

Bill No. 34 of 2012

THE PIRACY BILL, 2012

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BILL

to make special provisions for suppression of piracy and to provide for punishment for the offence of piracy and for matters connected therewith or incidental thereto.

WHEREAS India is a signatory to the United Nations Convention on the Law of the Sea adopted by the United Nations on the 10th December, 1982;

AND WHEREAS the aforesaid convention, among other things, states that all States shall co-operate to the fullest possible extent in the repression of piracy on high seas or any other place outside the jurisdiction of any State;

AND WHEREAS it is considered necessary to implement the provisions relating to piracy contained in the Convention.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Piracy Act, 2012.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title and
commence-
ment.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) "Code" means the Code of Criminal Procedure, 1973;

2 of 1974.

(b) "Convention State" means a State party to the United Nations Convention of the Law of the Sea 1982;

(c) "Designated Court" means a Court of Session specified as a Designated Court under this Act;

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(d) "notification" means a notification published in the Official Gazette;

(e) "piracy" means, —

(i) any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed — 10

(A) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(B) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; 15

(ii) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts, making it a pirate ship or aircraft;

(iii) any act of inciting or of intentionally facilitating an act described in sub-clauses (i) and (ii);

(iv) any act which is deemed piratical under the customary international law; 20

(f) "pirate ship or aircraft" means a ship or aircraft which, if, —

(i) it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in sub-clauses (i) to (iii) of clause (e); 25

(ii) it has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

(2) The words and expressions used in this Act and not defined but defined in the Indian Penal Code or the Code shall have the meanings respectively assigned to them in those Codes. 30 45 of 1860.

(3) Any reference in this Act to a law which is not in force in any area, shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.

Punishment for piracy.

3. Whoever commits an act of piracy shall be punished with imprisonment for life except where the accused has caused death in committing the act of piracy or attempt thereof in which case he may be punished with death and in addition the Designated Court may also subject to any restitution or forfeiture of property involved in the commission of the offence. 35

Attempt to commit piracy.

4. An attempt to commit piracy or any unlawful attempt intended to aid, abet, counsel or procure for the commission of an offence of piracy shall also constitute an offence and is liable on conviction to be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine. 40

Punishment to accomplice to piracy.

5. Every person who is an accomplice to an act of piracy shall be liable on conviction to be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine. 45

6. (1) Notwithstanding anything contained in the Code, for the purposes of this Act, the Central Government may, by notification, confer on any Gazetted officer of that Government or of a State Government the powers of arrest of any person, investigation and prosecution exercisable by a police officer under the said Code.

Conferment
of power of
investigation.

5 (2) The Designated Court shall have jurisdiction to prosecute—

(a) any person who apprehended by or in the custody of the coast guard vessel or an Indian naval warship regardless of the nationality or citizenship of such person and is accused of committing an act punishable under this Act;

10 (b) when a person is accused of committing an act of piracy is a citizen or national of India or is a resident foreign national in India or is a stateless person;

15 (c) when an offence under this Act is committed on board a foreign flag ship, where the law enforcement or other public authority of the port or place where the ship is located has been requested to intervene by the State whose flag the vessel is entitled to fly, or by the owner of the ship or its master or other person on board the ship:

Provided that nothing in this sub-section shall apply if the ship in question is a warship or auxiliary ship or is a government owned ship employed in non-commercial service and under the control of the government authorities at the time of the act of piracy otherwise giving rise to jurisdiction to the Court.

20 (3) Notwithstanding anything contained in any other law for the time being in force, the Designated Court shall have the jurisdiction to try a proclaimed offender *in absentia*.

7. In any prosecution of an offence under this Act, if it is proved—

Presumption.

25 (a) that the arms, ammunition, explosives and other equipments were recovered from the possession of the accused and there is a reason to believe that such arms, ammunition, explosives or other equipments of similar nature were used in the commission of the offence; or

(b) that there is evidence of use of the force, threat of force or any other form of intimidation caused to the crew or passengers of the ship in connection with the commission of the offence; or

30 (c) that there is evidence of an intended threat of using bomb, arms, firearms, explosives or committing any form of violence against the crew, passengers or cargo of a ship,

35 the Designated Court shall presume, unless the contrary is proved that the accused had committed such offence and the burden of proof that the accused has not committed such offence shall shift to the accused.

8. (1) For the purpose of providing for speedy trial of the offences under this Act, the Central Government shall, after consulting the Chief Justice of the concerned High Court, by notification, specify—

Designated
Courts.

40 (i) one or more Court of Session in the State, to be Designated Court for the purposes of this Act; and

(ii) the territorial jurisdiction of each such Court.

(2) Notwithstanding anything contained in the Code, a Designated Court shall, as far as practicable, hold the trial on a day-to-day basis.

9. (1) Notwithstanding anything contained in the Code,—

45 (a) all offences under this Act shall be triable only by the Designated Court specified under sub-section (1) of section 8;

Offences
triable by
Designated
Court.

(b) where a person accused of or suspected of the commission of an offence under this Act is produced before a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate: 5

Provided that where such Magistrate considers —

(i) when such person is forwarded to him under this sub-section; or

(ii) upon or at any time before the expiry of the period of detention authorised by him, that the detention of such person is unnecessary, 10

he shall order such person to be produced before the Designated Court having jurisdiction;

(c) the Designated Court may exercise, in relation to the person produced before him under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code, in relation to an accused person in such case who has been forwarded to him under that section; 15

(d) a Designated Court may, upon a perusal of a complaint made by an officer of the Central Government or the State Government, as the case may be, authorised in this behalf, take cognizance of that offence without the accused being committed to it for trial. 20

(2) While trying an offence under this Act, a Designated Court may also try an offence other than an offence under this Act, with which the accused may, under the Code, be charged at the same trial.

Application of Code in proceedings before a Designated Court.

10. Save as otherwise provided in this Act, the provisions of the Code shall apply to the proceedings before a Designated Court and the person conducting a prosecution before a Designated Court shall be deemed to be a Public Prosecutor appointed under the said Code. 25

Provisions as to bail.

11. (1) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond unless— 30

(a) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. 35

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding grant of bail under section 439 of the Code.

Provision as to extradition.

12. (1) The offence under this Act shall be deemed to have been included as extraditable offences and provided for in all extraditable treaties made by India.

(2) In the absence of a bilateral extradition treaty, the offences under this Act shall be extraditable offences between India and other Convention States on the basis of reciprocity. 40

(3) For the purposes of application of the provisions of the Extradition Act, 1962 to the offences under this Act, any ship registered in a Convention State shall, at any time while that ship is plying, be deemed to be within the jurisdiction of that Convention State whether or not it is for the time being also within the jurisdiction of any other country. 34 of 1962. 45

(4) For the purposes of this section, the provisions of section 188 of the Code shall apply.

5 **13.** (1) On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. Arrest and seizure of property.

(2) A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorised to that effect.

10 **14.** (1) For the purposes of geographic scope, the provisions of this Act shall also extend to the exclusive economic zone of India. Geographic scope.

(2) In this section, the expression "exclusive economic zone of India" shall have the same meaning as assigned to it in section 7 of the Territorial Water, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976.
80 of 1976.

STATEMENT OF OBJECTS AND REASONS

Since 2008, a major spurt in attacks by pirates, particularly in the Gulf of Aden and off the coast of Somalia, has seriously affected the safety and security of maritime traffic and personnel plying between Asia and Europe and the east coast of Africa. With the enhanced naval presence in the Gulf of Aden, pirates have been shifting their area of operations eastwards and southwards and some piracy incidents have also taken place close to India's Exclusive Economic Zone on its western coast. The Indian Navy and the Coast Guard have enhanced their vigil and successfully conducted several operations against pirates. As a result, a number of Somali pirates are presently in the custody of Indian police authorities and are undergoing trial.

2. India does not have a separate domestic legislation on piracy. Prosecution for piracy as a crime has not been included in the Indian Penal Code, 1860 or in the Code of Criminal Procedure, 1973. The provisions of the Indian Penal Code pertaining to armed robbery and the Admiralty jurisdiction of certain courts have been invoked in the past to prosecute pirates apprehended by the Indian Navy and the Coast Guard but in the absence of a clear and unambiguous reference to the offence of maritime piracy in Indian law, problems are being faced in ensuring prosecution of the pirates.

3. Given the increasing incidence of piracy, including within India's Exclusive Economic Zone, and the increasing number of pirates apprehended by the Indian Naval forces, a need was felt for a domestic legislation on piracy which could provide the necessary legal framework within the country for prosecution of persons for piracy related crimes.

4. In the above backdrop, it is felt necessary to introduce an overarching legislation which would provide certainty and clarity in the law as well as sound basis for effective prosecution of pirates apprehended by the Indian authorities irrespective of their nationalities. It would also promote the safety and security of India's maritime trade including the safety of our vessels and crew members.

5. The Piracy Bill, 2012, *inter alia*, provides for the following, namely:—

(a) to define the expression "piracy" so as to include various acts, as given in 1982 United Nations Convention on the Law of the Sea as acts of piracy;

(b) to provide punishment for an act of piracy, attempt to commit piracy and accomplice to piracy;

(c) confers power on any Gazetted officer of the Central Government or of a State Government with the powers of arrest of any person, investigation and prosecution exercisable by a police officer under the Code of Criminal Procedure;

(d) to specify by the Central Government after consultation with the Chief Justice of concerned High Court, by notification, one or more Court of Session in the State to be Designated Court for providing speedy trial of the offences under the proposed legislation and the territorial jurisdiction of each such Court;

(e) provides for application of Code of Criminal Procedure in the proceedings before a Designated Court; provisions relating to bail of accused persons;

(f) provision as to extradition of persons involved in an act of piracy;

(g) for the purpose of geographic scope, to extend the proposed legislation to the exclusive economic zone of India.

5. The proposed Bill strives to achieve the above objectives.

NEW DELHI;
The 21st March, 2012.

S. M. KRISHNA.

LOK SABHA

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to make special provisions for suppression of piracy and to provide for punishment for the offence of piracy and for matters connected therewith or incidental thereto.

(Shri S.M. Krishna, Minister of External Affairs)