

**16**

**STANDING COMMITTEE  
ON EXTERNAL AFFAIRS  
(2011-2012)**

**FIFTEENTH LOK SABHA**

**MINISTRY OF EXTERNAL AFFAIRS**

**THE PIRACY BILL, 2012**

**SIXTEENTH REPORT**



**LOK SABHA SECRETARIAT  
NEW DELHI**

***JULY 2012/SHRAVANA, 1934 (Saka)***

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*Presented to Lok Sabha on 14<sup>th</sup> August, 2012*  
*Laid in Rajya Sabha on 14<sup>th</sup> August, 2012*



**LOK SABHA SECRETARIAT**  
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**COMPOSITION OF THE STANDING COMMITTEE ON  
EXTERNAL AFFAIRS (2011-2012)**

**Shri Ananth Kumar - Chairman**

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|    |                      |                     |
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| 1. | Shri U.S. Saxena -   | Joint Secretary     |
| 2. | Dr. Ram Raj Rai -    | Additional Director |
| 3. | Shri A. Sivanandam - | Under Secretary     |
| 4. | Ms. Kiran Bhargava-  | Executive Assistant |

\* Shri K. Chandrasekhar Rao nominated to the Committee on External Affairs w.e.f. 25.11.2011.

\$ Ceased to be the Member of the Committee due to expiry of term of Dr. Karan Singh, Member, Rajya Sabha w.e.f. 27.01.12 and re-nominated to the Committee w.e.f. 02.02.2012.

@ Shri Sreegopal Vyas, Member Rajya Sabha ceased to be the Member of the Committee due to expiry of his term w.e.f. 02.04.12 and Smt. Najma Heptulla nominated to the Committee on External Affairs w.e.f. 04.05.2012.

# Smt. Sushila Saroj ceased to be the Member of the Committee on External Affairs due to change of her nomination to Committee on Social Justice and Empowerment w.e.f. 13.7.12.

## INTRODUCTION

I, the Chairman, Standing Committee on External Affairs (2011-2012) having been authorized by the Committee to submit the Report on their behalf, present this 16<sup>th</sup> Report (15<sup>th</sup> Lok Sabha) on “The Piracy Bill, 2012”.

2. The Bill was introduced in Lok Sabha on 24<sup>th</sup> April, 2012 and was referred by the Hon’ble Speaker to the Standing Committee on External Affairs for examination and Report.

3. In the process of examination of the Bill, the Committee took oral evidence of the representatives of the Ministry of External Affairs, Ministry of Home Affairs, Ministry of Defence, Ministry of Shipping, Ministry of Law & Justice (Legislative Department and Department of Legal Affairs) and DG Shipping on 16.05.2012, 21.05.2012 and 26.06.2012. The Committee also sought written information on various aspects of the Bill from these Ministries.

4. The Committee considered and adopted this Report at their sitting held on 26<sup>th</sup> July, 2012. The Minutes of the sittings of the Committee are appended to the Report.

5. The Committee wish to express their thanks to the representatives of the Ministry of External Affairs, Ministry of Home Affairs, Ministry of Defence, Ministry of Shipping, Ministry of Law & Justice (Legislative Department and Department of Legal Affairs) and DG Shipping who appeared before the Committee and placed their considered views and also for furnishing background information and written replies to the points raised by the Committee in connection with the examination of the Bill.

6. For facilitation of reference and convenience, the observations and recommendations of the Committee have been printed in bold in the body of the Report.

**NEW DELHI**  
**26 July, 2012**  
**04 Shravana, 1934 (Saka)**

**ANANTH KUMAR,**  
**Chairman,**  
**Standing Committee on External Affairs**

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**DRAFT REPORT**

**STANDING COMMITTEE ON  
EXTERNAL AFFAIRS  
(2011-2012)**

**(FIFTEENTH LOK SABHA)**

**MINISTRY OF EXTERNAL AFFAIRS  
THE PIRACY BILL, 2012**



**LOK SABHA SECRETARIAT  
NEW DELHI**

***JULY 2012/SHRAVANA, 1934 (Saka)***

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***Recommendations are at Page Nos. 16-21, 23, 24, 26-27, 30, 31, 35, 36, 38, 39***

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2.36, 2.38, 2.43, 2.47,

**REPORT**  
**CHAPTER-I**  
**INTRODUCTORY**

Recent times have seen intensification in incidents of piracy on high seas particularly off the coast of Somalia especially in the Gulf of Eden as well as in the region off South-East Asia along with other high risk zones. The act of 'Piracy' involves two distinct offences including robbery or hijacking, wherein target of the attack is to capture/harm a maritime vessel or its cargo as well as kidnapping the vessel and its crew and threatening them for payment of ransom.

**Legal definition of Piracy**

1.2 "Piracy" as an offence is defined as follows in the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) (Article 101):

"Piracy consists of any of the following acts:

- (a) any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
  - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
  - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)."

1.3 According to the above-mentioned definition, piracy as an offence can only be committed on the high seas. When an offence akin to piracy takes place in the territorial sea and internal waters of a State, it will be called Maritime Robbery or Armed robbery against ships.

### **International Scenario**

1.4 Seaborne piracy against ships and vessels remains a significant issue particularly in the waters between the Red Sea and Indian Ocean, off the Somalia coast, and also in the Strait of Malacca and Singapore, which are used by over 50,000 commercial ships a year. Piracy off the coast of Somalia has been a threat to international shipping and trade. In view of the economic costs of piracy and its adverse impact on global trade and threat posed to the security of the crew and the seafarers, there has been a coordinated multi-national effort to patrol the waters near the Horn of Africa including India and its Navy and Coast Guards.

1.5 An estimated 3,000 to 5,000 pirates operated in the beginning and by 2012, February 1,000 of such pirates have been captured and were put to trial under legal processes in several countries despite problems being faced in bringing these pirates to justice at the international level due to the dearth of an international institutional arrangement as well as effective domestic legislations to deal with the menace.

### **Problem of Piracy in Indian context**

1.6 With the increase in global trade, the maritime security has emerged as a major challenge. The Gulf of Aden which separates Somalia and Yemen and connects the Arabian Sea to the Red Sea has seen a major spurt in attacks by pirates operating from Somalia since 2008. This problem has really been exasperated in recent years. With Indian naval presence in the Gulf of Eden, the problem which were at the time related to Somalia and the Horn of Africa, some of the pirates began to shift their operations eastwards and southwards. This led to some of the pirates operating closer to the Indian Exclusive Economic Zone (EEZ) and the Western coast of India. In 2011, 286 piracy attacks took place which resulted in 33 hijacking. From December 2010, the Indian Navy and the Coast Guard conducted several major anti-piracy operations off India's Western Coast and apprehended around 120 suspected pirates.

#### **Efforts made on international level**

1.7 Efforts are being made on international level to deal with the situation both through political and diplomatic means as well as defence cooperation at high seas. The UN Secretary General presented a Report (S/2010/394) to the UN Security Council on 26 July 2010 which identified the various options for an international legal mechanism for prosecution and incarceration of the pirates, including capacity building of regional States to prosecute and imprison pirates, establishment of a Somali court in the country or in another country in the region, establishment of a special chamber or a regional tribunal or an international tribunal either with or without UN participation. The UN Secretary General also appointed a Special Adviser on Piracy who released a report in February 2011 elaborating on various options for judicial mechanisms to prosecute and incarcerate pirates.

## **Anti-Piracy legislation in other countries**

1.8 Netherlands and Germany are some of the countries that have domestic anti-piracy legislation in place. Kenya has also entered into agreement with other countries (US, UK, EU etc) for transfer of suspected pirates to Kenya for prosecution on a case to case basis. Kenya is nevertheless facing capacity and capability problems. Tanzania has concluded an agreement on transfer for prosecutions with United Kingdom and is considering a similar one with European Union. Seychelles has brought into force a legislation in March 2010 specifically authorising its personnel to seize a pirate ship on the high seas. Under the same legislation, personnel found guilty of piracy 'within Seychelles or elsewhere' are liable 'to imprisonment for 30 years and a fine of R 1 million'. However, recently Seychelles has conveyed that due to capacity constraints it will not be in a position to accommodate more defaulters. In other words countries in the region are facing problems in accepting pirates for prosecution and incarceration.

## **Present Legal Mechanism regarding Piracy**

1.9 The problem of piracy continues to persist but particularly after the actions of Indian Navy, it is seen as being worst in the western sector of the Indian Ocean than in the areas immediately close to India's EEZ. However, at present India does not have a separate domestic legislation to deal with piracy-related offences. In the absence of a clear and unambiguous reference to the offence of maritime piracy in the Indian law, problems have been faced in ensuring effective prosecution of the pirates. In the *Alondra Rainbow* case, which was the first piracy case to be tried in an Indian Court in 1999, in the

absence of a piracy law or the definition of piracy in the penal law of India, other relevant provisions of the Indian Penal Code and Admiralty Act were invoked to try the pirates. Although the prosecution was successful in the trial court, the appeal went in favour of the accused in the High court presumably on jurisdictional grounds.

1.10 The 120 captured pirates are currently being prosecuted under provisions of IPC, Indian Arms Act etc. However, in the absence of a suitable domestic legislation, pirates that are captured at sea cannot be successfully prosecuted. The provisions of the Indian Penal Code pertaining to armed robbery etc as also the Admiralty Act have been invoked in the past to prosecute pirates apprehended by the Indian Navy and the Coast Guard. India's domestic law (i.e. IPC) has not defined piracy as an offence and an accused person can be charged only for offences such as attempt to murder, dacoity, robbery etc. Another limitation of the IPC is that the piratical acts by a foreigner committed outside territorial waters of India do not constitute an offence under the IPC. These offences may attract lower sentences and cases may take a long time to be disposed off.

### **Impediments in the trial of Pirates in India**

1.11 Considering the increase in incidents and intensity of piracy and abduction of Indian seafarers, the Committee in their Tenth Report (15<sup>th</sup> L.S.) has taken up the issue and desired that "the issue of piracy needed to be addressed with the utmost seriousness it deserves. Besides appropriately taking up the matter with the international community to avert incidences of piracy, the Committee also wanted the Ministry of External Affairs to draw up a long term strategy in coordination with other concerned Ministries viz. Ministries of Shipping and Defence, to stringently deal with the issue of piracy

and making the sea lanes safer. At the same time, the Committee also desired the Ministry of External Affairs to expeditiously finalize the proposed legislation to deal with the prosecution of pirates.”

### **Draft Indian Legislation**

1.12 Regarding the salient features of the draft Indian legislation, ‘The Piracy Bill, 2012’, the Ministry of External Affairs stated as under:

- (i) “Piracy is defined as given in United Nations Convention on the Law of the Sea, 1982 (UNCLOS) and this definition is used to try the pirates by invoking universal jurisdiction under the national legislation.
- (ii) Using the UNCLOS definition would also enable international cooperation including extradition of persons involved in an act of piracy on the high seas.
- (iii) The Bill adheres to the guidelines for national legislation for Maritime Criminal Acts prepared by the Legal Committee of the International Maritime Organization (IMO).
- (iv) The provisions concerning attempt and conspiracy to commit piracy and other relevant provision on investigation, trial and bail are formulated on the lines of the IMO Model Law on Maritime Criminal Acts (LEG 93/12/1, 2007) and Model National Law on Acts of Piracy and Maritime Violence adopted on the deliberations by the Joint International Working Group on Uniformity of Law concerning Acts of Piracy and Maritime Violence, held in Singapore in 2000.
- (v) National Legislations on Piracy from Australia, UK, New Zealand and Sri Lanka were also consulted in the process.”

1.13 While highlighting the problem arising out of lack of legislative framework, the representative of Ministry of Defence during the course of evidence stated as under:

“Our ships are patrolling and they are catching these people. All that we can do is just disarm them and let them go free. That is because we do not have a legislation. If we had legislation then this 120 pirates, the number would have gone up to 250 or 500 and the piracy would have come under control. We would have been able to try them and put them behind bars. If we have a legislation, it would greatly help.”

1.14 The Committee further enquired about the possibility of handing over of the pirates to their countries of origin rather than prosecuting pirates in India. The Ministry of Defence in their written reply stated as under:

“The 120 pirates were arrested in the Indian EEZ. It was therefore more practical to bring them to India. The absence of functional governance in Somalia and the absence of any agreement with Puntland of TFG precluded the option of their transfer.

1.15 The Committee specifically referred to the instances of lack of trial by many countries, inspite of seizure of suspected pirates and wanted to know the reasons for such approach in those countries. The Ministry of External Affairs stated in their written reply as under:

“It is understood that many western countries do not undertake prosecution of apprehended suspected pirates because they are concerned that the pirates may claim asylum in their country after undergoing trial or their sentences. Reasons for lack of trial include problems regarding availability of adequate evidence and ensuring the presence of witnesses at the trial. As pirates tend to throw their weapons and equipment over board and destroy their passports before

they are caught, it is difficult to collect incriminating evidence or establish their identities. The witnesses are usually sailors/crews/ naval officers of many nationalities residing at different places across the globe who find it difficult to appear at trial proceedings. Many countries do not have the necessary legal framework to prosecute pirates. Evidentiary problems, burden of trials, providing counsel and translation of services are some of the problems faced by the countries after capturing the pirates.”

1.16 The Committee desired to know as to what persuaded Govt. of India to bring domestic legislation in the form of ‘The Piracy Bill, 2012’, while most of the countries do not have any domestic legislation for prosecution of pirates, particularly in the region. The Ministry of External Affairs in their written reply stated as under:

“India is among the countries which have been seriously affected by the problem of maritime Piracy. Indian Navy and Coast Guard, during the course of conducting anti-piracy operations off our Western Coast, have apprehended several suspected pirates. As India does not have a separate domestic legislation to deal with piracy-related offences, problems have been faced in ensuring effective prosecution of the pirates. The Piracy Bill under consideration has been tabled with a view to removing this lacuna in our law and allow effective prosecution of pirates apprehended by us in the future.”

1.17 In this context, the Committee desired to be acquainted with the laws that were used to prosecute pirates so far and particular Acts/Provisions under which the captured 120 suspected pirates are being trialed. The Ministry of External Affairs submitted the following reply:

“Acts of stealing, abduction, violence, illegal detention are punishable under the Indian Penal Code (IPC). These acts, if committed on the sea are also punishable under the IPC. Section 3 provides for punishment of offences committed beyond, but which by law may be tried within India and Section 4 deals with Extension of Code to extra-territorial offences. Section 188 of the CrPC caters for offences committed outside India by an Indian whether on the high seas or elsewhere or by a foreigner on a ship or aircraft registered in India.

Apart from that, the Admiralty Offences (Colonial) Act, 1849 passed by the British Parliament, and subsequently made applicable to India by the Admiralty Jurisdiction (India) Act, 1860 are also relevant. Section 1 of the above Act provides that any person charged with the commission of any act of treason, piracy, felony, robbery, murder, conspiracy etc committed upon the seas shall be brought to trial to any colony.

The suspected pirates presently in our custody have been charged with clauses under the IPC, details of which would be available with the Ministry of Home Affairs.”

1.18 The Ministry of Defence highlighted the impediments in the Trial of Pirates in India and particularly elaborated upon the MV Alondra Rainbow case in their written submission and stated as under:

“An example in this regard is the *MV Alondra Rainbow* case, where lack of separate legislation on piracy created a problem in launching an effective prosecution on pirates captured by the Indian Navy and Indian Coast Guard. The MV Alondra Rainbow (Feb. 2003), subsequent to being hijacked by pirates, was rescued by the Indian Navy and Indian

coast Guard and brought to Mumbai. The pirates were tried by the Sessions Court and found guilty and sentenced to 7 years imprisonment along with fines. In April 2005, however, the Mumbai High Court overruled the Sessions Court verdict and acquitted all the convicts. Acquittal of the convicted persons was due to certain doubts in the minds of the High Court with respect to *exact location of the seizure of the ship and identification of accused persons.*”

1.19 Elaborating upon the problems in the current legislative framework and its ramifications and highlighting the importance of new legislation, DG, Shipping during the course of evidence stated as under:

“...in terms of dealing with the pirates we have an Act of 1849. Fortuitously unrevealed, which gives us criminal jurisdiction in this particular instance. There was a case, ..... where the admiralty jurisdiction was invoked. It was accepted in the Sessions Court and not contested in the High Court. .... This 1849 legislation was obviously before the IPC and the CrPC. Subsequently, when the IPC and the CrPC has come in, there had been recommendation of the Law Commission that the IPC and the CrPC do take care of criminal offences. However, if the piracy has to be made a specific offence, then that exercise should be done by the Inter Ministerial Committee. In my opinion, this particular legislation, however limited it may sound, fills in an important gap.”

1.20 It was further elucidated that if Navy takes action against a ship flying another flag, then such kind of legislation becomes important and also that if there is an Indian flagship which is attacked on the high seas, we still have jurisdiction under the IPC and the CrPC.”

1.21 When the Committee desired to know from the Ministry of External Affairs whether the particular issue of prosecution of pirates can be tackled by amending the existing Criminal Procedure Code, or any Act related with Shipping or regulation of commercial activities etc. and also the reason for bringing in an entirely new legislation for prosecution of pirates, the Ministry stated in written reply as under:

“In view of the need to grant the relevant courts universal jurisdiction for this crime, which is not the case for other crimes under IPC, it was felt that a separate legislation would be appropriate.

Hitherto, Piracy has not been defined under any Indian law. The definition introduced by this Bill is the definition internationally accepted. A number of UN resolutions in the recent past have urged States to enact legislation on piracy by adopting the definition contained in UNCLOS. This becomes more important while invoking universal jurisdiction and trying foreigners as they have to be tried in accordance with internationally accepted provisions of law and procedure.”

1.22 The subject of Piracy involves many Ministries and agencies.

- i. The nodal agency dealing with the issue of piracy in the international context is the Ministry of External Affairs.
- ii. The nodal agency dealing with welfare of seafarers and issues related to hostages and issues related to insurance and shipping is the Ministry of Shipping along with its Directorate General of Shipping.
- iii. The nodal agency for action against suspected pirates on sea is the Ministry of Defence, the Indian Navy and Coast Guard.

- iv. The nodal agency for prosecution of pirates is the Ministry of Home Affairs and the State authorities where the pirates are being tried.”

1.23 The Committee were appropriately curious to know about the identification of Ministry of External Affairs for introduction of the Piracy Bill. The Foreign Secretary clarified the position during course of evidence as under:

“The idea emerged out of an inter-ministerial discussion because it was not clear exactly which Ministry should lead this and because of the urgency of the matter and need to deal with in terms of the United Nations Laws of the Sea, to align our law with the United Nations Laws of the sea, the later part of which, the MEA under the allocation of business rules, responsible.”

1.24 The Ministry of External Affairs further stated in a written submission as under:

“Since the United Nations Convention on the Law of the Sea (UNCLOS) as a subject is dealt by the Ministry of External Affairs, an initial draft of Piracy Bill, 2012 was prepared by MEA. The final draft legislation has been prepared on the basis of comments received from other concerned Ministries and Departments namely, Ministry of Defence, Shipping, Home Affairs, Indian Navy, Indian Coast Guard and Directorate General of Shipping and in consultation with the Deptt. of Legislative Affairs of the Ministry of Law & Justice. The draft Piracy Bill was approved by Cabinet on 24<sup>th</sup> January, 2012 and the Bill was introduced in Lok Sabha on 24<sup>th</sup> April, 2012.”

1.25 The Committee observed that the draft Bill mainly dealt with the issue of prosecution and punishment awarded to the pirates and desired to know the reasons behind focusing only on this limited arena and for not bringing a comprehensive legislation dealing with Piracy. The Ministry of External Affairs submitted the following justification:

“The present anti-piracy Bill is designed to address the existing lacunae in the Indian laws regarding absence of a clear and unambiguous reference to the offences of maritime piracy or the absence of a separate domestic legislation to deal with piracy-related offences. The present Bill is intended to address the pressing and immediate need of the hour for a domestic legal framework to prosecute and punish pirates, in respect of the international crime of piracy. The objective is to make special provisions for the suppression of piracy, criminalize the act of piracy and to establish universal jurisdiction for Indian Courts. The proposed Act also defines an act of piracy, provides for punishment, extradition and international cooperation. Therefore, for the offences committed relating to piracy, this legislation is a comprehensive one.”

1.26 Highlighting the role of the Ministry of External Affairs in implementation of the provisions of the Bill, the Ministry of External Affairs stated following in a written reply:

“The Ministry of External Affairs was asked to pilot the Piracy Bill by the Committee of Secretaries as its purpose is to serve as an enabling legislation for the UN Convention on the Law of the Sea (UNCLOS) into Indian domestic law and the UNCLOS is dealt by the L&T Division of MEA. MEA’s role in implementation of the provisions of Piracy Bill is

limited to aspects related to international cooperation or coordination with other countries.”

1.27 When specifically asked about the exact role of each Ministry/Agency/State Government in the preparation and implementation of the provisions of the Act, since the conduct of anti-piracy operation upto the stage of release of pirates after completion of the term, the Ministry of External Affairs submitted the following categorical reply:

“...the Ministry of Defence, the Indian Navy, the Indian Coast Guard would be responsible for taking action to apprehend suspected pirates at sea, transporting them to their next port of call and handing them over to state law enforcing authorities for prosecution. MHA and the respective state law enforcement authorities would then make arrangements for detention of the suspected pirates and bringing them to trial by the designated court. If convicted, after completion of their sentence the pirates will be deported to the country of their origin through the good offices of the Ministry of External Affairs. The Ministry of External Affairs would also be involved in case the Government of India seeks custody of a pirate held by another country or if a request for extradition of a pirate in our custody is received from another country.”

1.28 During the course of evidence, when the Committee desired to know about the nodal agency for implementation of provision of the Bill, the representatives of Home Affairs clearly stated their position as under:

“The limited but significant role of the Ministry of Home Affairs is in connection with the prosecution of the pirates and the State authorities, where the pirates have been tried.”

1.29 However, the representative of Ministry of External Affairs described the responsibility of MHA in the matter as under:

“.....for the implementation of the Piracy Bill, no specific role is envisaged for the Ministry of External Affairs. The Ministry of External Affairs has a clear role in matters relating to the Bill which involve action at the international level or interaction with other countries. But in terms of the implementation of this proposed Bill, since it is dealing with the violation of a law, the Ministry of Home Affairs is competent Ministry to deal with this.”

1.30 In the same context, when the Committee desired to know whether the states have been consulted as they would be hosting the pirates and would be engaged in imprisonment in trial and prosecution, the Ministry of External Affairs submitted the following legal position in a written reply:

“It may be noted that Piracy is a subject in the Union List. The Schedule VII, List I, Entry 21 of the Constitution includes “Piracies and crimes committed on the High Seas or in the air” ....Further, under Entry 14 of List I, entering into treaties and agreements and implementing of treaties is a Union subject”. Entry 93 includes in List I “Offences against laws with respect of any of the matters in this List”. Since the Piracy Bill, 2012 has been introduced to penalize the offence of piracy as provided in the United Nations Convention on the Law of the Sea; and also piracy being a matter covered in the Union List, under Article 245 and 246 of the Constitution Parliament is empowered to make laws on this matter for the whole or any part of territory of India. The consent or consultation with the States is not required as regards matters enumerated in List I.”

1.31 During the course of evidence, when the Committee wanted to know about the role of Ministry of Defence in implementation of the provision of the Bill, their representative stated as under:

“The role for Defence is limited and it is limited to action regarding apprehension of pirates on high seas and exclusive economic zones. Then, the pirates subsequently be handed over to the law enforcement agencies, I think under MHA, to prosecute the pirates under the proposed Piracy Bill.”

1.32 During the course of evidence, the Foreign Secretary clearly submitted the following view before the Committee:

“...in the Inter-Ministerial discussion, it was felt that the Ministry of External Affairs should be the nodal Ministry for piloting this legislation, not for dealing with the overall strategy.”

1.33 The Committee noted that in view of the involvement of multiple Ministries and agencies with diverse roles, it is pertinent to have proper coordination, mechanism. On being asked about the envisaged coordination mechanism, the Ministry of Defence in written reply stated as under:

“In the absence of legal provisions so far, appropriate SOPs for handing over of the captured pirates to law enforcement agencies of the State do not exist. There may be a need for MoD/MEA to establish suitable institutionalized agreements/SOPs to enable smooth handling/taking over of the case between the Indian Navy (IN)/Indian Coast Guard (ICG) units and the designated Police Stations for prosecution under the Piracy Bill, 2012.”

## **General Observations**

**1.34 The Committee observe that high sea piracy has assumed a serious dimension in the extended Region of Indian Ocean in the recent times. The Committee also feel that due to lack of any legal framework or absence of specific anti-piracy laws for repressing or capturing or trying these sea pirates, there is an urgent need of a comprehensive legislation on piracy which can provide the necessary framework within the country for prosecution of persons for piracy related crimes. That is why, the Committee in their 10<sup>th</sup> Report (15<sup>th</sup> L.S.) had strongly recommended for the introduction of such comprehensive domestic legislation to deal with all aspects of piracy. The Committee welcome the first initiative of the Government in this direction through introduction of a legislation in the form of 'The Piracy Bill, 2012' which would certainly help to provide clarity in the law as well as form a sound basis for effective prosecution of pirates apprehended by the Indian authorities. The Committee can now hope that the proposed legislation will certainly enable the authorities to prosecute the pirates irrespective of their nationalities and also ensure that the acts of piracy do not go unpunished because of logistical, legal and diplomatic hurdles. The Committee have also examined the Piracy Bill, 2012 in the backdrop of prevailing international situation and observe that a number of UN resolutions in the recent past have urged States to enact legislation on piracy by adopting the definition in the United Nations Convention on the Laws of the Sea (UNCLOS). This becomes more important while invoking universal jurisdiction and trying foreigners as they have to be tried in accordance with internationally accepted provisions of law and procedure. The proposed Act will also be treated as the legal basis for**

extradition from the countries with whom we do not have a bilateral agreement to that effect. The Committee also observe that there have been deliberations on the subject of an international legal mechanism to deal with pirates. The Committee, therefore, desire that in addition to the proposed anti-piracy domestic legislation, the Government should make all efforts to enhance international cooperation on the issue of maritime piracy at various international fora as well as address the factors that have led to rise and spread of piracy in certain regions. The Committee have a strong view that India must be a part of all such international endeavours to combat piracy and play a proactive role in any such initiative especially relating to India's Exclusive Economic Zone and High Seas around Indian Ocean.

(Recommendation No. 1)

1.35 The Committee note that India is a major seafarer supplying nation and there is a possibility that many hijacked ships will have Indian seafarers. As per the available information, there are a large number of Indian seafarers held hostage by the Somalian Pirates. The Committee, therefore, strongly recommend that the Ministry of Shipping/D.G., Shipping must take adequate and proactive measures to ensure the welfare of Indian seafarers who are captured by pirates, whether on Indian ship or ships bearing foreign flags particularly in terms of providing information to families, salary and ex-gratia payment. The Committee also recommend that efforts should be made to look comprehensively on the issues of regulation of ships, insurance of ships, rules for foreign flagships as well as address the issue of communication, intelligence, information sharing during pre and post piracy within and amongst various Ministries and Agencies.

(Recommendation No. 2)

1.36 During the course of examination, the Committee went through the views, observations and suggestions received from various stakeholders in the matter of piracy viz. Ministries of External Affairs, Defence, Home Affairs, Shipping, Law & Justice (Legislative Deptt. and Legal Affairs Deptt.) and DG, Shipping and discussed the purview of the Bill and the issues relating to implementation of its various provisions. The Committee, however, are unable to reach any conclusion about the responsibility of each Ministry in the matter. Bill has been introduced by the Ministry of External Affairs, but they are reluctant in being called as the Nodal Ministry in the matter. The Committee, however, hope that as per the Government of India (Allocation of Business) Rules, 1961, the Ministry of External Affairs have been allocated, *inter alia*, the Matters relating to Law of the Sea, including the Indian Territorial Waters, Contiguous Zone, Continental Shelf and exclusive Economic Zones (EEZ), questions of international law arising on the high seas including fishery rights; piracies and crimes committed on the High Seas or in the air; offences against the Law of Sovereign States committed on land or the high seas or in the air; legal matters concerning the International Seabed Area and Authority. The Committee, therefore, desire that the Ministry of External Affairs should be clearly designated as nodal Ministry for piloting the Bill as well as implementation of the provisions of the Bill and they should take all initiatives to ensure the preparation of appropriate rules, regulations and orders and issue of Standard Operating Procedures (SOPs) by the concerned Ministries to take care of procedural aspects and operational exigencies at the earliest after the enactment of the Bill. Considering the involvement of various

**Ministries/agencies in tackling the menace of piracy and prosecution of pirates, the Committee strongly recommend that an effective coordination mechanism should be established, involving all concerned agencies including concerned State Governments.**

**(Recommendation No. 3 )**

**1.37 The Committee are of the opinion that there should be a clear cut identification of the agency for each purpose in handling the issues relating to piracy to avoid any clash of functional jurisdiction amongst various Ministries and State Governments. The provisions demarcating the jurisdiction in regard to the issues of arrest, handing over, trial, and prosecution of the Pirates and regarding investigation and evidence should appropriately be incorporated in the Bill itself or it should be done through Rules made under the proposed Act or through Standard Operating Procedures. There should be clarity on the issue of handing over of captured pirates to the concerned State Governments and Ministry of Home Affairs should evolve a formula to decide the particular state for acceptance of the pirates captured in specific areas of EEZ so that a smooth handing over of pirates may take place without any conflict. Ministry of Home Affairs should also identify some prominent ports, special coastal police stations for the purpose of handing over the pirates and all these should be notified through appropriate legal mechanism including the issue of bearing of expenditure relating to trial, prosecution and imprisonment. The Committee, however, desire that the cost sharing formula should be prepared in consultation with the concerned State Governments. If required, Ministry of Home Affairs should also consult the Ministry of Finance in the matter.**

**(Recommendation No. 4)**

**1.38 During the course of evidence, the Committee went into the minute details of the role of various Ministries of External Affairs, Defence, Home Affairs and Shipping in implementation of the Act and noted that as there are many grey areas where there is possibility of conflict between the implementing agencies. It is surprising to note that the affected State Governments were never consulted during the process of preparation of the Bill. At present, all the expenses incurred in escorting Indian ships or ships joining the Convoy or for patrolling the high risk area are borne by the Ministry of Defence while once the pirates are captured by them they are handed over to the law enforcement agencies of the State for imprisonment and further trial and the expenditure for which has to be borne by the State Governments. The Committee note that piracy is a union subject, however, the Committee recommend that since the State Governments are the main implementing agencies of the provisions of the Act relating to trial, prosecution and imprisonment, the concerned State Governments should adequately be consulted at stages of discussion particularly in finalizing the provisions relating to these issues.**

**(Recommendation No. 5)**

## CHAPTER-II

### CLAUSE BY CLAUSE EXAMINATION OF 'THE PIRACY BILL, 2012'.

#### I. Nomenclature and Preamble of the Bill

The Preamble of the Piracy Bill, 2012 reads as under:

##### **The Piracy Bill, 2012**

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

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

*AND WHEREAS, the aforesaid convention, among other things, states that all States shall co-operate to the fullest possible extent in the repression of piracy on high seas or any other place outside the jurisdiction of any State;*  
*AND WHEREAS, it is considered necessary to implement the provisions relating to piracy contained in the Convention.”*

2.2 When the Committee desired to know about the reasons for nomenclature of the Bill, as the 'Piracy Bill, 2012', the Foreign Secretary submitted during the course of evidence that it was done on the suggestion of Department of Legislative Affairs. When the similar question was raised with the Legislative Department, Ministry of Law & Justice, they submitted the following justification in a written reply:

“Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS) uses the term piracy.”

**2.3 The Committee in the very first instance feel that, since the main idea of 'The Piracy Bill, 2012' is to provide legal framework for**

prosecution and punishment for an act of piracy within the Exclusive Economic Zone of India and in the high seas, the nomenclature of the Bill should reflect atleast both the issues. The word 'Piracy' may confuse anybody with other meanings of the word. The Committee, therefore, opine that the nomenclature of the Bill should be suitably amended to 'Anti-Maritime Piracy Bill, 2012'. Adding the prefix 'Anti' would be in sync with the intent of the Bill related to repression/suppression of piracy and would also align with Anti-Hijacking Act, 1982, while adding the word 'Maritime' will denote the specific form of piracy for which the Bill has been prepared. The Committee find it necessary particularly when in the present Hindi translation, the nomenclature of the Bill (Jaldasyuta) is more clear in describing the objective of the Bill and incorporates the term 'maritime'. Similarly, the Act may be called 'The Anti-Maritime Piracy Act 2012'.

(Recommendation No. 6)

2.4 The Committee suggest that in the long title of the Bill, "A Bill to make special provisions for suppression of piracy", the word "suppression" may be substituted with the word "repression" as it would be in sync with the term "repression of piracy" used in paragraph 2 of the preamble of the Bill. This would also be in line with Article 100 of the United Nations Convention on the Law of the Sea (UNCLOS), 1982 ("Duty to cooperate in the repression of piracy").

(Recommendation No. 7)

2.5 The Committee further suggest that the alphabet "c" in the small case may be replaced with same in capital "C" in the word 'Convention' used in paragraph 2 of the preamble of the Bill.

**(Recommendation No. 8)**

**Clause 1 – Short Title and Commencement of the Act**

2.6 This clause provides for the definition of the expression piracy, so as to include various Acts as given in 1982 UNCLOS as Acts of Piracy and reads as under:

- (1) *This Act may be called the Piracy Act, 2012.*
- (2) *It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.*

2.7 During the course of evidence, the Foreign Secretary justified the definition and submitted that:

“This definition is used to invoke universal jurisdiction under the national legislation for trying the suspected pirates; second, it will enable prosecution of pirates apprehended by the Indian Navy, irrespective of their nationality; third, the UNCLOS definition would also enable international cooperation including extradition of such piracy suspects. The enactment of the legislation would provide for certainty and clarity in the law as well as will give legal basis for prosecuting and punishing the pirates for committing the acts of piracy.”

2.8 However, the Ministry of Home Affairs in a written submission to the Committee put forth their reservations about non-inclusion of entire coastal waters and stated as under:

“The Indian Piracy Act, 2011 as an initial step accepts the definition of Piracy as laid down by United Nations Convention on Law of the Seas (UNCLOS) for the purpose of the definition of the crime. However, the said definition only includes acts on the High Seas. It will be advisable to include acts on Indian Coastal Waters in their totality.”

2.9 On being asked about their view, the Legislative Department (Ministry of Law and Justice) in a written reply clarified as under:

“The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platform on Continental Shelf Act, 2002 (69 of 2002) extends to the whole of India including the limit of the territorial waters, continental shelf, the exclusive economic zone or any other maritime zone of India within the meaning of section 2 of Act No. 80 of 1976”.

2.10 The Ministry of External Affairs in a written submission further stated as under:

“This Ministry is of the view that there is no conflict between the ‘Piracy Bill, 2012’ and ‘The Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platform on Continental Shelf Act (Act 69 of 2002) (SUA)’.

The SUA is limited in its application to acts of ‘terrorism’ committed against safety of maritime navigation and fixed platforms on continental shelf and its jurisdiction extends to fixed platforms on India’s Continental Shelf. For an offence committed outside India, the courts have jurisdiction under SUA only (under certain conditions)...

The ‘Piracy Bill, 2012’ on the other hand has a wider jurisdiction and covers within its scope all the acts of ‘piracy’ committed at high seas irrespective of the nationality of the offender, ship or victim”.

**2.11 The Committee note that the provisions of the Bill apply to the activities of the pirates in high sea and does not include the cases of robbery in Indian territorial water. Though the MEA has categorically denied any conflict between this Bill and another Act namely,**

**‘Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platform on Continental Shelf Act (Act 69 of 2002)’ which contains similar provision to deal with offences in territorial waters. The Committee are of the considered view that MEA, who are piloting the Bill, should ensure conformity in the present Act and the referred Act so that the security agency and implementation agencies do not have any procedural, as well as, operational problem in implementation of the Act for trial and prosecution of the pirates.**

**(Recommendation No. 9)**

### **Clause 2 - Definitions**

2.12 This clause deals with the definitions of various terms used in provisions of the Bill. In sub clause (e) and (f) defines “piracy” and “pirate ship or aircraft”, they read as under:

e) *"Piracy" means, —*

- (i) *any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed —*
  - (A) *on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;*
  - (B) *against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;*
- (ii) *any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts, making it a pirate ship or aircraft;*
- (iii) *any act of inciting or of intentionally facilitating an act described in sub-clauses (i) and (ii);*
- (iv) *any act which is deemed piratical under the customary international law;*

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

- (i) *it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in sub-clauses (i) to (iii) of clause (e);*
- (ii) *it has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.*

2.13 In a written submission to the Committee, Directorate General, Shipping suggested for inclusion of sub-clause (iv) of clause (e) in the ambit of clause (f) to which the Legislative Department (Ministry of Law and Justice) have given their acceptance.

**2.14 The Committee observe that in the sub clause (i) of clause (f) of clause 2 only sub-clause (i) to (iii) of clause (e) are mentioned. In the Committee's view it is also essential to incorporate sub-clause (iv) of clause (e) therein, to cover all residual Acts, which is deemed piratical in nature and are covered under the provisions of customary International Law, lest they are not covered otherwise. The Committee, therefore, desire that sub-clause (iv) of clause (e) should also be incorporated suitably in the sub-clause (i) of clause (f).**

**(Recommendation No. 10)**

### **Clause 3- Punishment for Piracy**

2.15 The clause 3 contains provision that committing an act of piracy shall be punished with imprisonment of life and where the accused has caused the death while committing the act of piracy, then he may be punished with death and in addition, restitution or forfeiture of property involved in the commission of the offence and reads as under:

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

2.16 The Committee took serious note of the provision for 'death penalty'. However, the Ministry of External Affairs while clarifying on the need to incorporate the provision of 'death penalty' in the Bill, the stated as under:

“....death penalty is a political decision because whether (we) still retain in our statute book, death penalty is there. It was suggested by the Legislative Department that if the acts of pirates cause a death then equivalent punishment should also be there and that is why death penalty has been provided. So, Ministry of External Affairs did not have any strong position on this. This was suggested by the Legislative Department..”

2.17 On the issue of problems arising in extradition of pirates due to capital punishment, during the course of evidence, the representative of the Ministry of External Affairs stated as under:

“....many European countries do not extradite people. In our Extradition Act, we have a provision where we give an undertaking that if the requested State says that death penalty will not be awarded then we can give an assurance that death penalty will not be awarded.”

2.18 In another written reply the Ministry of External Affairs stated the following facts about the current system of extradition of Pirates as under:

“According to this Ministry's information, India has not sought extradition of pirates so far. Since, piracy is considered to be an international crime amenable to universal jurisdiction under international law any State can request extradition of a pirate in the custody of another State in accordance with its national laws.”

2.19 Reiterating the points during the course of evidence, the

Representative of Ministry of Home Affairs submitted that in the Convention, there is a provision saying that the State will punish according to its own law and elaborated upon Section 396 of IPC, 'dacoity with murder' which has similarity with Clause 3 of the Bill.

2.20 However, when the Committee expressed their concern about the implications arising out of the provision for 'death penalty' which might hinder international cooperation and extradition, the Ministry of External Affairs clarified the position in a written submission as under:

"The UN Convention of the Law of Sea (UNCLOS) 1982, does not have any provision on extradition. The proposed Anti-Piracy Act will be treated as the legal basis for extradition to countries with which we do not have a bilateral agreement to that effect. The offences under this section shall be deemed to have been included as extraditable offences and in all the extradition treaties made by India."

2.21 During the course of evidence, Foreign Secretary submitted as under:

"...(we) have to anticipate such contingencies also where we would be requesting a Foreign State, ...there are provisions already existing by which we give an assurance that even notwithstanding the prevalence of Indian law having the 'death penalty' in it, in cases we are dealing with under the extradition, we will not apply it. This has been done in conjunction with the courts."

2.22 However, the Committee also questioned whether the 'death penalty' could be substituted with life imprisonment because, if a 'pirate' is given life imprisonment and another person (perpetrator of crime) is given death penalty, then there may be some discrepancy in the law.

**2.23** This domestic legislation on piracy was introduced to fill the legal vacuum and provide legal framework within the country. However, the problem of piracy is an international phenomenon and many States are involved in combating piracy and safeguarding high seas. The pirates of various nationalities are captured during the course of fighting against them. The provision of clause 3 states that whosoever commits an act of piracy shall be punished with imprisonment for life except where the accused has caused death in committing the act of piracy or attempt thereof in which case he may be punished with 'death'. There is an apparent involvement of issue of extradition of captured pirates from foreign countries in most of the cases. The Committee are of the opinion that the provision of death penalty may be reviewed in the light of international nature of crime and involvement of international actors and the past experience of Government of India having faced with refusals to extradite accused/criminals in view of existence of 'death penalty' clause in the Indian Law.

**(Recommendation No. 11)**

**2.24** The Committee further opine that in clause 3 (Punishment of Piracy), after the words (in line 4) "and in addition the designated court may also be subject", the words "such person" may be added to bring specificity to the proposed action of restitution or forfeiture of property of that entity.

**(Recommendation No. 12)**

**Clause 4 – Attempt to commit piracy**

**2.25** This clause contains provision for punishable offence with

imprisonment for a term extendable to fourteen years with fine, it reads as under:

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

**2.26 The Committee note that clause 4 of the Bill makes a provision of punishment for any attempt to commit the Act of Piracy. The Committee, therefore, desire that to reconfirm the mandatory nature of the provision the word “is” may be substituted by the word “be”.**

**(Recommendation No. 13)**

### **Clause 6 – Conferment of power of investigation**

2.27 This clause empowers the Central Government to issue Gazette Notification enabling the State Governments to exercise the powers under the Act, and it reads as under:

- 1) *Notwithstanding anything contained in the Code, for the purposes of this Act, the Central Government may, by notification, confer on any Gazetted officer of that Government or of a State Government the powers of arrest of any person, investigation and prosecution exercisable by a police officer under the said Code.*
- (2) *The Designated Court shall have jurisdiction to prosecute—*
  - (a) *any person who apprehended by or in the custody of the coast guard vessel or an Indian naval warship regardless of the nationality or citizenship of such person and is accused of committing an act punishable under this Act;*
  - (b) *when a person is accused of committing an act of piracy is a citizen or national of India or is a resident foreign national in India or is a stateless person;*
  - (c) *when an offence under this Act is committed on board a foreign flag ship, where the law enforcement or other public authority of the port or*

*place where the ship is located has been requested to intervene by the State whose flag the vessel is entitled to fly, or by the owner of the ship or its master or other person on board the ship:*

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

2.28 The significant aspect of the Bill is that it seeks to allow in absentia, prosecution of person involved in piracy, and permits the prosecution of stateless person, as many pirates are officially stateless.

2.29 On the particular issue of identification of pirates for the purpose of trial and prosecution, the Ministry of Home Affairs in written reply submitted as under:

“It is always the effort of Indian Navy, Indian Coast Guard to immediately try to take down exact grid location of the seizure of mother ships of the pirates and to identify the persons involved in the act of piracy.”

2.30 In this context, the Ministry of Defence in their written reply stated as under:

“It is a practice to note down the exact location whenever pirates are apprehended. On apprehension, the pirates are photographed and searched for any means of identification like ration card, phone bill etc. However, as regards bio-metric identification on land, they referred to the Home Ministry to take necessary steps.”

2.31 In a written submission, the Ministry of External Affairs while clarifying about the main investigation agency identified for the purpose and application

of all the provisions of criminal jurisprudence, stated as under:

“Under the Bill, the Central Government may, by notification, confer on any Gazetted Officer of that Government or of a State Government, the powers of arrest of any person, investigation and prosecution exercisable by a police officer under the said Code. The Provisions of CrPC and Indian Evidence Act will apply to it *mutatis mutandis*.”

2.32 On the power of arrest by Gazetted Officers, the Ministry of External Affairs in their written reply stated as under:

“Under Clause No. 6 (I), the Central Government would notify appropriate Central or State Government Gazetted Officers to deal with piracy offences and only such notified Officers would be able to exercise the powers of arrest, investigation and prosecution in relation to offence of piracy. Once the Bill is passed, Ministry of Home Affairs will prescribe the procedure in this regard.”

2.33 The Committee were further informed about designation of Marine Police Stations for the purpose. The Committee desired to know whether the provisions of the Bill are adequate to handle the issue of arrest, handing, trial and prosecution of the Pirates or any other Rules or Standard Operating Procedures (SOPs) are proposed to be prepared/issued to implement the provisions of this Bill. The Ministry of External Affairs in their written reply stated as under:

“The Bill provides that for the prosecution of the offence of piracy, the provisions of the Criminal Procedure Code shall apply to the proceedings before a designated court. Therefore, the arrest and prosecution of pirates would be done as provided in the Criminal Procedure Code.”

2.34 During the course of evidence, the representative of Ministry of Defence submitted as under:

“There is no Standard Operating Procedure as far as the taking of pirates to a

particular place is concerned. When the Commanding Officer encounters a situation like this, then he has to apprehend pirates. He will have certain considerations in his mind. First of all, he would like to hand over the pirates at the earliest. While doing so, he would also like to consider that he must take the pirates to a place where they can be handed over smoothly. He can be near to the minor port but local administration may not be in a position to take over those pirates. So, such are the considerations which will come in the mind of the Commanding Officer.”

2.35 Further, representative of the Ministry of Defence stressed upon the need to have a mechanism for handing over these pirates and other such anti-social elements to designated Officers / Offices. This was suggested to MEA that creation of this mechanism in consultation with the MEA, MHA and MoD may be carried out.

**2.36 Clause 6 of the Bill deals with the issue of arrest of the pirates, which provides that the Government may, by notification, confer on any Gazetted Officer of the Central Government or the State Government the power of arrest, investigation and prosecution exercisable by police officers. The Committee desire that such officers should be identified from amongst the officers who are capable to handle such complicated cases properly under the provisions of IPC and CrPC in coordination with Defence personnel who have handed over the pirates. The Committee would also recommend that all necessary steps should be taken by the concerned Ministries/authorities for an Inter-Agency Coordination for investigation, prosecution and providing evidence during the trial process. The Committee are of the considered opinion**

that for that purpose necessary Rules and Standard Operating Procedures (SOPs) for each steps ranging from arrest of pirates, identification, handing over, imprisonment, prosecution to handing over to country of origin after the punishment etc. should be evolved and notified through appropriate methods at the earliest for an effective implementation of the provisions of the Bill.

(Recommendation No. 14)

#### Clause 7 – Presumption clause

2.37 Provides that the Designated Court shall presume commission of an offence, if any of the acts listed under this clause are committed, unless contrary is proved, shifts the burden of proof to the accused and reads as under:

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

- (a) that the arms, ammunition, explosives and other equipments were recovered from the possession of the accused and there is a reason to believe that such arms, ammunition, explosives or other equipments of similar nature were used in the commission of the offence; or*
- (b) that there is evidence of use of the force, threat of force or any other form of intimidation caused to the crew or passengers of the ship in connection with the commission of the offence; or*
- (c) that there is evidence of an intended threat of using bomb, arms, firearms, explosives or committing any form of violence against the crew, passengers or cargo of a ship, the Designated Court shall presume, unless the contrary is proved that the accused had committed such offence and the burden of proof that the accused has not committed such offence shall shift to the accused.*

2.38 The Committee note that there is a significant departure in the approach of the Act as per clause 7(c), the Bill shifts the burden of proof

**on the accused. The Committee are of the view that the Ministry of Law and Justice must be consulted to avoid any conflict with the Indian Criminal Law System due to incorporation of this provision.**

**(Recommendation No. 15)**

### **Clause 8 – Designated Courts**

2.39 The clause states that for the purposes of providing speedy trial of the offences under this Act, the Central Government, in consultation with the Chief Justice of the concerned High Court, by notification shall specify one or more Court of Session in the State as Designated Court and also the territorial jurisdiction of the Court, it reads as under:

- (1) For the purpose of providing for speedy trial of the offences under this Act, the Central Government shall, after consulting the Chief Justice of the concerned High Court, by notification, specify—*
  - (i) one or more Court of Session in the State, to be Designated Court for the purposes of this Act; and*
  - (ii) the territorial jurisdiction of each such Court.*
- (2) Notwithstanding anything contained in the Code, a Designated Court shall, as far as practicable, hold the trial on a day-to-day basis.*

2.40 While explaining the position further, the Ministry of External Affairs in their written reply stated as under:

“Clause 8 provides that the Central Government after consulting the Chief Justice of the concerned High Court, may, by notification, specify one or more “Court of Session” in the State to be the designated court for the purposes of this Act and also specify the territorial jurisdiction of each such court. Once the Bill is passed, “Court of Session” will be specified along with their territorial jurisdiction for the purposes of this Act which will prevent conflict on the issue of jurisdiction amongst the states.”

2.41 On further query about the consultation with High Courts regarding formalities for establishment of trial court under the Act, the Ministry of External Affairs in their written reply stated as under:

“The High Courts have not been consulted at this stage..... once the Bill is passed, the Chief Justice of the concerned High Court would be consulted for designating or specifying one or more “Court of Session” and their territorial jurisdiction”

2.42 The Legislative Department, Ministry of Law & Justice further clarified that:

“Clause 8 of the Bill makes provisions for specifying of one or more court of sessions in a State. Under the General Clauses Act, 1897 State includes a Union Territory under sub-clause (b) of clause (58) of section 3. Provision for Designated Court for coastal State/UT is a matter of policy.”

**2.43 In regard to clause 8 concerning the provision of ‘designated court’, the Committee are of the opinion that the process to designate or specify the ‘Court of Sessions’ and their territorial jurisdiction should be clearly defined to avoid/prevent any conflict on the issue of jurisdiction amongst the States. The Committee, therefore, desire that at least one designated court should be identified in each coastal state so that all such cases may be taken up in the designated court to facilitate and fast track the trial process. The Committee also desire that the provision in this regard should also be incorporated in the subsequent Rules immediately after passing of the Bill.**

**(Recommendation No. 16)**

**Clause 13 – Arrest and Seizure of Property**

2.44 The clause empowers the State to arrest and seize property in the high seas. It can only be carried out by warships or military aircraft or ships/aircraft clearly marked for that purpose, it reads as under:

- (1) *“On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board.*
- (2) *A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorised to that effect.”*

2.45 While further elaborating upon the provision, during the course of evidence, the representative of Ministry of Home Affairs stated as under:

“The sub-section 2 says that a seizure on account of piracy may be carried out only by warships or military aircraft or other ship or ships clearly marked and identifiable as being on Government service and authorized to that effect. So, whether it is Navy or otherwise, if they come across piracy, they could immediately catch hold of that under the sections which the Central Government will notify ... than they could then be handed over to investigation authorities”.

2.46 In this context, the representative of Ministry of Shipping placed before the Committee that the Bill could perhaps also cover immunity for acts done in good faith. Though, this is inherent in any law, but even if it is made explicit, as in the case of aviation sector, in the Anti-Hijacking Act, that covers

immunity for any act done in good faith. Discussing an earlier draft of the Bill and reiterating to include provision explicitly in the Act, he further added as under:

“In the draft Piracy Act 2011, which was circulated earlier by the MEA, that included clause 5, which has protection of action taken in good faith. It basically says two things:

The first thing said is that any act done in good faith to rescue a person or to recover stolen property or to regain lawful control of a ship or maritime structure. The second thing is, an act done in good faith to protect the person, ship or related property against an act of piracy. These are the two things which were included as acts in good faith.”

**2.47 Considering the nature of the crime of maritime piracy and efforts made to combat piracy on high seas, the Committee are of the view that the proposed Bill must include provision for legal immunity for acts done in good faith. Though, such a provision may be inherent in the Bill, but the Committee strongly recommend that such provision must be explicitly incorporated in the body of the main Bill and that the security personnel duly authorized by the Government shall be covered with certain immunity provisions.**

**(Recommendation No. 17)**

**2.48 The Committee, therefore, approve, “The Piracy Bill, 2012” subject to the appropriate inclusion of suggestion/recommendations made by**

the Committee in the preceding paragraphs in the current Bill or through other appropriate methods like Rules or Standard Operating Procedures (SOPs).

(Recommendation No. 18)

NEW DELHI  
KUMAR,  
26 July, 2012  
Chairman,  
04 Shravana, 1934 (Saka)  
External Affairs

ANANTH  
  
Standing Committee on

**MINUTES OF THE TWENTY-THIRD SITTING OF THE STANDING COMMITTEE  
ON EXTERNAL AFFAIRS HELD ON 16<sup>th</sup> MAY, 2012**

The Committee sat from 1630 hrs. to 1740 hrs. in Committee Room 'E', Parliament House Annexe, New Delhi.

**Present**

**Shri Ananth Kumar – Chairman**

**Members**

**Lok Sabha**

2. Shri S. Alagiri
3. Dr. Bholu Singh
4. Shri Janardhana Swamy
5. Dr. Shashi Tharoor

**Rajya Sabha**

6. Shri H.K. Dua
7. Dr. Najma Heptulla
8. Dr. K.P. Ramalingam
9. Dr. Bharatkumar Raut
10. Dr. Karan Singh

**Sl. No.                      Name & Designation**

- |    |                          |   |                   |
|----|--------------------------|---|-------------------|
| 1. | Shri Ranjan Mathai       | - | Foreign Secretary |
| 2. | Shri Asoke Kumar Mukerji | - | Special Secretary |
| 3. | Shri Pavan Kapoor        | - | JS (UNP)          |
| 4. | Dr. Neeru Chadha         | - | JS (L&T)          |
| 5. | Dr. B.M. Vinod Kumar     | - | JS (Parl. & VIP)  |
| 6. | Shri Sanjay Rana         | - | Director (UNP)    |

**Secretariat**

- |    |                    |   |                     |
|----|--------------------|---|---------------------|
| 1. | Shri K.D. Muley    | - | Director            |
| 2. | Dr. Ram Raj Rai    | - | Additional Director |
| 3. | Shri A. Sivanandam | - | Under Secretary     |

2. At the outset, the Chairman welcomed the Members of the Committee, Secretary and other officers of Ministry of External Affairs and drew their attention towards Direction 55 (I) of the Directions by the Speaker, Lok Sabha. The Chairman also welcomed and congratulated Smt. Najma Heptulla for being nominated to the Standing Committee on External Affairs. He further informed the Committee that the Piracy Bill 2012, as introduced in Lok Sabha was referred to Standing Committee on External Affairs for examination and to Report thereupon.

3. After introductions, Foreign Secretary briefed the Committee on the Piracy Bill, 2012. The Problem of piracy in the areas immediately close to India's Exclusive Economic Zone was elaborated upon. The purpose for enacting new domestic legislation on Piracy for more effective prosecution of pirates apprehended by Indian Navy and the Coast Guard was discussed.

4. During deliberations, the Members of the Committee *inter-alia* raised various queries related to the subject particularly, MEA's involvement in piloting the Bill, nomenclature of the Bill, geographical scope of the Bill, issue of death penalty under clause 3 and its ramifications for extradition of the pirates, issue of child pirates and cost bearing and sharing mechanism for prosecution and imprisonment etc. Other issues discussed included the limitations of existing legislations in handling the pirates, structural arrangements and institutional framework to deal with the issue of maritime piracy, invasion of Indian territorial water, provision of immunity for Indian Sailors, Licensing of vessels, situation in Somalia and role of IOC-ARC and Afro Asian consultative Committee on the issue.

5. In view of involvement of other Ministries, the Committee decided to take evidence of Ministry of Home Affairs, Ministry of Defence, Ministry of Shipping, Directorate General Shipping alongwith Ministry of External Affairs in the next sitting of the Committee.

*The Committee then adjourned.*

A verbatim proceeding of the sitting has been kept on record.

**MINUTES OF THE TWENTY-FOURTH SITTING OF THE STANDING  
COMMITTEE ON EXTERNAL AFFAIRS HELD ON 21<sup>ST</sup> MAY, 2012**

The Committee sat from 1500 hrs. to 1640 hrs. in Committee Room 'D', Parliament House, New Delhi.

**Present**

**Dr. Karan Singh – In the Chair**

**Members**

**Lok Sabha**

2. Shri Anandrao Adsul
3. Dr. Shafiqur Rahman Barq
4. Shri Rajendrasinh Rana
5. Shri Janardhana Swamy
6. Dr. Shashi Tharoor

**Rajya Sabha**

7. Dr. Najma A. Heptulla
8. Dr. Bharatkumar B.Raut
9. Shri Shivanand Tiwari
10. Shri Tarun Vijay

**MINISTRY OF EXTERNAL AFFAIRS**

| Sl. No. | Name & Designation                         |
|---------|--|
| 1.      | Shri Ranjan Mathai - Foreign Secretary     |
| 2.      | Shri Pavan Kapoor - JS (UNP)               |
| 4.      | Dr. M. Gandhi - JS (L&T)                   |
| 5.      | Shri B.M. Vinod Kumar - Dir. (Parl. & VIP) |
| 6.      | Shri Sanjay Rana - Dir. (UNP)              |

**MINISTRY OF HOME AFFAIRS**

|    |   |
|----|---|
| 1. | Shri E. Ahmad - Secretary (BM)                  |
| 2. | Shri Dharmendra Sharma - JS (Internal Security) |
| 3. | Shri Rakesh Singh - JS (Border Management)      |

**MINISTRY OF DEFENCE**

|    |                          |   |                 |
|----|--------------------------|---|-----------------|
| 1. | Shri Shashi Kant Sharma  | - | Secretary       |
| 2. | Shri Shankar Aggarwal    | - | Addl. Secretary |
| 3. | Shri Ram Subhag Singh    | - | Joint Secretary |
| 4. | Shri Manish Pathak       | - | Director        |
| 5. | Vice Admiral Satish Soni | - | DCNS            |
| 6. | Capt. Sunil Balakrishnan | - | DNO (OPS)       |

### **MINISTRY OF SHIPPING**

|    |                             |   |                                |
|----|-----------------------------|---|--------------------------------|
| 1. | Shri Pradeep Kumar Sinha    | - | Secretary (Shipping)           |
| 2. | Shri Satish B. Agnihotri    | - | Director General (Shipping)    |
| 3. | Shri Munish Chandra Jauhari | - | JS (Shipping)                  |
| 4. | Shri L.K. Panda             | - | Principal Officer, MMD, Mumbai |

### **Secretariat**

|    |                    |   |                     |
|----|--------------------|---|---------------------|
| 1. | Dr. Ram Raj Rai    | - | Additional Director |
| 2. | Shri A. Sivanandam | - | Under Secretary     |

2. Hon'ble Chairman (Shri Ananth Kumar) could not attend the sitting of the Committee due to some urgent engagement. The Committee therefore, chose Dr. Karan Singh to act as Chairman for the sitting in terms of Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. At the outset, the Chairman welcomed the Members of the Committee and representatives of Ministry of External Affairs, Ministry of Defence, Ministry of Home Affairs and Ministry of Shipping and drew their attention towards confidential nature of the sitting. Thereafter, the Chairman invited representatives to submit their views on the various dimensions of the 'Piracy Bill, 2012'.

4. The Foreign Secretary submitted the basic purpose of the Piracy Bill and clearly stated that the Bill was introduced basically to fill an existing gap in domestic legislation to deal with piracy related offence and was not intended to be a comprehensive anti-piracy strategy.

5. Secretary, Shipping submitted that the proposed legislation fills an important requirement and extends the jurisdiction from the baseline in the sea and covers entire Exclusive Economic Zone (EEZ) area.

6. Secretary, Defence, supported the Bill and also elaborated upon the respective roles of the Indian Navy and Indian Coast Guard. Another representative of the Ministry of Defence elaborated upon the international coordinated efforts to curb piracy.

7. Representative of Ministry of Home Affairs stated that the proposed legal framework tries to synchronize legal framework with United Nations Convention on the Law of the Sea (UNCLOS) and it will certainly help to deal the maritime security in more comprehensive way with inter-ministerial, inter-organizational and multi-level framework.

8. Other issues discussed included provision of legal immunity to Government/Defence Personnel in action at sea/on board, applicability of IPC and Cr. PC, provision of death penalty, consultation with High Courts for establishment of designated courts, issues of coastal security, deployment of armed guards and private armed guards on ships and international cooperation at high seas, alongwith role of individual Ministry in implementation of the Act.

*The Committee then adjourned.*

A verbatim proceeding of the sitting has been kept on record.

**MINUTES OF THE TWENTY-SIXTH SITTING OF THE STANDING COMMITTEE ON  
EXTERNAL AFFAIRS HELD ON 26<sup>TH</sup> JUNE, 2012**

The Committee sat from 1100 hrs. to 1230 hrs. in Committee Room 53, Parliament House, New Delhi.

**Present**

**Shri Ananth Kumar – Chairman**

**Members**

**Lok Sabha**

2. Shri Anandrao Adsul
3. Shri Anto Antony
4. Shri Bhudeo Choudhary
5. Shri T.K.S. Elangovan
6. Shri Inder Singh Namdhari
7. Shri Janardhana Swamy

**Rajya Sabha**

8. Shri A.W. Rabi Bernard
9. Shri Murlidhar Deora
10. Shri H.K. Dua
11. Dr. Najma A. Heptulla
12. Shri Shivanand Tiwari
13. Shri Tarun Vijay

**MINISTRY OF EXTERNAL AFFAIRS**

| Sl. No. | Name & Designation                                |
|---------|---|
| 1.      | Shri Asoke Mukerji - Special Secretary (POI & IO) |
| 2.      | Shri R.K. Sachdeva - JS(Parl & VIP)               |
| 3.      | Shri Pavan Kapoor - JS (UNP)                      |
| 4.      | Dr. Neeru Chadha - JS (L&T)                       |
| 5.      | Shri J.P. Meena - Dir. (Parl. & ENGMT)            |
| 6.      | Shri Sanjay Rana - Dir. (UNP)                     |

**MINISTRY OF HOME AFFAIRS**

1. Smt. B. Bhamathi - Addl. Secretary , MHA

- |    |                        |   |                 |
|----|------------------------|---|-----------------|
| 2. | Shri Dharmendra Sharma | - | JS (IS-I), MHA  |
| 3. | Shri S. Suresh Kumar   | - | JS (CS), MHA    |
| 4. | Shri M. Gopal Reddy    | - | JS (IS-II), MHA |
| 5. | Shri S.K. Trivedi      | - | JDD, IB         |

### **MINISTRY OF DEFENCE**

- |    |                        |   |                 |
|----|------------------------|---|-----------------|
| 1. | Shri Shankar Aggarwal  | - | Addl. Secretary |
| 2. | Shri Ram Subhag Singh  | - | Joint Secretary |
| 3. | Shri Manish Pathak     | - | Director        |
| 4. | Shri P.K. Chatterjee   | - | DCNS            |
| 5. | Shri R. Adm B.K. Verma | - | ACNS (IWOPS)    |

### **MINISTRY OF SHIPPING**

- |    |                             |   |   |
|----|-----------------------------|---|---|
| 1. | Shri Pradeep Kumar Sinha    | - | Secretary (Shipping)                                |
| 2. | Shri Vijay Chhibber         | - | Special Secretary &<br>Financial Advisor (Shipping) |
| 3. | Shri Munish Chandra Jauhari | - | JS (Shipping)                                       |
| 4. | Shri Deepak Shetty          | - | Joint Director General of Shipping                  |
| 5. | Capt. M.M. Saggi            | - | Nautical Advisor to Govt. of India                  |
| 6. | Capt. Harish Khatri         | - | DDG (TECH)  |

### **MINISTRY OF LAW & JUSTICE**

#### **(Legislative Department)**

- |    |                  |   |                            |
|----|------------------|---|----------------------------|
| 1. | Shri V.K. Bhasin | - | Secretary                  |
| 2. | Dr. Sanjay Singh | - | Additional Secretary       |
| 3. | Shri K.V. Kumar  | - | Deputy Legislative Counsel |

### **MINISTRY OF LAW & JUSTICE**

#### **(Department of Legal Affairs)**

- |    |                  |   |                                      |
|----|------------------|---|--------------------------------------|
| 1. | Dr. B.A. Agarwal | - | Secretary ( Deptt. of Legal Affairs) |
| 2. | Dr. S.S. Charhar | - | Joint Secretary & Legal Advisor      |

### **Secretariat**

- |    |                    |   |                     |
|----|--------------------|---|---------------------|
| 1. | Dr. Ram Raj Rai    | - | Additional Director |
| 2. | Shri A. Sivanandam | - | Under Secretary     |

2. At the outset, the Chairman welcomed the Members of the Committee and Secretaries/Officers of the Ministry of External Affairs, Ministry of Home Affairs, Ministry of Defence, Ministry of Shipping, Legislative Department and Department of Legal Affairs from the Ministry of Law and Justice and drew their attention towards confidential nature of the sitting. Thereafter, the Chairman invited

representatives from Ministry of Law & Justice to submit their views on the 'Piracy Bill, 2012' and its implementation.

3. During the course of evidence, the representatives of Ministry of Home Affairs clarified that it was not the nodal Ministry for prosecution of the pirates and stated that prosecution is entirely within the State's jurisdiction.

4. Thereafter, the representatives of Ministry of Defence submitted that the role of Defence is limited to action regarding apprehension of pirates on high seas and Exclusive Economic Zones. He also informed that Standard Operating Procedure (SOP) for dealing with piracy incidents by the Indian Navy is under preparation. Another representative of the same Ministry elaborated upon the lack of SOP for taking pirates to a particular place and narrated his past experiences with local administration in this regard.

5. The representative of Ministry of External Affairs stated that no specific role is envisaged for the Ministry in implementation of the Piracy Bill. The role of Ministry is in matters relating to the Bill which involve action at the international level or interaction with other countries but for implementation of Bill, the Ministry of Home Affairs is the competent Ministry.

6. Other issues discussed involved jurisdiction of cases for trials, need for coordination mechanism, consultation with State Government and Ministry of Finance, cost bearing and cost sharing for trial, prosecution and imprisonment of Pirates, role of coastal police stations and provisions of death penalty and its implications for extradition of pirates.

*The Committee then adjourned.*

A verbatim proceeding of the sitting has been kept on record.

**MINUTES OF THE THIRTIETH SITTING OF THE STANDING COMMITTEE ON EXTERNAL AFFAIRS HELD ON 26<sup>TH</sup> JULY, 2012**

The Committee sat from 1130 hrs. to 1245 hrs. in Committee Room 'B', Parliament House Annexe, New Delhi.

**Present**

**Shri Ananth Kumar – Chairman**

**Members**  
**Lok Sabha**

2. Shri Anandrao Adsul
3. Shri Anto Antony
4. Shri P. Karunakaran
5. Shri Inder Singh Namdhari

**Rajya Sabha**

6. Shri H.K. Dua
7. Shri K.P. Ramalingam
8. Dr. Bharatkumar Raut
9. Dr. Karan Singh
10. Shri Shivanand Tiwari
11. Shri Tarun Vijay

**Secretariat**

1. Dr. Ram Raj Rai - Additional Director
2. Shri A. Sivanandam - Under Secretary

2. At the outset, the Chairman welcomed Members to the sitting of the Committee.

3. The Committee took up for consideration the draft Report on 'The Piracy Bill, 2012'. The Chairman invited the Members to offer their suggestions, if any, for incorporation in the draft Report. The Members suggested some minor modifications. The Committee adopted the draft Report with minor modifications.

4. The Committee then authorized the Chairman to finalize the Report incorporating the suggestions made by the Members and present the same to Parliament.

*The Committee then adjourned.*

**Bill No. 34 of 2012**

THE PIRACY BILL, 2012

A

BILL

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

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

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

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

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

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

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

Short title and  
commence-  
ment.

Definitions.

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

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

2 of 1974.

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

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

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

(e) "piracy" means, —

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

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

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

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

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

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

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

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

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

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

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

Punishment for piracy.

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

Attempt to commit piracy.

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

Punishment to accomplice to piracy.

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

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

Conferment  
of power of  
investigation.

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

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

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

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

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

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

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

Presumption.

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

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

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

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

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

Designated  
Courts.

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

(ii) the territorial jurisdiction of each such Court.

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

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

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

Offences  
triable by  
Designated  
Court.

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

Provided that where such Magistrate considers —

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

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

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

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

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

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

Application of Code in proceedings before a Designated Court.

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

Provisions as to bail.

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

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

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

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

Provision as to extradition.

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

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

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

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

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

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

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

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

## STATEMENT OF OBJECTS AND REASONS

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW DELHI;  
The 21st March, 2012.

S. M. KRISHNA.

LOK SABHA

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**BILL**

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

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

GMGIPMRND—4855LS(S3)—29-03-2012.

LOK SABHA  
-----  
CORRIGENDUM  
TO  
THE PIRACY BILL, 2012

**[To be/As introduced in Lok Sabha]**

Page 2, line 1, -

for “contest”

read “context”

**NEW DELHI;**

**April 19, 2012**

**Chaitra 30, 1934 (Saka)**

## Notes on Clauses

Clause 1.- This clause contains short title and commencement of the Act.

Clause 2.- This clause defines various terms used in the provisions of the bill.

Clause 3.- This clause relates to punishment for Piracy.

This clause provides that committing an act of piracy shall be punished with imprisonment of life and where the accused has caused the death while committing the act of piracy, then he may be punished with death and in addition restitution or forfeiture of property involved in the commission of the offence.

Clause 4.- This clause deals with attempt to commit piracy

This clause makes it a punishable offence with imprisonment for a term extendable to fourteen years with fine.

Clause 5.- This clause relates to punishment to accomplice piracy

This clause makes it punishable offence with imprisonment for a term which may extend to fourteen years with fine.

Clause 6.- This clause relates to conferment of power of investigation

This clause empowers the Central Government to issue gazette notification enabling the State Governments to exercise the powers under the Act.

Clause 7.- This clause relates to presumption clause

This clause provides that for the Designated Court shall presume commission of an offence, if any of the acts listed under this section are committed, unless contrary is proved, shifts the burden of proof to the accused.

Clause 8.- This clause relates to Designated Courts

This clause provides that for the purposes of providing speedy trial of the offences under this Act, the Central Government after consulting with the Chief Justice of the concerned High Court, by notification shall specify one or more Court of session in the State as Designated Court and also the territorial jurisdiction of the court.

Clause 9.- This clause relates to offences triable by Designated Court

This clause covers offences triable by the designated court.

Clause 10.- This clause relates to application of Code in proceedings before a Designated Court

This clause explains application of Cr.PC and IPC by the Designated court.

Clause 11.- This clause deals with provisions on bail

This clause provides that no person accused of an offence punishable under this Act shall, if in custody, be released on bail, except on certain conditions mentioned therein.

Clause 12.- This clause provides for provisions as to extradition

This clause provides that offence under this act shall be deemed to have been extraditable offences and will be provided in all extraditable treaties by India.

This clause also provides that in the absence of bilateral extradition treaties, based on reciprocity the offences under this Act shall be extraditable offences with other States.

Clause 13.- This clause relates to arrest and seizure of property.

This clause empowers the State to arrest and seize property in the high seas. It further states that it can only be carried out by warships or military aircraft or ships/aircraft clearly marked for that purpose.

Clause 14.- This clause deals with Geographic Scope of the Act.

This clause provides that the provisions of this Act shall extend to the Exclusive Economic Zone of India (EEZ) as defined under Section 7 of the Indian Maritime Zones Act, 1976.