

Legislative Brief

The Anti-Maritime Piracy Bill, 2019

The Anti-Maritime Piracy Bill, 2019 was introduced in Lok Sabha on December 9, 2019.

It was referred to the Standing Committee on External Affairs on December 23, 2019.

Highlights of the Bill

- ◆ The Bill enables Indian authorities to take action against piracy in the high seas. The Bill brings into law the UN Convention on the Law of the Sea. It applies to the sea beyond the Exclusive Economic Zone (EEZ), i.e., beyond 200 nautical miles from India's coastline.
- ◆ The Bill defines piracy as any illegal act of violence, detention or destruction against a ship, aircraft, person or property, for private purposes, by the crew or passengers of a private ship or aircraft.
- ◆ Piracy also includes inciting and intentionally facilitating such acts of violence, and voluntarily participating in the operation of a pirate ship or aircraft.
- ◆ Committing an act of piracy will be punishable with: (i) life imprisonment; or (ii) death, if the act of piracy causes or seeks to cause death.
- ◆ Participating, organising, aiding, supporting, attempting to commit, and directing others to participate in an act of piracy will be punishable with up to 14 years of imprisonment, and a fine.

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Key Issues and Analysis

- ◆ Under the Bill, if a person, while committing an act of piracy causes or seeks to cause death, he will be punished with death. This implies a mandatory death penalty for such offences. The Supreme Court has held that mandatory death penalty for any offence is unconstitutional as it violates Articles 14 and 21 of the Constitution. However, Parliament has passed laws providing for mandatory death penalty for some offences.
- ◆ The Bill provides for imprisonment of up to 14 years if a person participates in an act of piracy. Committing an act of piracy (which includes voluntarily participating in the operation of a pirate ship or aircraft) is punishable with life imprisonment. As these circumstances may overlap, it is unclear how the punishment would be determined in such cases.
- ◆ The Bill will apply to all parts of the sea adjacent to and beyond the limits of the Exclusive Economic Zone (EEZ) of India, i.e., beyond 200 nautical miles from the coastline. The question is whether the Bill should cover the EEZ also, that is the area between 12 nautical miles and 200 nautical miles (from the coastline of India).

PART A: HIGHLIGHTS OF THE BILL

Context

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) defines piracy to include any acts of violence, detention or destruction committed for private ends against persons or property on board a ship on the high seas or outside the jurisdiction of any state.¹ Acts of piracy threaten maritime security by endangering the welfare of people travelling by sea and the security of navigation and commerce.² These acts may result in the loss of life, physical harm, hostage-taking, disruptions to commerce and navigation, and financial losses to ship-owners. As per the International Maritime Organisation, during 2018 and 2019, 84 acts of piracy were reported globally.³

Currently, India does not have a domestic legislation on maritime piracy. In the past, provisions of the Indian Penal Code, 1860 (IPC) pertaining to armed robbery and the admiralty jurisdiction of certain courts have been invoked to prosecute pirates.⁴ However, the sovereignty of India extends only up to the territorial waters of India (12 nautical miles from the coastline).⁵ Piratical acts by a foreigner committed outside the territorial waters of India do not constitute an offence under the IPC. For example, in the Alondra Rainbow case (1999), the Mumbai High Court acquitted the accused on grounds that India did not have the jurisdiction to prosecute them.⁴

In 1995, India ratified the UNCLOS, which gives a uniform international legal framework for combatting acts of piracy. Consequently, the Piracy Bill, 2012 was introduced in Lok Sabha in April 2012. The 2012 Bill lapsed with the dissolution of the 15th Lok Sabha. The Anti-Maritime Piracy Bill, 2019 was introduced in Lok Sabha on December 9, 2019, and has been referred to the Standing Committee on External Affairs for detailed examination.

Key Features

The Bill provides for prevention of maritime piracy and prosecution of persons for such piracy-related crimes. It will apply to all parts of the sea adjacent to and beyond the limits of the Exclusive Economic Zone of India, i.e., beyond 200 nautical miles from the coastline.

Definition of Piracy

- The Bill defines piracy as any illegal act of violence, detention, or destruction committed against a ship, aircraft, person or property, for private purposes, by the crew or passengers of a private ship or aircraft. Such acts may be carried out in the high seas (beyond the Exclusive Economic Zone of India) or any place outside the jurisdiction of India. Inciting or intentionally facilitating such acts would also qualify as piracy. It includes any other act that is considered as piratical under international law.
- Piracy also includes voluntary participation in the operations of a pirate ship or aircraft used for piracy.

Offences and Penalties

- An act of piracy will be punishable with: (i) imprisonment for life; or (ii) death, if the act of piracy causes or attempts to cause death. An attempt to commit, aid, support, or counsel an act of piracy will be punishable with up to 14 years of imprisonment, and a fine. Participating, organising, or directing others to participate in an act of piracy will also be punishable with up to 14 years of imprisonment, and a fine.
- Offences will be considered extraditable. This means that the accused can be transferred to any country for prosecution with which India has signed an extradition treaty. In the absence of such treaties, offences will be extraditable on the basis of reciprocity between the countries.

Jurisdiction of the Courts

- The central government, in consultation with the Chief Justice of the concerned High Court, may notify Sessions Courts as the Designated Courts under this Bill. The Designated Court will try offences committed by: (i) a person in the custody of the Indian Navy or Coast Guard, regardless of his nationality, (ii) a citizen of India, a resident foreign national in India, or a stateless person. Further, the Court may try a person even if the person is not physically present in the Court.
- The Court will not have jurisdiction over offences committed on a foreign ship unless an intervention is requested by: (i) the country of origin of the ship, (ii) the ship-owner, or (iii) any other person on the ship.
- Warships and government-owned ships employed for non-commercial purposes will not be under the jurisdiction of the Court.

PART B: KEY ISSUES AND ANALYSIS

Punishment for committing piracy

Provision of mandatory death penalty has been held to be unconstitutional

Bill:
Clause 3(ii)

Under the Bill, if a person, while committing an act of piracy causes or attempts to cause death, he will be punished with death. The Supreme Court has ruled that mandatory death penalty for an offence violates Articles 14 and 21 of the Constitution. The Court has held that a provision that imposes a mandatory death penalty is arbitrary and unfair as it fails to take into account the facts and circumstances of each case and denies courts their right to exercise their discretion on whether to impose a death sentence.^{7,8} The Supreme Court has also narrowed the application of death penalty to the ‘rarest of rare’ cases and issued criteria to determine whether the accused deserves a death sentence.⁶

Instances where the Court has struck down such provisions include: (i) Section 303 of the Indian Penal Code, 1860 which provided for mandatory death sentence for offenders who committed murder while serving a life sentence, and (ii) Section 27(3) of the Arms Act, 1959 which provided for mandatory death penalty for the usage of prohibited arms resulting in the death of a person.^{7,8}

However, Parliament has passed laws which provide for mandatory death penalty. These include the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act), the Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002, and the Anti-Hijacking Act, 2016.⁹ Note that a plea challenging the mandatory death penalty in the SC/ST Act is currently pending in the Supreme Court.¹⁰

This Bill ratifies the United Nations Convention on the Law of the Sea (UNCLOS). Other countries such as the United States of America, Kenya, Australia, Italy, and Sri Lanka, which have also ratified the UNCLOS and passed similar laws to prevent maritime piracy, do not provide for mandatory death penalty.¹¹

Note also that, under the Indian Penal Code, 1860 attempt to murder has a maximum penalty of life imprisonment (if hurt is caused).¹² This Bill provides mandatory death penalty for an attempt to cause death during an act of piracy.

Certain actions may fall under different offences and have differing penalties

Bill:
Clauses
2(1)(f),
3,4,5

The Bill defines piracy to include: (i) any illegal act of violence, detention, or destruction committed against a ship, aircraft, person or property; or (ii) inciting or intentionally facilitating such illegal acts; or (iii) voluntarily participating in the operation of a pirate ship. Any person who commits an act of piracy will be punished with: (i) imprisonment for life; or (ii) death penalty, if the act of piracy causes or attempts to cause death.

However, another clause in the Bill provides for imprisonment of up to 14 years, along with a fine, if a person aids, assists, participates, organises, or directs another person to participate in an act of piracy. Offences in both the clauses seem to be similar. It is unclear which penalties will apply under which circumstances.

For instance, person A directs person B to damage a ship on the high seas. There could be two ways in which person A is charged: (i) committing an act of piracy by inciting such act and thus be charged with life imprisonment, or death; or (ii) directing another person to participate in an act of piracy, and punished with imprisonment of up to 14 years, along with a fine. Similarly, ‘committing an act of piracy’ and ‘participating in an act of piracy’ could have the same interpretation. Assisting and aiding piracy may be similar to intentionally facilitating piracy or voluntarily participating in the operation of a pirate ship (covered in the definition of piracy).

Note that, the United Nations guidelines on international law on piracy (2011) state that in addition to criminalising the direct conduct of piracy, it is also important that all modes of participation in the offence, such as organising, instigating, aiding and abetting, facilitating and counselling, are also criminalised.¹³ This is to combat any kind of organised crime, as not all of the criminals are directly involved in carrying out the act itself. The guidelines also state that even though the definition of piracy allows prosecution for such acts, many countries may require to explicitly state these in their domestic law to provide a base for prosecution.¹³

Geographical applicability of the Bill

Bill:
Clause 1(3)

The Statement of Objects and Reasons of the Bill mentions that incidences of piracy have been increasing, including within India’s Exclusive Economic Zone (EEZ). The EEZ is the area between 12 nautical miles and 200 nautical miles from India’s coastline. The Bill applies to all parts of the sea adjacent to and beyond the limits of India’s EEZ. Therefore, it will apply to the high seas, which is the area beyond 200 nautical miles from India’s coastline. The question is whether the Bill should also apply to the EEZ.

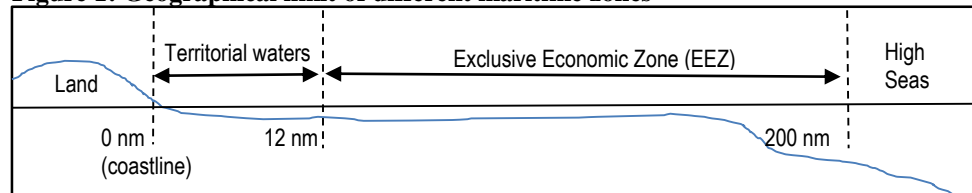
India's sovereignty extends till its territorial waters (up to 12 nautical miles from the coastline) which implies that all domestic laws of the country apply in this zone.⁵ Prosecuting pirates who are apprehended beyond these territorial waters is a challenge because India does not have a domestic law on maritime piracy.⁴ The Bill seeks to remedy this.

India has limited rights in the EEZ (such as the rights to explore, exploit, and manage natural resources).⁵ Currently, certain acts of piracy (such as acts of violence against a ship and seizure of a ship) occurring in the EEZ are covered under the Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act (SUA Act), 2002.¹⁴ However, the SUA Act, 2002 may not cover all acts of piracy as defined under UNCLOS. For example, an act of theft that does not endanger the safety of a ship in the EEZ will not be covered under the SUA Act, 2002. But this would qualify as an act of piracy under UNCLOS and this Bill.

UNCLOS states that provisions relating to piracy should apply to both the EEZ and the high seas.¹⁵ Note that the geographic scope of the Piracy Bill, 2012 (which has lapsed) also extended to the EEZ.¹⁶

The figure below shows the geographical limit of the different maritime zones in India.

Figure 1: Geographical limit of different maritime zones



Note: nm is nautical miles. 1nm = 1.852 kilometres.

Sources: The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976; PRS.

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