

REPORT NO.

202



PARLIAMENT OF INDIA
RAJYA SABHA

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

TWO HUNDRED SECOND REPORT
The Merchant Shipping (Second Amendment) Bill, 2013

(Presented to the Hon'ble Chairman, Rajya Sabha on 20th November, 2013)

(Presented to the Hon'ble Speaker, Lok Sabha on 20th November, 2013)

(Presented to the Rajya Sabha on _____)

(Laid on the Table of the Lok Sabha on _____)



Rajya Sabha Secretariat, New Delhi
November 2013/ Kartika (Saka)

E-mail: rsc-tt@sansad.nic.in

Website: <http://rajyasabha.nic.in>

PARLIAMENT OF INDIA
RAJYA SABHA

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

TWO HUNDRED SECOND REPORT

The Merchant Shipping (Second Amendment) Bill, 2013

(Presented to the Hon'ble Chairman, Rajya Sabha on 20th November, 2013)

(Presented to the Hon'ble Speaker, Lok Sabha on 20th November, 2013)

(Presented to the Rajya Sabha on _____)

(Laid on the Table of the Lok Sabha on _____)



Rajya Sabha Secretariat, New Delhi
November 2013/ Kartika (SAKA)

CONTENTS

	PAGES
1. COMPOSITION OF THE COMMITTEE	(i)
2. INTRODUCTION	(ii)
3. TABLE OF ABBREVIATIONS	(iii)
3. REPORT	1-11
4. RECOMMENDATIONS/OBSERVATIONS AT A GLANCE	12-15
5. ANNEXURE - I	16-26
6. ♦MINUTES	-
7. LIST OF REPORTS	27-42

♦ To be appended at printing stage.

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

(2013-2014)

- 1. Shri Sitaram Yechury - Chairman**

Rajya Sabha

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

Lok Sabha

11. Yogi Adityanath
12. Shri Sisir Kumar Adhikari
13. Shri Ghanshyam Anuragi
14. Shri Subrata Bakshi
15. Shri Haribhai Parthibhai Chaudhary
16. Shrimati Tabassum Hasan
17. Dr. Mahesh Joshi
18. Shri M. Krishnaswamy
19. Shri G.V. Harsha Kumar
20. Shri S. Pakkappa
21. Shri Prabodh Panda
22. Shri Deoraj Singh Patel
23. Shri Adhalrao Shivaji Patil
24. Shri Nilesh N. Rane
25. Shri Modugula Venugopala Reddy
26. Shri Madan Lal Sharma
27. Shri Dushyant Singh
28. Shri Rakesh Singh
29. Shri Shatrughan Sinha
30. Shri K. Sudhakaran
31. 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*
Shri P.P. Raumon, *Committee Officer*

INTRODUCTION

I, the Chairman, 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 Two Hundred Second Report on “The Merchant Shipping (Second 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 19th August, 2013 and pending therein, to the Committee on 20th August, 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 24th August, 2013 on various provisions of the Bill. The Committee also heard the views of the stakeholders on the 1st October, 2013. The Committee also sought clarifications through two sets of the questionnaire on the various issues related to the Bill and heard the Secretary, Ministry of Shipping and concerned officers again at its meeting held on the 22nd October, 2013. A press advertisement was published to that effect on the 11th September, 2013 in all important national and regional daily newspapers.

4. The Committee wishes to express its thanks to the officers of Ministries of Shipping; Law and Justice; Labour and Employment; External Affairs and Agriculture for placing before the Committee the material and information desired in connection with the subject and for clarifying the points raised by the Members on various issues related to the Bill.

5. The Committee considered and adopted the Report at its meeting held on the 31st October, 2013.

SITARAM YECHURY

Chairman,

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

NEW DELHI;
October 31, 2013
Kartika 9, 1935 (Saka)

* Published in Gazette of India Extraordinary Part-II, Section-2, dated 20.8.2013

**Rajya Sabha Parliamentary Bulletin Part-II No. 51174, dated 20.8.2013

TABLE OF ABBREVIATIONS

CS	Classification Society
DAVP	Directorate of Advertising and Visual Publicity
GT	Gross Tonnage
IACS	International Association of Classification Societies
ILO	International Labour Organisation
IMO	International Maritime Organization
MLC	Maritime Labour Convention
RO	Recognized Organizations
RPS	Recruitment and Placement of Seafarers
STCW	Standards of Training, Certification & Watch -keeping

REPORT

Introduction

1. The Merchant Shipping (Second Amendment) Bill, 2013 (Annexure -1) was introduced in the Rajya Sabha on the 19th August 2013. The Hon'ble Chairman, Rajya Sabha referred the Bill on the 20th August, 2013 to the Department-related Parliamentary Standing Committee on Transport, Tourism and Culture for examination and Report within three months.

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

Objective of the proposed Amendment Bill

3. The Bill seeks to make enabling provisions for implementation and enforcement of the Maritime Labour Convention, 2006 (hereinafter referred to as the MLC, 2006). It provides for International standards for the living and working conditions of seafarers which include safe and secure work place on a ship, fair terms of employment, decent working and living conditions on a ship, health protection, medical care and other social protection. The Bill aims at making mandatory for 'Indian flag vessels' to comply with it. The Bill seeks to ensure that rights of all seafarers regardless of their nationality are protected.

4. The Committee heard the views of the Secretary Ministry of Shipping on the 24th September, 2013. A detailed Background Note and clause-by-clause comments on the Bill were also received from the Ministry for consideration.

5. The Ministry informed the Committee that India is a member of International Labour Organization (ILO) and takes an active part in the deliberations at the meetings of various fora of the ILO. India has acceded to various ILO Conventions. Now, India intends to accede to the ILO's instrument C- 186, known as the Maritime Labour Convention. This Convention is considered as the 'Bill of Rights' for the seafarers across the world, given the fact that shipping, as an industry, is intrinsically global in nature. The MLC, 2006 provides for international standards for the living and working conditions of seafarers, including the provision for their food, accommodation, medical care, repatriation, social security, and recruitment. The main objectives of the said Convention are:

- (i) To bring the system of seamen's protection contained in the existing labour standards closer to the workers concerned, in a form consistent with the rapidly developing and globalized sector; and
- (ii) To improve the applicability of the system so that ship owners and governments interested in providing decent conditions of work to their respective national seafarers do not have to bear an unequal burden in ensuring their protection.

6. Except as expressly provided or otherwise, this Convention applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks. This Convention does not apply to warships or naval auxiliaries.

Advantages of the Bill, if passed

7. India, by ratifying the MLC 2006, will ensure an improvement in the working and living conditions and employment rights of Indian national seafarers and provide, *inter alia*, the following benefits to them:

- Safe and secure workplace on a ship;
- Fair terms of employment;
- Decent working and living conditions on a ship; and
- Right to health protection, medical care and other social protection.

8. ILO Convention No.186 on the Maritime Labour Standards is developed mainly to provide decent conditions of work for seafarers and the ratifying countries will have the advantage of protecting their seafarers against unfair competition from substandard ships and will benefit from a system of certification, avoiding or reducing the likelihood of lengthy delays related to inspections in foreign ports. The Convention requires registered ratifications by at least 30 Members with a total share in the world gross tonnage of ships of 33 per cent, after which it shall come into force for any member country 12 months after the date on which its ratification has been registered. Already 55 member countries (as on 22-10-2013) with 70 per cent of world tonnage have ratified the Convention. Having satisfied the limit of ratification of 30 member countries with 40 per cent of world tonnage, the MLC 2006 has now come into force on the 20th August, 2013.

9. The Union Cabinet has since recommended the ratification of the MLC, 2006. Consequently, it is proposed to amend the Merchant Shipping Act, 1958, to provide enabling provision for implementation and enforcement of the MLC 2006, and thereby making it mandatory for Indian flag vessels to comply with the provisions of the said Convention and to obtain a Maritime Labour Certificate to that effect for the Indian flag vessels. In this context, under the provisions of the proposed Merchant Shipping (Amendment) Bill, 2013, every Indian flag vessel of 500 gross tonnage or more and engaged in international voyage(s), would be issued with a Maritime Labour Certificate after an inspection of the ship concerned. This will enable them to get preferential treatment and exemption from their inspection for this purpose at foreign ports thereby reducing the operational time[otherwise due] and transaction costs for them and Indian EXIM [export – import] trade in general. Further, India will be able to ensure that all

foreign flag vessels entering the territorial waters of India, or any marine areas adjacent thereto, over which India has, or may hereafter have an exclusive jurisdiction, are subject to an inspection under the MLC, 2006 by which the rights of all seafarers regardless of their nationality are protected. The Convention is in its advanced stage of ratification by India. The draft Bill has been approved in principle by the Ministry. It is submitted to Parliament for passage. Since, the Convention has entered into force with effect from the 20th August 2013 India should ensure that the Indian ships and the seafarers get the favourable treatment as envisaged in the MLC, 2006. Hence, the Indian Maritime Administration, *i.e.* the Directorate General of Shipping has already facilitated the Indian ship owners to comply with MLC 2006 by enabling them to obtain for their ships a 'Statement of Compliance' under MLC 2006 for their ships. It will help their ships to get a favourable treatment especially, in foreign ports.

10. The Committee in its meeting held on the 1st October, 2013 heard the views of the important stake holders and considered all the relevant written memoranda received from them.

11. In addition, the Committee also elicited comments/ suggestions from the public. A press advertisement was published to that effect on the 11th September, 2013 in all important national and regional daily newspapers through Directorate of Advertising and Visual Publicity (DAVP), Ministry of Information and Broadcasting.

12. The Committee heard the views of the Secretary, Ministry of Shipping again on the 22nd October, 2013 on various provisions of the Bill. Based on the above, the recommendations made by the Committee on the **relevant Clauses** of the Bills are given in the succeeding paragraphs.

Recommendations/observations

13. The Clause 2

13.1 The Clause 2 of the Bill proposes for substitution of sub-heading with a detailed sub-heading, *i.e.*, "*Classification of seamen, seafarer, maritime labour standards and prescription of minimum manning scale*" in the Merchant Shipping Act, 1958. The Ministry has informed that this has been done in order to have greater clarity on the applicability of the section. If not specified, it will appear as though the section is meant for deciding the manning scales of seamen.

13.2 The Ministry further clarified that there is a subtle difference between a seaman and a seafarer. "A seaman is only a member of the crew of a vessel, whereas a seafarer can be any person who may be engaged/ employed/ carried to sea, in any capacity, and the latter includes a supernumerary also, apart from a member of the crew. Hence, both the said definitions are required to be retained in the said Act."

13.3 The Committee also agrees to retain the term "seafarer" in the Act. The Committee feels that in order to make the legislation gender neutral replacing the term "seamen" with "sea persons" may be considered.

14. **The Clause 3**

14.1 The Clause 3 proposes for insertion of new Sections 88A and 88B in the Act. The Section 88-A defines the terms which are used in the Convention like 'Maritime Labour Certificate', 'Maritime Labour Compliance Declaration', 'Maritime Labour Convention' and 'Seafarer'. The Section 88-B prescribes for the application, exceptions, etc. of the MLC, 2006 to Indian Ships operating under the authority of India. The Ministry clarified that every Indian ship as defined in Merchant Shipping Act, 1958, whether publicly or privately owned, ordinarily engaged in commercial activities shall be subject to an application of this amending legislation. However, as per the Convention, the following ships are not included-

- (a) Ships which navigate exclusively in inland waters or waters within or closely adjacent to sheltered waters or areas where any law relating to ports apply;
- (b) Ships engaged in fishing;
- (c) Traditionally built ships such as dhows and junks; and
- (d) Ships of war or naval auxiliaries.

14.2 **The Committee observes that as per the definition and scope of application under Article II of the MLC, 2006, Para 4, the Convention should be made applicable to all ships whether publicly or privately owned, ordinarily engaged in commercial activities except explicitly exempted in the Act itself. The Committee feels that interest of the persons working on ships of less than 500 GT should also be protected and it is not forbidden by the MLC. Therefore, as far as possible, the benefits flowing from the adoption and implementation of the provisions of the MLC should reach the maximum number of seamen/seafarers engaged in Merchant shipping. At the same time, the Committee also apprehends that as it involves multi level delegation, it might result in procedural delays. Therefore, abundant care should be taken to ensure speedy issuance of Maritime Labour Certificates.**

14.3 **The Committee also notes that there is no mention of periodicity of Declaration, Certificate etc. issued under Section 88 A of the Bill and recommends that if this has not been provided, it should also be suitably included in the Bill.**

14.4 **It was brought before the Committee that powers pertaining to the Declaration of Compliance under proposed Section 88A(a) has been given to DG Shipping only, whereas powers pertaining to the issuance of Maritime Labour Certificate under clause 88A(b) has been further delegated to officers, authorities or organizations authorized for this purpose. It was contended before the Committee that both should be same in order to avoid delays and inconvenience to the seafarers. The Committee feels that provision of 88(A)(a) is restrictive rather than exhaustive as in the case of Section 88(A)(b) and both should have been similarly worded *i.e.* delegation of authority in both the cases should be the same.**

14.5 The Committee notes an apparent error and recommends that the word “singed” be corrected and made “signed” in the Section 88(A) (c). The Committee observes that Maritime Labour Convention is basically a convention of International Labour Organisation (ILO) and it should also be mentioned in the definition portion given under Clause 3 inserting new Section 88 A (c) so as to read as “Maritime Labour Convention” means the Convention of the International Labour Organisation (ILO) on Maritime Labour Standards signed in Geneva on the 23rd February, 2006.

14.6 The Committee further notes an obvious error and recommends that the word “works” be corrected and made “work” in the Section 88(A) (d) (i).

15. The Clauses 4 and 5

15.1 The Clause 4 of the Bill proposes to amend the Section 91 of the principal Act. Accordingly in Section 91 of the principal Act, for the words “boys not under fifteen – years of age”, the words “young persons not under the age of sixteen years” shall be substituted. Similarly, the Clause 5 of the Bill also amends the Section 92 of the principal Act by substituting “any boy” with “any young person”, “the boy is a minor” with “such young person”, “fifteen years” with “sixteen years” and “a minor” with “an young person”.

15.2 The Ministry clarified that these amendments were proposed to maintain the parity with the MLC, 2006 Convention. The new provisions will be inserted to bar person less than 16 years of age to be engaged on board any ships. The Convention directs that persons below 16 years of age shall not be engaged or work in any capacity on board any ships. The change is to comply with the above recruitment.

15.3 This has been proposed in the Bill under Clause 5 (a) (ii) that for the words “the boy is a minor”; the words “such young person” shall be substituted. The Committee notes that this formulation does not convey the meaning fully. Therefore, only the words “the boy” should be substituted with the words “such young person” to read the sentence as “.....or on his behalf by his guardian, if such young person is a minor.....” In sub section 92 sub clause (3) (b) the substituted word should be “a young person” and not “an young person.”

16. The Clause 8

16.1 The Clause 8 amends the Section 101 of the principal Act. It is proposed to add details regarding the hours of work and rest and entitlement of leave. Moreover, under this provision payment of compensation to the seafarer for injury or death has also been prescribed.

16.2 The Ministry clarified that the Convention prescribes detail guidelines as regards the hour of work and rest and also entitlement of leave to a seafarer after completing a

contract. Moreover, the proposed amendment also includes payment of compensation during the entire period of contract to comply with the requirement of the Convention.

16.3 The Committee feels that Trade Unions should be recognized under the statute as important stake holders in deciding about payment, leave, compensation, etc. to the seafarers. The recommendation made at para 22.5 of this Report may also be considered in this regard.

17. The Clause 9

17.1 Under Clause 9, the Section 109 of the principal Act shall be substituted with new Section 109 (1) and (2) dealing with prohibition of engagement of underage persons in certain cases.

17.2 Accordingly it is stated that “no person under the age of sixteen years shall be engaged or carried to sea to work in any capacity in any ship”.

17.3 It has been observed that Sub Section (a) of Section 109 mentioned that “no young person shall be engaged in night work” and Sub Section (b) of the same Section mentioned that “the period of night work shall be such, as may be prescribed”. Therefore, the provisions of (a) and (b) appear to be self contradictory. When it is mentioned that no young person shall be engaged in night work then how can the period of night work be prescribed. The MLC is very clear that nobody under sixteen years of age should be employed. These amendments cover that effectively. “Young person” is defined in the Merchant Shipping Act, to be under 18 years of age.

17.4 The Committee feels that at times for the purpose of training or gaining experience a young person may also be sent on board during night and notes that such exemptions are provided in the MLC. Therefore, the Committee recommends that the amendment to Section 109 (a) which presently states that “no young person shall be engaged in night work” should instead read as, “no young person shall be engaged in night work unless with exceptions made by the competent authority in regards to effective training or specific nature of duty that requires performance of duties at night which in no case should be detrimental to their health or well being.”

17.5 The Ministry, therefore, has to ensure that ‘young persons’ are on board of a ship under regulated and supervised conditions.

18. The Clause 11

18.1 The Clause 11 provides for substituting a new Section in the place of Section 113 regarding the issuance of Medical Certificate.

18.2 However, this has been observed that Sub Section 1(c) and (d) of old Section 113 have become new provisions of Section 113, Sub Section 1(a) and (b). Moreover, Sub Section 2 of old Section 113 which reads as, “Rules under Clause (b) of Sub Section (1) shall be made after consultation with such organizations in India as the Central Government may consider being most representatives of the employers of seamen and of seamen.” has been completely deleted.

18.3 The Committee feels that consultation with representative organizations is necessary and, therefore, Sub section 2 of old Section 113, which has been deleted, should be retained. Or, the intent of this deleted provision should find its way in generic terms under Clause 16, proposing insertion of new Section 218A on page 4 of the Bill.

19. The Clause 12

19.1 The Clause 12 provides for amending the Section 132 prescribing the Monetary limit for the seafarers to approach the Shipping Master for settling the dispute. The Committee noted that the amount has been increased from Rs.3,000/- to Rs.3,00,000/-. The Committee, in view of the demand placed by various stake holders, asked the Ministry to explore the possibility to increase the amount to more than Rs. 3,00,000/-. The Ministry replied that initially they had proposed to increase the said limit to Rs.10,00,000/-. However, the representatives of the Ministry of Law and Justice had limited the amount to Rs. 3,00,000. The Ministry of Law and Justice during the evidence held on the 22nd October, 2013 clarified that the competence of the Master of the Ship is equivalent to the competence of an Under-Secretary of Government of India and accordingly the financial powers have been restricted with the ceiling of Rs.3,00,000/-.

19.2 The Committee feels that in the present context, even the limit of Rs. 3, 00,000 is meagre and observes that the competence of the Master of the Ship may be increased beyond Rs. 3, 00,000 and the upper limit should be prescribed from time to time.

20. The Clause 17

20.1 The Clause 17 seeks to omit the penalties provided in Section 436, at Serial No. 25 of the principal Act. This penalty is imposed for carrying any person to sea to work in contravention of Sections 109, 111 or for false representation by his parent or guardian regarding age and the penalty for which is only Rs.50. / The Ministry of Shipping explained that since Section 110 in the principal Act is now proposed to be omitted, the penalty imposed also is proposed to be omitted.

20.2 On being asked to clarify why these penalty amounts should not be revised, the Ministry of Shipping stated that as regards the revision of penalties available in Section 436 supra, a proposal to further amend the Merchant Shipping Act is currently under examination. The proposal will require inter-ministerial consultations and will, thereafter, be taken up for consideration of the Union Cabinet.

20.3 With regard to other penalties imposed under Section 436, the Committee feels that these are too meagre to be retained and therefore need to be raised substantially. For example, if a Master of an Indian ship commits an offence under sub-section 4 of Section 35 and uses or attempts to use a navigation certificate of registry not legally granted in respect of the ship, the fine for such serious offence may extend only to 1000 rupees. The Committee notes that the penalties imposed on violation of provisions of the Merchant Shipping Act, 1958 are very meagre and have almost become redundant to deter the violations. Therefore, the entire Section

436 may be revised suitably with a focus on having penalties reasonable enough to secure stricter compliance of the Act.

21. Legal Implications, if any, of providing for an age of 16 years in the proposed Merchant Shipping (Second Amendment) Bill, 2013

21.1 On being asked about the legal implications of increasing the minimum age of a young person to work on a ship from 15 years to 16 years in the Bill, the Ministry of Shipping clarified that the Section 91 of the Merchant Shipping Act, 1958, prescribed 15 years for apprentices entering the seafaring profession. Hence, the minimum age limit for getting into the seafaring profession is more than the extant limit of 14 years set under the labour laws of the country, for various vocations. An exception, however, thereto was made into the Merchant Shipping Act, 1958, in relation to the Indian maritime shipping industry. However, it has been clarified by the Ministry of Labour & Employment that the Government has now, in- principle, agreed to raise the minimum age of employment under the labour laws also to 16 years and is consequently, also taking necessary action to ratify the ILO Conventions 138 & 182 on minimum age & child labour exploitation. Hence, the enhancement of age upto 16 years now proposed under the MLC for the shipping industry is in line thereof. Every eligible entrant/candidate has to undergo a pre-sea training component for an entry into the seafaring profession. Such formal & institutionalized human resource development training is governed for the global maritime industry by the International Maritime Organization (IMO) London's Convention on Standards of Training, Certification & Watch-keeping (STCW). India has since adopted this Convention, upon ratification and follows it, wherein 16 years of age is the prescribed minimum entry level age for this vocation.

21.2 The Committee finds the reply furnished by the Ministry of Shipping very convincing. But also feels at the same time that minimum age of a young person to be employed is different under different Acts. Therefore, the instant statutory provision should be amended in the same perspective so that there remains no confusion in its interpretation and application. Moreover, it should not put children also into disadvantage in any manner. Accordingly, the Committee recommends that the provisions made under Clauses 4, 5 and 9 of the Bill should be uniformly amended. Other Acts and Rules administered by various Ministries/Departments prescribing minimum age limit for young persons to be employed should also be suitably and uniformly amended. The Ministry may take up the matter with Ministry of Law and the Ministry of Labour to remove all anomalies arising therefrom or consequential thereto.

22 Recognition of Trade Unions and National Maritime Board

22.1 The Committee was informed that many of the ship owners are not making payment of wages to seafarers including the officers. The Committee received memoranda regarding many cases wherein the manning agents did not pay the full wages including emoluments, etc. as per the industry wage agreement. As a result, seafarers are deprived of their legitimate wages.

22.2 The Committee received a memoranda, *inter alia*, mentioning that Section 150 (9) of the M. S. Act in the matter of Power of the Central Government to constitute Tribunal

states that “Nothing contained in the Industrial Disputes Act, 1947, shall apply to any dispute between seamen or any class of seamen or any union of seamen and the owners of ships in which such seamen are employed or are likely to be employed.” In the absence of recognition of trade unions in the M. S. Act, the interests of the seafarers and also the ship owners remain unprotected. This leaves scope for unscrupulous ship owners to take advantage of the situation to exploit the seafarers. This also leads to chaos in this sensitive and strategically important industry. When negotiations on charter of demand are to be considered, often these issues land up in court.

22.3 The Committee asked the Ministry whether trade unions in the maritime field are made part of the MS Act, 1958 and whether those should be recognized as per the Act.

22.4 The Ministry admitted that the Trade Union paradigm in the maritime field has not been made an expressed part of the MS Act, 1958 from the outset barring under its Section 113(2) which provided prior consultations with most representatives of the ship owners and seamen, for the purpose. However, for every purpose of the Act, the Trade Unions are being consulted, as important stakeholders for engagement. The recognition of the Trade Union is made as per the procedures by the Ministry of Labour and Employment, Government of India.

22.5 The Committee takes a view that the role of Trade Unions should be clearly recognised in the MS Act, 1958 in the mutual interest of both seafarers and ship owners for which express provisions be made in the MS Act. In addition to the recommendation made with regard to Clause 12 above, the Committee further suggests that Shipping Master should be given powers to penalize the manning agents or the ship owners in case they fail to make due payment of wages to seafarers. The Government should protect the seafarers from the exploitation by manning agents and the ship owners. Besides, the National Maritime Board which is presently a key dispute resolution mechanism should be incorporated under the provisions of the Merchant Shipping Act. Presently, references of the National Maritime Board are already there in the form filled by seafarers when they sign the Articles of Agreement under Section 100 and 101 of the M.S. Act.

23 Regarding the designated authority

23.1 On being asked by the Committee to explain why the designated authority to carry out inspection and survey of ships has not been defined in the legislation itself, the Ministry of Shipping replied that ships of Member States have to be periodically inspected and issued Maritime Labour Certificates (MLC) under the Convention. Given the volume and nature of work associated with vessel inspections, this task is proposed to be delegated to a Recognized Organization (ROs)/Classification Society (CS), which is permissible under Regulation 5.1.1. of the Convention. Inspection of ships is carried out by the qualified Surveyors. As per Sections 9 (1) and 9(1A) of the M. S. Act, 1958, the Central Government by notification may appoint a person or body of persons as Surveyors to inspect and survey ships, for the purpose of this Act.

23.2 Further, the Government of India through a Gazette Notification to this effect has been authorising such International Association of Classification Societies (IACS) as Recognised Organisations to be surveyors, for carrying out surveys and for issuing and

endorsing certificates, etc. under M. S. Act, 1958. The necessary control and safeguards are built-in the respective agreements to be entered between the Central Government and such organisations.

23.3 The Committee observes that safeguards are critical to surveys and inspections and, therefore, these should be built into the legislation itself instead of being left out to be determined by respective agreements, as is being currently done. Further, while determining the designated authority, the quality and competence of such authority should be periodically reviewed by the Government to ensure greater credibility of the existing institutional arrangements.

24 Use of discretionary power by the competent authority

24.1 The Committee noted that the Bill has provided for a lot of discretionary powers to the competent authority. Where the competent authority determines that it would not be reasonable or practicable at the present time to apply certain details of the Code referred to in Article VI, Paragraph, 1, to a ship or particular categories of ships flying the flag of the Member, the relevant provision of the Code shall not apply to the extent that the subject matter is dealt with differently by national laws or regulations or collective bargaining agreements or other measures. Such a determination may only be made in consultation with the ship owners' and seafarers' organizations concerned and may only be made with respect of ships of less than 200 gross tonnage not engaged in international voyages.

24.2 The Committee recommends that the discretionary powers in this regard may be used sparingly and judiciously by the competent authority on a case to case basis with due deference to the existing national and international laws and practices as also the available consultative mechanism for the purpose.

25 Regarding delay in bringing the legislation and framing of rules

25.1 The Committee enquired from the Ministry about the specific reasons for bringing this legislation now, as the Maritime Labour Convention was adopted way back in the year 2006. The Ministry explained that the MLC 2006, is an entirely labour oriented Convention, framed for the creation of a legal framework for facilitating and promoting decent working conditions and safe guards for the welfare of seafarers. It is a Convention which benefits the three important stakeholders i.e., the seafarers, the ship owners and the Government. Tripartite consultations and consensus were, therefore, essential. Seminars and consultations were, accordingly, held over the years. Draft amendments to the M.S. Act, 1956, as amended were, consequently, prepared after working out a detailed gap analysis between the MLC and the provisions of Merchant Shipping Act, 1958. Therefore, a Bill thereto was submitted to Parliament and the whole process took time.

25.2 The Committee while taking note of the explanation given by the Ministry feels that there has been some delay and the Ministry should have expedited it keeping in mind the importance of the Convention to the Indian maritime sector. The Committee feels that implementation of the Bill, when passed, should not be

further delayed due to delayed rule-framing. The Committee emphasises the need for timely rule-framing for the early implementation of the Statute.

25.3 The Committee specifically notes that under Clause 16, the proposed new Section 218 prescribes power of the Central Government to make rules with respect to the Maritime Labour Convention; manner of issuance of certificate; hours of work and rest; period of night work; standard for the quality and quantity of food; the manner of conducting inspections etc. The procedures for the specifications of the aforesaid Convention will be prescribed in the rules, from time to time, as per the changes whenever made to the Convention. The Committee strongly recommends that all such rules should be framed and put into effect expeditiously in the interest of the seafaring community.

26 Regarding Changes in the Recruitment and Placement of Seafarers (RPS) Rules

26.1 The Committee enquired from the Ministry that whether the present amendment would bring change in the Recruitment and Placement of Seafarers Rules, 2005. To this, the Ministry confirmed that it would be changed consequent upon the present amendment Bill and stated that the Merchant Shipping (Recruitment and Placement of Seafarers: RPS) Rules, 2005, is proposed to be amended, consequentially, under sections 95 and 457 of the M.S. Act. This will bring in changes to the licensing norms and functioning of the RPS entities. The obligations of the RPS towards seafarers' recruitment; procedures to be adopted for such recruitment; responsibility of the RPS towards seafarers' recruitment; procedures to be adopted for such recruitment, responsibility of the RPS towards welfare of seafarers, etc., have increased due to the MLC provisions. Such changes have to be brought in through amendments thereto. However, since elaborate provisions and changes in procedures have to be brought in resultantly, it is not possible to confine the same only within the M.S. Act and, therefore, amendment (s) in the subordinate legislation [Rules] would be needed. The same stands worked upon in the proposed MS [RPS Amendment] Rules, which is under examination in the Ministry of Shipping and will be finalized in consultation with the Legislative Department, Ministry of Law, and Govt. of India. The Committee also took note of the apprehensions expressed by a stakeholder that the changes may adversely affect the interest of the seamen/ seafarers.

26.2 In view of the above, the Committee recommends that while framing the RPS rules, abundant care should be taken to safeguard the welfare of the Indian seafarers/seamen working in outside Indian waters and also those working for outside Indian ship owners. The proposed amendment in the RPS rules should be in tune with the Convention and also the recommendations of the Committee given in this Report.

27. The Committee recommends that in view of above recommendations necessary amendments may be brought in the relevant Clauses of the Merchant Shipping (Second Amendment) Bill, 2013 and the Bill, as amended, be passed.

RECOMMENDATIONS/OBSERVATIONS OF THE COMMITTEE — AT A GLANCE

The Clause 2

The Committee also agrees to retain the term “seafarer” in the Act. The Committee feels that in order to make the legislation gender neutral replacing the term “seamen” with “sea persons” may be considered.

(Para:13.3)

The Clause 3

The Committee observes that as per the definition and scope of application under Article II of the MLC, 2006, Para 4, the Convention should be made applicable to all ships whether publicly or privately owned, ordinarily engaged in commercial activities except explicitly exempted in the Act itself. The Committee feels that interest of the persons working on ships of less than 500 GT should also be protected and it is not forbidden by the MLC. Therefore, as far as possible, the benefits flowing from the adoption and implementation of the provisions of the MLC should reach the maximum number of seamen/seafarers engaged in Merchant shipping. At the same time, the Committee also apprehends that as it involves multi level delegation, it might result in procedural delays. Therefore, abundant care should be taken to ensure speedy issuance of Maritime Labour Certificates.

(Para:14.2)

The Committee also notes that there is no mention of periodicity of Declaration, Certificate etc. issued under Section 88 A of the Bill and recommends that if this has not been provided, it should also be suitably included in the Bill.

(Para:14.3)

It was brought before the Committee that powers pertaining to the Declaration of Compliance under proposed Section 88A(a) has been given to DG Shipping only, whereas powers pertaining to the issuance of Maritime Labour Certificate under clause 88A(b) has been further delegated to officers, authorities or organizations authorized for this purpose. It was contended before the Committee that both should be same in order to avoid delays and inconvenience to the seafarers. The Committee feels that provision of 88(A)(a) is restrictive rather than exhaustive as in the case of Section 88(A)(b) and both should have been similarly worded *i.e.* delegation of authority in both the cases should be the same.

(Para:14.4)

The Committee notes an apparent error and recommends that the word “singed” be corrected and made “signed” in the Section 88(A) (c). The Committee observes that Maritime Labour Convention is basically a convention of International Labour Organisation (ILO) and it should also be mentioned in the definition portion given under Clause 3 inserting new Section 88 A (c) so as to read as “Maritime Labour Convention” means the Convention of the International Labour Organisation (ILO) on Maritime Labour Standards signed in Geneva on the 23rd February, 2006.

(Para:14.5)

The Committee further notes an obvious error and recommends that the word “works” be corrected and made “work” in the Section 88(A) (d) (i).

(Para:14.6)

The Clauses 4 and 5

This has been proposed in the Bill under Clause 5 (a) (ii) that for the words “the boy is a minor”; the words “such young person” shall be substituted. The Committee notes that this formulation does not convey the meaning fully. Therefore, only the words “the boy” should be substituted with the words “such young person” to read the sentence as “.....or on his behalf by his guardian, if such young person is a minor.....” In sub section 92 sub clause (3) (b) the substituted word should be “a young person” and not “an young person.”

(Para:15.3)

The Clause 8

The Committee feels that Trade Unions should be recognized under the statute as important stake holders in deciding about payment, leave, compensation, etc. to the seafarers. The recommendation made at para 22.5 of this Report may also be considered in this regard.

(Para:16.3)

The Clause 9

The Committee feels that at times for the purpose of training or gaining experience a young person may also be sent on board during night and notes that such exemptions are provided in the MLC. Therefore, the Committee recommends that the amendment to Section 109 (a) which presently states that “no young person shall be engaged in night work” should instead read as, “no young person shall be engaged in night work unless with exceptions made by the competent authority in regards to effective training or specific nature of duty that requires performance of duties at night which in no case should be detrimental to their health or well being.”

(Para:17.4)

The Ministry, therefore, has to ensure that ‘young persons’ are on board of a ship under regulated and supervised conditions.

(Para:17.5)

The Clause 11

The Committee feels that consultation with representative organizations is necessary and, therefore, Sub section 2 of old Section 113, which has been deleted, should be retained. Or, the intent of this deleted provision should find its way in generic terms under Clause 16, proposing insertion of new Section 218A on page 4 of the Bill.

(Para:18.3)

The Clause 12

The Committee feels that in the present context, even the limit of Rs. 3, 00,000 is meagre and observes that the competence of the Master of the Ship may be

increased beyond Rs. 3, 00,000 and the upper limit should be prescribed from time to time.

(Para:19.2)

The Clause 17

With regard to other penalties imposed under Section 436, the Committee feels that these are too meagre to be retained and therefore need to be raised substantially. For example, if a Master of an Indian ship commits an offence under sub-section 4 of Section 35 and uses or attempts to use a navigation certificate of registry not legally granted in respect of the ship, the fine for such serious offence may extend only to 1000 rupees. The Committee notes that the penalties imposed on violation of provisions of the Merchant Shipping Act, 1958 are very meagre and have almost become redundant to deter the violations. Therefore, the entire Section 436 may be revised suitably with a focus on having penalties reasonable enough to secure stricter compliance of the Act.

(Para:20.3)

Legal Implications, if any, of providing for an age of 16 years in the proposed Merchant Shipping (Second Amendment) Bill, 2013

The Committee finds the reply furnished by the Ministry of Shipping very convincing. But also feels at the same time that minimum age of a young person to be employed is different under different Acts. Therefore, the instant statutory provision should be amended in the same perspective so that there remains no confusion in its interpretation and application. Moreover, it should not put children also into disadvantage in any manner. Accordingly, the Committee recommends that the provisions made under Clauses 4, 5 and 9 of the Bill should be uniformly amended. Other Acts and Rules administered by various Ministries/Departments prescribing minimum age limit for young persons to be employed should also be suitably and uniformly amended. The Ministry may take up the matter with Ministry of Law and the Ministry of Labour to remove all anomalies arising therefrom or consequential thereto.

(Para:21.2)

Recognition of Trade Unions and National Maritime Board

The Committee takes a view that the role of Trade Unions should be clearly recognised in the MS Act, 1958 in the mutual interest of both seafarers and ship owners for which express provisions be made in the MS Act. In addition to the recommendation made with regard to Clause 12 above, the Committee further suggests that Shipping Master should be given powers to penalize the manning agents or the ship owners in case they fail to make due payment of wages to seafarers. The Government should protect the seafarers from the exploitation by manning agents and the ship owners. Besides, the National Maritime Board which is presently a key dispute resolution mechanism should be incorporated under the provisions of the Merchant Shipping Act. Presently, references of the National Maritime Board are already there in the form filled by seafarers when they sign the Articles of Agreement under Section 100 and 101 of the M.S. Act.

(Para:22.5)

Regarding the designated authority

The Committee observes that safeguards are critical to surveys and inspections and, therefore, these should be built into the legislation itself instead of being left out to be determined by respective agreements, as is being currently done. Further, while determining the designated authority, the quality and competence of such authority should be periodically reviewed by the Government to ensure greater credibility of the existing institutional arrangements. (Para:23.3)

Use of discretionary power by the competent authority

The Committee recommends that the discretionary powers in this regard may be used sparingly and judiciously by the competent authority on a case to case basis with due deference to the existing national and international laws and practices as also the available consultative mechanism for the purpose.

(Para:24.2)

Regarding delay in bringing the legislation and framing of rules

The Committee while taking note of the explanation given by the Ministry feels that there has been some delay and the Ministry should have expedited it keeping in mind the importance of the Convention to the Indian maritime sector. The Committee feels that implementation of the Bill, when passed, should not be further delayed due to delayed rule-framing. The Committee emphasises the need for timely rule-framing for the early implementation of the Statute.

(Para:25.2)

The Committee specifically notes that under Clause 16, the proposed new Section 218 prescribes power of the Central Government to make rules with respect to the Maritime Labour Convention; manner of issuance of certificate; hours of work and rest; period of night work; standard for the quality and quantity of food; the manner of conducting inspections etc. The procedures for the specifications of the aforesaid Convention will be prescribed in the rules, from time to time, as per the changes whenever made to the Convention. The Committee strongly recommends that all such rules should be framed and put into effect expeditiously in the interest of the seafaring community. (Para:25.3)

Regarding Changes in the Recruitment and Placement of Seafarers (RPS) Rules

In view of the above, the Committee recommends that while framing the RPS rules, abundant care should be taken to safeguard the welfare of the Indian seafarers/seamen working in outside Indian waters and also those working for outside Indian ship owners. The proposed amendment in the RPS rules should be in tune with the Convention and also the recommendations of the Committee given in this Report. (Para:26.2)

The Committee recommends that in view of above recommendations necessary amendments may be brought in the relevant Clauses of the Merchant Shipping (Second Amendment) Bill, 2013 and the Bill, as amended, be passed.

(Para:27)

AS INTRODUCED IN THE RAJYA SABHA

Bill No. XLIX of 2013**THE MERCHANT SHIPPING (SECOND AMENDMENT) BILL, 2013**

A

BILL*further to amend the Merchant Shipping Act, 1958.*

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

1. (1) This Act may be called the Merchant Shipping (Second Amendment) Act, 2013. Short title and commencement.

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

44 of 1958. 5 **2.** In the Merchant Shipping Act, 1958 (hereinafter referred to as the principal Act), in PART VII, under the heading, for the sub-heading, the following sub-heading shall be substituted, namely:— Substitution of sub-heading in PART VII.

“Classification of seamen, seafarer, maritime labour standards and prescription of minimum manning scale”.

10 **3.** In the principal Act, after section 88, the following sections shall be inserted, Insertion of new sections 88A and 88B.

namely:—

‘88A. In this Part, unless the context otherwise requires,—

issued (by the Director-General of Shipping, Government of India) in respect of a ship that is a

Definitions.

with the requirements and standards set out in the provisions of the Maritime Labour Convention;

(b) “Maritime Labour Certificate” means the certificate issued by the Director-General of Shipping or by any officer, authority or organisation authorised by him in this behalf, in accordance with the provisions of the Maritime Labour Convention; 5

(c) “Maritime Labour Convention” means the International Convention on Maritime Labour Standards signed in Geneva on the 23rd February, 2006;

(d) “seafarer” means any person who is employed or engaged or works in any capacity on board a sea going ship, but does not include— 10

(i) the employment or engagement or works on board in any capacity by any person in a ship of war; or

(ii) any Government ship used for military or non-commercial purposes.

88B. (1) The provisions relating to maritime labour standards as contained in the Maritime Labour Convention, shall apply to all seafarers and ships engaged in commercial activities, but does not include— 15

(a) ships which navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where any law for the time being in force relating to ports apply; 20

(b) ships engaged in fishing activities;

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

(d) ships of war or naval auxiliaries.

(2) Subject to the provisions of sub-section (1), the Central Government may, on the recommendation of the Director-General of Shipping, by order, extend the provisions of the said sub-section to ships not engaged in commercial activities with such exceptions and modifications as it may consider necessary.’. 25

4. In section 91 of the principal Act, for the words “boys not under fifteen years of age”, the words “young persons not under the age of sixteen years” shall be substituted.

5. In section 92 of the principal Act,— 30

(a) in sub-section (1),—

(i) for the words “any boy”, the words “any young person” shall be substituted;

(ii) for the words “the boy is a minor”, the words “such young person” shall be substituted; 35

(b) in sub-section (3),—

(i) in clause (a), in sub-clause (iii), for the words “fifteen years”, the words “sixteen years” shall be substituted;

(ii) in clause (b), for the words “a minor”, the words “an young person” shall be substituted. 40

6. In section 95 of the principal Act, in the *Explanation*, clause (b) shall be omitted.

7. In section 99A of the principal Act, the *Explanation* thereto shall be omitted.

<p>8. In section 101 of the principal Act, in sub-section (2),—</p> <p>(i) after clause (c), the following clause shall be inserted, namely:—</p> <p>“(cc) hours of work and rest in a week, as may be prescribed;”;</p> <p>(ii) after clause (f), the following clause shall be inserted, namely:—</p> <p>“(ff) the entitlement for leave, as may be prescribed;”;</p> <p>(iii) in clause (j), for the words “arising out of and”, the words “arising out of employment or” shall be substituted.</p>	<p>Amendment of section 101.</p>
<p>9. For section 109 of the principal Act, the following section shall be substituted, namely:—</p> <p>“109. (1) No person under the age of sixteen years shall be engaged or carried to sea to work in any capacity in any ship.</p> <p>(2) (a) No young person shall be engaged in night work.</p> <p>(b) The period of night work shall be such, as may be prescribed.”.</p>	<p>Substitution of new section for section 109.</p> <p>Prohibition of engagement of underage persons in certain cases.</p>
<p>10. Section 110 of the principal Act shall be omitted.</p>	<p>Omission of section 110.</p>
<p>11. For section 113 of the principal Act, the following section shall be substituted, namely:—</p> <p>“113. The Central Government may make rules for the purposes of employment of young persons, prescribing—</p> <p>(a) the authorities, whose certificates of physical fitness shall be accepted for the purposes of section 111;</p> <p>(b) the form of register of young persons to be maintained in ships where there is no agreement with the crew.”.</p>	<p>Substitution of new section for section 113.</p> <p>Power to make rules respecting employment of young persons.</p>
<p>12. In section 132 of the principal Act, in sub-section (1), in clause (a), for the words “three thousand rupees”, the words “three lakh rupees” shall be substituted.</p>	<p>Amendment of section 132.</p>
<p>13. In section 168 of the principal Act, after sub-section (6), the following sub-sections shall be inserted, namely:—</p> <p>“(7) The master of the ship or any person having charge over the ship shall maintain such standards, in accordance with the provisions of the Maritime Labour Convention, for the quantity and quality of food and drinking water, and the catering standards applicable to food provided to the seamen on ships, as may be prescribed.</p> <p>(8) The master of the ship or any person having charge over the ship shall undertake educational activities to promote awareness and implementation of the standards referred to in sub-section (7).”.</p>	<p>Amendment of section 168.</p>
<p>14. In section 173 of the principal Act, for sub-section (1) , the following sub-section shall be substituted, namely:—</p> <p>“(1) Every foreign-going ship carrying—</p> <p>(a) more than the prescribed number of persons (including the crew), shall have on board as part of her complement a medical officer possessing such qualifications; and</p> <p>(b) less than the prescribed number of persons shall have such medical facilities, as may be prescribed, in accordance with the provisions of the Maritime</p>	<p>Amendment of section 173.</p>