. The Ministry of Shipping has furnished their reply stating that the remarks at last of the observation of CMMI, indicate that their views in the matter have not been firmed up by them. However, the provision in Clause 69(4) has been incorporated after extensive consultations with the stakeholders to protect the interest of Indian seafarers who become victim of piracy.

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

139. 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.

140. Clause 83

83. (1) Where the Central Government is of the opinion that any dispute between seafarer or any class of seafarers or of any union of seafarers and the owners of ships in which such seafarers are employed or are likely to be employed exists or is apprehended and such dispute relates to any matter connected with or incidental to the employment of the seafarers, the Central Government may, by notification, constitute a Tribunal consisting of one or more persons, having knowledge of maritime matter, and refer the dispute for adjudication.

(2) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.

(3) The Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.

(4) The Tribunal shall, for the purposes of discharging its functions under this Act, have power to regulate its own procedure and shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses;

(e) any other matter which may be prescribed.

(5) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.

(6) No party to a dispute shall be entitled to be represented by a legal practitioner in any proceeding before the Tribunal except with the consent of the other party or parties to the proceeding and with the leave of the Tribunal.

(7) The Tribunal shall dispose of the reference within a period as may be specified in the notification under sub-section (1) and submit its award to the Central Government.

(8) On receipt of the award, the Central Government shall cause it to be published and the award shall become enforceable on the expiry of thirty days from the date of such publication:

Provided that where the Central Government is of the opinion that it shall be inexpedient on public grounds to give effect to the award or any part of it, it may before the expiry of the said period of thirty days by order in the Official Gazette either reject the award or modify it, and where the Central Government does so, the award shall not become enforceable or shall become enforceable subject to the modifications, as the case may be.

(9) An award which has become enforceable under this section shall be binding on—

(a) all parties to the dispute;

(b) where any party to the dispute is the owner of the ship, his heirs, successors, or assigns.

(10) Save as otherwise provided in the award, an award shall remain in operation for a period of one year from the date on which it becomes enforceable and shall thereafter continue to remain in operation until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

(11) Unless otherwise directed by the Central Government, the Tribunal shall cease to exist on the expiry of a period of thirty days after publication of the award.

(12) Any money due to a seafarer from the owner of a ship under an award may be recovered as wages.

(13) Nothing contained in the Industrial Disputes Act, 1947, shall apply to any dispute between seafarers or any class of seafarers or any union of seafarers and the owners of ships in which such seafarers are employed or are likely to be employed.

(14) During the pendency of proceedings under this section,—

(a) no seafarer or class of seafarers or union of seafarers shall go or remain on strike or otherwise act in a manner prejudicial to the normal operation of the ships in which the seafarer is employed or are likely to be employed; and

(b) no owner of a ship shall,—

(i) alter to the prejudice of the seafarer concerned in the dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(ii) discharge or punish any seafarer in respect of any matter connected with the dispute.

141. Clause 83 of the Bill seeks to empower the Central Government to refer the dispute between seafarer and their employer to the Tribunal for adjudication.

142. The seafarer unions have pointed out that this Clause will create unnecessary hardship for seafarers to represent his / her case and Clause 83 (8) and (10) are unconstitutional. .

143. The Ministry of Shipping replied that this provision already existed in section 150 the MS Act 1958. The objective is to ensure that seafarers, class of seafarers, union of seafarers, and the owners of ships, have an opportunity to alternate dispute redressal forum as against the lengthy process of the Civil Court. How it is unconstitutional is not clear from the observations made by the seafarer union.

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

145. Clause 90

90. If a seafarer states to the master that he desires to make a complaint to a Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be, or other proper officer against the master or any of the crew, the person authorised by the Central Government in this behalf shall,—

(a) if the ship is then at a place where there is a Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be, or other proper officer, as soon after such statement as the service of the ship shall permit, and

(b) if the ship is not then at such place, as soon after her first arrival at such place as the service of the ship shall permit, allow the complainant to go ashore or send him ashore under proper protection so that he may be enabled to make the complaint.

146. Clause 90 of the Bill seeks to enable seafarer to make a complaint against the master or any member of the crew if the ship is at a place where there is a Judicial Magistrate of the first class or a Metropolitan Magistrate or when the ship reaches a place where such Magistrate is available.

147. The individual stakeholder submitted that complaint procedure should perhaps include that D.G Shipping will investigate the complaint subject to an appellate authority. Perhaps minimum wages for seafarers on Indian flag vessels may be referred to, with an annual publication of revised minimum wages.

148. The Ministry of Shipping has furnished a reply to this point which stated that in Clause 90, there option is available to the seafarer to either go to the judicial magistrate or a proper officer appointed by the Central Government. The existing minimum wages declared under labour laws will apply to seafarers also and no separate minimum wages for seafarers are proposed in the Bill.

149. 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.

150. Clause 125

125. (1) Every vessel, company or port facility, as the case may be, shall comply with such requirements as may be prescribed for safety management and security management.

(2) The Central Government or a person authorised by it shall arrange for the audit of the vessel, company or port facility for the purpose of sub-section (1).

(3) The Central Government or a person authorised by it, may set different levels of security and provide such information thereof to all the port facilities, and all vessels entering into any port facility.

151. Clause 125 of the Bill seeks to provide for implementation of safety and security management of the vessels and the port facilities where the vessels have an interface. It further provides for maintaining different levels of security by vessels and ports depending on the security situation in the country.

152. The seafarer union has submitted that under Clause 125(1) — Before paying off or discharging a seaman, master shall deliver a full account of the wages and of all deductions made there from on any account may be included.

153. The Ministry of Shipping however, did not accept the suggestion. The Ministry has explained that the omitted sections are related to MLC which shall be incorporated in the rules to be framed under clause 68 of the Bill.

154. 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.

155. Clause 129

129. Save as otherwise provided, this Part shall apply to,—

(a) every Indian vessel;

(b) every vessel other than an Indian vessel;

(c) vessel not entitled to fly the flag of India but which operate under the authority of India;

(d) any vessel that enters a port, shipyard, or offshore terminal or place in India or within the territorial waters of India or any marine areas adjacent thereto over which India has, or may hereafter have, exclusive jurisdiction in regard to control of pollution under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 or any other law for the time being in force; and

(e) any incident of marine casualty or any act relating to such casualty occurring with grave and imminent danger to Indian coast line or maritime zones of India or related interests from pollution or threat of pollution in the sea or air either by deliberate, negligent or accidental release of oil, ballast water, noxious liquid substance, garbage, sewage, waste, harmful anti-fouling substances, harmful emissions or any other harmful substance including such incidents occurring on the high seas;

(f) port shipyard or offshore terminal for the purpose of providing reception facilities.

156. Clause 129 of the Bill seeks to specify the application of Part VII. It applies, *inter alia*, to Indian vessels, ports and foreign vessels on matters related to prevention of pollution.

157. The stakeholders have submitted the following suggestions:

(i) Clause 129(1) — The master, owner or agent shall pay to every seaman his wages within 4 days of his discharge and the seaman shall receive on account a sum of one-fourth of the balance due to him at the time of discharge.

(ii) Clause 129(2) — If the master, owner or agent fails without reasonable cause to make payment as stated above, he shall pay to the seaman not exceeding 2 days pay for each day commencing from the day of discharge during which payment is delayed as decided by the shipping master, maximum 10 days double pay. It would be appropriate to include the above provisions in the Bill.

158. The Ministry of Shipping has stated that the omitted sections are related to MLC which shall be incorporated in the rules to be framed under clause 68 of the Bill.

159. 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.

160. **Clause 136**

136. (1) When an incident in which the cargo or harmful substances, as covered under this Part or the Pollution prevention convention is escaping or likely to escape from a vessel and may cause or threaten to cause pollution of air, any part of coasts or coastal waters of India, the master of every vessel shall report the particulars of such incident to such authority in such manner as may be prescribed.

(2) The vessel referred to in sub-section (1) being abandoned, or a report from such vessel being incomplete, the Central Government shall fix the responsibility on the master of that vessel.

(3) Where the Central Government is satisfied that the cargo or harmful substances as covered under this Part or the Pollution prevention convention is escaping or likely to escape and may cause or threaten to cause pollution of air, any part of coasts or coastal waters of India, it may direct the owner, agent, master, charterer, operator, lessee or licensee of the vessel by notice served on him, to take following action, namely:-

(a) to prevent the escape of harmful substances from the vessel, as may be specified in such notice;

(b) to remove the cargo or oil or noxious liquid substance or harmful substance from the vessel, in such manner and to such place, if any, as may be specified in the notice;

(c) to remove the vessel to a place, if any, as may be specified in the notice;

(d) to remove the cargo or oil or noxious liquid substance or harmful substance slicks on the surface of the sea in such manner, if any, as may be specified in the notice; and

(e) to prohibit the removal of the vessel including any cargo or stores therein, from a place specified in the notice.

(4) Notwithstanding anything contained in sub-section (3), the Central Government may, if it is of the opinion that the pollution caused or likely to be caused by release of harmful substances has or may present a grave and

imminent danger to the coastline or related interest from pollution or threat of pollution, proceed to take such measures as may be deemed necessary to prevent, mitigate or eliminate such threat or danger and any measures so taken shall be deemed to have been taken under this section.

(5) Where any person fails to comply, or fails to comply in part, with any notice served on him under sub-section (3), the Central Government may, whether or not such person is convicted of an offence under this Part by reason of his having so failed to comply, cause such action to be taken as it may deem necessary for,—

(a) carrying out the directives given in the notice issued under sub-section (1); and

(b) containing the pollution already caused or preventing the pollution threatened to be caused, of any part of the coast of India by any harmful substance escaped or threatening to escape from the vessel.

(6) Subject to the provisions of this Part any expenditure or liability incurred by the Central Government in, or by reason of, the exercise of powers under sub-section (4) in relation to any vessel in respect of which a notice had been issued under sub-section (3), shall be a debt due to the Central Government by the person or persons on whom the notice was served and may be recovered from that person, or as the case may be, from all or any of those persons and shall be a charge upon all or any vessel owned by that person or persons which may be detained by the Central Government until the amount is paid.

(7) Notwithstanding anything contained in sub-sections (3) to (6), to prevent, mitigate or eliminate grave and imminent danger to the coastline or related interests from pollution or threat of pollution following upon a maritime casualty or acts relating to such casualty on the high seas which may reasonably be expected to result in major harmful consequences to the Indian coastal water, the Central Government shall take such measures as may be necessary.

(8) The Central Government may make national or regional arrangement system for responding promptly and effectively to pollution incidents occurring within the zones under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 or any other law for the time being in force.

161. Clause 136 of the Bill seeks to obligate the master of a vessel to make a report to the authority designated by the Central Government, whenever an incident in which the cargo or harmful substances as covered under Part VII or the pollution prevention convention is escaping or likely to escape and may cause or threaten to cause pollution of air, any part of coasts or coastal waters of India and the responsibility of the master for failure in making such reports. It empowers the Central Government to direct the owner, agent, master, charterer, operator, lessee or licensee of the vessel through a notice, to take immediate necessary action to prevent or control pollution, in case an incident of pollution occurs or likely to occur and also empowers the Central Government to take any suitable and appropriate measures, as deemed necessary, to prevent, mitigate or eliminate the threat or danger from pollution, whenever a pollution is caused or likely to be caused by release of harmful substances, or whenever a grave and imminent danger to the coastline or related interest is likely from an incident of pollution or threat of pollution.

162. As regards Prevention, Containment Pollution From vessel and response Clause the stakeholders submitted that Unless otherwise expressly provided, the provisions of this Act which apply to vessels other than those referred to in sub-section (1) shall so apply only while any such vessel is within India or in waters within the jurisdiction of India. We believe the applicability of the Act of different zones under the Territorial Waters Act is possible only with suitable notification issued under clause 7 of the Territorial Water, Continental Shelf, Exclusive Economic Zones and other Maritime Zones of India Act, 1976, and it cannot be in extended in any other manner.

163. The Ministry of Shipping did not accept the suggestion and submitted that the geographical limit of application of a legislation is to be mentioned in that legislation itself. The Merchant Shipping Act 1958 also had similar provisions e.g., coastal waters has been defined to include Exclusive Economic Zone (EEZ) under section 356B(d).

164. The Maritime Zones of India Act declares the limits of all zones and section 7 of that Act enables alteration of that limit by notification. Section 7 of Maritime Zones Act also provides for extending any enactment i.e. an Act already in force. In this case the Bill itself provides for application upto the limits mentioned in Cl. 136 (8).

165. **Clause 140**

140. Every vessel, company, port facility, shipyard, ship breaking yard, ship repair unit, offshore facilities or terminal shall, unless exempted, be in possession of such certificates as may be prescribed.

166. Clause 140 of the Bill seeks to provide that every vessel shall possess the prescribed certificates, as may be specified under the rules.

167. The stakeholders suggested that under Clause 140- certificates the Committee should consider adding a clause regarding electronic certification system for development and implementation. It is time we develop & move to electronic format system of ships certifications, as well that of seafarers (Since 24 June 2016, Denmark has been issuing electronic ship certificates to ships flying the Danish flag. In order to verify the validity and authenticity of electronic ship certificates, one can enter the Tracking ID no. of the relevant certificate together with either the ship's IMO number or the certificates date of issue. Enabling every vessel, company, port facility, ship yard, ship breaking yard, ship repair unit, offshore facilities or terminal shall, unless exempted, be in possession of such certificates as may be prescribed. As such, the central Government may prescribe, acceptability of such certificates, documents in electronic formats, available on board the unit. These certificates shall be digitally signed by the issuing authority and can be verified through a verification system

168. The Ministry of Shipping has in their reply submitted that format and registration procedures of ship certificates will be specified in detail in the secondary legislation i.e. M.S Rules. Electronic means of facilitation need not be provided as a statutory provision in the Bill as this is a policy measure. The Government has already taken this initiative to provide services to stakeholders through e-governance.

169. **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.**

170. **Clause 150**

150. In every case of collision between two vessels it shall be the duty of the master or person in-charge of each vessel, in and so far as he can do so without danger to his own vessel, crew and passengers, if any, -

(a) to render to the other vessel, her master, crew and passengers, if any, such assistance as may be practicable and may be necessary to save them from any danger caused by the collision and to stay by the other vessel until he has ascertained that she has no need of further assistance; and

(b) to give to the masters or persons in-charge of the other vessels the name of his own vessel and of the port to which she belongs and also the names of the ports from which she comes and to which she is bound.

171. Clause 150 of the Bill seeks to impose a duty on the master of a vessel to assist the other vessel in case of collision between two vessels without endangering his vessel, crew and passengers. It requires the master to save the other vessel from any danger caused by the collision and to standby near the other vessel until the other vessel needs no further assistance

and also requires the master to exchange information such as name of its ship, port of registry, last port and next port of call.

172. It was submitted to the Committee that in every case of collision between two vessels it shall be the duty of the master or person in-charge of each vessel, in and so far as he can do so without danger to his own vessel, crew and passengers, if any, —

(a) to render to the other vessel, her master, crew and passengers, if any, such assistance as may be practicable and may be necessary to save them from any danger caused by the collision and to stay by the other vessel until he has ascertained that she has no need of further assistance; and

(b) to give to the masters or persons in-charge of the other vessels the name of his own vessel and of the port to which she belongs and also the names of the ports from which she comes and to which she is bound.

173. No specific penalty has been prescribed in the table under Sec. 256(2) for not complying with the above section.

174. The Ministry of Shipping has replied to this point that Clause 209 empowers the Central Government to cancel or suspend any certificate granted to seafarers for violation of the provision under Clause 150. Hence separate penalty for this purpose is not required. Any willful act of collision will attract the provision of Indian Penal Code, 1860.

175. 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.

176. **Clause 169**

169. (1) Save as otherwise provided in sub-sections (2) and (3) of this section, the owner of a ship at the time of an incident or where the incident consists of a series of occurrences, at the time of first of such occurrence, shall be liable for any pollution damage caused by the ship as a result of the incident.

(2) No liability for pollution damage shall attach to the owner, if he proves that the pollution damage,—

(a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) was wholly caused by an act or omission done with intent to cause damage by a third party.

(3) Where the owner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from his liability to such person.

(4) No claim for compensation for pollution damage may be made against the owner otherwise than in accordance with the provisions of this Chapter.

(5) Subject to sub-section (6), no claim for compensation for pollution damage under this Chapter or otherwise may be made against,—

(a) the servants or agents of the owner or the members of the crew;

(b) the pilot or any other person who, without being a member of the crew, performs services for the ship;

(c) any charterer (by whatever name called including a bareboat charterer), manager or operator of the ship;

(d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;

(e) any person taking preventive measures;

(f) all servants or agents of persons mentioned in clauses (c), (d) and (e), unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage may probably result.

(6) Nothing in this Chapter shall prejudice any right of recourse of the owner against third parties.

177. Clause 169 of the Bill seeks to provide for the liability of owner for any pollution damage caused by the ship. It further provides for exemption of the owner from liability if he proves that the pollution damage is the result of an act of war, hostility, civil war, etc., and was wholly caused by an act or omission done with intent to cause damage by a third party and also the damage caused intentionally by a person who suffered the damage or from negligence of that person and specifies the persons against whom the claim for compensation for pollution damage under this Chapter or otherwise cannot be made.

178. The stakeholders have pointed out that under this clause, the Ship owner is not liable for pollution damage as stated in the following section of the Bill - Sec. 169(2) — No liability for pollution damage shall attach to the owner, if he proves that the pollution damage

(a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) was wholly caused by an act or omission done with intent to cause damage by a third party.

However the International Convention on Civil Liability for Oil Pollution Damage states one more exception under which the ship owner shall not be liable, as follows --Article III Para. 2(c) --- No liability for pollution damage shall attach to the owner if he proves that the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

Considering that India has ratified the above CLC Convention it is imperative that the said Para, of the convention is incorporated in Sec. 169 (2) of the Bill.

179. The Ministry of Shipping accepted the point and submitted that provisions of the international convention will be incorporated.

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

181. Clause 179

179. (1) Rights of compensation under this Chapter shall be extinguished unless an action is brought within a period of three years from the date when the damage occurred:

Provided that, no action shall be made for compensation after six years from the date of the incident which caused the damage.

(2) If incident consists of a series of occurrences, the period of six years shall start from the date of the first occurrence.

182. Clause 179 of the Bill seeks to provide for the limitation period of three years for claiming compensation from the date of oil pollution damage or six years, if the incident consists of a series of occurrences.

183. The stakeholders have in their written memoranda to the Committee requested that under Clause 179. (1) Right of compensation under this Chapter shall be extinguished unless an action

is brought within a period of three years from the date when the damage occurred ,Provided that no action shall be made for compensation after six years from the date the incident which caused the damage

(2) If incident consists of a series of occurrences, the period of six years shall start from the date of the first occurrence.

184. The Ministry of Shipping did not accept this suggestion and stated that the period in which the right of compensation gets extinguished is clearly mentioned in Clause 179(1). These dates are part of CLC Convention. Therefore, the suggestion may not be accepted.

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

186. Clause 185

185. (1) No liability for pollution damage shall be incurred by the ship owner under this Chapter, if he proves that such damage,—

(a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) was wholly caused by any act or omission done with an intent to cause such damage by any person other than an employee or agent of the owner.

(2) If the shipowner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, then, he shall be wholly or partially exonerated from his liability to such person.

187. Clause 185 of the Bill seeks to exempt from liability for the ship owner, in certain situations such as, if the pollution damage is caused due to act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or was wholly caused by any act or omission done with an intent to cause such damage by any person other than an employee or agent of the owner. It further provides to exonerate the liability of the ship owner when it is proved that the person suffered the damage has intentionally done the damage or due to negligence an oil pollution damage was caused.

188. The stakeholders in their written memorandum to the Committee has stated that Liability of ship owner for bunker oil pollution damage Ship owner is not liable for pollution damage as stated in the following section of the Bill under Clause 185(1) if he proves that such damage —

(a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) was wholly caused by an act or omission done with an intent to cause such damage by any person other than an employee or agent of the owner.

However the International Convention on Civil Liability for Bunker Oil Pollution Damage states one more exception under which the ship owner shall not be liable, as follows:

Article 3 Para. 3(c) — No liability for pollution damage shall attach to the ship-owner if he proves that the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigation aids in the exercise of that function. Considering that India has ratified the above Bunker Convention it is imperative that the said Para, of the convention is incorporated in Sec. 185(1) of the Bill.

189. The Ministry of Shipping accepted this matter and agreed to include provisions of the international convention .

190. 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.

191. Clause 189

189. (1) The right to claim compensation under this Chapter shall be extinguished if such claim is not made within a period of three years from the date of occurrence of damage: Provided that in no case, such claim may be made after six years from the date of incident which caused such damage.

(2) Where the incident consists of a series of occurrences, the period of six years shall run from the date of the first of such occurrence.

192. Clause 189 of the Bill seeks to stipulate the limitation period of three years for claiming compensation from the date of bunker oil pollution damage or six years if the incident consists of a series of occurrences.

193. The Memorandum received by the Committee stated that under Clause 189. (1) the right to claim compensation under this Chapter shall be extinguished if such claim is not made within a period of three years from the date of occurrence of damage;

Provided that in no case, such claim may be made after six years from the date of incident which caused such damage

(2) Where the incident consists of a series of occurrences, the period of six years shall run from the date of the first of such occurrence.

194. The Ministry of Shipping furnished the reply to this issue and submitted that the period in which the right of compensation gets extinguished is clearly mentioned in Clause 189(1). These dates are part of Bunker Convention. The suggestion may not be accepted.

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

196. Clause 207

207. (1) For the purposes of investigations and inquiries under this Part, a marine casualty shall be deemed to be an event, or sequences of events that has resulted in any of the following and has occurred directly by, or in connection with the operations of Indian vessels and vessels other than Indian vessels, when,—

(a) on or near the coast of India, any vessel is lost, abandoned, stranded or materially damaged;

(b) on or near the coast of India, any vessel causes loss or material damage to any other vessel;

(c) any loss of life or presumed loss of life, ensues by reason of any casualty happening, or otherwise, to or on board any vessel, on or near the coast of India;

(d) any loss of life or presumed loss of life, ensues by reason of any casualty happening, or otherwise, to an Indian national on board any vessel, anywhere in the world;

(e) in any place, any such loss, abandonment, stranding, material damage or casualty as mentioned above occurs to or on board any Indian vessel, and any competent witness thereof is found in India;

(f) any Indian vessel is lost or is supposed to have been lost, and any evidence is obtainable in India as to the circumstances under which she proceeded to sea or was last heard of;

(g) in any place within the zones under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, pollution, or the potential threat of such pollution to the environment, or severe damage to the environment, or the potential to severe damage to the environment is caused of a vessel;

(h) a fire or explosion takes place on any Indian vessel anywhere in the world, or a fire or explosion takes place on a vessel other than an Indian vessel, while such vessel is on, or near, the coast of India.

(2) In the cases mentioned in sub-section (1), the owner, manager, operator, company, pilot, harbour-master, master, or other person in charge of the vessel, or, where two vessels are concerned, in charge of each vessel at the time of the marine casualty, as the case may be, shall, within twenty-four hours of the occurrence, give notice of the marine casualty to the officer appointed in this behalf by the Central Government.

(3) Wherever any such officer receives the notice of the marine casualty under sub-section (2), he shall forthwith report in writing the information to the Central Government and may proceed to make preliminary inquiry into the marine casualty and shall furnish the report on completion of independent inquiry into the incident.

(4) The Central Government may, for the purposes of the investigation, appoint a body to conduct a marine safety investigation in accordance with the Safety Convention.

(5) The body appointed under sub-section (4) shall, make preliminary assessment of the marine casualty and conduct a marine safety investigation for ascertaining its causes and circumstances and submit its report to the Central Government.

Explanation.— For the purposes of this Part, the word “company” has the same meaning as assigned to it in clause (a) of section 111.

197. Clause 207 of the Bill seeks to define the marine casualty and mandate on the owner, manager, operator, company, pilot, harbour-master, master, or other person in charge of the vessel, to give notice of the occurrence of casualty within twenty-four hours of such occurrence to the office appointed by the Central Government for the purpose and such officer shall forthwith report in writing the information to the Central Government and may proceed to make preliminary inquiry into the marine casualty and shall furnish the report on completion of independent inquiry into the incident. It further empowers the Central Government to appoint a body to make preliminary assessment of the marine casualty and conduct a marine safety investigation for ascertaining its causes and circumstances and submit its report to the Central Government.

198. The present Bill does not incorporate the innovative, constructive steps adapted by other countries such as United Kingdom (SOSREP), Stake holders participation in the board which governs maritime administration, the Concept of Merchant Navy Training Board (MNTB), Merchant Ship Accident and Investigation Board (MAIB) of UK, etc

199. The Ministry of Shipping has submitted that it is not desirable to have a permanent body for accident matters as it may involve financial and administrative burden. For investigation of accidents, as proposed in Clause 207 (4) of the Bill, a body can be constituted as and when required. The Bill already envisages two types of the Boards as below; National Shipping Board, to advise the Government on matters relating to Indian shipping and Seafarer Welfare Board for advising the Central Government on measures to be taken for promoting the welfare of seafarers, in which ship-owners, seafarers and other stakeholders are represented.

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

201. **Clause 209**

209. The Central Government may, by order, cancel or suspend any certificate granted under this Act to any seafarer for any specified period,—

- (a) if the inquiry report or investigation report reveals that the seafarer is incompetent or has been guilty of misconduct;
- (b) in a case of collision, the seafarer has failed to render assistance;
- (c) if the seafarer has been convicted of any offence under this Act or any nonbailable offence committed under any other law for the time being in force in India or outside India;
- (d) the casualty, if any, has been caused by wrongful act or default of the seafarer; or
- (e) if the seafarer to whom the certificate has been granted contravenes any provisions of this Act:

Provided that no order under this section shall be passed unless the person concerned has been given an opportunity of making a representation against such order.

202. Clause 209 of the Bill seeks to empower the Central Government to cancel or suspend any certificate granted under this Bill to any seafarer for any specified period, by way of an order, based on inquiry report or for any other default of seafarer listed under that clause.

203. The stakeholders submitted that the present format of this Clause 209

(c) if the seafarer has been convicted of any offence under this Act or any non bailable offence committed under any other law for the time being in force in India or outside India. The stakeholders commented that Power to cancel certificate etc is draconian in nature.

204. The Ministry of Shipping replied that Clause 209 empowers the Central Government to cancel or suspend the certificate of a seafarer for a specified period only in certain circumstances listed in this clause such as incompetency or misconduct revealed in report after inquiry/investigation; fail to render assistance in case of a collision; convicted of any offence under this Act or any non bailable offence committed under any other law; causing casualty by wrongful act or default of the seafarer; and for contravening the provisions of this Bill. It is also provided that no order shall be passed unless the person concerned has been given an opportunity of making a representation against such order.

205. 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.

206. **Clause 224**

224. (1) The owner of any wreck in the possession of the receiver upon establishing his claim to the same to the satisfaction of the receiver within one year from the time at which the wreck came into the possession of the receiver shall, upon paying the salvage and other charges, be entitled to have the wreck or the proceeds thereof delivered to him.

(2) Where any articles belonging to or forming part of a vessel other than an Indian vessel which has been wrecked or belonging to and forming part of the cargo of such vessel, are found in any area to which this Chapter applies or are brought into any port in India, the consular officer of the country in which the vessel is registered or, in the case of cargo, the country to which the owners of the cargo may have belonged shall, in the absence of the owner and of the master or other agent of the owner, be deemed to be the agent of the owner, with respect to the custody and disposal of the articles.

(3) Where the owner of the wreck does not appear and claim the balance of the proceeds of sale within one year from the date of sale, the said balance shall become the property of the Central Government.

207. Clause 224 of the Bill seeks to specify the claims of the owner to wreck and time limit of his entitlement to possess wreck back which is in possession of receiver of wreck and empowers

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)
