

REPORT NO.

197



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PARLIAMENT OF INDIA  
**RAJYA SABHA**

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

**ONE HUNDRED NINETY SEVENTH REPORT**  
**The Merchant Shipping (Amendment) Bill, 2013**

(PRESENTED TO THE HON'BLE CHAIRMAN, RAJYA SABHA ON 26.6.2013)

(PRESENTED TO THE HON'BLE SPEAKER, LOK SABHA ON 26.6.2013)

(PRESENTED TO THE RAJYA SABHA ON \_\_\_\_\_)

(LAID ON THE TABLE OF LOK SABHA ON \_\_\_\_\_)



Rajya Sabha Secretariat, New Delhi

2013/ \_\_\_\_\_, 1935 (Saka)

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**RAJYA SABHA SECRETARIAT**

**NEW DELHI**

\_\_\_\_\_ 2013/ \_\_\_\_\_, 1935 (Saka)

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♦ To be appended at printing stage.

**COMPOSITION OF THE DEPARTMENT-RELATED PARLIAMENTARY  
STANDING COMMITTEE ON TRANSPORT, TOURISM AND CULTURE  
(2012-2013)**

**1. Shri Sitaram Yechury - Chairman**

**Rajya Sabha**

2. Shri Satish Sharma
3. Prof. Alka Balram Kshatriya
4. Shri V. Hanumantha Rao
5. Shrimati Bimla Kashyap Sood
6. Shri Aayanur Manjunatha
7. Shri Narendra Kumar Kashyap
8. Shrimati Vasanthi Stanley
9. Shri Kunal Kumar Ghosh
10. Shri Shashi Bhusan Behera

**Lok Sabha**

11. Shri Sisir Kumar Adhikari
12. Yogi Adityanath
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16. Dr. Mahesh Joshi
17. Shri M. Krishnaswamy
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19. Shri S. Pakkhirappa
20. Shri Prabodh Panda
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24. Shri Modugula Venugopala Reddy
25. Shri Madan Lal Sharma
26. Shri Dushyant Singh
27. Shri Rakesh Singh
28. Shri Shatrughan Sinha
29. Shri K. Sudhakaran
30. Shri Dinesh Trivedi
31. *Vacant*

**SECRETARIAT**

Shri N.K. Singh, Joint Secretary  
Shri Swarabji B., Joint Director  
Dr. (Smt.) Subhashree Panigrahi, Joint Director  
Shrimati A.S. Chakravani, Assistant Director  
Shri T. Kennedy Jesudossan, Committee Officer  
Shri P.P. Raumon, Committee Officer

## INTRODUCTION

I, the Chairman of the Department-related Parliamentary Standing Committee on Transport, Tourism and Culture, having been authorised by the Committee to present on its behalf, do hereby present this One Hundred and Ninety Seventh Report on “The Merchant Shipping (Amendment) Bill, 2013\*.

2. In pursuance of rules relating to the Department-related Parliamentary Standing Committees the Hon’ble Chairman, Rajya Sabha referred\*\* the Bill as introduced in the Rajya Sabha on the 18<sup>th</sup> March 2013, to the Committee on 19<sup>th</sup> March, 2013 for examination and report within three months.

3. The Committee took oral evidence of the Secretary, Ministry of Shipping and other senior officers at its meeting held on the 18<sup>th</sup> April, 2013 on various provisions of the Bill. The Committee also heard the views of the Indian Ship Owner Association (INSA) on 20<sup>th</sup> May, 2013. After detailed deliberations the committee considered the Bill clause by clause on the 17<sup>th</sup> June 2013 and adopted the same.

4. The Committee wishes to express its thanks to the officers of Ministry of Shipping for placing before the Committee the material and information desired in connection with the Merchant Shipping (Amendment) Bill, 2013.

NEW DELHI;  
June 17, 2013  
Jyaishtha 27, 1935 (Saka)

**SITARAM YECHURY**  
*Chairman,*  
*Department-related Parliamentary Standing*  
*Committee on Transport, Tourism and Culture.*

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\* Published in Gazette of India Extraordinary Part-II, Section-2, dated 22.03.2013

\*\*Rajya Sabha Parliamentary Bulletin Part-II No.50787 dated 25.3.2013

## Report

The Merchant Shipping (Amendment) Bill, 2013 (Annexure -1) was introduced in the Rajya Sabha on the 18<sup>th</sup> March, 2013. On the 19<sup>th</sup> March 2013, the Hon'ble Chairman, Rajya Sabha referred the Bill to the Department-related Parliamentary Standing Committee on Transport, Tourism and Culture for examination and report.

2. The Merchant Shipping Act, 1958 governs matters relating to merchant shipping in India. The main objective of the Act is to ensure development and efficient maintenance of the Indian mercantile marine in a manner best suited to serve the national interest. The Act has been amended from time to time in the light of experience gained in its implementation and also to give effect to the provisions of various International Conventions to which India has acceded.

3. The Bill, in its Statement of Objects and Reasons, mentions that as a member of the International Maritime Organisation (IMO), India has been a signatory to a number of International Conventions and Protocols adopted by the IMO. Now, India intends to accede to the International Convention for the Control of Harmful Anti-Fouling Systems on Ships, 2001 (hereafter referred to as AFS Convention 2001). This Convention aims at protecting the marine environment and human health from adverse consequences of the use of listed harmful anti-fouling systems. The anti-fouling paints on ships' surface lead to "leaching" of these paints into the sea water, thereby causing harm to the aquatic environment and human health.

4. Anti-fouling paints are used to coat the underwater area of ships to prevent sea life (such as algae and mollusks) attaching themselves to the hull, thereby slowing down the ship. This also leads to increase in weight and hence more fuel consumption. But, the harmful chemicals used in anti fouling paints get released in the water and damage the marine life.

5. In the early days of sailing ships, lime and later arsenic were used to coat ships' hulls, until the modern chemicals industry developed effective anti-fouling paints using metallic compounds. These compounds slowly "leach" into the sea water, killing barnacles and other marine life that get attached to the ship. But studies have shown that these compounds persist in the water, killing sea life, harming the environment and possibly entering the food chain. One of the most effective anti-fouling paints, developed in the 1960s, contains the organotin tributyltin (TBT), which has been proven to cause deformations in oysters and sex changes in whelks. The AFS Convention, therefore, prohibits the use of such harmful chemicals in anti-fouling paints used on ships, and seeks to put in place a mechanism to prevent the use of harmful substances in anti-fouling system.

6. Under the terms of the AFS Convention, Parties to the Convention are required to prohibit or control Anti-fouling systems as listed in an Annexure to the Convention, which will be updated as and when necessary.

7. The Convention includes a Clause which states that a ship shall be entitled to compensation if it is unduly detained or delayed while undergoing inspection for possible violations of the Convention.

8. The Convention states that ships shall not apply or re-apply chemical compounds which act as biocides in anti-fouling systems. This applies to all ships (including fixed and floating platforms, Floating Storage Units (FSUs), and Floating Production Storage and Off - take Units (FPSOs).

9. The Convention requires Parties to undertake technical research for promoting development of safer technologies for controlling fouling on ships and for communication and exchange of information.

### **Enforcement of the Convention**

10. Based on a decision of the IMO Council, a Conference was held at headquarters of the IMO at London, in October, in which seventy five countries including India had participated, apart from the observers. The Final Act of the Conference was signed on the 5<sup>th</sup> October 2001.

11. Though the AFS Convention was adopted in 2001, it came into force only in 2008, when combined tonnage of the ratifying countries reached 50% of the world tonnage. As on 15<sup>th</sup> March, 2013, 64 States have ratified the said Convention and accordingly, the combined tonnage has reached 83.04% of the world shipping tonnage.

12. In order to enable the Government of India or its agencies to give effect to the AFS Convention 2001 adopted by the IMO as also to enable the maritime administration to meet its operational requirements, suitable amendments in the Merchant Shipping Act, 1958 are required to be made.

13. The proposed amendments to the Merchant Shipping Act, 1958 seeks to provide for the enforcement of the said AFS Convention 2001, thereby making it mandatory for Indian flag vessels to comply with Anti-Fouling Systems and to obtain a certificate of compliance thereof. Under the provisions of the Merchant Shipping (Amendment) Bill, 2013, all Indian flag vessels having 400 gross tonnage or more, engaged in international voyages, would be issued with an 'International Anti-Fouling System Certificate', after due verification. This will enable them to engage in international shipping activities without having to approach the Government of other countries, which have ratified the Convention for such certificates.

14. Besides, the proposed amendment would enable India to ensure that all foreign flag vessels entering the Country's territorial waters, or any marine areas adjacent thereto over which India has, or may hereafter have, exclusive jurisdiction in regard to control of pollution under any law for the time being in force, are duly certified in accordance with the requirement of the AFS Convention 2001.

15. Most importantly, the Bill also provides for the levy of the penalty for non-compliance of the provisions of the Convention as provided in the Clause 3 of the Bill.

16. The Committee heard the views of the Secretary, Ministry of Shipping and other senior officials of the Ministry on the provisions of the Bill on the 18<sup>th</sup> April, 2013. The Committee also heard the views of the representative of the Indian National Ship Owners Association (INSA) on the 20<sup>th</sup> May, 2013. Besides, both the ICC Shipping Association (ICCSA) and the INSA submitted written memoranda to the Committee on different aspects of the proposed amendments, as important stakeholders in this field. The Committee also considered the background note and replies to its questionnaire furnished by the Ministry of Shipping.

### **Advantages of the ratification and enactment of legislation for India**

17. The Ministry explained that if India ratifies the Convention, it will be a party state of it and by virtue of that can enforce the Convention requirements on the foreign flag ships trading in its coastal waters. Also, it can take action on the non compliant foreign ships. The Committee was informed that Director- General of Shipping had held consultations with the representatives of various stakeholders who have shown general agreement with the proposal of accession of the AFS Convention 2001 by the Government of India. When enquired about



the difference between the Ratification Certificate and Compliance Certificate, the Ministry of Shipping clarified that Ratification Certificate is a certificate issued by a Flag State which has ratified the Convention and confirms the full compliance of the Convention, both in national and international waters. Whereas, a Compliance Certificate (Statement of Compliance) is issued by a country which is yet to ratify the Convention, but would like to facilitate operation of a ship under its flag in the waters of another country which has ratified the convention and by that virtue, has the right to intervene with any ship which is in non-compliance of the Convention. In such cases, the particular ships have to meet all the Convention requirements, but the non-party State cannot enforce the Convention requirements on the foreign flag ships trading in its coastal waters.

18. The Ministry apprised that accession of the AFS Convention 2001 is, therefore, considered essential and desirable in view of the following reasons:

- India being a Member of the IMO Council, it has a large interest in International Sea borne trade and also is a party to various Conventions/ Protocols of IMO.
- India has a long coastline with a high population density in certain pockets where towns/ cities are located.
- Ratifying this Convention will demonstrate India's commitment to adopting uniform international standards for protecting the marine environment.
- At any given time, the majority of vessels in Indian waters are foreign-flagged. It is, therefore, very important to have necessary and effective mechanisms to regulate foreign vessels operating in our waters in order to protect the marine environment and ensure that Indian Ports and Waterways are free from deleterious environmental impact.

19. Contamination of sediments through the continued use of TBT has been found in harbour sediments in India, with west coast levels higher than east coast. Recent work has shown that the TBT levels in sediments were 16-16,816 ng/g and 4.5-1193 ng/g in Kochi and Mumbai Harbours, respectively. These include concentrations, which are high enough to induce toxicological effects in sensitive species like oysters *Saccostrea Cucculata* in West Indian Harbours.

20. India, due to its long coastline, has a high stake in fisheries development in its coastal waters. The quality of water required to carrying out fishing activities must be of a high standard. The fishing industry provides livelihood for fishermen and their families and also supports other commercial industries such as boat-builders, trap and net makers, packers, distributors and retailers. Sustainability of marine fisheries is now threatened by coastal degradation caused by introduction of different pollutants. Maintenance of present level of seafood production and further enhancement through improved fishing and aquaculture will become increasingly difficult in the absence of sustainable environmental management of coastal seas.

21. Further, India will be able to ensure that all foreign flag vessels entering India territorial waters or Exclusive Economic Zone are duly certified in accordance with the requirement of the AFS Convention 2001. It also enables implementation of relevant records required to be maintained on board ship.

## CLAUSE-BY-CLAUSE CONSIDERATION

22. The Committee in its meeting held on the 17<sup>th</sup> June 2013 considered Clauses of the Bill and the Committee's recommendations/observations have been given in the succeeding paragraphs.

23.1 The Clause 2 of the Bill seeks to insert a separate Part XIB after Part XIA in the Principal Act. The separate part is needed to be inserted since the provisions contained therein are based on a distinct international convention, i.e. 'the Convention on the Control of the Harmful Anti-Fouling Systems for Ships, 2001' (AFS Convention 2001). Part XIB starts with section 356P and ends with section 356Y. Relevant provisions mentioned under Section 356P to 356Y are discussed below:

### 356P

23.2 Section 356P applies this new part of legislation to every Indian ship and ships operating under the authority of India. However, the provisions do not apply to warships, naval auxiliary ships and non commercial ships on Government service.

23.3 The Committee asked about the reasons for exempting non-commercial ships and their percentage to the Indian merchant shipping. The Ministry replied that the Bill forms part of the Merchant Shipping Act 1958, section 2 of which provides the application of the Act only to the vessels registered under it or ought to have been registered under it. Non-commercial vessels such as war ships belonging to the Indian Navy or those belonging to Indian Coast Guard are not registered under the Merchant Shipping Act, 1958 and hence do not fall under the purview of the Bill.

23.4 The Ministry further clarified that exempting non-commercial ships from the purview of the International maritime conventions was a standard practice worldwide. Some examples cited are reproduced below:-

- Article 3 (3) of the International Convention for the Prevention of Pollution from ships (MARPOL) 73/78 specifically clarifies that the Convention is not applicable to any war ship, naval ship or any other Government ship used for non-commercial services.
- Chapter I, Reg.3 of Safety of Life At Sea (SOLAS) 74', expressly provides that the Convention is not applicable to war ships and troop ships.
- Similarly, Article 3 of International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001 also clarifies that the Convention is not applicable to Government ships used for non-commercial services.

23.5 **The Committee notes from the reply of the Ministry that the proposed amendments would be applicable to all Merchant Ships registered under the Merchant Shipping Act, 1958, or ought to have been registered under it. Section 356 P (2) of the amending Bill exempts warships, naval auxiliary or other ships "only on Government non-commercial service". In other words, these provisions would apply to all commercial ships - government or non-government. But it remains silent about the 'non-government vessels on non-commercial service'. On being asked, the Ministry could not furnish data about non-commercial ships saying that it had data about only merchant ships. In the absence of such a data, the Committee feels, it is difficult to know the extent of the vessels being left out from the ambit of the proposed Bill. The use of harmful paints by any ship, in fact would affect marine environment adversely. These aspects, the Committee recommends, should be considered carefully by the**

**Ministry. The words "appropriate measures" in the Proviso to Section 356 P (2), to the extent possible, be specified.**

### **356U**

23.6 Section 356U prescribes that the Central Government taking into account international rules, standards and requirements shall prescribe Rules to control wastes from anti-fouling systems, their removal, collection, treatment and disposal to protect human health and environment.

23.7 Merely placing an anti-fouling system on a vessel will not suffice. The waste from the vessel needs to be collected and disposed off, safely. Such waste needs to be collected and disposed in such a way that no harm is caused to the sea and the creatures living therein. A party to the Convention is obliged to make the necessary Rules to this effect.

**23.8 The Committee directs that necessary Rules be framed by the Government preferably, within six months from the date of notification of this Amendment Act.**

### **356W**

23.9 Section 356 prescribes that a surveyor or any person authorised by the Director General of Shipping may, at any reasonable time, inspect any ships to which this new legislation applies for the purpose of ensuring that prohibition, restriction and obligation imposed by or under this part are complied with. Such surveyor may also verify the certificate or a declaration of anti fouling system on board. He may also inspect any record required to be maintained on board of the vessel. The record certified by the surveyor shall be admissible as evidence of facts stated therein.

23.10 The Ministry informed that in order to check the implementation and enforcement of the obligations imposed by this legislation on the vessels, a mechanism of inspection by the Government Surveyors and authorised persons is necessary. Compliance with the anti-fouling system requirements will be checked by such Surveyors. The certificate, documentation and system can be checked physically by such Surveyors. In case of any legal dispute, the record certified by a Surveyor can be produced as evidence in courts of law.

**23.11 The Committee feels that the words "surveyor" or "any other person authorized by Director-General" are ambiguous. It implies that there are two categories namely, "surveyors" and "any other person authorized by the Director-General, Shipping" for the purpose which is prone to confusion. The Committee therefore recommends that the said words in Section 356W may be substituted by the words "any person authorized by Director-General, Shipping as Surveyor" which would better serve the purpose.**

### **356X**

23.12 Section 356X prescribes the power of the Director-General of Shipping or any other authorised officer to detain the ships unless the contravention of this legislation is removed. Director-General, Shipping may also levy a penalty on such ships as specified in section 436. The assistance of Indian Navy or Indian Coast Guard may also be taken by the Director-General of Shipping.

23.13 The Central Government on receipt of the information from the Government of any other country that a ship has contravened any provisions of the convention, may conduct investigation of the alleged violation and take appropriate measures.

23.14 In case any contravention by any Indian or foreign ship is reported, the Director-General of Shipping has been given the power to enforce deterrent measures, including detention of the ship. A penalty, as prescribed under this law, can also be imposed. Such a

provision is needed to have an effective monitoring mechanism by the Government. The Director-General, Shipping may take the help of the Indian Navy or the Indian Coast Guard to deal with the non-compliant vessels in the Indian waters. The Central Government has also been given the power to investigate incidents or an allegation of the violation of a Convention or the law by any vessel, on request of any foreign state, while that particular ship is in Indian waters. This is an obligation under the Convention.

### **356Y**

23.15 Section 356Y prescribes the power of the Central Government to make the rules with respect to specification of anti-fouling system, form and records of anti fouling system, fee for issuance of certificate, etc.

23.16 The procedures for the specifications of the aforesaid anti-fouling system, records to be maintained, fee etc., will be prescribed in the Rules, from time to time, as per the changes to the Convention. The technical provisions are to be promulgated through Rules, and this section provides for the power to make Rules, prescribe fee, etc.

23.17 It was noted by the Committee that words used in Clause 356Y (2) (e) are ambiguous and may even lead to rule framing on the basis of extraneous consideration under “any other matter” and asked the Ministry as to why these cannot be specified and made clearly mentioned in the Bill itself.

23.18 The Ministry replied that “Any other matter” is a generic term which has been extensively used in the Merchant Shipping Act 1958, particularly in the section dealing with ‘Power to make rules’, e.g. 356-O (2) (ee), 344-I, 344T etc.

**23.19 The Committee is not convinced with the reason extended by the Ministry about the generic nature of the words “any other matter” and finds the reasoning that use in the Parent Act justifies its use in the Amended Act, untenable. The Committee apprehends that expressions such as “any other matter” are often liable to be misused by taking the rule making power beyond the ambit of authorization. Therefore, the Committee feels that powers to make rules should be clearly specified in the Bill itself in order to obviate possibility of any abuse of the provision.**

24. The Sections 356T, 356W and 356X of the Bill provide for Anti-fouling certification, inspection, control, detention, etc. of the ships. The Committee wanted to know from the Ministry that if these provisions leave any scope for misuse of these powers and whether adequate safeguards have been proposed in the Bill. To this query, the Ministry replied that inspection, control and detention of ships are internationally recognized practices in the maritime sector provided through various international maritime conventions *inter-alia*, the UNCLOS’82, SOLAS’74 , MARPOL’73/78 etc. The regime, known as Port State Control (PSC) has well established systems and procedures, including for the grievance-redressal, which are internationally recognized and uniformly implemented across the world, as per the time-tested laid down guidelines of the IMO, the specialized maritime agency of the United Nations.

25. The Parent Act of the proposed Bill, *i.e.*, the Merchant Shipping Act, 1958 has clear provisions for appealing against any intervention with any ship which may *prima facie* appear to be unreasonable (section 336/342) and seek compensation, if a ship is wrongly detained (section 337). Such deterrent provisions have proven to be effective in all maritime conventions in vogue internationally and the same is envisaged for this Convention as well.

**26. The Committee feels that abundant precaution should be taken against all possible misuse of the provisions of the Bill, particularly dealing with inspection,**

**control, detention, etc. of the ships. The Committee strongly recommends that adequate safeguards and preventive mechanism should be built into the system sought to be put in place for this purpose.**

27. With regard to provisions of Clause 2, the Committee further noted that perhaps, adequate grievance redressal mechanism has not been provided in this Bill, for grievances pertaining to the Ship owners and the Authority, between one Government and the other and enquired from the Ministry as to how the grievances would be redressed under the Bill. The Ministry replied that grievance-redressal mechanism against undue detention is already provided for in the Merchant Shipping Act, 1958, as has been explained in the preceding paragraphs No.25 and 26.

28. Regarding the issues related with another flag, Port State Control (PSC) regime provides for appealing against the detention directly to the respective Flag authorities or through the 'Detention Review Panel' established by the Memorandum of Understanding (MOUs) under which the PSC regimes function.

**29. The Committee notes the explanation of the Ministry that grievance-redressal mechanism is already provided for in the Merchant Shipping Act, 1958. The Committee also takes note of some stakeholders who pleaded before the Committee that "the amendments proposed to enable ratification of anti fouling Convention is short of grievance redressal mechanism". The Committee directs the Ministry to take care of this concern and recommends that grievance-redressal mechanism particularly, against undue detention, etc. should be clearly laid down in the Act leaving no scope for ambiguity in this matter.**

#### **Clause 3 [Section 436-115H to 115L]**

30. This Clause prescribes the penalties by amending the original section 436 of the Principal Act. The entry from 115H to 115L has been added to the list under section 436 of the Act, for contravention of provisions of part XIB. The provisions of penalty, being a primary legislative function, is prescribed under the Bill, so that it can be restored to deal with the non-compliant vessels or the Masters of the vessels, as and when required.

31. The Committee asked to the Ministry whether the penalties proposed to be inserted in Section 436 of the Principal Act are adequate and deterrent enough to attain the objective. To this query the Ministry replied that Merchant Shipping Act, 1958, generally provides for only nominal penal provisions ranging from few hundreds to few thousand of rupees. In comparison, the penalty amount as prescribed in the proposed Bill is expected to have a more deterrent effect. Moreover, detention of ships for non-compliance, prescribed under Section 356X, is a demonstrable provision to discourage violations.

**32. The Committee feels that since the penalty provisions have an international bearing and hold good even for foreign flag ships, in dollar terms the penalty amount appears to be far from adequate. In view of this, the Committee recommends that the penalty provisions as mentioned in Clause 3 of the Bill should be adequate enough to have deterrent effect on the potential violators.**

#### **Clause 4 [New Annexure is added]**

33. This Clause provides for insertion of the annexure after the schedule in the Principal Act. The annexure contains the total Regulations as contained in Annexure 1 to the International Convention on Tonnage Measurement of Ships, 1969 along with appendix 1 and appendix 2. The Annexure gives the procedure to compute the Gross Ton (GT) and Net Ton (NT) of a ship, which is in accordance with International Tonnage Convention 1969

which has already been ratified and necessary Merchant Shipping Rules, under the Merchant Shipping Act are in place.

34. The Committee noted that as per Clause 4 of the Bill, after the Schedule to the Principal Act, Annexure providing for three sets of regulations would be inserted, determining the make/ build of the ship, tonnage, etc. which are highly technical in nature. The Committee enquired from the Ministry that whether the Ministry has made a proper assessment of each of these regulations and impact thereof and how it would impact the existing vessels and the new vessels to be acquired.

35. The Ministry *vide* their written replies totally agreed with the observation of the Committee and stated that the proposed Annexure to Clause 4 is highly technical in nature, which was inserted primarily to define “Gross Tonnage” at Section 356Q. However, since India has already ratified the International Tonnage Convention and has framed its own Merchant Shipping (Tonnage Measurement) Rules, 1987 to determine the tonnage of a ship, the Annexure can be considered for deletion. This was conveyed to the Ministry *vide* the DGS letter No. AFS-3(2)/2009 dated 10.12.2012.

**36. The Committee is happy to note that the Ministry of Shipping has agreed with its observations regarding the proposed Annexure to Clause 4 which is highly technical in nature and can be considered for deletion. Accordingly, the Committee recommends that in view of the above reply, concerned Annexure may be deleted or if need be suitably amended.**

#### **General Recommendations**

##### **(a) Uniformity in the guidelines and decisions of Central and State Pollution Control Boards**

37. It was noted by the Committee that our Country would be bound by the provisions of the Bill to take appropriate measures in its territory to control the waste material so as to protect human health and environment taking into account international rules, standards and requirements, etc. and wanted to know from the Ministry about the concerns/ requirements of the shipping industry in this regard. The Ministry replied that Indian shipping companies may not face problems for the collection and disposal of the waste of anti-fouling systems, as the issue is relevant only during the dry-dock repairs of the ships. However, shipyards/ repair yards would need to develop necessary arrangements for the collection and disposal of the wastes arising from the anti-fouling systems, in the interests of protecting the Indian coastal waters in particular, which may be needed to be monitored by the respective Pollution Control Boards.

**38. The Committee recommends that all Pollution Control Boards should have uniform standards in management and control of wastes arising from the anti-fouling systems so that all ships, both Indian and foreign are not put to inconvenience due to divergent provisions at varied places.**

##### **(b) Financial Implications for Small and Medium segments of Domestic Merchant Shipping**

39. When asked, the Ministry informed that there are no financial implications for ratifying the Convention by the Government of India. Further, the Committee enquired whether any cost-benefit analysis has been made with regard to merchant shipping sector if the use of this new paint will be made mandatory. The Ministry replied that no specific cost-benefit analysis was undertaken by the Government of India against the background of mandatory use of new AFS paints. However, similar studies were undertaken by several

agencies, including many of the countries who have already ratified the Convention, reports of which are said to be available in public domain. The Committee was further informed that the Directorate General of Shipping has had extensive discussions with all major stakeholders, including shipping companies and had detailed consultations with other related Ministries/ Departments prior to processing the proposal for ratification of the Convention. On being categorically asked whether the new provisions would increase the cost of merchant shipping, particularly for the small and medium ones and if so, what would be its immediate implications to this sector, the Ministry answered that in the initial stages of implementation of the Convention in 2001, it was reported to have been incurring an additional cost of around 20-30% for the new AFS compliant paints. However, over the past one decade, most of the ship-yards are reported to have already changed over their painting schemes to the Convention compliant paints. Accordingly, most of the manufacturers of the marine paints are also said to be concentrating on the AFS compliant paints, making the cost difference of the same with the antiquated (tin based) paints, inconsequential.

40. Further, the longevity and better performance standards of the new AFS compliant paints, encourage ship owners to opt for the Convention-compliant paints, since in the long term, the cost-differential, if any, is effectively neutralised.

**41. The Committee strongly recommends that small and medium segments of merchant shipping may not be put to disadvantage because of ratification and Government must properly address their concerns arising out of this international commitment. Domestic shipping should not be burdened with these International Convention costs.**

#### **(c) Approval and certification mechanism for paints**

42. Regarding the rules for approval and certification mechanism for paints in the Indian context, Sect.356 Y (2) (a) of the proposed Bill provides for power to the Central Government for making appropriate rules, if and when felt necessary.

43. Prohibited list of Anti-fouling systems in the international scenario is devised to be developed by the 'Technical Groups' established in pursuance of Article 6 & 7 of the Convention. Any State which is party to the Convention can be part of the 'Technical Group'. India can also become a member of the groups, provided the Convention is ratified.

**44. The Committee feels that paint approval and certification mechanism sought to be provided through the proposed amendment is also very weak thereby, making uniform interpretation and application difficult. The Committee recommends that the Bill should have scope for making rules in this regard as much as the Government must complete rule framing in time, for effective implementation of the provisions of the amended law.**

#### **(d) Relaxation to domestic Merchant Shipping**

45. The Ministry of Shipping held that the Convention *per se* applies to all ships as the AFS pollution risks are more relevant in the coastal waters than in international waters. However, Annexure 4 of the Convention dealing with Survey and Certification of ships is applicable only to ships above 400 gross tonnage, making international voyages and hence does not apply to domestic ships operating exclusively in the coastal waters of India. This has been suitably incorporated under Section 356S of the proposed Bill.

46. On being asked whether any relaxation can be extended to ships exclusively faring in domestic waters, the Ministry replied that any further relaxation can be considered by the Central Government subject to the conditions that it is necessary and is of no detriment to the

flora and fauna of marine life in domestic waters. The exemptions subject to these conditions may be extended to domestic shipping through Section 356Y which provides for power to the making of rules by the Central Government.

47. **The Committee notes the provision mentioned at Sub-Section (3) of Section 356S that “Indian ships, which are required to be registered under this Act, shall be issued an Indian Anti-Fouling System Certificate, as may be prescribed from time to time.” This implies that the Government will prescribe such criteria for issuing certificates through Rules from time to time. The Committee feels that domestic merchant ships of less than 400 gross tonnage and not undertaking international voyages but yet registered under the Merchant Shipping Act,1958 will suffer adversely unless relevant Rules are framed in time. In this regard the Committee also takes note of the concern of some stakeholders that domestic ships moving exclusively in Indian waters should be given relaxation from the restrictions to be imposed on them consequent upon the ratification of the Convention. The Ministry has also agreed that further relaxation can be extended to domestic shipping subject to the conditions that it is necessary and is of no detriment to the flora and fauna of marine life in domestic waters. Accordingly, the Committee recommends that the above stated concerns raised by the domestic shipping sector should be duly addressed by the Ministry and necessary Rules be framed as soon as possible and preferably made effective along with the notification of this Amendment Act itself.**

48. **The Committee recommends that in view of Para Nos. 23.5, 23.8, 23.11, 23.19, 26, 29, 32, 36, 38, 41, 44 and 47 above necessary amendments may be brought in the relevant Clauses of the Merchant Shipping (Amendment) Bill, 2013 and the Bill, as amended, be passed.**

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## **RECOMMENDATIONS/OBSERVATIONS OF THE COMMITTEE – AT A GLANCE**

### **Section 356P**

The Committee notes from the reply of the Ministry that the proposed amendments would be applicable to all Merchant Ships registered under the Merchant Shipping Act, 1958, or ought to have been registered under it. Section 356 P (2) of the amending Bill exempts warships, naval auxiliary or other ships "only on Government non-commercial service". In other words, these provisions would apply to all commercial ships - government or non-government. But it remains silent about the 'non-government vessels on non-commercial service'. On being asked, the Ministry could not furnish data about non-commercial ships saying that it had data about only merchant ships. In the absence of such a data, the Committee feels, it is difficult to know the extent of the vessels being left out from the ambit of the proposed Bill. The use of harmful paints by any ship, in fact would affect marine environment adversely. These aspects, the Committee recommends, should be considered carefully by the Ministry. The words "appropriate measures" in the Proviso to Section 356 P (2), to the extent possible, be specified.

(Para: 23.5)

### **Section 356U**

The Committee recommends that necessary Rules be framed by the Government preferably, within six months from the date of notification of this Amendment Act.

(Para: 23.8)

### **Section 356W**

The Committee feels that the words "surveyor" or "any other person authorized by Director-General" are ambiguous. It implies that there are two categories namely, "surveyors" and "any other person authorized by the Director-General, Shipping" for the purpose which is prone to confusion. The Committee therefore recommends that the said words in Section 356W may be substituted by the words "any person authorized by Director-General, Shipping as Surveyor" which would better serve the purpose.

(Para: 23.11)

### **Section 356Y**

The Committee is not convinced with the reason extended by the Ministry about the generic nature of the words "any other matter" and finds the reasoning that use in the Parent Act justifies its use in the Amended Act, untenable. The Committee apprehends that expressions such as "any other matter" are often liable to be misused by taking the rule making power beyond the ambit of authorization. Therefore, the Committee feels that powers to make rules should be clearly specified in the Bill itself in order to obviate possibility of any abuse of the provision.

(Para: 23.19)

The Committee feels that abundant precaution should be taken against all possible misuse of the provisions of the Bill, particularly dealing with inspection, control, detention, etc. of the ships. The Committee strongly recommends that adequate safeguards and preventive mechanism should be built into the system sought to be put in place for this purpose.

(Para: 26)

The Committee notes the explanation of the Ministry that grievance-redressal mechanism is already provided for in the Merchant Shipping Act, 1958. The Committee also takes note of some stakeholders who pleaded before the Committee that “the amendments proposed to enable ratification of anti fouling Convention is short of grievance redressal mechanism". The Committee recommends the Ministry to take care of this concern and recommends that grievance-redressal mechanism particularly, against undue detention, etc. should be clearly laid down in the Act leaving no scope for ambiguity in this matter.

(Para: 29)

#### Clause 3 [Section 436-115H to 115L]

The Committee feels that since the penalty provisions have an international bearing and hold good even for foreign flag ships, in dollar terms the penalty amount appears to be far from adequate. In view of this, the Committee recommends that the penalty provisions as mentioned in Clause 3 of the Bill should be adequate enough to have deterrent effect on the potential violators.

(Para: 32)

#### Clause 4 [New Annexure is added]

The Committee is happy to note that the Ministry of Shipping has agreed with its observations regarding the proposed Annexure to Clause 4 which is highly technical in nature and can be considered for deletion. Accordingly, the Committee recommends that in view of the above reply, concerned Annexure may be deleted or if need be suitably amended.

(Para: 36)

#### General Recommendations

##### (a) Uniformity in the guidelines and decisions of Central and State Pollution Control Boards

The Committee recommends that all Pollution Control Boards should have uniform standards in management and control of wastes arising from the anti-fouling systems so that all ships, both Indian and foreign are not put to inconvenience due to divergent provisions at varied places.

(Para: 38)

##### (b) Financial Implications for Small and Medium segments of Domestic Merchant Shipping

The Committee strongly recommends that small and medium segments of merchant shipping may not be put to disadvantage because of ratification and Government must properly address their concerns arising out of this international commitment. Domestic shipping should not be burdened with these International Convention costs.

(Para: 41)

##### (c) Approval and certification mechanism for paints

The Committee feels that paint approval and certification mechanism sought to be provided through the proposed amendment is also very weak thereby, making uniform interpretation and application difficult. The Committee recommends that the

**Bill should have scope for making rules in this regard as much as the Government must complete rule framing in time, for effective implementation of the provisions of the amended law.**

**(Para: 44)**

**(d) Relaxation to domestic Merchant Shipping**

**The Committee notes the provision mentioned at Sub-Section (3) of Section 356S that “Indian ships, which are required to be registered under this Act, shall be issued an Indian Anti-Fouling System Certificate, as may be prescribed from time to time.” This implies that the Government will prescribe such criteria for issuing certificates through Rules from time to time. The Committee feels that domestic merchant ships of less than 400 gross tonnage and not undertaking international voyages but yet registered under the Merchant Shipping Act,1958 will suffer adversely until relevant Rules are framed in time. In this regard the Committee also takes note of the concern of some stakeholders that domestic ships moving exclusively in Indian waters should be given relaxation from the restrictions to be imposed on them consequent upon the ratification of the Convention. The Ministry has also agreed that further relaxation can be extended to domestic shipping subject to the conditions that it is necessary and is of no detriment to the flora and fauna of marine life in domestic waters. Accordingly, the Committee recommends that the above stated concerns raised by the domestic shipping sector should be duly addressed by the Ministry and necessary Rules be framed as soon as possible and preferably be made effective along with the notification of this Amendment Act itself.**

**(Para: 47)**

**The Committee recommends that in view of Para Nos. 23.5, 23.8, 23.11, 23.19, 26, 29, 32, 36, 38, 41, 44 and 47 above necessary amendments may be brought in the relevant Clauses of the Merchant Shipping (Amendment) Bill, 2013 and the Bill, as amended, be passed.**

**(Para: 48)**

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# MINUTES

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**X**  
**TENTH MEETING**

The Committee met at 11:00 A.M. on Thursday, the 18<sup>th</sup> April, 2013 in Committee Room 'B', Ground Floor, Parliament House Annexe, New Delhi.

**MEMBERS PRESENT**

**1. Shri Sitaram Yechury – *Chairman***

**RAJYA SABHA**

2. Shri Satish Sharma
3. Prof. Alka Balram Kshatriya
4. Shrimati Bimla Kashyap Sood
5. Shrimati Vasanthi Stanley
6. Shri Kunal Kumar Ghosh
7. Shri Shashi Bhusan Behera

**LOK SABHA**

32. Shri Sisir Kumar Adhikari
33. Yogi Adityanath
34. Dr. Mahesh Joshi
35. Shri M. Krishnaswamy
36. Shri Deoraj Singh Patel
37. Shri Madan Lal Sharma
38. Shri Shatrughan Sinha
39. Shri Dinesh Trivedi

**SECRETARIAT**

Shri N.K. Singh, Joint Secretary  
Shri Swarabji B, Joint Director  
Dr. (Smt) Subhashree Panigrahi, Joint Director  
Smt. A.S. Chakravani, Assistant Director  
Shri T.Kennedy Jesudossan, Committee Officer  
Shri P.P. Raumon, Committee Officer

**Ministry of Shipping**

Sr. No.	Name of Officer	Designation
1.	Shri P.K. Sinha	Secretary
2.	Mrs. T. Kumar	Additional Secretary & Financial Advisor
3.	Shri M.C. Jouhari	Joint Secretary (S & Parl.)
4.	Shri N. Muruganandam	Joint Secretary (Ports)
5.	Shri C.B. Singh	Adviser

6.	Ms. Divya Prasad	Joint Secretary (Coord.)
7.	Shri Sunil Mishra	Joint Secretary (DGS)
8.	Shri B. Poyaamozhi	DA(Ports)
9.	Shri P. Sudhir Kumar	Pr. CCA
10.	Shri M.M. Hasija	Dy. F.A.
11.	Ms. Geetu Joshi	Director (GJ)
12.	Shri Ashwani Kumar	Director (AK)
13.	Shri R. Srinivasa Naik	Director (RSN)
14.	Shri Sambit Tripathi	Director (ST)

#### **Inland Waterways Authority of India (IWAI)**

15.	Shri Vishwapati Trivedi	Chairman,
16.	Ms. Jayashree Mukherjee	Vice Chairman
17.	Shri R.P. Khare	Chief Engineer (Civil)
18.	Shri A. Banerjee	Chief Ship Surveyor

#### **Attached & Subordinate Offices**

19.	Shri Goutam Chatterjee	DG (Shipping)
20.	Capt. A.M. Surej	DG (Light Houses & Light Ships)
21.	Shri Bimal Sinha	Chief Engineer (ALHW)

#### **Ports**

22.	Shri R.P.S Kahlon	Chairman, KoPT
23.	Shri S.S. Mishra	Chairman, PPT
24.	Shri Ajeya Kallam	Chairman, VPT
25.	Shri Atulya Misra	Chairman, Ch. CPT
26.	Shri S. Natarajan	Chairman I/c. VoCPT
27.	Dr. P. Tamilvanan	Chairman, NMPT
28.	Shri T.S.N. Murthy	Dy. Chairman, NMPT
29.	Shri Paul Antony	Chairman, CoPT
30.	Shri Rajeev Gupta	Chairman, MBPT
31.	Shri S.K. Kaul	Secretary, JNPT
32.	Shri A.J. Lokhande	Chief Engineer, JNPT
33.	Shri P.D. Vaghela	Chairman, KPT
34.	Shri P. Mara Pandian	Chairman, MoPT
35.	Shri M.A. Bhaskarachar	CMD, EPL

36. Shri A. Janardhana Rao MD, IPA

**Public Sector Undertakings**

37. Shri B.K. Mandal CMD, SCI

38. Cmde. K. Subramaniam CMD, CSL

39. Shri Manish Jain CMD, CIWTC & HDPE

40. Capt. D.K. Mohanty CMD, DCI

41. Capt. M. Baveja VC I/c., IMU

**Ministry Of Law & Justice**

42. Shri Satish Chandra Joint Secretary & Legal Adviser

43. Shri Mahesh Tyagi Dy. Legal Adviser

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3. \* \* \* \*

4. Thereafter, the Committee considered the two Bills referred to the Committee viz (i) the Merchant Shipping (Amendment) Bill, 2013 and (ii) The National Waterway (Lakhipur-Bhanga Stretch of the Barak River) Bill, 2013. The Committee asked about the importance of the Bills and its various aspects. The Secretary, Ministry of Shipping explained about the Bills with the help of power point presentations. The Committee observed that the National Waterway (Lakhipur-Bhanga Stretch of the Barak River) Bill, 2013 is a repetition of the Bill the Committee examined and reported to the Parliament vide its 130<sup>th</sup> Report in the year 2008.

5. Members of the Committee also raised various queries. The Secretary replied to the points raised by the Members of the Committee. The Chairman directed that written replies to the points not answered, may be sent within a week.

6. A verbatim record of the proceedings was kept.

7. The meeting adjourned at 1.45 p.m to meet again at 3.15 pm. \* \* \* \*

**XII**  
**TWELFTH MEETING**

The Committee met at 4:00 P.M. on Monday, the 20<sup>th</sup> May, 2013 in Room No.63, First Floor, Parliament House, New Delhi.

**MEMBERS PRESENT**

1. **Shri Sitaram Yechury – Chairman**

**RAJYA SABHA**

2. Shrimati Bimla Kashyap Sood
3. Shri Aayanur Manjunatha
4. Shri Narendra Kumar Kashyap
5. Shrimati Vasanthi Stanley
6. Shri Shashi Bhusan Behera

**Lok Sabha**

7. Dr. Mahesh Joshi
8. Shri M. Krishnaswamy
9. Shri G.V. Harsha Kumar
10. Shri S. Pakkappa
11. Shri Prabodh Panda
12. Shri Deoraj Singh Patel
13. Shri Adhalrao Shivaji Patil
14. Shri Modugula Venugopala Reddy
15. Shri Shatrughan Sinha
16. Shri Dinesh Trivedi

**SECRETARIAT**

Shri N.K. Singh, Joint Secretary  
Shri Swarabji B., Joint Director  
Dr. (Smt.) Subhashree Panigrahi, Joint Director  
Shrimati A.S. Chakravani, Assistant Director  
Shri T. Kennedy Jesudossan, Committee Officer

**INDIAN NATIONAL SHIP-OWNERS ASSOCIATION, MUMBAI**

Capt. Ranjeet Singh

2. \* \* \* \*



3. Thereafter, the Committee heard the views/suggestions of the representative of the Indian National Ship-owners Association, Mumbai on “The Merchant Shipping (Amendment) Bill, 2013. On certain issues he could not furnish replies instantly, therefore, the Chairman directed him to submit the written replies to the Secretariat within a week.
4. Another witness from ICC Shipping Association, Mumbai could not appear before the Committee although he had already confirmed his appearance.
5. A verbatim record of the proceedings was kept.
6. The meeting adjourned at 5:00 P.M. \* \* \* \* .

**XIII**  
**THIRTEENTH MEETING**

The Committee met at 11.30 am on Monday, the 17<sup>th</sup> June, 2013 in Committee Room A, Ground Floor, Parliament House Annexe, New Delhi.

**MEMBERS PRESENT**

**1. Shri Sitaram Yechury – *Chairman***

**RAJYA SABHA**

2. Shri V. Hanumantha Rao
3. Shri Aayanur Manjunatha
4. Shri Narendra Kumar Kashyap
5. Shri Shashi Bhusan Behera

**LOK SABHA**

6. Dr. Mahesh Joshi
7. Shri M. Krishnaswamy
8. Shri G.V. Harsha Kumar
9. Shri S. Pakkappa
10. Shri Prabodh Panda
11. Shri Shatrughan Sinha
12. Shri K. Sudhakaran

**SECRETARIAT**

Shri N.K. Singh, Joint Secretary  
Shri Swarabji B, Joint Director  
Dr. (Smt) Subhashree Panigrahi, Joint Director  
Shrimati A.S. Chakravani, Assistant Director  
Shri P.P. Raumon, Committee Officer

2. The Chairman welcomed the Members of the Committee and took up consideration of the draft report on the Merchant Shipping (Amendment) Bill 2013 draft Report which was circulated to them. After some discussion, the Committee adopted the Report with minor modifications.

3. The Chairman informed the Committee that the time given to the Committee for presenting the Report expiring before the ensuing Session of Parliament, it need to be presented to Hon'ble Chairman, Rajya Sabha. Therefore, the Committee decided that this Report along with the Report on the National Waterway (Lakhipur – Bhanga Stretch of the Barak River) Bill, 2013 which has already been adopted by the Committee may be presented

to the Hon'ble Chairman, Rajya Sabha. The Committee accordingly authorized its Chairman to present both the reports to the Hon'ble Chairman.

4. \* \* \* \*

5. The meeting adjourned at 12.30 p.m.

## **LIST OF ABBREVIATIONS**

AFS	Anti-Fouling Systems
DGS	Director General Shipping
GT	Gross Ton
IMO	International Maritime Organisation
INSA	Indian National Ship Owners Association
MARPOL	International Convention for the Prevention of Pollution from Ship
MoU	Memorandum of Understanding
NT	Net Ton
PSC	Port State Control
SOLAS	Safety of Life at Sea
TBT	Tributyltin
UNCLOS	United Nations Convention on the Law of the Sea