

PARLIAMENT OF INDIA

RAJYA SABHA

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

NINETY-NINTH REPORT

ON

THE ADMIRALTY BILL, 2005

(PRESENTED TO THE RAJYA SABHA ON 21ST MARCH, 2006)

(LAID ON THE TABLE OF THE LOK SABHA ON 21ST MARCH, 2006)

RAJYA SABHA SECRETARIAT

NEW DELHI

MARCH, 2006/PHALGUNA, 1927(SAKA)

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COMPOSITION OF THE DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON TRANSPORT, TOURISM AND CULTURE (2004-2005)

1. **Shri Nilotpal Basu - *Chairman***

RAJYA SABHA

*

2. Shri Kamal Akhtar
3. Prof. Ram Deo Bhandary
4. Shri S.S. Chandran
5. Smt. Hema Malini
6. Shri Janardhana Poojary
7. Shri Satish Kumar Sharma

8. Shri Shatrughan Sinha
9. Shri Rama Muni Reddy Sirigireddy
10. Shrimati Ambika Soni

LOK SABHA

11. Shri Ramdas Athawale
12. Shri Raj Babbar
13. Shri Anil Basu
14. Shri Sartaj Singh Chhatwal
15. Shri N.S.V. Chitthan
16. Shri Adhir Chowdhury
17. Dr. K. Dhanaraju
18. Shri Ravindra Naik Dharavath
19. Shri Dip Gogoi
20. Shri Vijay Kumar Khandelwal
21. Shri W. Wangyuh Konyak
22. Dr. Ramkrishna Kusmaria
23. Shri Samik Lahiri
24. Shri Sudam Marandi
25. Shri Alok Kumar Mehta
26. Shri Gingee N. Ramachandran
27. Shri Manabendra Shah
28. Shri Dushyant Singh
29. Shri Madan Lal Sharma
30. Shri Chengara Surendran
31. Shri Umakant Yadav

(i)
(2005-2006)

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SECRETARIAT

Shri Sham Sher Singh, Joint Secretary
Shrimati Agnes Momin George, Director
Shri Jagdish Kumar, Under Secretary
Shrimati Subhashree Panigrahi, Committee Officer

INTRODUCTION

I, the Chairman of the Department-related Parliamentary Standing Committee on Transport, Tourism and Culture, having been authorised by the Committee to present on its behalf, do hereby present this Ninety-ninth Report of the Committee on the Admiralty Bill 2005*.

2. The Bill was introduced in the Lok Sabha on the 11th May 2005. In pursuance of rules relating to the Department-related Parliamentary Standing Committees, the Hon'ble Chairman, Rajya Sabha, in consultation with the Hon'ble Speaker, Lok Sabha, referred** the Bill to the Committee on 27th May 2005 for examination and report within three months. On the requests being made by the Chairman of the Committee, Hon'ble Chairman had granted extension of time till the 27th November, 2005, and then upto the 15th December, 2005, 28th February, 2006 and

28th April, 2006 respectively for the presentation of the report of the Committee on the aforesaid Bill.

3. The Committee took oral evidence of the Secretary and other officers of the Department of Shipping and Ministry of Law and Justice at its meetings held on the 8th July 2005 and 28th September 2005 respectively.

4. In order to get wider views on the subject, the Committee invited the views of individuals, organisations and institutions on the subject through advertisement in all major national dailies and vernacular newspapers all over the country. The advertisement evoked tremendous public response and the Committee received memoranda on the subject for consideration of the Committee. The Committee also heard the views of the representatives of the Indian National Shipowners Associations, Foreign Owners Representative & Shipmanagers Association, Port, Dock and Waterfront Workers' Federation of India, All India Port and Dock Workers' Federation, Indian National Port and Dock Workers' Federation, Iron Steel Scrap and Shipbreakers Association of India, Company of Master Mariners of India and the National Union of Seafarers of India on the provisions of the Bill at its meetings held on the 18th July, 19th July, 31st August and 9th September 2005 respectively.

5. The Committee took up clause-by-clause consideration of the Bill during its meeting held on the 17th March 2006. The Committee also considered the draft Report on the subject and adopted the same with minor modifications on 17th March 2006 itself.

6. The Committee wishes to express its thanks to the Secretary and other officers of the Department of Shipping and Ministry of Law and Justice for the assistance provided during deliberations on the provisions of the Bill. The Committee also acknowledges the contribution of Shri Zarir P. Bharucha, Advocate, Supreme Court of India and the representatives of employees Unions/Federations/Associations of major ports, who submitted their valuable suggestions on the provisions of the Bill.

NEW DELHI ;

March 17, 2006

Phalguna 26, 1927 (Saka)

NILOTPAL BASU

Chairman

Department-related Parliamentary

Standing

Committee on Transport,

Tourism & Culture

* Published in the Gazette of India Extraordinary Part II, Section-2, dated 11.5.2005

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** Rajya Sabha Parliamentary Bulletin Part II, No.42212 dated 30.5.2005.

REPORT

The Admiralty Bill, 2005 was introduced in the Lok Sabha on the 11th May, 2005. The Bill seeks to update India's Admiralty Laws which would be responsive to the needs of the Industry and will ensure that the maritime disputes are disposed of expeditiously and effectively. The long title of

the Bill highlights the purpose of the Bill as to consolidate and amend the law relating to the admiralty jurisdiction of courts, legal proceedings in connection with ships, their arrest, detention and sale and other matters. It also seeks to repeal five age old Acts namely; the Admiralty Offences (Colonial) Act, 1849, the Admiralty Jurisdiction (India) Act, 1860, the Admiralty Court Act 1861, the Colonial Courts of Admiralty Act, 1890, the Colonial Courts of Admiralty (India) Act, 1891 and Patent relating to High Courts of Bombay, Calcutta and Madras, which are in force since colonial days. The Bill was referred to this Committee by the Hon'ble Chairman, Rajya Sabha for examination and report. The Committee has accordingly discharged its mandate.

Statement of Objects & Reasons:-

2. The salient features given in the Statement of objects and reasons appended to the Admiralty Bill (**Annexure**) are as follows:-

- i. The Admiralty laws in India are more than a century old and maritime industry has been highlighting the need to update India's admiralty laws to be responsive to the needs of the industry.
- ii. To consolidate and amend the law relating to Admiralty jurisdiction of Courts, legal proceedings in connection with ships, their arrest, detention and sale and matters connected therewith or incidental thereto.
- iii. To enlarge the scope of the legislation to cover claims pertaining to pollution damages, loss of life, personal injury, towage of ships, pilotage of ships, port dues, disbursement made by the ship owners and agents of ships.
- iv. To make certain provision for vesting of civil jurisdiction in respect of various types of claims pertaining to shipping industry in High Courts, power of Supreme Court to transfer any proceedings from one High Court to another, power of the High Court to confer Admiralty jurisdiction in consultation with the Chief Justice of India on any Principal Civil Court of the State.
- v. To spell out Admiralty jurisdiction and mode of exercising it, conditions in respect of claims in an action *in rem*, jurisdiction *in personam*, restrictions on entertainment of actions in cases pertaining to action *in personam* in collision of ships.
- vi. To incorporate certain provision for vesting of rights on sale of ships, distribution of sale proceeds, order of priority of claim, maritime lien, procedure in respect of foreign ships and protection of owner, demise charterer, manager or operator of ships arrested.
- vii. To apply Code of Civil Procedure, assistance of assessors, reference to arbitration and

appeal.

viii. To confer upon the Central Government the power to make rules besides provision for repeal of the existing laws on the subject as recommended by the Law Commission.

3. In the background note furnished to the Committee, the Department of Shipping cited the following reasons for introduction of Admiralty Bill which have been enumerated in the following paragraphs :-

Reasons for Introduction of Admiralty Bill:-

4. The Committee was informed that a Committee in 1986, under the aegis of Shri Praveen Singh, the then Director General of Shipping, Mumbai, reviewed the existing maritime laws and admiralty jurisdiction in India and recommended for enacting a specific admiralty law.

5. The Parveen Singh Committee observed that existing admiralty jurisdiction of courts in India is by virtue of the Colonial Admiralty Jurisdiction Act, 1891 which vested the jurisdiction only in the High courts of Bombay, Calcutta and Madras. However, the jurisdiction of these courts, in fact extended to the whole of British India. These courts were vested with similar powers exercised by the English Courts under the Admiralty Courts, Act 1861 and as such this Act became the principal Act to be adopted and adapted by the courts in India. But, the Admiralty Courts Act, 1861 had limited jurisdiction in respect of claims leaving the Indian courts to follow precedents from British courts in areas relating to claims pertaining to ownership, building of or equipping of ships, repairs of ships, necessary supplies of ships, cargo or ship damages, crew wages, maintenance of ships, salvage disbursements by master and mortgages. Claimants often resort to obtaining arrest of ship involved in a claim with a view to effectively realizing the claim. In the existing Act of 1861, there is a general provision to the effect that an action for a claim can be brought *in personam* or *in rem*. The main drawback of this provision is that only the ship involved in cause can be proceeded against for arrest, thus leaving the claimant without recourse to effective action in the court. However, the British laws on the subject have undergone several changes including the adoption of the convention of arrest of a sister ship. But the British Act of 1861, is still being followed which is not only inadequate but also cumbersome British legacy. Accordingly, Parveen Singh Committee opined that the present admiralty jurisdiction of courts in India was outdated and recommended that a comprehensive legislation defining the scope of admiralty jurisdiction be enacted.

6. The Supreme Court in the case of **M.V.Elizabeth & others Vs Harwan Investment Trading Pvt. Ltd. JT 1992(2) S.C. 65**, while stressing on the need to codify and clarify the

admiralty laws of this country had observed as under:

"Admiralty jurisdiction, an unfamiliar branch of jurisprudence, was the subject of illuminating debate in this appeal directed against judgement of the Andhra Pradesh High Court. But what was surprising to hear, even in 1991, that the admiralty jurisdiction by the High Courts in India Republic is still governed by the obsolete Acts of 1861, 1890 & 1891. Yet there appeared no escape from it, notwithstanding its unpleasant echo in ears. The shock was still greater when it transpired that this state of affairs is due to lack of legislative exercise. Various provisions in 1890 Act have been rendered not only anomalous but also even derogatory to the sovereignty of the State. Nothing further need be said except the hope that the unfortunate state of affairs shall be brought to an end at the earliest."

7. Pursuant to the above direction of the Supreme Court, the Law Commission of India examined the whole question of admiralty jurisdiction. It has been pointed out by the Law Commission that the admiralty jurisdiction, despite the peculiarities of its origin and growth, is a part of the totality of jurisdiction vested in the High Court as a superior court of record and it is not a distinct and separate jurisdiction. The Commission felt that it is not necessary to limit the jurisdiction only to High Courts whose territories have a coastal belt as was recommended earlier by Praveen Singh Committee. The Commission therefore, recommended that the admiralty jurisdiction must be conferred upon all High Courts as part of their original jurisdiction with a provision empowering the extension of this jurisdiction to other Principal civil Courts in case a necessity should arise in future. The Commission in its 151st Report presented in 1994 recommended that legislation on the lines of the draft Bill suggested by it, might be enacted. The Commission also recommended repealing the following existing Acts/statutes, which will become redundant once the new law is enacted.

- (i) the Admiralty Offences (Colonial) Act, 1849;
- (ii) the Admiralty Jurisdiction (India) Act, 1860;
- (iii) the Admiralty Court Act 1861;
- (iv) the Colonial Courts of Admiralty Act, 1890;
- (v) the Colonial Courts of Admiralty (India) Act, 1891; and
- (vi) Patent relating to High Courts of Bombay, Calcutta and Madras.

8. The Department of Shipping in their background note informed that the present legislation is to give effect to the recommendations of Law Commission. The Clause 3 of Bill proposes to confer the original admiralty jurisdiction on all the High Courts with a provision for empowering the extension of this jurisdiction to other Principal Civil Courts in case a necessity should arise in future. Efforts have been made to ensure that the Bill is comprehensive in nature

by defining the scope of the admiralty jurisdiction in clause 5. The limitation of the existing laws about the action *in personam* or action *in rem* has been removed by providing for both the actions by clearly defining the cases when a particular action can be initiated. Clause 6 deals with action *in rem* while clauses 7 & 8 relate to the action *in personam*. Particular attention has been paid to prescribe the manner and procedure of distribution of sale proceeds in clause 11 and the order of priority of claims in clause 12.

9. The Department of Shipping has summarised the main reasons for bringing the present Bill as follows:-

- (i) to consolidate and amend the law relating to Admiralty jurisdiction of Courts, legal proceedings in connection with ships, their arrest, detention and sale and matters connected therewith or incidental thereto;
- (ii) to have a comprehensive legislation with enlarged scope to cover claims pertaining to oil pollution damages, loss of life, personal injury, towage of ship, pilotage of ship, port dues, disbursement made by ship owners and agents of ships, general average, bottomry bonds, forfeiture or condemnation of ships or cargo; and
- (iii) to repeal the outdated and obsolete existing laws made during British period on admiralty jurisdiction.

10. In its meeting held on the 8th July, 2005, the Committee heard the views of the Secretary, Department of Shipping on the Bill. Thereafter, the Committee decided to invite the views of individuals, organisations and institutions on the subject matter of the Bill through advertisement in all major national dailies and vernacular newspapers all over the country. Moreover, the Committee also heard the views of various stakeholders and trade unions. The Committee received 21 memoranda on the subject. These memoranda were thereafter forwarded to the Department of Shipping for its comments. The Department of Shipping forwarded their comments *vide* their Office Memorandum no. SR-11011/2/05-MA dated 26th September, 2005. The Committee in its meeting held on 17.03.2006, considered the Bill Clause by Clause and recommends the following. :-

CHAPTER-I

Clause- 2 (Definitions)

11. Clause 2 of the Bill deals with the definitions of various terms and expressions used in the Bill. Definitions are intended to avoid ambiguities and tedious repetitions. The Committee will deal with this clause as under:-

11.1 **Clause - 2** - In this Act, Unless the context otherwise requires, -

11.1.1 (a) “admiralty jurisdiction” means jurisdiction exercised by a court on any matter referred to in section 5;

11.1.2 The Clause was adopted without any change. The Committee therefore, does not suggest any change.

11.2 (b) "admiralty proceeding" means "any proceeding pending before a court exercising admiralty jurisdiction.

11.2.1 The Committee observes that the Department of Shipping in its reply has admitted that “this definition shall take care of every such proceeding pending before a court either before or after the enactment.” Therefore, the Committee recommends that the words “either before or after the commencement of this Act” should be added between the words “court” and “exercising Admiralty Jurisdiction”.

11.3 (c) "charge" means " any charge with the exception of light dues and any other charges in respect of lighthouses, buoys, beacons or pilotage".

11.3.1 The Committee was informed by the Stakeholdersthatthe definition appears to be all inclusive and cannot be restricted to hypothecation. The Department of Shippingreplied that the expression ”charge” in relation to a ship means "generally any dues with reference to port and pilotage etc". Therefore, an attempt has been made by the Government to give a precise definition so that there is no difficulty when it comes to settlement of claims. The Ministry therefore, suggested retaining the definition in the present form.

11.3.2 The Committee is of the considered view that the definition of a word spells out its meaning/content; it states what it is inclusive of and not what it is exclusive of. The Department of Shipping in their comments has accepted that “charge” means “any due with reference to port and pilotage etc.” This definition may be suitably changed and substituted with the existing one.

11.4 (d) “collision regulations” shall have the meaning assigned to this expression in the Merchant Shipping Act, 1958;

11.4.1 The Clause was adopted without any change. The Committee, therefore, does not suggest any change in this definition.

11.5 (e) “court” means the High Court or any other court exercising admiralty jurisdiction under section 3;

11.5.1 The Committee considered the Clause 2(e) alongwith Clause 2(g).

11.6 (f) “goods” means any property including live animals, containers, pellets or such other

articles of transport or packaging supplied by the consignor, irrespective of the fact whether such property is to be carried on or under the deck.

11.6.1 The Clause was adopted without any change. The Committee, therefore, does not suggest any change in this definition.

11.7 (g) "High Court" shall have the meaning assigned to this expression in the Merchant Shipping Act, 1958.

11.7.1 The Committee was suggested by the Stakeholders that the definition of the expression "High Court" contained in section 2(g) should exclude all references to the Merchant Shipping Act, 1958 and instead mention the High Courts of Bombay, Ahmedabad, Cochin, Hyderabad, Chennai, Calcutta, Bangalore and Bhubaneswar, as being conferred with concurrent admiralty jurisdiction which is not restricted territorially.

11.7.2 The Department of Shipping clarified that the Merchant Shipping Act, 1958 contains the definition of High Court in relation to its jurisdiction. By putting referential definition of the High Court, it is intended to vest admiralty jurisdiction in High Courts with extension to Principal Civil Courts under clause 3(2) of the Bill. The admiralty jurisdiction is thus, not restricted to territory where a court is located but extends to the entire coast of India and inland waters as parties to maritime disputes are dispersed all over India.

11.7.3 The Committee observes that the Clause 2(c) defines the expression "Court" to mean "High Court". Whereas, in Clause 2(g) High Court is defined as per Clause 3(15) of the Merchant Shipping Act 1958 as "*High Court within the limits of whose appellate jurisdiction, (a) the port of registry of the vessel is situate ; (b) the vessel is for the time being,; or (c) the cause of action wholly or in part arises.*" It appears from the above definitions that the exercise of admiralty jurisdiction of the High Court appears to be circumscribed by the territorial allocation of jurisdiction contained in the Merchant Shipping Act, 1958. Whereas the concepts of 'cause of action' and 'port of registry' are incongruous as the Admiralty jurisdiction is universal and is not concerned with the question of nexus between the cause of action and forum.

11.7.4 The Committee strongly feels that the designated High Courts should be conferred pan-Indian admiralty jurisdiction which would facilitate the courts to take out writ *in rem* and warrant of arrest which can be served or executed anywhere in India. Ships spend only a brief period of time in a port. In a case, where security / bail has been granted to a ship and the security or bail proves inadequate after the vessel has sailed, the absence of pan-Indian admiralty would involve

the claimant following the vessel and filing an admiralty suit in another High Court. This process will lead to multiplicity of cases. Therefore, the Committee feels that there is a compelling need for certain designated High Courts namely., Mumbai, Ahmedabad, Cochin, Hyderabad, Chennai, Calcutta, Bangalore and Bhubaneshwar to be conferred with an all-India admiralty jurisdiction. In any case, the efforts of courts have been vested with admiralty jurisdiction so there is no departure.

11.8 (h) “Inland waters” as "include all waters that are in fact navigable, irrespective of whether they are affected by tides or are land-locked or open or contain salt or fresh waters, and any part of the sea adjacent to the coast of India notified by the Central Government to be Inland Waters for the purposes of this Act."

11.8.1 The Committee enquired that the definition of "Inland Water" in the context of the clause 2 (h) requires further clarifications and desired the Ministry to explain their position in this regard. The Department of Shipping replied that by putting the definition of inland waters, it is attempted to give a precise definition to the expression and at same time the Central Government is empowered to notify any part of the sea adjacent to the coast of India to be its inland waters.

11.8.2 The Clause was adopted without any change. The Committee, therefore, does not suggest any change in this definition.

11.9 (i) “limits of the port” shall have the meaning assigned to this expression in the Indian Ports Act, 1908;

11.9.1 The Clause was adopted without any change. The Committee, therefore, does not suggest any change in this definition.

11.10 (j) “maritime lien” means the maritime lien specified in section 13.

11.10.1 The Clause was adopted without any change. The Committee, therefore, does not suggest any change in this definition.

11.11 (k) “master” shall have the meaning assigned to it in the Merchant Shipping Act, 1958;

11.11.1 The Clause was adopted without any change. The Committee, therefore, does not suggest any change in this definition.

11.12 (l) “port” shall have the meaning assigned to it in the Indian Ports Act, 1908;

11.12.1 The Clause was adopted without any change. The Committee, therefore, does not suggest any change in this definition.

11.13 (m) “ship” does not include a sailing vessel.

11.13.1 The Committee has been informed that “ship” means a vessel of any kind used or

constructed for use in navigation by water, however, it is propelled or moved, and includes a) barge, lighter or other floating vessel; b) a hovercraft; c) an offshore industry mobile unit or jack up oil rig and d) a vessel that has sunk or is stranded or the remains or wreck of such vessel but does not include e) a sea plane or f) a vessel under construction that has not been launched.

11.13.2 The Committee was also informed that a ship imported for breaking as per EXIM Policy and Customs Act, 1962, ceases to be a ship. The Department of Shipping informed that definition of the ship has been taken from the Merchant Shipping Act, 1958. It is intended to give a comprehensive meaning to the expression ship by excluding only sailing vessels. Therefore, the definition may be retained in the present form.

11.13.3 The Committee observes that Clause 2(m) defines "ship" as "does not include sailing vessel". Whereas, the term "sailing vessel" has not been defined under the Bill, which is otherwise very much required for understanding the meaning of the ship. The Committee recommends the Department of Shipping to re-examine the Clause 2 (m) in consultation with the Ministry of Law and Justice so as to make the definition of the Ship more clear. The Committee further recommends that while defining the term "ship", the interest of the ship-breaking industry should also be protected in clear terms.

11.13.4 The Committee also recommends that the terms such as "Charter", "Sub-Charter", "Sailing Vessel", "Manager", etc., that are in vogue in admiralty parlance should also be defined appropriately. Further, it also recommends that such terms which are not defined in the Act, but defined in the Merchant Shipping Act, 1958 should have the same meaning assigned to them in that Act..

CHAPTER II

Jurisdiction of courts

Clause - 3

12 Clause 3

12.1 **Clause-3(1) reads** - "Subject to the provisions of sub-section (2), the civil jurisdiction in respect of all claims under this Act shall vest in the High Court concerned and be exercisable in accordance with the provisions contained in this chapter."

12.1.1 The Committee has been informed that there are several High Courts conferred with the admiralty jurisdiction. Therefore, there should be a centralized registry where information regarding admiralty proceedings such as caveats against arrest of a vessel are shared with or

instantaneously accessible by other High Courts, so as to avoid any duplication of effort and confusion. This is the position in Australia where there is centralized national admiralty court registry maintained with the Federal Court. The Committee was further informed that the provisions of the Merchant Shipping Act, 1958 and the Major Port Trust Act, 1963 are sufficient in so far as the crew claims and various port dues are concerned. It is felt that by bringing that jurisdiction entirely under the High Courts will make the matters worse and time consuming. Supreme Court being the appellate authority, there could be a possibility of denial of justice as crewmembers may not be in a position to follow up the appeal.

12.1.2 The Department Shipping explained that Admiralty jurisdiction is a part of the totality of jurisdiction vested in the High Courts as a superior court of record. As it is proposed that admiralty jurisdiction should extend over all navigable waters in the country, it is not necessary to limit the jurisdiction only to the High Courts whose territories have a coastal belt. Hence, it is provided that the admiralty jurisdiction shall continue with all High Courts as a part of their original jurisdiction, with a provision empowering the extension of this jurisdiction to the Principal Civil Courts in case a necessity therefor, arise in future. As to the suggestion of information regarding the steps taken by various High Courts and to link them, it is understood that the computerization is being undertaken to link these courts.

12.1.3 The Committee notes that there are several High Courts conferred with the admiralty jurisdiction. Therefore, the Committee recommends that the Department of Shipping may explore the possibility of setting-up of a centralized registry for admiralty jurisdiction in consultation with the Ministry of Law & Justice in order to avoid any duplication or confusion. It should not be a problem once the process of computerisation is expedited which will enable linking of courts.

12.2 **Clause-3(2)** If at any time, the High Court is of the opinion that the number of cases filed under this Act is unduly large, it may, in consultation with the Chief Justice of India, by notification in the official gazette, confer admiralty jurisdiction in such matters, wholly or to the extent it considers necessary, on such of the Principal Civil Courts of the State as may be specified in the notification."

12.2.1 The Clause was adopted without any change. The Committee, therefore, does not suggest any change in this sub-clause.

12.3 **Clause- 3(3)** Any notification referred to in sub-section (2) may also contain such supplemental, incidental and consequential provisions, as the High Court may deem necessary.

12.3.1 The Clause was adopted without any change. The Committee, therefore, does not suggest

any change in this sub-clause.

12.3.2 Clause 3 was adopted with one recommendation.

Clause 4

Transfer of proceedings by Supreme Court.

13 **Clause 4 of the Bill states:-**

13.1 The Supreme Court may, on application of any party, transfer, at any stage, any admiralty proceeding from one High Court to any other High Court and the latter High Court shall proceed to try, hear and determine the matter from the stage at which it stood at the time of transfer:

Provided that no such proceeding shall be transferred unless parties to the proceeding have been given an opportunity of being heard in the matter.

13.2 The Committee has been informed by the Stakeholders that in this context a time frame, say 90 days, should be provided for transfer of proceedings from one High Court to another to avoid dragging of proceedings. The Committee was further suggested that Supreme Court ought to be invested with the jurisdiction to transfer admiralty proceedings on its own also.

13.3 The Department of Shipping replied that the Supreme Court, being the highest court of land, it is not advisable to adopt a criteria which is generally adopted in the case of lower courts. Therefore, the provision may be retained in the present form.

13.4 The Clause was adopted without any change. The Committee, therefore, does not suggest any change in this clause.

Clause 5

Admiralty Jurisdiction

14. **Clause 5(1)**

14.1 (a) to hear and determine any of the questions and claims mentioned in sub-section(2);

14.1.1 (b) in relation to any of the proceedings mentioned in section 7;

14.1.2 The sub-clauses (a) and (b) of clause 5(1) were adopted without any change. The Committee, therefore, does not suggest any change therein.

14.1.3 (c) Any other admiralty jurisdiction which it had immediately before the commencement of this Act by virtue of the Admiralty Court Act, 1861 or the Colonial Courts of Admiralty Act, 1890 or the Colonial Courts of Admiralty (India) Act, 1891 or otherwise;

14.1.4 The Committee was informed that sub-clause (c) of 5 should mention the retention of jurisdiction under the 1840 Admiralty Court Act, as this Act is still in force and was not repealed by 1861 Act. The latter Act merely enlarged the jurisdiction of the former without repealing it.

This view has been judicially approved by the Bombay High Court in MV Nicos's case (AIR 1983 from 178 at para 17).

14.1.5 The Department of Shipping has stated that the Admiralty Courts Act, 1840 was enacted to improve the practice and extend the jurisdiction of the High Courts of Admiralty of England. It appears that the said Act was not extended to the Courts in India.

14.1.6 Sub-clause (1) of clause 5 proposes to confer admiralty jurisdiction in all cases specified therein and clause (c) takes care of such jurisdiction with reference to the earlier laws in force. The causes of action, question of claims in respect of which admiralty jurisdiction can be exercised have been most comprehensively set out in clause 5 of the Bill in light of the Supreme Court Act, 1981 of UK. It does not seem necessary to add any other clauses to the proposed clause 5(2). The Department of Shipping has therefore, suggested for retention of the provision in the present form.

14.1.7 The Committee is not convinced with the reply of the Department of Shipping - "It appears that the said Act was not extended to the Courts in India". In legal matters, there should not be any ambiguity with regard to Acts/ provisions in vogue. The Committee recommends that the status of jurisdiction under the 1840 Admiralty Court Act, which was further, enlarged in the 1861 Act may be re-examined in consultation with the Ministry of law and Justice so that there is no scope of any ambiguity with regard to jurisdiction of 1840 Admiralty Court Act.

14.1.8 (d) any jurisdiction connected with ships which is vested in the High Court by rules of such courts made after the commencement of this Act, assigning and directing the jurisdiction to be exercised by that court.

14.1.9 The sub-clause (d) of clause 5(1) was adopted without any change. The Committee, therefore, does not suggest any change in this sub-clause.

14.2 **Clause 5(2)**- For the purposes of clause (a) of sub-section (1), a court may exercise jurisdiction to hear and determine any of the following questions or claims, namely:-

14.2.1 (a) any claim to the possession or ownership of a ship or to the ownership of any share therein including a claim concerning employment or earnings relating to that ship;

14.2.2 (b) any question arising between the co-owners of a ship as to its possession, employment or earning;

14.2.3 (c) any claim in respect of registered mortgage or of charge on a ship or any share therein;

14.2.4 (d) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried in a ship, or for the restoration of a ship

or any such goods after seizure, or for droits of admiralty.

14.2.5 (e) any claim for damage caused to a ship during her stay, business or voyage

14.2.6 (f) any claim for damage caused by a ship including civil liability for damage caused by oil pollution covered under the Merchant Shipping Act, 1958

14.2.7 (g) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment or in its operation, or in consequence of the wrongful act, neglect or default of-

- (i) the owners, charterers or persons in possession or control of a ship; or
- (ii) the master or crew of a ship, or any other person for whose wrongful act, neglect or default the owner, charterer or person in possession or control of a ship is responsible, being an act, neglect or default, in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship;

14.2.8 (h) any claim for loss of, or damage to, goods carried on board a ship;

14.2.9 (i) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;

14.2.10 (j) any claim in the nature of salvage for services rendered in saving life from a ship or in preserving the ship cargo, equipment, apparel or any other property of ship or wreck;

14.2.11 (k) any claim in the nature of towage in respect of a ship;

14.2.12 (l) any claim in the nature of pilotage in respect of a ship;

14.2.13 (m) any claim in respect of goods, materials bunker or other necessaries supplied to a ship or any services rendered to a ship for her operation or maintenance;

Explanation- For the purpose of this clause the expression “services” with reference a claim shall include a claim made towards insurance for such services;

14.2.14 (n) any claim in respect of the construction, repair or equipment of a ship or in respect of any port dues, fee and other charges to the Port Authorities under the Indian Ports Act, 1908 as amended from time to time or rates and other charges due under the Major Port Trust Act, 1963

14.2.15 (o) notwithstanding anything contained in the provisions of sections 150 and 151 of the Merchant Shipping Act, 1958, any claim by a master or member of the crew of a ship for wages including any sum allotted out of wages or adjudged to be due which may be recoverable as wages;

14.2.16 (p) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;

14.2.17 (q) any claim arising out of an act which is or is claimed to be in the nature of general average

Explanation- For the purpose of this clause” means "any extraordinary sacrifice or expenditure voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the ship property imperiled in the common use, “general average”

14.2.18 (r) any claim arising out of bottomry

14.3 **Clause 5(3)** - While exercising jurisdiction under clause (b) of sub-section (2), the court may settle any account outstanding and unsettled between the parties in relation to a ship, and direct that the ship, or any share thereof, shall be sold, or make such other order as the court thinks fit.

14.4 **Clause 5(4)** The provisions of this section shall apply -

14.4.1 (a) in relation to all ships whether Indian or not irrespective of the residence or domicile of owners thereof;

14.4.2 (b) in relation to all maritime claims, wherever arising (including, in the case of cargo or wreck or wreck salvage, claim in respect of cargo or wreck found on land and ;

14.4.3 (c) to all registered mortgages or charges, whether legal or equitable, including mortgages and charges created under any foreign law.

14.4.4 The Committee considered the clause 5 and took into account various submissions made to it by stakeholders / trade unions which *inter-alia* includes the following points:-

- Ø it should be positively classified as maritime claim.
- Ø Section 5(2)(a) of the draft Bill should insert the word “operation” between the words employment or earnings. The clause would read as “including a claim for the employment, operation or earnings relating to that ship”
- Ø Section 5(2)(c) of the draft Bill should be read as “any claim in respect of mortgage or a charge on a ship or any share therein or any mortgage of ship’s freight
- Ø There will be uncertainty if there is a claim for an unregistered mortgage.
- Ø The definition of charge, which appears to be all-inclusive, cannot be restricted to hypothecation.
- Ø Section 5(2)(d) of the draft Bill should be deleted. The proposed legislation should not confer jurisdiction over forfeiture. Forfeiture is a penal remedy and is out of place in what is

basically a civil jurisdiction. Moreover, the omission of the clause will avoid the need to explore the 19th century admiralty decisions in order to discover just what type of forfeiture are covered by admiralty jurisdiction. The second concept contained in the clause viz. droits of admiralty, is a residual category covering rights to Royal fish and other obscure vestiges of the prerogative of the Crown is right of admiralty. There is no evidence that admiralty jurisdiction is ever exercised in respect of these matters or that any inconvenience would result from its abolition.

Ø This clause appears to have restricted the scope to some uncertain extent, especially when a ship is idle, under repairs or mothballed.

Ø The word “oil” may be deleted so as to cover other pollutants also. It is also suggested that exclusion of damage caused by pollution other than oil pollution covered under the Merchant Shipping Act, 1958 would not be appropriate.

Ø It would be necessary to include claims for damage caused by Air and Water Pollution and the discharge of hazardous waste/substance, within the meaning of the relevant statutes/rules.

Ø A new clause 5(g)(iii) may be added, as “nothing contained in section 5(g) (iii) shall be applicable during lawful agitation and strike by seamen.”

Ø This clause presents conflict, if it is not dealt under maritime claim enforceable as an action *in rem*, then vessel interest may sue as Admiralty action which otherwise not available

Ø Section 5(2)(i) draft Bill should add the following words at the end “whether by charter party or otherwise”. This would ensure that a claim arising out of any agreement for the use or hire of the ship not limited to charter parties would attract the admiralty jurisdiction of the court.

Ø Section 5(2)(j) of the draft Bill which deals with salvage should towards the end contain “or any salvage agreement, including, if applicable special compensation relating to salvage operation in respect of a ship which by itself or its cargo threatened damage to the environment”. This wording will ensure salvors are able to recover special compensation for amounts due to them under SCOPIC clause for oil pollution/environmental damage.

Ø There should be 'service of salvage' or 'salvage' instead of 'salvage of services'. It is also suggested that at the time of towing/ pilotage, if any damage occurred, provisions of the Major Port Trust Act should be implemented.

Ø Section 5(2)(m), the Bill should be read as “any claim in respect of goods, material

bunkers or other necessities supplied to a ship or any services rendered to a ship for her operation or maintenance, including stevedoring and lighterage services”. This is because very often Indian entities provide lighterage and stevedoring services to foreign vessels and have no means of recourse for unpaid dues.

Ø Explanation to the clause including insurance premium to the clause is incongruous and incorrect. There should be a separate head of jurisdiction that deals with claim for unpaid insurance premia and club calls. This is because insurance is not a service rendered to ship. It should be included in the draft Bill as separate head of admiralty jurisdiction.

Ø It is not clear about the claim made towards insurance. It should be worded more suitably.

Ø There is no material change despite specific mention of Bunker and other necessities. The insurance clause appears to favor the insurance lobbies in recovering their unpaid premium. It is unclear if cargo insurance would also be covered. There is further uncertainty as to whether the explanation clarifies that the Admiralty jurisdiction covers only an action by an insurer against the defaulting assured.

Ø Section 5(2)(n) of the draft Bill fuses and conflates three distinct concepts. Accordingly it has been proposed to split the same in three separate heads of jurisdiction .as under:

- (i) “any claim in respect of the construction of a ship (including such a claim relating to a vessels before it was launched)”.
- (ii) “any claim in respect of the alteration, repair or equipping of a ship”.
- (iii) “any claim in respect of any liability for any port, harbour, canal or light tolls, charges, dues, tolls, charges or dues of similar kind in relation to a ship”.

Ø Port charges due by a vessel in a non-Indian port, and vessel are available/present in Indian territorial waters. He has also suggested that it should be bi-furcated into construction/repair of a ship and port charges.

Ø The following should be added at the end of the clause:

“including cost of repatriation or social insurance contribution payable on their behalf or any amount that a person as employer, is under an obligation to pay to a person as employee, whether the obligation arose out of a contract of employment or by operation of law, including the operation of the law of foreign country and includes any claim arising under a manning and crew agreement , relating to a vessel.”

Ø It should be expended to cover all other sums due including money, property or other remuneration and benefits in respect of their employment on the ship, including but not

restricted to social insurance contributions, repatriation costs, whether the obligation arose out of a contract of employment or by operation of law, including the operation of the law of foreign country Further, the procedure to be adopted for challenging disputed award by a seaman or seamen may be mentioned.

Words “or its owner” should be added at the end of the clause.

Ø The word “or” should be added between the ship and property. There can be general average contribution by freight interests as well. Therefore, freight could also be considered for inclusion.

It has been recommended that this head of jurisdiction should be deleted, as bottomry is largely obsolete.

Ø The following heads of jurisdiction be added to those contained in clause 5(2):

- a) a claim for an insurance premium or for a mutual insurance call, in relation to a ship payable by or on behalf of a ship owner or demise charterer or manager;
- b) a claim for any commissions, brokerages or agency fees payable by or on behalf of a ship owner or demise charterer or manager; and
- c) a claim for any dispute arising out of a contract for the sale of a ship

Ø The Bill is silent on the aspect of sub-standard shipping and safety of vessels. Hence, in order to protect and safeguard the lives of crew on board and at sea the jurisdiction of courts should be extended as under: -

“The Master, the Crew, the Trade Union or the ITF representing crew on board the vessel shall entertain a claim against the beneficial owner or operator, if the vessel is suspected for seaworthiness and unsafe shipping defying ISM or ILO guidelines. In clause (o), line 2 & 3 after the words the crew of the ship” the words “including their representative unions at the national/international level” should be added

Ø Sub-clause(4) of clause 5 makes it clear that sub clauses (1)(2)(3) of clause 5 shall apply to all ships and their property, all maritime claims and all registered mortgages or charges created under foreign law. In brief, this provision is meant to extend to all those cases in which money or property is recoverable in respect of a maritime claim.

Ø The expression registered mortgage has been used for the reasons that it will be difficult to establish mortgage which are not registered and ultimately affect the settlement of maritime claims in genuine cases. Therefore, clauses 5(4) (b) and 5(4)(c) may be retained in the present form.

Ø Clause 5(2) (p) provides for "any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship" "instead this should read as under":- "notwithstanding anything contained in the provisions of sections 150 and 151 of the Merchant Shipping Act, 1958, any claim by a master or member of the crew and complement of a ship or their heirs and dependants for wages including all other sums due (whether money, property or other remuneration and benefits) in respect of their employment on the ship, including but not restricted to, social insurance contributions, repatriation costs, compensation for death or injury, whether the obligation to pay such wages, dues or compensation arose out of a contract of employment or otherwise or by operation of law including the operation of law of a foreign country". Effectively, this would ensure, that crew members would be entitled to arrest a ship not just in terms of wages, but in respect of other benefits also.

14.4.5 All these suggestions were referred to the Department of Shipping for their comments.

The comments of the Department of Shipping are given in the succeeding paragraphs:-

14.4.6 Clause 5 of the Bill makes provision for admiralty jurisdiction of the court. Before we proceed to discuss contents of clause 5, it is necessary to recapitulate, in brief, the background of this provision. As we know India does not have "Admiralty Laws" of its own, instead our courts continue to administer the admiralty jurisdiction in accordance with the statutes enacted by the British Parliament and extended to India as its colony.

14.4.7 Though the British admiralty law has undergone substantive changes but in India our courts dispensed justice only with respect to these limited admiralty jurisdiction conferred by the British statutes. Today, the wide jurisdiction vested in English Courts is derived from ancient principle of maritime law developed by customs and practices as well as from subsequent statutes, which have incorporated the provisions of International Conventions.

14.4.8 In India the statutory law regulating the shipping is contained in the Merchant Shipping Act, 1958 but it does not deal with the admiralty jurisdiction.

14.4.9 The Indian admiralty jurisdiction is founded on the English law but it could not develop for the obvious reasons. In the circumstances, it was felt necessary to have an independent legislation to replace the century old statutes on the scope and extent of admiralty jurisdiction.

14.4.10 The present Bill is primarily based on the Supreme Court Act, 1981 of UK, which takes into account various aspects, and features needed reference in the provisions. The causes of action, questions of claims in respect of which admiralty jurisdiction can be exercised have been

most comprehensively dealt with in the Act of 1981.

14.4.11 In the proposed Bill provisions relating to admiralty jurisdiction have been based on similar provisions contained in the UK Act of 1981, which are relevant in the Indian context also. The law which is in force in UK today is the outcome of development of law on the subject during so many centuries, which seems to be time tested with reference to International Conventions and Protocols.

14.4.12 Since clause 5 is based on the UK Act of 1981, it does not seem necessary to add any other causes in the proposed Bill. In brief, the maritime law administered in India has been based on English Law all along and it is also that law which influenced the law administered all over the world. It will, therefore, be not only expedient but also natural that our proposed Bill should be substantively based in the legislation of UK but with improvements and additions necessary to meet our needs.

14.4.13 All laws are essentially organic in nature in the sense there is ongoing exercise requiring changes/modification in them to keep pace with the changes/requirements of the people whose conduct are intended to be regulated under these instruments. As the law is not static this can be further improved after gaining experience in this regard.

14.4.14 The Committee observes that the reply furnished by the Department of Shipping "All laws are essentially organic in nature in the sense there is ongoing exercise requiring changes/modification in them to keep pace with the changes/requirements of the people whose conduct are intended to be regulated under these instruments. As the law is not static this can be further improved after gaining experience in this regard." is not acceptable *in toto*. The Committee, therefore, recommends that in view of the issues highlighted by various representationists, as mentioned above, the Clause 5 may be re-considered and revised wherever necessary taking into account the issues.

Clauses 6

Conditions in respect of claims in an action *in rem*

15. Clause 6

15.1 Clause 6 (1) reads -The admiralty jurisdiction of the court shall not be invoked by an action *in rem* by arrest of a ship, in the case of a ship registered in India as an Indian ship, unless six clear days' notice in writing is served upon the registered owner or the master of the ship intended to be proceeded against, stating the cause of action and the quantum of claim and the date and time of application to the court for arrest and calling upon the owner or master to

provide security for the claim to the satisfaction of the admiralty court in lieu of the arrest and where such a security is provided, the court shall entertain the action without arresting the ship and shall order the arrest of the ship only in the event of failure to provide such security.

15.2 *Clause 6(2) reads* - Notwithstanding anything contained in this Act or any other law for the time being in force, the admiralty jurisdiction of the court shall not be invoked by action *in rem* unless the ship against which the proceedings have been commenced is within the territorial or inland waters of India at the time of commencement of the proceedings and as such is within the jurisdiction of that High court:

Provided that no such ship shall be arrested unless there is failure to provide security.

15.3 *Clause 6(3) reads* - The admiralty jurisdiction of the court shall not be invoked by an action *in rem* against a vessel arising out of a breach of contract and a claim in such case may be enforced by an action *in personam* under this act.

15.4 The Committee was requested that this clause may be deleted, as it is directly contrary to clause 5(4)(a). It was submitted that arrest of Indian ships should be on the same footing as any other vessel. The issue of “*in rem*” and “*in personam*” claims should be looked into in more details and the English Law provisions as set out in Sections 21 and 22 of the British Supreme Court Act, 1981 be incorporated in the Admiralty Bill with logical amendments.

15.5 The Committee was also apprised that in clause 6(1) there should be explicit mention that during the notice period the ship shall not leave the port, without the permission of the court. With regard to “security” it has been suggested that in the case of crew claims it could be a bank guarantee or claim value deposit. In the case of safety and non-seaworthiness except detention no other security should be accepted.

15.6 The Committee was further suggested that Clause 6 should further provide that in an action *in rem*, the previous seller must be made a privy to the proceedings in cases where indemnity/undertaking for clean title is given. Action *in rem* by arrest of a ship can be invoked only in respect of claims directly attributable to the res and for the claims attributable to sister vessels or vessels owned by a joint/group owners.

15.7 The Committee was informed that provisions of clauses 6(3) and 7(2) are contradictory to each other. While 6(3) provides that admiralty jurisdiction of the court shall not be invoked by an action *in rem* against a vessel arising out of breach of contract. At the same time, clause 7(2) provides that in case any claims mentioned in clauses (e) to (r) of sub-section (2) of section 5

admiralty jurisdiction may be invoked by an action *in rem*. It is felt that claims under 5(2)(i) or (k) or (m) would generally arise out of a contract.

15.8 While offering their comments on the suggestions about various provisions of Clause 6, the Department of Shipping replied as under: -

The provisions contained in the sub-clause (1) of clause 6 deal with one of the conditions in respect of claims in an action *in rem*. The provisions of clause 6 correspond to article 4 on Release from arrest in International Convention on Arrest of Ships, 1999. The basis of making modifications in sub-clause (1) of clause 6 lies to the fact that all Indian ships are under full control of the Govt. of India under the Merchant Shipping Act, 1958 which is not available in respect of foreign ships. Therefore, it has been provided that no arrest of an Indian ship should be effected unless at least six clear days' notice is given to the owner and he failed to provide the security to the court to cover the maritime claims. The rationale behind inclusion of this clause may kindly be considered by the Hon'ble Committee before deciding its omission to bring the Indian ship at par with foreign ship owners.

15.9 Clause 7 of the Bill deals with jurisdiction *in personam*. Sub-clause (3) of clause 6 has been incorporated in the Bill to take care of the judgment of the Supreme Court in Epoch Enterrepots Vs MV Won FU (JT 2002 (8) SC 546). Though sub clause 3 constitute a condition for exercise of the admiralty jurisdiction *in rem*, on reconsideration it has been thought appropriate to place this provision under clause 7 as its sub-clause (4). Clause 7 provides for the Mode of exercise of admiralty jurisdiction which after the arrest of a ship or otherwise is *in personam* only.

15.10 The Committee notes that Clause 6 of the Bill has been captioned in the marginal heading as "Conditions in respect of claims in an action *in rem*". The Committee feels that the 6 days notice period, which is provided in this clause can be reduced suitably given the fast means of communication available in today's world.

15.11 Moreover, the Committee observes that the provisions given in the Clause 6(3) are ambiguous and it appears that wherever an affected party proceeds *in personam* cannot proceed *in rem*. This will unnecessarily complicate the gamut of issues. Under the present law, the Indian crew are entitled to what is called an action *in rem* against a ship; it simply means that a ship can be arrested to secure a claim. But provisions of Clause 6 of the Admiralty Bill, 2005 takes away the existing right. More fundamentally, what it does is it leaves the door open for foreign owners to start arguing that their vessels are also not liable to be arrested in India. In such

circumstances the Committee apprehends that the foreign owners will escape in the pretext of having local agents in India and accordingly they are amenable to the courts *in personam* jurisdiction. Moreover, provisions of Clause 6 will also lead to circumstances when a ship can be proceeded against *in personam* by means of a regular civil suit. Resultantly, for arresting a ship, it will take a quite long period sometimes expanding over decades.

15.12 Therefore, the Committee recommends that the Clause 6 (3) may suitably be made part of clause 7.

Clause 7

Jurisdiction *in personam*

16. Clause 7

16.1 *Clause 7 (1) reads* - The jurisdiction of the court may be invoked by an action *in personam* in the cases -

- (i) referred to in clauses (a) to (c) of sub-section (2) of section 5; or
- (ii) of maritime lien or charge on any ship or its property including bunker.

16.2 *Clause 7(2) reads* - In the case of any such claim as is mentioned in clauses (e) to (r) of sub-section (2) of section 5, where –

- (a) the claim arises in connection with a ship; and
 - (b) the person who would be liable on a claim in an action *in personam* (hereinafter referred to as ‘the relevant person’) was, when the cause of action arose, the owner, or charterer of, or in possession, or in control of a ship,
- admiralty jurisdiction may be invoked (whether or not the claim gives rise to a maritime lien on that ship) by an action *in rem* against -

- (i) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or
- (ii) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.

16.3 *Clause 7(3) reads* - Where, in the exercise of its admiralty jurisdiction, the court orders any ship or its property to be sold, the court shall have jurisdiction to hear and determine any question arising as to title to the proceeds of sale

16.4 The Committee was informed that the present wording of clause 7 of the draft Bill is

seriously deficient and unsatisfactory. The draft Bill appears to have selectively borrowed parts of section 21 of the 1981 UK Act. It should, therefore, be completely redrafted.

16.5 The Committee was suggested that the entire legislation could have been more supportive of cargo interests by circumventing the need for an *in personam* liability of the relevant person as required under section 7(2)(b) and creating a right of lien against offending vessels, regardless of their ownership or control. Section 7(1) (ii) must be deleted. In clause 7(2), it should be corrected to read as clauses (f) to (r) . In clause 7(2)(b), it should read as “ the ship “ in place of “a ship”.

16.6 The Department of Shipping substantiated their position with regard to the above suggestions relating to various provisions of Clause 7 in the following paragraphs:-

“Broadly the proposed Bill may be divided into two parts, one part dealing with “court” which will exercise admiralty jurisdiction and the second part in which the extent and scope of their jurisdiction have been dealt with. Clause 7 of the Bill deals with some principal aspects of the second part.

16.7 At present a wide range of subjects fall within the ambit of admiralty jurisdiction particularly those relating to maritime claims, contracts, torts etc. There are various aspects touching upon admiralty jurisdiction in regard to location, persons, aliens, property, vessels etc and certain principles governing tortuous liability in admiralty matters which are generally governed by judicial precedents.

16.8 The principal feature of admiralty actions, however, has been a distinction between proceedings *in rem* and proceedings *in personam*. Admiralty law confers on a claimant a right *in rem* to proceed against a ship or cargo as distinguished from a right *in personam* against an owner.

16.9 The admiralty action *in rem*, as practiced in UK or in US, is not followed in many of the countries. In the countries, following the civil law, all proceedings are initiated by an action *in personam*. The object of civil law is to redress of wrongs by compelling compensation or restitution, the wrong doer is not punished, he only suffers so much harm as is necessary to make good the wrong he has done. The person who has suffered gets a definite benefit from the law or at least he avoids a loss. The court having competence in the matter has the power to order an attachment of the ship if it is convinced that the plaintiff is likely to lose his security unless the ship is detained within jurisdiction. The hands of the court are not fettered by the technicalities of an action *in personam* and the scope of the proceedings is not limited to the maritime liens or claims.

16.10 The real purpose of the arrest in both the English Law and Civil law system is to obtain security as a guarantee for the satisfaction of the decree. In any event, once the arrest is made and owner has entered appearance, the proceedings continue *in personam*.

16.11 All action in civil law whether maritime or not are *in personam* and arrest of a vessel is permitted even in respect of non-maritime claims. Admiralty actions in England, whether *in rem* or *in personam* are conferred to well defined maritime liens or claims and directed against the res (ship cargo or freight) which is the subject matter of the dispute or any other ship in the same beneficial ownership as the one already in question. Having regard to importance, in maritime matters, of an effective remedy against the ship, it is proposed to retain the distinction between an action *in rem* by sub clause (2) of clause 7 of the Bill and an action *in personam* by clause 7 itself. Though the contents of clause 7 have been termed as “jurisdiction *in personam*,” in fact the provisions deal with the mode of exercise of admiralty jurisdiction.

16.12 In the Bill, we have taken note of good points of both the English Law and Civil Law systems and attempt has been made to make the admiralty jurisdiction and its mode of exercise wide enough and explicit. Well defined aspects of English Law are taken care of in clauses 5(2) and 7(2) of the Bill and necessary discretion is also given to the courts. In the Bill, clause 9 confers discretion to the courts to decide the more appropriate form of action in any particular case at any stage, make appropriate directions and orders and grant necessary relief so as to ensure that technicalities as to the form or mode of action do not defeat the valid claims and rights of the parties.

16.13 Thus, the question whether any action should be instituted or permitted to continue *in rem* or *in personam* is left to the court which will examine each case on its merits and take appropriate action in the interests of justice. Concisely, the determination of the Mode of exercise of admiralty jurisdiction after enunciation of their basic principles in the Bill, has been left to the discretion of the court instead of confining it to statutory provisions as is the case in the Act of 1981 of UK. For the above reasons, the text of the UK Act has not been lifted as it is but finds place in a modified form in the Bill.”

16.14 During the course of oral evidence held on 31st August, 2005, the Committee was informed that Clause 7 is very important from the admiralty jurisdiction until Brussel Arrest Convention was enacted, the admiralty law did not permit the arrest of any other ship belonging to the ship owner but only the offending ship could be arrested. In the year 1952, the Brussel Arrest Convention was enacted which allowed a sister ship to be arrested as it is supposed to be

within the beneficial ownership of the same owner. In the instant case Clause 7 of the Admiralty Bill, 2005 appears to be a model of Section 22 of the English Act. But surprisingly, for inexplicable reasons material alterations to Section 22 has been made. Section 22 has 8 sub-sections and each of those sub-sections has precise meaning. Those sub-sections are being omitted in Clause 7.

16.15 The Committee recommends that keeping in view of its earlier recommendation regarding Clause 6 (3), the marginal heading of Clause 7 be changed to 'mode of exercise of admiralty jurisdiction 'instead of jurisdiction in personam'.

Clause 8

Restrictions on entertainment of actions *in personam* in collision and other similar cases

17. Clause 8

17.1 *Clause 8 (1) reads* - This section applies to any claim for damage or loss of life or personal injury arising out of –

- (a) a collision between ships; or
- (b) the carrying out of or omission to carry out, a manoeuvre in the case of one or more ships; or
- (c) non-compliance, on the part of one or more ships, with the collision regulations.

17.2 *Clause 8(2) reads* - While exercising admiralty jurisdiction, a court shall not entertain any action *in personam* against any defendant unless-

- (a) such defendant, at the time of commencement of the action, actually and voluntarily resides or carries on business or personally works for gain in India:
provided that an action may be entertained in any case where there are more defendants than one if the defendant who does not actually and voluntarily reside or carry on business or personally works for gain in India is made a party to such action either with the leave of the court, or each of such defendants acquiesces in, such institution; or
- (b) the cause of action, wholly or in part, arises in India, including inland waters of India or within the limits of a port of India; or
- (c) an action arising out of the same incident or series of incidents is pending in a court or has been heard and determined by such court; or
- (d) a ship is beneficially owned or chartered by demise by the defendant and such

ship has been arrested and proceedings are pending in respect thereof.

17.3 *Clause 8(3) reads* - The court shall not entertain any action *in personam* to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside India against the same defendant in respect of the same incident or series of incidents have also been discontinued or have otherwise come to an end.

17.4 *Clause 8(4) reads* - The provisions of sub-section (2) and (3) of this section shall apply to counterclaims in proceedings arising out of the same incident or series of incidents as they apply to actions, and a reference to the plaintiff and the defendant for this purpose shall be construed as reference to the plaintiff in the counter-claim and the defendant in the counter-claim respectively.

17.5 *Clause 8(5) reads* - The provisions of sub-sections (2) and (3) of this section shall not apply to any action or counter-claim if the defendant submits or agrees to submit to the jurisdiction of the court.

17.6 *Clause 8(6) reads* - Subject to the provisions of sub-section (3), the court shall have jurisdiction to entertain an action *in personam* to enforce a claim to which this section applies whenever any of the conditions specified in clauses (a) to (d) of sub section (2), are satisfied and where applicable, the rules of the court relating to the service of process outside the jurisdiction shall apply.

17.7 The Committee was informed that the word “voluntarily” may be deleted from clause 8(2) (a) as the “actual residing” in the jurisdiction should be sufficient. The Committee was also suggested that provision of Section 8 (2) should be consistent with the provisions of Section 20 of the Code of Civil Procedure and Clause 8(2) (c) & (d) should be deleted.

17.8 Further, the Department of Shipping informed the Committee that the Clause 8 of the Bill is based on the provisions contained in section 20 and 22 of the Supreme Court Act of 1981 of UK. Having a re-look into the provisions, it appears that the word “unless” occurring in sub-clause (2) of clause 8 do not read properly with sub clauses (c) & (d). Therefore, for clause (c) & (d) the word “if” may be used, which will clarify the position and take care of the doubts rose in this regard.

17.9 The expression “voluntarily” is based on the provisions of Civil Procedure Code. The maritime claims may arise against a defendant who is having his office and business outside India and as a consequence a claim having been filed in a court outside India. The provisions of sub clause (3) of clause 8 takes care of such cases which is different than what is given in section 10

of Civil Procedure Code.

17.10 The Committee observes that according to Clause 8(2)(a) “while exercising admiralty jurisdiction, a court shall not entertain any action *in personam* against any defendant unless such defendant, at the time of commencement of the action, actually and voluntarily resides or carries on business or personally works for gain in India”. The Committee feels that the wordings in the clause may be mis-used by foreign ship owners as their agent resides and carries on business for them in India. Therefore, the Committee recommends that the Department of Shipping should take adequate care so that the possibility of such kind of misuse can be prevented in future.

17.11 The rest of the Clause was adopted without any change.

Clause 9

Directions by Court

18. Clause 9 of the Bill reads - "Notwithstanding anything contained in section 5 of this Act, it shall be open to the court in its discretion, at any stage of the proceedings to treat proceedings *in rem* or *in personam*, either in whole or in part, and to grant such reliefs and make such directions and orders (including amendments to the pleadings) as it may consider appropriate and just."

18.1 The Committee was informed that this clause lacks a clear definition of action *in rem* and action *in personam*. The jurisdiction and pre-requisites of both of them cannot be inter-changed without satisfying the criteria laid down. *In personam* action is based on residence, cause of action or acquiescence to jurisdiction and ought not to be exercised otherwise. Further, *in rem* action should only be against the property under arrest and not against all properties of party who appeared to defend the vessel.

18.2 The Committee notes that it has been left open to the Court in its discretion to treat the proceedings *in rem* or *in personam* and grant relief and make orders. The Committee feels that the directions by Court may be considered appropriate and just and adopted the Clause without suggesting any change.

Clause 10

Vesting of rights on sale of ship

19. Clause 10 reads - "On the sale of a ship by the court in exercise of its admiralty

jurisdiction, the ship shall vest in the purchaser free from all encumbrances."

19.1 The Clause was adopted without suggesting any change.

Clause 11

Distribution of sale proceeds.

20. Clause 11

20.1 *Clause 11(1) reads* - In an action *in rem*, where the court has ordered the property proceeded against to be sold-

- (a) a notice in the manner provided in sub-section (2) shall be given by the court; and
- (b) any party which obtains a decree or order against the said property may claim such reliefs as are provided in sub-section (3).

20.2 *Clause 11(2) reads* - For the purposes of clause (a) of sub-section (1), a notice shall be given in one international and one national newspaper as the court may specify containing the following particulars, namely:-

- (a) number of the action;
- (b) names of the parties to an action;
- (c) gross sale proceeds; and
- (d) the order of priority of the claim to the sale proceeds.

20.3 *Clause 11(3) reads* - Any party referred to in clause (b) of sub-section (1) may apply to the court by a notice of motion for an order determining the order of priority of the claims against the proceeds of the sale of the property.

20.4 *Clause 11(4) reads* - The court shall determine order of priority of the claim to the sale proceeds on expiration of the period of ninety days from the publication of notice under sub-section (2):

20.4.1 Provided that any party having a claim to the property or the proceeds of sale thereof may apply to the court before the expiry of period of ninety days for leave to intervene and prove claims by filing an action before it or by filing a suit before any other appropriate court before the expiration of that period.

20.5 *Clause 11(5) reads* - The court may extend the period of ninety days on the application of any party which has instituted proceedings before any other court as provided in sub-section (4) or before the court of competent jurisdiction in India for obtaining a decree against the property or proceeds of sale and the said court shall not disburse the sale proceeds or determine priority

until thirty days after the disposal of the said suit or action and any appeal therefrom.

20.6 *Clause 11(6) reads* - Notwithstanding the provisions contained in sub-section (3) above, the court may determine priority among the parties and direct payment out of the sale proceeds on an application by any party which has obtained a decree or order against the ship or its property if the court is of the opinion that the claim of the applicant is entitled to priority over the claim in respect of which a suit or action has been instituted:

Provided that the court shall provide opportunity of hearing to all parties which may have made claims and filed suit or action against the property or sale proceeds within the prescribed period of ninety days or such other period which may be extended by the court before determining priority and directing disbursement out of the sale proceeds.

20.7 The Committee received variety of opinions on different sub-clauses of Clause 8 but there was unanimity regarding the complicated nature of this clause. The Committee was informed that the clause is procedural in nature and ought to find place in the admiralty court rules.

20.8 This clause also presupposed an arrest, if sale is specified, the modality of initiation of an action *in rem* ought to be specified. In section 11 (2) & (3) the notice provision is intermixed, if it is a notice advertising propose sale of a vessel then section 11 (2) (e) & (d) are out of context. In 11(4) it should be rem proceedings against the same ship whereas section 11(6) presupposes an consolidated overview of all rival claims on sale proceeds.

20.9 The Ministry clarified before the Committee that though the Clause appears to contain some procedural aspect but in essence deals with the principles underlying the distribution of sale proceeds Sale of property of a person involves touching of a very important legal right of a person and any interference with such right has to be dealt with in the legislation instead of leaving it to the rules. Interests of third parties who may have claims have been protected by giving 90 days' notice in news papers. In sum and substance, this provision takes care of each and every aspect of sale of property arising out of an action *in rem*. It may, therefore, be retained in the present form.

20.10 The Committee adopted the Clause without suggesting any change.

Clause 12

Order of priority of claims

21. Clause 12

21.1 *Clause 12(1) reads* - The order of claims determining inter se priority in an admiralty proceedings shall be as follows:-

- (a) a claim on any ship or its property including bunker where there is a maritime lien and action is proceeded against ship or its property;
- (b) mortgages and charges on a ship or its property where an action is proceeded against ship or its property ;
- (a) all other claims

21.2 **Clause 12(2) provides,**

The priority among the claims inter se with respect to clause (a) of sub-section (1) shall be as follows: -

- (a) claims for salvage of life, ship or its property provided that salvage of life shall take priority over other salvages;
- (b) wages and other sums due to the master or members of crew of the ship in respect of their employment on the ship;
 - (c) (i) claims in respect of loss of life or personal injury having a direct connection with the operation of the ship;
- (ii) claims for contribution for general average;
 - (iii) claims based on tort arising out of physical damage caused by the operation of the ship other than loss or damage to cargo containers and passengers' effects carried on the ship;
- (iv) bottomry;
- (d) port, canal and other waterway dues and pilotage dues.

21.3 **Clause 12(3) provides,**

The following principles shall apply in determining the priority of claims inter se –

- (a) prior claims shall exclude subsequent ones;
- (b) if there are more claims than one in any category of priority, they shall rank pari passu;
- (c) claims for various salvages shall rank in inverse order of time when the claims secured thereto accrue;
- (d) claims for salvage, port dues, wages and claims in the nature of general average shall take priority over all other claims mentioned in clause (c) of sub-section (2) notwithstanding the fact that the claims arose earlier.

21.3.1 All the stakeholders who presented their views before the Committee agreed to one suggestion that this clause should be deleted and left to the High Courts to frame rules. It is felt that in the field of admiralty jurisdiction for determining priorities between competing maritime claims, historically discretionary approach was exercised on a broad basis.

21.3.2 The Committee was also suggested this provision is contravening the provisions of sections 64 & 65 of the Major Port Trust Act, 1963 as per which repayments to port is the topmost priority whereas the present Bill has fixed the priorities in a different order.

21.3.3 The representatives of port and dock workers were of the view that clause (b) dealing with wages and other sums due to the master and crew of the ship in respect of their employment on the ship should take priority over clause. They also suggested that in case of loss of life of crew and missing, the ship owners and Government would protect their family by way of giving compensation of amounts.

21.3.4 The Committee desired that the Ministry should explain their position on the provisions of Clause 12. The D/o. Shipping inter-alia replied that the clause deals with the manner of distribution of the proceeds of sale of any ship or property and the order of priority of the claims in regard thereto. As this clause deals with basic principles to be applied in determining the priority in any admiralty proceedings, which is a must in admiralty legislation, for giving priority to persons' livelihood, injury suffered during the operation etc., to any other claim. These principles cannot be provided in the rules. The provision, therefore, may be retained in the present form.

21.3.5 The Committee observes that the Clause 12(2) of the Bill endeavours to categorise the priority of maritime claims which is not recommended in respect of admiralty jurisdiction as priority between competing maritime claims has historically been exercised on the basis of a broad discretionary approach. The Committee cites for example, though a crew member claims for wages is generally subordinated to a claim for salvage. The same is not rigid and the courts have at times departed from these guidelines due to considerations of equity, public policy and commercial expediency. Therefore, the order of priorities adopted in one case may not be followed in another if the court believes that considerations of justice or public policy warrant a departure. In view of this, the Committee recommends that this provision should not be included in the Bill.

Clause 13

Maritime lien

22. Clause 13 (1) provides

Maritime lien shall attach to a ship or its property in respect of the following, namely:-

- (a) claim for salvage of life, ship or its property;

- (b) wages and other sums due to the master or members of crew of the ship in respect of their employment on the ship;
- (c) claim for loss of life or personal injury having a direct connection with the operation of the ship;
- (d) claim for contribution to general average
- (e) port, canal and other waterway dues and pilotage dues;
- (f) claim based on tort arising out of physical loss or damage caused by the operation of the ship other than the loss or damage to cargo, containers and passengers' effects carried on the ship, the date of accrual of such maritime lien being the date on which the operations giving rise to the said claim were performed.

22.1 **Clause 13(2) provides**

No maritime lien shall attach to a vessel to secure a claim which arises out of or results from:-

- a) damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which compensation is payable to the claimants pursuant to an international convention providing for strict liability, compulsory insurance or any other means of securing such claim;
- (b) the radio-active properties or a combination of radio-active properties with toxic, explosive or other hazardous properties or nuclear fuel or radio-active products or waste.

22.2 **Clause 13(3) provides**

22.2.1 A maritime lien shall stand extinguished on the expiry of one year from the date of its creation under sub-section (1):

Provided that the claim, if any, not barred by limitation, may be enforced by an action *in personam*:

22.2.2 Provided further that the period of one year may be extended further by the court if the claimant of lien is unable to commence an action to enforce the lien against the ship or its property for reasons beyond his control.

22.2.3 The Committee was informed that clause (b) dealing with wages and other sums due to the master and crew of the ship in respect of their employment on the ship should take priority over clause (a). The Committee was also suggested that the heads of claim should be restricted to five and that the proviso extending the period should be deleted and the statutory period should be confined to normal period of 3 years. There is no mention of "contribution to general

average” in the 1993 International Convention on Maritime Liens and Mortgages.

22.2.4 It was also suggested to the Committee that the Bill must conform to the relevant International Conventions and any deviation should be deleted. It has also suggested that words “or its property” (section 13(1)) and “claim for contribution to general average” (section 13(1) (d)) should be deleted. Further, a proviso to provide that maritime lien shall stand extinguished if the ship has been purchased or imported for the purpose of demolition may be incorporated in section 13(2). There was a suggestion that there should be proper safeguards for radioactive substances as provided in 13(2)(a) for oil spillage matters. The 2nd proviso should be deleted as it makes the process cumbersome. The limit of one year is equitable and should not be extendable. The proviso in section 13(3) providing time limit of one year and its further extension by one more year may be deleted.

22.2.5 The Department of Shipping explained to the Committee that the provision is based on International Convention on Maritime Liens and Mortgages 1993. This provision takes care of the interests of creditors and recognizes the right on property till every debt due in respect of that property is discharged. In view of the above, the provision may be retained in the present form.

22.2.6 The Committee observes that a maritime lien is a charge that attaches to a ship to secure certain types of claims. Typically, such claims are few in number, as they tend to place the holder in favoured position in law. For instance, a maritime lien unlike an ordinary maritime claim does not get extinguished on the sale of a ship, but instead survives a change of ownership of the vessel. This is why such liens are restricted to certain limited categories of claims. The Supreme Court in *MV Won Fu's Case* (2003 1 SCC 305) ruled that maritime lien exists in 5 cases only viz., a) salvage b) damage done by a ship c) seaman's and masters wages d) master's disbursements and e) bottomry. The Committee also takes note of the fact that as per the provisions of Clause 13 of the Bill, maritime liens has a wider scope as it includes claims for general average and port and canal dues. Whereas, there is no mention of master's disbursements and damage done by a ship. Therefore, this clause apart from being contrary to the Supreme Court's judgment in *MV Won Fu's case*, also marks a departure from the policy of other commonwealth jurisdictions by creating new classes of maritime liens. The Committee recommends that Clause 13 be amended on the line of Supreme Court judgement in *MV Won Fu's Case, 2003*.

22.2.7 The Committee feels that Clause 13(3) provides for extension of lien indefinitely which is

harmful for the interest of the Ship-breaking industry. Therefore, the Committee recommends that the Government must take care of Ship-breaking industry and lien period may be specified in the Bill and should not be extendable beyond that period.

Clause 14

Procedure in respect of foreign ships.

Clause 14

23.1 Clause 14(1) provides

In all actions under this Act, the nationality of the ship proceeded against shall be stated in the plaint, and if the ship is a foreign ship, notice or institution of the suit shall be given to the Consulate of the State to which the ship belongs.

23.2 Clause 14(2) provides

A statement of service of such notice or a statement that there is no such Consulate in the City, shall be made in the affidavit in support of any application for arrest of the ship.

23.3 Clause 14(3) provides

If a notice is served on the Consulate, a copy of the said notice shall be annexed to the affidavit.

23.4 Clause 14(4) provides

For the purposes aforesaid, it would be sufficient service if a notice is served on a Consul or any other officer in the Consulate.

23.5 The Committee was apprised by various organisations that the Australian admiralty court rules might be adopted with appropriate modifications in this regard. The Clauses 14 & 15 ought to be contiguous along with arrest proceedings sections.

23.6 The Department of Shipping apprised the Committee that the provisions of a notice, where suit is filed against a foreign ships, for notice to the Counsel/mission of the foreign country in India is dealt with in clause 14 of the Bill.

23.7 The Clause was adopted without suggesting any change.

Clause 15

Protection of owner, demise charterer, manager or operator of ships arrested.

24. Clause 15

24.1 Clause 15 (1) provides

The court may, as a condition of arrest of a ship, or for` permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of

the ship an obligation to provide such security and upon such terms as may determine, for any loss or damage which may be incurred by the defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to the following:

- (a) the arrest having been wrongful or unjustified; or
- (b) excessive security having been demanded and provided.

24.2 Clause 15(2) provides

Where pursuant to sub-section (1), the security has been provided, the person providing such security may at any time apply to the Court to have the security reduced, modified or cancelled.

24.3 One of the leading port and dock employee's federation is of the view that it may not be possible to adhere to the provision if the ship is arrested by the master or the crew or the trade union or ITF for realizing wages of the crew.

24.4 The Committee referred the matter to the D/o. Shipping to which they replied that the Clause 15 of the Bill is based on Article 6 of International Convention on Arrest of Ships, 1999. Clauses 14 & 15 are not merely procedural provisions but are provisions, which apply to a foreign flagship and provide protection to the owner, demise charterer, manager or operator of ships arrested. Any action, which if taken, amounts to interfering with the legal rights of a person, is always dealt with in the legislation and not left to the rules. The provisions of clauses 14 & 15 may, therefore, be retained in the present form.

24.5 The Clause was adopted without suggesting any change.

Chapter III

Procedure and Appeals

Clause 16

Code of Civil Procedure to Apply

25. Clause 16

25.1 Clause 16(1) provides

The provisions of the Code of Civil Procedure, 1908 shall apply in all the proceedings before the court in so far as they are not inconsistent with or contrary to the provisions of this Act or the rules made there under.

25.2 Clause 16(2) provides

The admiralty court shall have all the powers of a civil court in dealing with any application before it and of passing such interim and other orders, as it may consider necessary and appropriate to protect the interests of the parties before it.

25.3 The Committee during the course examination was informed by various organisations that the clause 16(1) makes clause 19 superfluous as CPC provides for appeal against judgment, decree or final order.

25.4 The Department of Shipping on the other informed that the Clause 16 makes procedural provisions relating to admiralty jurisdiction created under its provisions. When a jurisdiction is envisaged consequent to an amendment or consolidation of laws with reference to a particular subject matter, it becomes necessary to make relevant procedural provisions and this is what is intended by clause 16. By this clause, it has been clarified that the procedure in admiralty matters will be the same as that in suits and interlocutory application in civil courts.

25.5 The Civil Procedure Code, 1908 will therefore be applicable as far as may be to these proceedings. As regards clause 19 of the Bill, consequent to exercise of admiralty jurisdiction by a High Court or a Principal Civil Court, in terms of the CPC, an appeal would normally lie in the Supreme Court and the High Court respectively. Since the Bill vests admiralty jurisdiction in the High Court concerned, it becomes necessary to make a provision for hearing of first appeal by a Division Bench of the same High Court. In view of above clauses 16 & 19 may be retained in the present form.

25.6 The Committee adopted the Clause without suggesting any change.

Clause 17

Assistance of Assessors

26. **Clause 17**

26.1 **Clause 17(1) provides**

In pursuance of the provisions of section 140 of the Code of Civil Procedure, 1908, the Central Government shall appoint and publish in the Official Gazette a list of assessors with such qualifications or experience in admiralty and maritime matters as may be prescribed.

26.2 **Clause 17(2) provides**

The appointment of assessors shall not be construed as a bar to the examination of expert witnesses by any of the parties in any admiralty proceeding.

26.3 **Clause 17(3) provides**

The Central Government may make rules prescribing the qualifications for assessors, the nature of duties to be performed by them and the fees to be paid, to them and other ancillary and incidental matters.

26.4 The Committee adopted the Clause without suggesting any change.

Clause 18

Reference to arbitration

27. Notwithstanding anything contained in the provisions of any other law, it shall be open to the court in admiralty proceedings to refer, with the written consent of the parties, the entire dispute before it or such questions of law or fact raised thereby, as the court may consider necessary, to arbitration and dispose of the dispute or the questions, as the case may be, in conformity with the award unless modified by the court for reasons to be recorded in writing.

28. The Committee adopted the Clause without suggesting any change.

Clause 19

Appeal

29. An appeal shall lie from any judgment, decree or final order of a single Judge of the High Court or any other court exercising admiralty jurisdiction under this Chapter to a Division Bench of the High Court.

30. The Committee enquired the Ministry as to why the Bill provides for appeals only in respect of final orders but not against interim orders. To this, the Department of Shipping replied that the Civil Procedure Code, 1908 will be applicable as far as may be to admiralty proceedings. As regards clause 19 of the Bill, consequent to exercise of admiralty jurisdiction by a High Court or a Principal Civil Court, in terms of the CPC, an appeal would normally lie in the Supreme Court and the High Court respectively. Since the Bill vests admiralty jurisdiction in the High Court concerned, it becomes necessary to make a provision for hearing of first appeal by a Division Bench of the same High Court. In view of above clauses 19 may be retained in the present form.

31. Clause 19 of the Bill provides for appeals only in respect of “final order”. The Committee feels that revision application should be allowed against any “interim order” and recommends that the clause be amended suitably.

Chapter V

Miscellaneous

Clause 20

Power to make rules

32. **Clause 20**

32.1 **Clause 20(1) provides**

The Central Government may, by notification in the Official Gazette, make rules for carrying out

the provisions of this Act.

32.2 **Clause 20(2) provides**

In particular, and without prejudice to the generality of the foregoing power, the Central Government may regulate by rules the practice and procedure of admiralty jurisdiction under this Act including fees, costs and expenses in such proceedings.

32.3 **Clause 20(3) provides**

Until rules are made under sub-section (2) by the Central Government, the existing rules governing the exercise of admiralty jurisdiction in the High Courts shall be applicable.

32.4 **Clause 20(4) provides**

32.5 Every rule made, under this Act shall be laid as soon as may be after the rule is made before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect, only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

32.6 The Committee adopted the Clause without suggesting any change

Clause 21

Repeal and Savings

33. **Clause 21**

33.1 **Clause 21(1) provides**

The following enactments are hereby repealed:-

- (a) the Admiralty Offences (Colonial) Act, 1849
- (b) the Admiralty Jurisdiction (India) Act, 1860
- (c) the Admiralty Court Act, 1861
- (d) the Colonial Courts of Admiralty Act, 1890
- (e) the Colonial Courts of Admiralty (India) Act, 1891
- (f) the provisions of Letters Patent, 1865 in so far as they apply to the admiralty jurisdiction of the Bombay, Calcutta and Madras High Courts.

33.2 **Clause 21(2) provides**

Notwithstanding the repeal of any of the enactments mentioned in sub-section (1), any rule,

notification, regulation, bye-law or order previously issued shall, in so far as such rule, notification, regulation, bye-law or order is not inconsistent with any of the provisions of this Act or any rule made under section 20, continue in force as if it had been issued or made under the corresponding provisions of this Act.

33.3 The Committee was informed by different stakeholders / trade unions that the Admiralty Courts Act of 1840 should also be repealed. Further, the Admiralty Offences (Colonial) Act, 1849 may not be repealed unless an amendment to the law relating to criminal justice like the Indian Penal Code and the Criminal Procedure Code is brought about to deal with piracy cases on the high seas.

33.4 The Department of Shipping observed that the admiralty jurisdiction in India is exercised by virtue of century old British legislation. When the draft Bill is accepted and enacted, certain existing legislation on the subject would become redundant.

33.5 In clause 21, therefore, it is proposed to repeal those enactments. The Admiralty Courts Act, 1840 has not been included in this repeal and savings clause for the reason that the said Act apply to the courts in UK and appears not to have been extended to India. Hence, no modification is necessary in this clause.

34. The Committee is not convinced with the reply given by the Department of Shipping and recommends that the Bill should repeal the Admiralty Courts Act of 1840 as well.

Clause 1, the Enacting Formula and the Title

35. The Committee recommends that the Bill's title should aptly be changed from "Admiralty Bill" to "Admiralty Jurisdiction Bill" by amending Clause 1 of the Bill. The figure "2005" should be changed to '2006".

36. In the enacting formula the words "fifty-sixth" be substituted by "fifty-seventh".

37. The Committee recommends that the Bill be passed after incorporating official amendments and taking into account its recommendations in respect of Clause 1, 2(b), 2(c), 2(g), 2(m), 3(1), 5, 6(1), 6(3), 7, 8(2)(a), 12(2), 13,19 and 21 above.

OBSERVATIONS/CONCLUSIONS/RECOMMENDATIONS - AT A GLANCE

Clause 2(a)

The Clause was adopted without any change. The Committee therefore, does not suggest any

change.(para 11.1.2)

Clause 2(b)

The Committee observes that the Department of Shipping in its reply has admitted that “this definition shall take care of every such proceeding pending before a court either before or after the enactment.” Therefore, the Committee recommends that the words “either before or after the commencement of this Act” should be added between the words “court” and “exercising Admiralty Jurisdiction”.(para 11.2.1)

Clause 2(c)

The Committee is of the considered view that the definition of a word spells out its meaning/content; it states what it is inclusive of and not what it is exclusive of. The Department of Shipping in their comments has accepted that “charge” means “any due with reference to port and pilotage etc.” This definition may be suitably changed and substituted with the existing one.

(para 11.3.2)

Clause 2(d)

The Clause was adopted without any change. The Committee, therefore, does not suggest any change in this definition. (para 11.4.1)

Clause 2(e)

The Committee considered the Clause 2(e) alongwith Clause 2(g).(para 11.5.1)

Clause 2(f)

The Clause was adopted without any change. The Committee, therefore, does not suggest any change in this definition. (para 11.6.1)

Clause 2(g)

The Committee observes that the Clause 2(c) defines the expression "Court" to mean "High Court". Whereas, in Clause 2(g) High Court is defined as per Clause 3(15) of the Merchant Shipping Act 1958 as "*High Court within the limits of whose appellate jurisdiction, (a) the port of registry of the vessel is situate ; (b) the vessel is for the time being,; or (c) the cause of action wholly or in part arises.*" It appears from the above definitions that the exercise of admiralty jurisdiction of the High Court appears to be circumscribed by the territorial allocation of jurisdiction contained in the Merchant Shipping Act, 1958. Whereas the concepts of 'cause of action' and 'port of registry' are incongruous as the Admiralty jurisdiction is universal and is not concerned with the question of nexus between the cause of action and forum.

The Committee strongly feels that the designated High Courts should be conferred pan-

Indian admiralty jurisdiction which would facilitate the courts to take out writ *in rem* and warrant of arrest which can be served or executed anywhere in India. Ships spend only a brief period of time in a port. In a case, where security / bail has been granted to a ship and the security or bail proves inadequate after the vessel has sailed, the absence of pan-Indian admiralty would involve the claimant following the vessel and filing an admiralty suit in another High Court. This process will lead to multiplicity of cases. Therefore, the Committee feels that there is a compelling need for certain designated High Courts namely., Mumbai, Ahmedabad, Cochin, Hyderabad, Chennai, Calcutta, Bangalore and Bhubaneshwar to be conferred with an all-India admiralty jurisdiction. In any case, the efforts of courts have been vested with admiralty jurisdiction so there is no departure. **(paras 11.7.3&11.7.4)**

Clause 2(h)

The Clause was adopted without any change. The Committee, therefore, does not suggest any change in this definition.

(para 11.8.2)

Clause 2(i)

The Clause was adopted without any change. The Committee, therefore, does not suggest any change in this definition.

(para 11.9.1)

Clause 2(j)

The Clause was adopted without any change. The Committee, therefore, does not suggest any change in this definition.

(para 11.10.1)

Clause 2(k)

The Clause was adopted without any change. The Committee, therefore, does not suggest any change in this definition.

(para 11.11.1)

Clause 2(l)

The Clause was adopted without any change. The Committee, therefore, does not suggest any change in this definition.

(para 11.12.1)

Clause 2(m)

The Committee observes that Clause 2(m) defines "ship" as "does not include sailing vessel". Whereas, the term "sailing vessel" has not been defined under the Bill, which is otherwise very much required for understanding the meaning of the ship. The Committee recommends the Department of Shipping to re-examine the Clause 2 (m) in consultation with the Ministry of Law and Justice so as to make the definition of the Ship more clear. The Committee

further recommends that while defining the term "ship", the interest of the ship-breaking industry should also be protected in clear terms.

The Committee also recommends that the terms such as "Charter", "Sub-Charter", "Sailing Vessel", "Manager", etc., that are in vogue in admiralty parlance should also be defined appropriately. Further, it also recommends that such terms which are not defined in the Act, but defined in the Merchant Shipping Act, 1958 should have the same meaning assigned to them in that Act.

(paras 11.13.3&11.13.4)

Clause 3(1)

The Committee notes that there are several High Courts conferred with the admiralty jurisdiction. Therefore, the Committee recommends that the Department of Shipping may explore the possibility of setting-up of a centralized registry for admiralty jurisdiction in consultation with the Ministry of Law & Justice in order to avoid any duplication or confusion. It should not be a problem once the process of computerisation is expedited which will enable linking of courts.

(para 12.1.3)

Clause 3(2)

The Clause was adopted without any change. The Committee, therefore, does not suggest any change in this sub-clause. (para 12.2.1)

Clause 3(3)

The Clause was adopted without any change. The Committee, therefore, does not suggest any change in this sub-clause.

Clause 3 was adopted with one recommendation. (paras 12.3.1&12.3.2)

Clause 4

The Clause was adopted without any change. The Committee, therefore, does not suggest any change in this clause.

(para 13.4)

Clause 5(1)(a)&(b)

The sub-clauses (a) and (b) of clause 5(1) were adopted without any change. The Committee, therefore, does not suggest any change therein. (para 14.1.2)

Clause 5(1)(c)

The Committee is not convinced with the reply of the Department of Shipping - "It

appears that the said Act was not extended to the Courts in India". In legal matters, there should not be any ambiguity with regard to Acts/ provisions in vogue. The Committee recommends that the status of jurisdiction under the 1840 Admiralty Court Act, which was further, enlarged in the 1861 Act may be re-examined in consultation with the Ministry of law and Justice so that there is no scope of any ambiguity with regard to jurisdiction of 1840 Admiralty Court Act. (para 14.1.7)

Clause 5(1)(d)

The sub-clause (d) of clause 5(1) was adopted without any change. The Committee, therefore, does not suggest any change in this sub-clause. (para 14.1.9)

Clause 5(2)(3)&(4)

The Committee observes that the reply furnished by the Department of Shipping "All laws are essentially organic in nature in the sense there is ongoing exercise requiring changes/ modification in them to keep pace with the changes/requirements of the people whose conduct are intended to be regulated under these instruments. As the law is not static this can be further improved after gaining experience in this regard." is not acceptable *in toto*. The Committee, therefore, recommends that in view of the issues highlighted by various representationists, as mentioned above, the Clause 5 may be re-considered and revised wherever necessary taking into account the issues. (para 14.4.14)

Clause 6(1)(2)&(3)

The Committee notes that Clause 6 of the Bill has been captioned in the marginal heading as "Conditions in respect of claims in an action *in rem*". The Committee feels that the 6 days notice period, which is provided in this clause can be reduced suitably given the fast means of communication available in today's world.

Moreover, the Committee observes that the provisions given in the Clause 6(3) are ambiguous and it appears that wherever an affected party proceeds *in personam* cannot proceed *in rem*. This will unnecessarily complicate the gamut of issues. Under the present law, the Indian crew are entitled to what is called an action *in rem* against a ship; it simply means that a ship can be arrested to secure a claim. But provisions of Clause 6 of the Admiralty Bill, 2005 takes away the existing right. More fundamentally, what it does is it leaves the door open for foreign owners to start arguing that their vessels are also not liable to be arrested in India. In such circumstances the Committee apprehends that the foreign owners will escape in the pretext of having local agents in India and accordingly they are amenable to the courts *in personam* jurisdiction. Moreover, provisions of Clause 6 will also lead to circumstances when a ship can be proceeded against *in personam* by means of a regular civil suit. Resultantly, for arresting a ship, it will take a quite long period sometimes expanding over decades.

Therefore, the Committee recommends that the Clause 6 (3) may suitably be made part of clause 7.

(para 15.10, 15.11 & 15.12)

Clause 7

The Committee recommends that keeping in view of its earlier recommendation regarding Clause 6 (3), the marginal heading of Clause 7 be changed to 'mode of exercise of admiralty jurisdiction' instead of 'jurisdiction in personam'.

(para 16.15)

Clause 8

The Committee observes that according to Clause 8(2)(a) “while exercising admiralty jurisdiction, a court shall not entertain any action *in personam* against any defendant unless such defendant, at the time of commencement of the action, actually and voluntarily resides or carries on business or personally works for gain in India”. The Committee feels that the wordings in the clause may be mis-used by foreign ship owners as their agent resides and carries on business for them in India. Therefore, the Committee recommends that the Department of Shipping should take adequate care so that the possibility of such kind of misuse can be prevented in future.

The rest of the Clause was adopted without any change.

(paras 17.10.&17.11)

Clause 9

The Committee notes that it has been left open to the Court in its discretion to treat the proceedings *in rem* or *in personam* and grant relief and make orders. The Committee feels that the directions by Court may be considered appropriate and just and adopted the Clause without suggesting any change.(para 18.2)

Clause 10

The Clause was adopted without suggesting any change. (para 19.1)

Clause 11

The Committee adopted the Clause without suggesting any change.(para 20.10)

Clause 12

The Committee observes that the Clause 12(2) of the Bill endeavours to categorise the priority of maritime claims which is not recommended in respect of admiralty jurisdiction as priority between competing maritime claims has historically been exercised on the basis of a broad discretionary approach. The Committee cites for example, though a crew member claims for wages is generally subordinated to a claim for salvage. The same is not rigid and the courts have at times departed from these guidelines due to considerations of equity, public policy and commercial expediency. Therefore, the order of priorities adopted in one case may not be followed in another if the court believes that considerations of justice or public policy warrant a departure. In view of this, the Committee recommends that this provision should not be included in the Bill.

(para 21.3.5)

Clause 13 (1)(2)&(3)

The Committee observes that a maritime lien is a charge that attaches to a ship to secure certain types of claims. Typically, such claims are few in number, as they tend to place the holder in favoured position in law. For instance, a maritime lien unlike an ordinary maritime claim does not get extinguished on the sale of a ship, but instead survives a change of ownership of the vessel. This is why such liens are restricted to certain limited categories of claims. The Supreme Court in MV Won Fu's Case (2003 1 SCC 305) ruled that maritime lien exists in 5 cases only viz., a) salvage b) damage done by a ship c) seaman's and masters wages d) master's disbursements and e) bottomry. The Committee also takes note of the fact that as per the provisions of Clause 13 of the Bill, maritime liens has a wider scope as it includes claims for general average and port and canal dues. Whereas, there is no mention of master's disbursements and damage done by a ship. Therefore, this clause apart from being contrary to the Supreme Court's judgment in MV Won Fu's case, also marks a departure from the policy of other commonwealth jurisdictions by creating new classes of maritime liens. The Committee recommends that Clause 13 be amended on the line of Supreme Court judgement in MV Won Fu's Case, 2003.

The Committee feels that Clause 13(3) provides for extension of lien indefinitely which is harmful for the interest of the Ship-breaking industry. Therefore, the Committee recommends that the Government must take care of Ship-breaking industry and lien period may be specified in the Bill and should not be extendable beyond that period. (paras 22.2.6&22.2.7)

Clause 14

The Clause was adopted without suggesting any change. (para 23.7)

Clause 15

24.5 The Clause was adopted without suggesting any change.(para 24.5)

Clause 16

The Committee adopted the Clause without suggesting any change.

(para 25.6)

Clause 17

The Committee adopted the Clause without suggesting any change.

(para 26.4)

Clause 18

The Committee adopted the Clause without suggesting any change.

(para 28)

Clause 19

Clause 19 of the Bill provides for appeals only in respect of “final order”. The Committee feels that revision application should be allowed against any “interim order” and recommends that the clause be amended suitably.

(para 31)

Clause 20

The Committee adopted the Clause without suggesting any change(para 32.6)

Clause 21

The Committee is not convinced with the reply given by the Department of Shipping and recommends that the Bill should repeal the Admiralty Courts Act of 1840 as well.

(para 34)

Clause 1

The Committee recommends that the Bill’s title should aptly be changed from “Admiralty Bill” to “Admiralty Jurisdiction Bill” by amending Clause 1 of the Bill. The figure "2005" should be changed to '2006".

In the enacting formula the words "fifty-sixth" be substituted by "fifty-seventh".

The Committee recommends that the Bill be passed after incorporating official amendments and taking into account its recommendations in respect of Clause 1, 2(b), 2(c), 2(g), 2(m), 3(1), 5, 6(1), 6(3), 7, 8(2)(a), 12(2), 13, 19and 21 above.

(paras 35,36&37)

ANNEXURE

THE ADMIRALTY BILL, 2005

a

BILL

to consolidate and amend the law relating to the admiralty jurisdiction of courts, legal proceedings in connection with ships, their arrest, detention and sale and matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I

Preliminary

1. (1) This Act may be called the Admiralty Act, 2005.

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

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

- (a) “admiralty jurisdiction” means jurisdiction exercised by a court on any matter referred to in section 5;
- (b) “admiralty proceeding” means any proceeding pending before a court exercising admiralty jurisdiction;
- (c) “charge” means any charge with the exception of light dues and any other charges in respect of lighthouses, buoys, beacons or pilotage;
- (d) “collision regulations” shall have the meaning assigned to this expression in the Merchant Shipping Act, 1958;
- (e) “court” means the High Court or any other court exercising admiralty jurisdiction under section 3;
- (f) “goods” means any property including live animals, containers, pellets or such other articles of transport or packaging supplied by the consignor, irrespective of the fact whether such property is to be carried on or under the deck;
- (g) “High Court” shall have the meaning assigned to this expression in the Merchant Shipping Act, 1958;
- (h) “inland waters” includes all waters that are in fact navigable, irrespective of whether they are affected by tides or are land-locked or open or contain salt or fresh waters, and any part of the sea adjacent to the coast of India notified by the Central Government to be inland waters for the purposes of this Act;
- (i) “limits of the port” shall have the meaning assigned to this expression in the Indian Ports Act, 1908;
- (j) “maritime lien” means the maritime lien specified in section 13;
- (k) “master” shall have the meaning assigned to it in the Merchant Shipping Act, 1958;
- (l) “port” shall have the meaning assigned to it in the Indian Ports Act, 1908;
- (m) “ship” does not include a sailing vessel.

CHAPTER II

Jurisdiction of courts

3. (1) Subject to the provisions of sub-section (2), the civil jurisdiction in respect of all claims under this Act shall vest in the High Court concerned and be exercisable in accordance with the provisions contained in this Chapter.

(2) If at any time, the High Court is of the opinion that the number of cases filed under this Act is unduly large, it may, in consultation with the Chief Justice of India, by notification in the Official Gazette, confer admiralty jurisdiction in such matters, wholly or to the extent it considers necessary, on such of the principal civil courts of the State as may be specified in the notification.

(3) Any notification referred to in sub-section (2) may also contain such supplemental, incidental and consequential provisions as the High Court may deem necessary.

4. The Supreme Court may, on application of any party, transfer, at any stage, any admiralty proceeding from one High Court to any other High Court and the latter High Court shall proceed to try, hear and determine the matter from the stage at which it stood at the time of transfer:

Provided that no such proceeding shall be transferred unless parties to the proceeding have been given an opportunity of being heard in the matter.

5. (1) The court shall have jurisdiction—

(a) to hear and determine any of the questions and claims mentioned in sub-section (2);

(b) in relation to any of the proceedings mentioned in section 7;

(c) any other admiralty jurisdiction which it had immediately before the commencement of this Act by virtue of the Admiralty Court Act, 1861 or the Colonial Courts of Admiralty Act, 1890 or the Colonial Courts of Admiralty (India) Act, 1891 or otherwise;

(d) any jurisdiction connected with ships which is vested in the High Court by rules of such court made after the commencement of this Act, assigning and directing the jurisdiction to be exercised by that court.

(2) For the purposes of clause (a) of sub-section (1), a court may exercise jurisdiction to hear and determine any of the following questions or claims, namely:—

- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein including a claim concerning employment or earnings relating to that ship;
- (b) any question arising between the co-owners of a ship as to its possession, employment or earnings;
- (c) any claim in respect of a registered mortgage or of charge on a ship or any share therein;
- (d) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of admiralty;
- (e) any claim for damage caused to a ship during her stay, business or voyage;
- (f) any claim for damage caused by a ship including civil liability for damage caused by oil pollution covered under the Merchant Shipping Act, 1958;
- (g) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment or in its operation, or in consequence of the wrongful act, neglect or default of—
 - (i) the owners, charterers or persons in possession or control of a ship; or
 - (ii) the master or crew of a ship, or any other person for whose wrongful act, neglect or default the owner, charterer or person in possession or control of a ship is responsible, being an act, neglect or default, in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
- (h) any claim for loss of, or damage to, goods carried on board a ship;
 - (i) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- (j) any claim in the nature of salvage for services rendered in saving life from a ship or in preserving the ship, cargo, equipment, apparel or of any other property of the ship or wreck;
- (k) any claim in the nature of towage in respect of a ship;
- (l) any claim in the nature of pilotage in respect of a ship;

(*m*) any claim in respect of goods, materials, bunker or other necessities supplied to a ship or any services rendered to a ship for her operation or maintenance.

Explanation.— For the purposes of this clause, the expression “services” with reference to a claim shall include a claim made towards insurance for such services;

(*n*) any claim in respect of the construction, repair or equipment of a ship or in respect of any port dues, fee and other charges to the Port Authorities under the Indian Ports Act, 1908, as amended from time to time or rates and other charges due under the Major Port Trusts Act, 1963;

(*o*) notwithstanding anything contained in the provisions of sections 150 and 151 of the Merchant Shipping Act, 1958, any claim by a master or member of the crew of a ship for wages including any sum allotted out of wages or adjudged to be due which may be recoverable as wages;

(*p*) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;

(*q*) any claim arising out of an act which is or is claimed to be in the nature of general average.

Explanation.—For the purposes of this clause, “general average” means any extraordinary sacrifice or expenditure voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the ship property imperilled in the common adventure;

(*r*) any claim arising out of bottomry.

(3) While exercising jurisdiction under clause (*b*) of sub-section (2), the court may settle any account outstanding and unsettled between the parties in relation to a ship, and direct that the ship, or any share thereof, shall be sold, or make such other order as the court thinks fit.

(4) The provisions of this section shall apply –

(*a*) in relation to all ships whether Indian or not irrespective of the residence or domicile of owners thereof;

(*b*) in relation to all maritime claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and

(*c*) to all registered mortgages or charges, whether legal or equitable, including mortgages

and charges created under any foreign law.

6. (1) The admiralty jurisdiction of the court shall not be invoked by an action *in rem* by arrest of a ship, in the case of a ship registered in India as an Indian ship, unless six clear days' notice in writing is served upon the registered owner or the master of the ship intended to be proceeded against, stating the cause of action and the quantum of claim and the date and time of application to the court for arrest and calling upon the owner or master to provide security for the claim to the satisfaction of the admiralty court in lieu of the arrest and where such a security is provided, the court shall entertain the action without arresting the ship and shall order the arrest of the ship only in the event of failure to provide such security.

(2) Notwithstanding anything contained in this Act or any other law for the time being in force, the admiralty jurisdiction of the High Court shall not be invoked by an action *in rem* unless the ship against which the proceedings have been commenced is within the territorial or inland waters of India at the time of commencement of the proceedings and as such is within the jurisdiction of that High Court:

Provided that no such ship shall be arrested unless there is failure to provide security.

(3) The admiralty jurisdiction of the court shall not be invoked by an action *in rem* against a vessel arising out of a breach of contract and a claim in such case may be enforced by an action *in personam* under this Act.

7. (1) The jurisdiction of the court may be invoked by an action *in personam* in the cases,—

- (i) referred to in clauses (a) to (c) of sub-section (2) of section 5; or
- (ii) of maritime lien or charge on any ship or its property including bunker.

(2) In the case of any such claim as is mentioned in clauses (e) to (r) of sub-section (2) of section 5, where—

(a) the claim arises in connection with a ship; and

(b) the person who would be liable on a claim in an action *in personam* (hereinafter referred to as “the relevant person”) was, when the cause of action arose, the owner, or charterer, or in possession, or in control, of a ship,

admiralty jurisdiction may be invoked (whether or not the claim gives rise to a maritime lien on that ship) by an action *in rem* against,—

(i) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or

(ii) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.

(3) Where, in the exercise of its admiralty jurisdiction, the court orders any ship or its property to be sold, the court shall have jurisdiction to hear and determine any question arising as to title to the proceeds of sale.

8. (1) This section applies to any claim for damage or loss of life or personal injury arising out of —

(a) a collision between ships; or

(b) the carrying out of or omission to carry out, a manoeuvre in the case of one or more ships; or

(c) non-compliance, on the part of one or more ships, with the collision regulations.

(2) While exercising admiralty jurisdiction, a court shall not entertain any action *in personam* against any defendant unless—

(a) such defendant, at the time of commencement of the action, actually and voluntarily resides or carries on business or personally works for gain in India:

Provided that an action may be entertained in any case where there are more defendants than one if the defendant who does not actually and voluntarily reside or carry on business or personally works for gain in India is made a party to such action either with the leave of the court, or each of such defendants acquiesces in, such institution; or

(b) the cause of action, wholly or in part, arises in India, including inland waters of India or within the limits of a port of India; or

(c) an action arising out of the same incident or series of incidents is pending in a court or has been heard and determined by such court; or

(d) a ship is beneficially owned or chartered by demise by the defendant and such ship has been arrested and proceedings are pending in respect thereof.

(3) The court shall not entertain any action *in personam* to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside India against the same defendant in respect of the same incident or series of incidents have been discontinued or have otherwise come to an end.

(4) The provisions of sub-sections (2) and (3) of this section shall apply to counter-claims (except counter-claims in proceedings arising out of the same incident or series of incidents) as they apply to actions, and a reference to the plaintiff and the defendant for this purpose shall be construed as reference to the plaintiff in the counter-claim and the defendant in the counter-claim respectively.

(5) The provisions of sub-sections (2) and (3) of this section shall not apply to any action or counter-claim if the defendant submits or agrees to submit to the jurisdiction of the court.

(6) Subject to the provisions of sub-section (3), the court shall have jurisdiction to entertain an action *in personam* to enforce a claim to which this section applies whenever any of the conditions specified in clauses (a) to (d) of sub-section (2), are satisfied and where applicable, the rules of the court relating to the service of process outside the jurisdiction shall apply.

9. Notwithstanding anything contained in section 5 of this Act, it shall be open to the court in its discretion, at any stage of the proceedings to treat proceedings *in rem* or *in personam*, either in whole or in part, and to grant such reliefs and make such directions and orders (including amendments to the pleadings) as it may consider appropriate and just.

10. On the sale of a ship by the court in exercise of its admiralty jurisdiction, the ship shall vest in the purchaser free from all encumbrances.

11. (1) In an action *in rem*, where the court has ordered the property proceeded against to be sold

(a) a notice in the manner provided in sub-section (2) shall be given by the court; and

(b) any party which obtains a decree or order against the said property may claim such reliefs as are provided in sub-section (3).

(2) For the purposes of clause (a) of sub-section (1), a notice shall be given in one international and one national newspaper as the court may specify containing following particulars, namely:—

- (a) number of the action;
- (b) names of the parties to an action;
- (c) gross sale proceeds; and
- (d) the order of priority of the claim to the sale proceeds.

(3) Any party referred to in clause (b) of sub-section (1) may apply to the court by a notice of motion for an order determining the order of priority of the claims against the proceeds of the sale of the property.

(4) The court shall determine order of priority of the claim to the sale proceeds on expiration of period of ninety days from the publication of notice under sub-section (2):

Provided that any party having a claim to the property or the proceeds of sale thereof may apply to the court before the expiry of period of ninety days for leave to intervene and prove claims by filing an action before it or by filing a suit before any other appropriate court before the expiration of that period.

(5) The court may extend period of ninety days on the application of any party which has instituted proceedings before any other court as provided in sub-section (4) or before the court of competent jurisdiction in India for obtaining a decree against the property or proceeds of sale and the said court shall not disburse the sale proceeds or determine priority until thirty days after the disposal of the said suit or action and any appeal therefrom.

(6) Notwithstanding the provisions contained in sub-section (3) above, the court may determine priority among the parties and direct payment out of the sale proceeds on an application by any party which has obtained a decree or order against the ship or its property if the court is of the opinion that the claim of the applicant is entitled to priority over the claim in respect of which a suit or action has been instituted:

Provided that the court shall provide opportunity of hearing to all parties which may have made claims and filed suit or action against the property or sale proceeds within the prescribed period of ninety days or such other period which may be extended by the court before determining priority and directing disbursement out of the sale proceeds.

12. (1) The order of claims determining *inter se* priority in an admiralty proceeding shall be as follows:—

(a) a claim on any ship or its property including bunker where there is a maritime lien and action is proceeded against ship or its property;

(b) mortgages and charges on a ship or its property where an action is proceeded against ship or its property;

(c) all other claims.

(2) The priority among the claims *inter se* with respect to clause (a) of sub-section (1) shall be as follows:—

(a) claims for salvage of life, ship or its property provided that salvage of life shall take priority over other salvages;

(b) wages and other sums due to the master or members of crew of the ship in respect of their employment on the ship;

(c) (i) claims in respect of loss of life or personal injury having a direct connection with the operation of the ship;

(ii) claims for contribution for general average;

(iii) claims based on tort arising out of physical damage caused by the operation of the ship other than loss or damage to cargo containers and passengers' effects carried on the ship;

(iv) bottomry;

(d) port, canal and other waterway dues and pilotage dues.

(3) The following principles shall apply in determining the priority of claims *inter se*—

(a) prior claims shall exclude subsequent ones;

(b) if there are more claims than one in any category of priority, they shall rank *pari passu*;

(c) claims for various salvages shall rank in inverse order of time when the claims secured thereto accrue;

(d) claims for salvage, port dues, wages and claims in the nature of general average shall take priority over all other claims mentioned in clause (c) of sub-section (2) notwithstanding the fact that the claims arose earlier.

13. (1) Maritime lien shall attach to a ship or its property in respect of the following, namely:—

(a) claim for salvage of life, ship or its property;

(b) wages and other sums due to the master or members of crew of the ship in respect of their employment on the ship;

(c) claim for loss of life or personal injury having a direct connection with the operation of the ship;

(d) claim for contribution to general average;

(e) port, canal and other waterway dues and pilotage dues;

(f) claim based on tort arising out of physical loss or damage caused by the operation of the ship other than the loss or damage to cargo, containers and passengers' effects carried on the ship, the date of accrual of such maritime lien being the date on which the operations giving rise to the said claim were performed.

(2) No maritime lien shall attach to a vessel to secure a claim which arises out of or results from:

—

(a) damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which compensation is payable to the claimants pursuant to an international convention providing for strict liability, compulsory insurance or any other means of securing such claim;

(b) the radio-active properties or a combination of radio-active properties with toxic, explosive or other hazardous properties or nuclear fuel or radio-active products or waste.

(3) A maritime lien shall stand extinguished on the expiry of one year from the date of its creation under sub-section (1):

Provided that the claim, if any, not barred by limitation, may be enforced by an action *in personam*:

Provided further that the period of one year may be extended further by the court if the claimant of lien is unable to commence an action to enforce the lien against the ship or its property for reasons beyond his control.

14. (1) In all actions under this Act, the nationality of the ship proceeded against shall be stated in the plaint, and if the ship is a foreign ship, notice or institution of the suit shall be given to the Consulate of the State to which the ship belongs.

(2) A statement of service of such notice or a statement that there is no such Consulate in the City, shall be made in the affidavit in support of any application for arrest of the ship.

(3) If a notice is served on the Consulate, a copy of the said notice shall be annexed to the affidavit.

(4) For the purposes aforesaid, it would be sufficient service if a notice is served on a Consul or any other officer in the Consulate.

15. (1) The court may, as a condition of arrest of a ship, or for permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of the ship an obligation to provide such security and upon such terms as may determine, for any loss or damage which may be incurred by the defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to the following:—

(a) the arrest having been wrongful or unjustified; or

(b) excessive security having been demanded and provided.

(2) Where pursuant to sub-section (1), the security has been provided, the person providing such security may at any time apply to the court to have the security reduced, modified or cancelled.

CHAPTER III

Procedure and appeals

16. (1) The provisions of the Code of Civil Procedure, 1908 shall apply in all the proceedings before the court in so far as they are not inconsistent with or contrary to the provisions of this Act or the rules made thereunder.

(2) The admiralty court shall have all the powers of a civil court in dealing with any application before it and of passing such interim and other orders as it may consider necessary and appropriate to protect the interests of the parties before it.

17. (1) In pursuance of the provisions of section 140 of the Code of Civil Procedure, 1908, the Central Government shall appoint and publish in the Official Gazette a list of assessors with such qualifications or experience in admiralty and maritime matters as may be prescribed.

(2) The appointment of assessors shall not be construed as a bar to the examination of expert witnesses by any of the parties in any admiralty proceeding.

(3) The Central Government may make rules prescribing the qualifications for assessors, the

nature of duties to be performed by them and the fees to be paid, to them and other ancillary and incidental matters.

18. Notwithstanding anything contained in the provisions of any other law, it shall be open to the court in admiralty proceedings to refer, with the written consent of the parties, the entire dispute before it or such questions of law or fact raised thereby, as the court may consider necessary, to arbitration and dispose of the dispute or the questions, as the case may be, in conformity with the award unless modified by the court for reasons to be recorded in writing.

19. An appeal shall lie from any judgment, decree or final order of a single Judge of the High Court or any other court exercising admiralty jurisdiction under this Chapter to a Division Bench of the High Court.

CHAPTER V

Miscellaneous

20. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Central Government may regulate by rules, the practice and procedure of admiralty jurisdiction under this Act including fees, costs and expenses in such proceedings.

(3) Until rules are made under sub-section (2) by the Central Government, the existing rules governing the exercise of admiralty jurisdiction in the High Courts shall be applicable.

(4) Every rule made, under this Act shall be laid, as soon as may be after the rule is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

21. (1) The following enactments are hereby repealed—

(a) the Admiralty Offences (Colonial) Act, 1849;

(b) the Admiralty Jurisdiction (India) Act, 1860;

(c) the Admiralty Court Act, 1861;

(d) the Colonial Courts of Admiralty Act, 1890;

(e) the Colonial Courts of Admiralty (India) Act, 1891;

(f) the provisions of Letters Patent, 1865 in so far as they apply to the admiralty jurisdiction of the Bombay, Calcutta and Madras High Courts.

(2) Notwithstanding the repeal of any of the enactments mentioned in sub-section (1), any rule, notification, regulation, bye-law or order previously issued shall, in so far as such rule, notification, regulation, bye-law or order is not inconsistent with any of the provisions of this Act or any rule made under section 20, continue in force as if it had been issued or made under the corresponding provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

The Admiralty Laws in India are based on the British Acts which are more than a century old. While the British Acts has been revised from time to time, the Admiralty laws applicable to India remained unchanged.

2. The maritime industry has been highlighting the need to update India's Admiralty Laws to be responsive to the needs of the Industry and to ensure that the maritime disputes are disposed of expeditiously and effectively.

3. The Supreme Court in its judgment in *M.V. Elizabeth & Others Vs Harwan Investment and Trading Pvt. Ltd.* (JT 1992 (2) SC (5) advised on the need to codify and clarify the Admiralty laws of the country. It also advised to update these laws to serve the needs of the Shipping industry. The matter was, accordingly, referred to the Law Commission. Various issues including representations from the shipping industry were examined by the Law Commission. In its 151st Report tabled in Parliament in August, 1995 the Law Commission recommended for enacting a new Admiralty Act of India. The present proposal is to give effect to the said recommendations.

4. The objective of the proposed Admiralty Bill is to consolidate and amend the law relating to Admiralty jurisdiction of Courts, legal proceedings in connection with ships, their arrest, detention and sale and matters connected therewith or incidental thereto. It is proposed to enlarge the scope of the legislation to cover claims pertaining to pollution damages, loss of life, personal injury, towage of ships, pilotage of ships, port dues, disbursement made by the ship owners and agents of ships.

5. The Bill, *inter alia*, provides for vesting of civil jurisdiction in respect of various types of claims pertaining to shipping industry in High Courts, power of Supreme Court to transfer any proceedings from one High Court to another, power of the High Court to confer Admiralty jurisdiction in consultation with the Chief Justice of India on any principal civil court of the State. It also spells out Admiralty jurisdiction and mode of exercising it, conditions in respect of claims in an action *in rem*, jurisdiction *in personam*, restrictions on entertainment of actions in cases pertaining to action *in personam* in collision of ships.

6. The Bill also makes provisions for vesting of rights on sale of ships, distribution of sale proceeds, order of priority of claim, maritime lien, procedure in respect of foreign ships and protection of owner, demise charterer, manager or operator of ships arrested. The Bill also provides for application of Code of Civil Procedure, assistance of assessors, reference to arbitration and appeal. It also confers upon the Central Government the power to make rules besides provision for repeal of the existing laws on the subject as recommended by the Law Commission.

7. The proposed Bill takes into account the needs of the maritime industry and will be conducive to the efficiency and development of the industry.

8. The Bill seeks to achieve the above stated objectives.

New Delhi;

T. R. BAALU.

The 31st March, 2005

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (3) of clause 17 of the Bill empowers the Central Government to make rules prescribing the qualifications for assessors, the nature of duties to be performed by them and the fees to be paid to them and other ancillary and incidental matters. Sub-clause (1) of clause 20 empowers the Central Government to make rules for carrying out the provisions of the Bill. Sub-clause (2) of clause 20 empowers the Central Government to make rules to regulate the practice and procedure of admiralty jurisdiction including fees, costs and expenses in such proceedings. And all such rules made under the provisions of the Bill are required to be laid in Parliament.

The matters in respect of which rules may be made in accordance with the provisions of the Bill are matters of procedure and detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

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to consolidate and amend the law relating to the admiralty jurisdiction of courts, legal proceedings in connection with ships, their arrest, detention and sale and matters connected therewith or incidental thereto.

(Shri T.R. Baalu, Minister of Shipping, Road Transport and Highways)

MINUTES

XXXV

THIRTY-FIFTH MEETING

The Committee met at 3.00 p.m. on Monday, the 6th June 2005 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shri Nilotpal Basu – *Chairman*

RAJYA SABHA

2. Shri S.S. Chandran
3. Shri Shatrughan Sinha
4. Shri Rama Muni Reddy Sirigireddy
5. Smt. Ambika Soni

LOK SABHA

6. Shri Anil Basu
7. Shri N.S.V. Chitthan
8. Shri Adhir Ranjan Chowdhury
9. Dr. K. Dhanaraju
10. Dr. Ramkrishna Kusmaria
11. Shri Samik Lahiri
12. Shri Alok Kumar Mehta
13. Shri Ravindra Naik

SECRETARIAT

Shrimati Agnes Momin George, Director
Shri Jagdish Kumar, Under Secretary
Shrimati Subhashree Panigrahi, Committee Officer

REPRESENTATIVES OF THE MINISTRY OF CIVIL AVIATION

Shri Prashant Kumar Mishra, Additional Secretary & FA
Dr. Nasim Zaidi, Joint Secretary
Shri Sanjay Narayen, Joint Secretary
Shri Sanjeev Kumar, Director

REPRESENTATIVES OF THE AIRPORTS AUTHORITY OF INDIA

Shri K. Ramalingam, Chairman
Shri V.D.V. Prasad Rao, Member (Finance)

2. At the outset, the Chairman of the Committee informed the Members that the Chairman, Rajya Sabha in consultation with the Speaker, Lok Sabha, has referred the Admiralty Bill, 2005, which was introduced in the Lok Sabha on the 11th May, 2005 and is pending therein, to this Committee for examination and report within three months.

3. * * *

4. * * *

5. The meeting of the Committee then adjourned at 5.15 p.m. to meet again on 20th June 2005.

* Relates to other matter.

**XXXVII
THIRTY-SEVENTH MEETING**

The Committee met at 3.00 p.m. on Wednesday, the 29th June 2005 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

14. Shri Nilotpal Basu – *Chairman*

RAJYA SABHA

15. Prof. Ram Deo Bhandary
16. Shri S.S. Chandran

17. Shri Rama Muni Reddy Sirigireddy

LOK SABHA

18. Shri Ramdas Athawale
19. Shri Anil Basu
20. Dr. K. Dhanaraju
21. Shri W. Wangyuh Konyak
22. Shri Samik Lahiri
23. Shri Alok Kumar Mehta
24. Shri Ravindra Naik
25. Shri Manabendra Shah
26. Shri Dushyant Singh
27. Shri Madan Lal Sharma
28. Shri Sartaj Singh
29. Shri Umakant Yadav

SECRETARIAT

Shrimati Agnes Momin George, Director

Shri Jagdish Kumar, Under Secretary

REPRESENTATIVES OF THE MINISTRY OF CIVIL AVIATION

Shri Ajay Prasad, Secretary

Shri Prashant Kumar Mishra, Additional Secretary & FA

Dr. Nasim Zaidi, Joint Secretary

Shri Sanjay Narayan, Joint Secretary

REPRESENTATIVES OF THE AIRPORTS AUTHORITY OF INDIA

Shri K. Ramalingam, Chairman

Shri V.D.V. Prasad Rao, Member (Finance)

Shri A.K. Misra, Member (Planning)

2. At the outset, the Committee held preliminary discussion on the Admiralty Bill, 2005. After some discussion, the Committee decided to invite comments/suggestions from interested individuals/organisations on the Bill and directed the Secretariat to issue a Press Communiqué accordingly. The Committee also decided to hear the Secretary, Department of Shipping in connection with the subject at its next meeting to be held on the 8th July 2005.

3. * * *

4. * * *

5. The meeting of the Committee then adjourned at 5.00 p.m. to meet again on 8th July 2005.

* Relates to other matter.

XXXVIII
THIRTY-EIGHTH MEETING

The Committee met at 2.00 p.m. on Friday, the 8th July 2005 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shri Nilotpal Basu – *Chairman*

RAJYA SABHA

2. Shri Kamal Akhtar
3. Prof. Ram Deo Bhandary
4. Shri Janardhana Poojary
5. Smt. Ambika Soni

LOK SABHA

6. Shri Anil Basu
7. Shri Adhir Ranjan Chowdhury
8. Dr. K. Dhanaraju
9. Shri W. Wangyuh Konyak
10. Dr. Ramkrishna Kusmaria
11. Shri Samik Lahiri
12. Shri Alok Kumar Mehta
13. Shri Ravindra Naik
14. Shri Sartaj Singh
15. Shri Umakant Yadav

SECRETARIAT

Shrimati Agnes Momin George, Director

Shri Jagdish Kumar, Under Secretary

Shrimati Subhashree Panigrahi, Committee Officer

REPRESENTATIVES OF THE DEPARTMENT OF SHIPPING

Shri D.T. Joseph, Secretary

Shri Pradeep Kumar, Director (IWT)

Shri G.S. Sahni, Director General (S)

REPRESENTATIVE OF THE MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT)

Dr. Sanjay Singh, Joint Secretary and Legal Counsel

REPRESENTATIVE OF THE MINISTRY OF LAW AND JUSTICE (LEGAL AFFAIRS)

Shri K.D. Singh, Additional Secretary

2. At the outset, the Committee heard the views of the Secretary, Department of Shipping on the Admiralty Bill 2005. The Secretary, while presenting his views, also detailed the background of the Bill. The Committee called for written explanation from the Department explaining the delay involved in bringing out the Admiralty Bill, 2005. The Committee also directed the Secretariat to forward a Questionnaire on the Bill to the Department of Shipping and obtain replies thereon. The Committee also decided to hear the views of the experts/organisations on the Bill during its next meetings.
3. A verbatim record of the proceedings of the Meeting was kept.
4. * * *
5. The meeting of the Committee then adjourned at 2.50 p.m.

* Relates to other matter.

XXXIX THIRTY-NINTH MEETING

The Committee met at 3.00 p.m. on Monday, the 18th July 2005 in Room No. '63', First Floor, Parliament House, New Delhi.

MEMBERS PRESENT

1. Shri Nilotpal Basu – *Chairman*

RAJYA SABHA

2. Shri Kamal Akhtar
3. Prof. Ram Deo Bhandary
4. Shri S.S. Chandran
5. Shri Shatrughan Sinha
6. Shri Rama Muni Reddy Sirigireddy
7. Smt. Ambika Soni

LOK SABHA

8. Shri Ramdas Athawale
9. Shri Anil Basu
10. Shri N.S.V. Chitthan
11. Shri Samik Lahiri
12. Shri Alok Kumar Mehta
13. Shri Madan Lal Sharma
14. Shri Umakant Yadav

SECRETARIAT

Shrimati Agnes Momin George, Director

Shri Jagdish Kumar, Under Secretary

Shrimati Subhashree Panigrahi, Committee Officer

REPRESENTATIVE OF INDIAN NATIONAL SHIPOWNERS ASSOCIATION:

Shri Dipankar Halder - Company Secretary, Shipping Corporation of India

REPRESENTATIVE OF THE FOREIGN OWNERS REPRESENTATIVE & SHIPMANAGER ASSOCIATION:

Capt. R.K. Sood

REPRESENTATIVE OF THE PORT, DOCK & WATERFRONT WORKER'S FEDERATION OF INDIA:

Shri.V.K. Balakrishnan, Vice-President

2. The Committee heard the views of the above-mentioned representatives of the various stakeholders on the Admiralty Bill 2005. The Committee also called for written comments from the representatives within 10 days period.
3. A verbatim record of the proceedings of the Meeting was kept.
4. The meeting of the Committee then adjourned at 4.40 p.m.

XL

FORTIETH MEETING

The Committee met at 12.00 noon on Tuesday, the 19th July 2005 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shri Nilotpal Basu – *Chairman*

RAJYA SABHA

2. Shri Kamal Akhtar
3. Shri Janardhana Poojary
4. Shri Shatrughan Sinha
5. Shri Rama Muni Reddy Sirigireddy

LOK SABHA

6. Shri Ramdas Athawale
7. Shri N.S.V. Chitthan
8. Dr. K. Dhanaraju
9. Shri W.Wangyuh Konyak
10. Shri Ravindra Naik

11. Shri Madan Lal Sharma
12. Shri Sartaj Singh
13. Shri Umakant Yadav

SECRETARIAT

Shrimati Agnes Momin George, Director

Shri Jagdish Kumar, Under Secretary

Shrimati Subhashree Panigrahi, Committee Officer

REPRESENTATIVE OF ALL INDIA PORT & DOCK WORKERS' FEDERATION:

Shri P.M. Mohammed Haneef, General Secretary

2. The Committee heard the views of the representative of the All India Port & Dock Workers' Federation on the Admiralty Bill 2005. The Committee also called for written comments from the representative.
3. A verbatim record of the proceedings of the Meeting was kept.
4. The meeting of the Committee then adjourned at 12.40 p.m.

II

SECOND MEETING

The Committee met at 11.00 a.m. on Wednesday, the 31st August 2005 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shri Nilotpal Basu – *Chairman*

RAJYA SABHA

2. Shri S. S. Chandran
3. Shri Janardhana Poojary

LOK SABHA

4. Shri Anil Basu
5. Dr. K. Dhanaraju
6. Shri Ravindra Naik Dharavath
7. Shri Dip Gogoi
8. Dr. Ramkrishna Kusmaria
9. Shri Samik Lahiri
10. Shri Alok Kumar Mehta
11. Shri Manabendra Shah
12. Shri Madan Lal Sharma
13. Shri Chengara Surendran
14. Shri Umakant Yadav

SECRETARIAT

Shrimati Agnes Momin George, Director
Shri Jagdish Kumar, Under Secretary
Shrimati Subhashree Panigrahi, Committee Officer

I.REPRESENTATIVE OF THE INDIAN NATIONAL PORT & DOCK WORKER'S FEDERATION:

Shri P.K. Samantray, President

II.REPRESENTATIVES OF THE FOREIGN OWNERS REPRESENTATIVES & SHIPMANAGERS ASSOCIATION:

Capt. K. Guha, Chairman
Shri Zarir P. Bharucha, Advocate, Supreme Court of India

III.REPRESENTATIVE OF THE PORT, DOCK & WATERFRONT WORKER'S FEDERATION OF INDIA:

Shri P. Krishnaiah, President

IV.REPRESENTATIVE OF THE IRON STEEL SCRAP & SHIPBREAKERS ASSOCIATION OF INDIA:

Shri P.S. Nagarsheth, President

2. The Committee heard the views of the above mentioned representatives of the various organisations on the Admiralty Bill 2005. The Committee also called for written comments from the representative of the Indian National Port & Dock Worker's Federation within fifteen days.

3. A verbatim record of the proceedings of the Meeting was kept.

4. The meeting of the Committee then adjourned at 1.40 p.m.

III THIRD MEETING

The Committee met at 10.30 a.m. on Friday, the 9th September 2005 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

2. **Shri Nilotpall Basu – *Chairman***

RAJYA SABHA

3. Prof. Ram Deo Bhandary
4. Shri S. S. Chandran
5. Shri Janardhana Poojary
6. Shri Rama Muni Reddy Sirigireddy
7. Shrimati Ambika Soni

LOK SABHA

8. Shri Ramdas Athawale
9. Shri Raj Babbar
10. Shri Anil Basu
11. Shri Sartaj Singh Chhatwal
12. Shri N.S.V. Chitthan
13. Dr. K. Dhanaraju
14. Shri W. Wangyuh Konyak
15. Dr. Ramkrishna Kusmaria
16. Shri Alok Kumar Mehta
17. Shri Manabendra Shah
18. Shri Madan Lal Sharma
19. Shri Chengara Surendran
20. Shri Umakant Yadav

SECRETARIAT

Shrimati Agnes Momin George, Director
Shri Jagdish Kumar, Under Secretary
Shrimati Subhashree Panigrahi, Committee Officer

MEMBERS OF SWEDEN'S PARLIAMENTARY COMMITTEE ON CULTURE AFFAIRS

1. Mr. Lars Wegendal - Leader of the Delegation
2. Mr. Paavo Vallius
3. Ms. Gunilla Tjernberg
4. Mr. Nikos Papadopoulos
5. Ms. Cecilia Wikstrom
6. Ms. Anna Lindgren
7. Ms. Gunilla Carlsson
8. Ms. Rossana Dinamarca
9. Mr. Peter Pedersen
10. Ms. Margareta Palsson

OFFICIALS ACCOMPANING THE DELEGATION

Ms. Igna Eriksson Fogh, Ambassdor

Ms. Karin Josephson, Secretary to the Committee

Ms. Charlotte Rundelius, Clerical assistant to the Committee

OFFICER FROM THE MINISTRY OF EXTERNAL AFFAIRS:

Shri V. Ashok, Joint Secretary

REPRESENTATIVE OF THE COMPANY OF MASTER MARINERS OF INDIA:

Capt. J.S. Gill, Chairman

REPRESENTATIVE OF THE NATIONAL UNION OF SEAFARERS OF INDIA:

Dr. Shanti G. Patel, President

2. * * *

3. * * *

4. * * *

5. The Committee then re-assembled after tea-break and heard the views of the Capt. J.S. Gill, Chairman of the Company of Master Mariners of India and Dr. Shanti G. Patel, President of the National Union of Seafarers of India on the Admiralty Bill 2005.

6. A verbatim record of the proceedings of the Meeting was kept.

7. The Committee while considering its future programme decided to meet next on 19th September 2005 at 3.00 P.M. to have views of the Secretary, Department of Shipping on the Admiralty Bill 2005.

8. The meeting of the Committee then adjourned at 12.45 p.m.

* *Relates to other matter.*

V

FIFTH MEETING

The Committee met at 10.30 a.m. on Wednesday, the 28th September 2005 in Committee Room 'C', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shri Nilotpal Basu – *Chairman*

RAJYA SABHA

2. Prof. Ram Deo Bhandary

3. Shri S. S. Chandran

4. Shri Janardhana Poojary
5. Shri Shatrughan Sinha
6. Shrimati Ambika Soni

LOK SABHA

7. Shri Ramdas Athawale
8. Shri Anil Basu
9. Shri Sartaj Singh Chhatwal
10. Shri N.S.V. Chitthan
11. Dr. K. Dhanaraju
12. Shri Samik Lahiri
13. Shri Alok Kumar Mehta
14. Shri Gingee N. Ramachandran
15. Shri Madan Lal Sharma
16. Shri Chengara Surendran

SECRETARIAT

Shrimati Agnes Momin George, Director

Shri Jagdish Kumar, Under Secretary

Shrimati Subhashree Panigrahi, Committee Officer

MEMBERS OF SOUTH AFRICAN PARLIAMENTARY STANDING COMMITTEE ON SOCIAL DEVELOPMENT AND COMMUNITY DEVELOPMENT

1. Ms. Ntombizodwa Pauline Magwaza - Leader of the Delegation
2. Ms. Petronella Catherine Duncan
3. Mr. Max Ozinsky
4. Mr. Mzwandile Manjiya
5. Mr. Johan Pieter Gelderblom
6. Mr. Patric Cecil Mckenzie
7. Mr. Zandisile Christopher Stall
8. Ms. Lindiwe Nisabo
9. Ms. Paulina Wilhelmina Cupido

OFFICER ACCOMPANING THE DELEGATION

Mr. Jacob Moroe, Second Secretary : Political (Africa High Commission)

REPRESENTATIVES OF THE DEPARTMENT OF SHIPPING

Shri D.T. Joseph, Secretary

Shri Susheel Kumar, Joint Secretary

Shri G.S. Sahni, Director-General, Shipping

REPRESENTATIVE OF THE DEPARTMENT OF LEGISLATIVE DEPARTMENT

Dr. Sanjay Singh, Joint Secretary & Legislative Counsel

REPRESENTATIVE OF THE DEPARTMENT OF LEGAL AFFAIRS

Shri R. Raghupati, Joint Secretary & Legal Advisor

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| 2. | * | * | * |
| 3. | * | * | * |
| 4. | * | * | * |

5. The Committee then re-assembled after tea-break and heard the views of the Secretary, Department of Shipping on the Admiralty Bill 2005. The Committee also discussed the comparative statement containing the provisions of the Admiralty Bill 2005 vis-à-vis the observation made by the stakeholders/public and the comments of the Department of Shipping thereon. While discussing the statement, the Chairman of the Committee directed to the Secretary, Department of Shipping to furnish clause-by-clause detailed comments on the points contained in the Memoranda within 15 days, which has already been forwarded to the Department of Shipping. The Committee also decided to hear the Secretary, Department of Shipping once again in future.

6. A verbatim record of the proceedings of the Meeting was kept.

7. The meeting of the Committee then adjourned at 1.15 p.m.

**XV
FIFTEENTH MEETING**

The Committee met at 10.00 a.m. on Friday, the 17th March 2006 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shri Nilotpall Basu – *Chairman*

RAJYA SABHA

2. Shri Kamal Akhtar
3. Prof. Ram Deo Bhandary
4. Shri Janardhana Poojary
5. Shri Rama Muni Reddy Sirigireddy

LOK SABHA

6. Shri Raj Babbar
7. Shri N.S.V. Chitthan
8. Shri Ravindra Naik Dharavath
9. Shri W. Wangyuh Konyak
10. Shri Madan Lal Sharma
11. Shri Umakant Yadav

SECRETARIAT

Shri Sham Sher Singh, Joint Secretary

Shrimati Agnes Momin George, Director

Shri Jagdish Kumar, Under Secretary

Shrimati Subhashree Panigrahi, Committee Officer

2. * * *
3. The Committee then took up clause-by-clause consideration of the Admiralty Bill, 2005; the Inland Vessels (Amendment) Bill, 2005; and the Carriage by Road Bill, 2005. The Committee also considered the draft Report on the said Bills and adopted the same with minor modifications.
4. The Committee also authorized the Chairman to nominate the Members for presentation of all the four reports to the Parliament on 21st March, 2006.
5. * * *
6. The meeting of the Committee then adjourned at 10.30 a.m.

* Relates to other matter.

* Nominated *w.e.f.* 14.04.2005 *vice* Shri Dara Singh Chauhan.

* Nominated *w.e.f.* 8.3.2006 *vice* Smt. Ambika Soni.