

**06**

**STANDING COMMITTEE  
ON EXTERNAL AFFAIRS  
(2020-2021)**

**SEVENTEENTH LOK SABHA**

**MINISTRY OF EXTERNAL AFFAIRS**

**THE ANTI MARITIME PIRACY BILL, 2019**

**SIXTH REPORT**



**LOK SABHA SECRETARIAT  
NEW DELHI**

***FEBRUARY 2021/MAGHA, 1942 (Saka)***

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**STANDING COMMITTEE ON**  
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**(2020-21)**

**(SEVENTEENTH LOK SABHA)**

**MINISTRY OF EXTERNAL AFFAIRS**

**THE ANTI MARITIME PIRACY BILL, 2019**

*Presented to Lok Sabha on 11.02.2021*  
*Laid in Rajya Sabha on 11.02.2021*



**LOK SABHA SECRETARIAT**  
**NEW DELHI**

***FEBRUARY 2021/MAGHA, 1942 (Saka)***

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## COMPOSITION OF THE COMMITTEE ON EXTERNAL AFFAIRS (2019-20)

### 1. Shri P.P. Chaudhary, Chairperson

#### Lok Sabha

2. Shri Abhishek Banerjee
3. Shri Margani Bharat
4. Kunwar Pushpendra Singh Chandel
5. Shri Jayadev Galla
6. Shri Dileshwar Kamait
7. Smt. Preneet Kaur
8. Shri Pakauri Lal Kol
9. Smt. Meenakashi Lekhi
10. Smt. Poonam Mahajan
11. Shri P. C. Mohan
12. Shri Borlakunta Venkatesh Netha
13. Shri Ritesh Pandey
14. Dr. K. C. Patel
15. Shri Soyam Babu Rao
16. Shri Achyutananda Samanta
17. Shri Ram Swaroop Sharma
18. Shri Ravindra Shyamnarayan Shukla *alias* Ravi Kishan
19. Shri Manoj Tiwari
20. Shri Rebaty Tripura
21. Shri N.K. Premachandran

#### Rajya Sabha

22. Shri K. J. Alphons
23. Smt. Jaya Bachchan
24. Smt. Misha Bharti
25. Shri P. Chidambaram
26. Shri Swapan Dasgupta
27. Shri Ranjan Gogoi\*
28. Shri Shamsheer Singh Manhas
29. Shri Kapil Sibal
30. Shri Abdul Wahab
31. Vacant\*\*

\*Shri Ranjan Gogoi, Member, Rajya Sabha nominated w.e.f. 23.07.2020, Parliamentary Bulletin Part II No. 59970 and

\*\*Shri Chuniabhai Kanjibhai Gohel and Shri Sharad Pawar, Members, Rajya Sabha ceased to be Members of the Committee w.e.f. 09.04.2020.

## COMPOSITION OF THE COMMITTEE ON EXTERNAL AFFAIRS (2020-21)

### 1. Shri P.P. Chaudhary, Chairperson

#### Lok Sabha

2. Smt. Harsimrat Kaur Badal
3. Shri Abhishek Banerjee
4. Shri Kalyan Banerjee
5. Kunwar Pushpendra Singh Chandel
6. Shri Dileshwar Kamait
7. Shri Suresh Kumar Kashyap
8. Smt. Preneet Kaur
9. Smt. Meenakashi Lekhi
10. Smt. Goddeti Madhavi
11. Smt. Poonam Mahajan
12. Shri P. C. Mohan
13. Ms. Chandrani Murmu
14. Shri Ritesh Pandey
15. Dr. K. C. Patel
16. Shri N.K. Premachandran
17. Shri Navneet Ravi Rana
18. Shri Soyam Babu Rao
19. Shri Manne Srinivas Reddy
20. Shri Ram Swaroop Sharma
21. Shri Rebati Tripura

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27. Shri Ranjan Gogoi
28. Shri Shamsheer Singh Manhas
29. Shri Kapil Sibal
30. Shri Abdul Wahab
31. Shri Brij Lal

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- |    |                           |   |                      |
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| 2. | Dr. Ram Raj Rai           | – | Director             |
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## INTRODUCTION

I, the Chairman, Standing Committee on External Affairs (2020-21) having been authorized by the Committee to submit the Report on their behalf, present this Sixth (17<sup>th</sup> Lok Sabha) on “The Anti Maritime Piracy Bill, 2019”.

2. The Bill was introduced in Lok Sabha on 9 December, 2019 and was referred by the Hon’ble Speaker to the Standing Committee on External Affairs (2019-20) for examination and Report.

3. In the process of examination of the Bill, the Committee took oral evidence of the representatives of the Ministries of External Affairs, Home Affairs, Defence, Shipping, Law & Justice (Legislative Department and Department of Legal Affairs). The Committee also sought written information on various aspects of the Bill from these Ministries. The Committee also sought views of Members of Parliament representing constituencies in coastal regions.

4. The Committee considered and adopted this Report at their Sitting held on 11 January, 2021. The Minutes of the Sitzings of the Committee are appended to the Report.

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

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

**NEW DELHI**  
**10 February, 2021**  
**21 Magha, 1942 (Saka)**

**P.P CHAUDHARY,**  
**Chairman,**  
**Committee on External Affairs**

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

The act of ‘Piracy’ involves two distinct offences including robbery or hijacking, wherein target of the attack is to capture/harm a maritime vessel or its cargo as well as kidnapping the vessel and its crew and threatening them for payment of ransom. The threat of piracy has mushroomed enormously in the past few years. The spread of sea piracy in contemporary times is not restricted to one particular sea area or zone, it has become rampant in almost each and every part of the world. Piracy/kidnapping attacks in the Gulf of Guinea, Malacca, Red Sea, Somalian waters etc. are becoming more violent with the greater tendency to attack, hijack and rob vessels as well as kidnap crew. After 2008, a major spurt in piracy attacks was seen in the Gulf of Aden by pirates operating off the coast of Somalia. This region, which connects the Arabian Sea to the Red Sea and to the Mediterranean Sea through the Suez Canal, has many important sea lanes for trade between Asia and Europe/East coast of Africa. With the enhanced naval presence in the Gulf of Aden, pirates shifted their area of operations eastwards and southwards in the Indian Ocean with numerous piracy attempts being reported off Seychelles and Mauritius. Some piracy incidents at that time were also reported towards the western coast of India. This was countered successfully by the Indian Navy and the Coast Guard which enhanced their vigil and conducted major anti-piracy operations on the western coast of India. After the peak of 2012, the number of piracy incidents off the coast of Somalia went down but a new hotspot of piracy has now emerged in the Gulf of Guinea off the coast of Nigeria.

1.1 As per International Maritime Organization (IMO) promulgated report of attacks by pirates and robbers via the Global Integrated Shipping Information System (GISIS), the sum total of the number of incidents of piracy and armed robbery in West Africa, as reported by IMO in the 11 year period from 1<sup>st</sup> January, 2009 to 15<sup>th</sup> December, 2019 was 1173. Additionally the number of acts of piracy and armed robbery against ships in West Africa during the same period was 65 (approx). During the same period over 500 Indians were captured by pirates around the world at various points of time. The United Nations Security Council, in a number of resolutions adopted since 2008, urged the UN Member States to cooperate in investigation and prosecution of all persons responsible for acts of piracy and further called upon States to criminalize piracy under their domestic law and to favourably consider the prosecution of suspected, and imprisonment of convicted pirates.

**Legal definition of Piracy**

1.2 India signed the United Nations Convention on Law of the Sea (UNCLOS) on 10 December 1982 and ratified it on 29 June 1995. ‘Piracy’ as an offence is defined in Article 101 of the 1982 UNCLOS as follows:

–Piracy consists of any of the following acts:



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

1.3 According to the above-mentioned definition, piracy as an offence can only be committed in the high seas. When an offence akin to piracy takes place in the territorial sea and internal waters of a State, it will be called Maritime Robbery or Armed robbery against ships. –Armed robbery against ships” is defined in the Code of Practice of the International Maritime Organization for the investigation of the Crimes of Piracy and Armed Robbery against Ships, as follows:

–Armed robbery against ships” means any of the following acts:

- (a) any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State\_s internal waters, archipelagic waters and territorial sea;
- (b) any act of inciting or of intentionally facilitating an act described above.

1.4 When the Committee wanted to know about the role of national legislations framed by some other countries in the prosecution of pirates, the representative of MEA stated as under:

–I may also mention that while drawing up this Bill, national legislations framed by some other countries including Australia, United Kingdom, New Zealand and Sri Lanka were consulted. The proposed Bill contains the following main elements –

1. The Legal Definition of ‘\_Piracy’ - Piracy has been defined as given in 1982 UNCLOS and this definition is used to try the pirates under national legislation. The geographical scope of the definition extends to the acts of piracy on the high seas and in any other place outside the jurisdiction of any State along with acts that occur in the States exclusive economic zone. Acts that occur in the territorial or inland waters of a State are termed as armed robbery and do not fall within the definition of the proposed Bill.

2. The Universal Jurisdiction - This means that even if a crime takes place outside India and it involves a victim who is not Indian and is committed by a person who is not Indian, Indian courts will have the authority to try him or her. In fact, the Bill allows for *in absentia* prosecution and also prosecution of Stateless persons.

3. Criminalization of Policy - The proposed Bill criminalizes the acts of piracy in the Indian legal jurisdiction. The maximum punishment envisaged is imprisonment for life or death in addition to forfeiture of property involved in the commissioning of the crime. Attempts to commit the act of piracy or an accessory to such an act will be liable to be punished up to 14 years in addition to fine.

4. Presumption - In keeping with the guidelines of the IMO, the proposed Bill contains provisions regarding presumption of guilt under Section 11 of the proposed Act. Under the circumstances listed in Section 11, the designated courts shall presume, unless contrary is provided, that the accused person has committed such an offence.

5. Extradition - As per the proposed Bill, the act of piracy will be deemed as an extraditable criminal offence leading to extradition of suspects.

Sir, overall, as I mentioned, earlier enactment of this legislation would provide for certainty and clarity in the law as well as a sound legal basis for prosecuting and punishing persons committing acts of piracy. The Bill will not have retrospective effect but will promote the safety and security of India's maritime trade including the safety of our vessels and crew members by acting as a strong deterrent.”

## 1.5 Present Legal Mechanism to deal Piracy in India

India does not have a separate domestic legislation on piracy. The provisions of the Indian Penal Code pertaining to armed robbery and the Admiralty jurisdiction of certain courts have been invoked in the past to prosecute pirates apprehended by the Indian Navy and the Coast Guard but in the absence of a clear and unambiguous reference to the offence of maritime piracy in Indian law, problems are faced in ensuring effective prosecution of the pirates. Given the increasing incidence of piracy, including within India's Exclusive Economic Zone (EEZ), and the increasing number of pirates apprehended by the Indian Naval forces, the need was felt for a comprehensive domestic legislation on piracy. It was decided in early 2011, that the Ministry of External Affairs should coordinate the inter-ministerial exercise of preparing domestic legislation on piracy.

1.6 Explaining the problems arising due to lack of an effective legislative framework, the representative of the Ministry of External Affairs during the course of briefing held on 16.01.2020 stated as under:

—.....Although the Indian Navy and the Coast Guard have in the past caught many pirates on the high seas of the Indian coast, they could not be tried satisfactorily for their crime in the Indian courts for want of a separate domestic legislation on piracy in India. Prosecution for piracy as a crime has not been included in the IPC or the CRPC. This had created a problem

in launching an effective prosecution in the Alondra Rainbow case, the only piracy related case that has been tried in an Indian court so far. In the absence of a piracy law or the definition of piracy in the penal law of India, other relevant provisions of the Indian Penal Code and Admiralty Jurisdictions were invoked to try the pirates in this particular case. Although the prosecution in this case was successful in the trial court, the verdict was overruled by the High Court presumably on jurisdictional grounds.”

1.7 On being enquired about the current system of extradition of pirates and the provisions of Indian/International Law under which they are covered, the MEA in its written reply submitted that:

–The extradition of pirates to or from other countries is currently as per bilateral agreements, or on case-to-case basis in the absence of bilateral treaties. Extradition of Pirates between State Parties to the 1982 UN Convention of the Law of the Sea (UNCLOS) is also possible under this Convention.”

### **Inter-Ministerial Consultations for Preparation of Bill**

1.8 As the subject of the United Nations Convention on the Law of the Sea (UNCLOS) is dealt with by the Ministry of External Affairs under the Allocation of Business Rules, it was decided that MEA would undertake to pilot a separate comprehensive domestic legislation to deal with piracy, especially the enabling procedure and mechanism for prosecution of pirates in Indian courts. Accordingly, the MEA prepared a draft anti-piracy legislation and circulated the same for comments of the concerned Ministries and Departments, namely, Defence, Shipping, Home Affairs, Indian Navy, Indian Coast Guard and Directorate General of Shipping. The draft legislation was modified based on the comments received and in consultation with the Department of Legislative Affairs of the Ministry of Law and Justice.

1.9 The then Cabinet, in its meeting held on 24 January 2012, approved the proposal to enact a domestic anti-piracy legislation. As approved by the Cabinet, –The Piracy Bill 2012” was introduced in the Lok Sabha on 24 April, 2012. It was then referred by the Hon’ble Speaker to the Standing Committee on External Affairs for examination and report. In the process of examination of the Bill, the Committee took oral evidence and written information from the representatives of the Ministries of External Affairs, Home Affairs, Defence, Shipping, Law and Justice (Legislative Department and Department of Legal Affairs) and DG Shipping in May-June 2012. Subsequently, the Committee submitted their final report to the Lok Sabha on 14 August 2012 approving the Piracy Bill 2012 subject to the appropriate inclusion of its 18 recommendations.

1.10 Taking into consideration the views of the Standing Committee, Official Amendments to the Bill were approved by the Cabinet on 18 March 2013. MEA had given notices for introduction of Official Amendments during all the Parliament Sessions in 2013, following which it was listed in the Lok Sabha’s business. However it did not come up for discussion in any of the Sessions of the last Parliament in 2013 because of paucity of time.

1.11 \_The Anti Maritime Piracy Bill’ was re-drafted in 2015 by MEA with inter-ministerial consultations with the Ministries of Law and Justice, Defence, Home Affairs, Shipping, Civil

Aviation, Indian Navy and Indian Coast Guard. After Cabinet's approval on 1 August 2018, a notice for its introduction was given but it could not be introduced and lapsed with the last Lok Sabha. After Fresh Cabinet Approval in Nov 2019, the Anti-Maritime Piracy Bill, 2019 was re-introduced in the Lok Sabha by EAM on December 9, 2019. The Bill has been again referred to the Committee on External Affairs for examination and report.

### **Salient features of the draft Legislation**

1.12 Regarding the salient features of the draft Legislation, ‘The Anti-Maritime Piracy Bill, 2019’, the MEA submitted the following facts:

- i. –Piracy is defined as given in 1982 United Nations Convention on the Law of the Sea (UNCLOS) and this definition is used to try the pirates, by invoking universal jurisdiction, under the national legislation.
- ii. Using the UNCLOS definition would also enable international cooperation including extradition of persons involved in an act of piracy on the high seas.
- iii. The draft adheres to the guidelines and Model Law for national legislation for Maritime Criminal Acts prepared by the Legal Committee of the International Maritime Organization (IMO).
- iv. National Legislations on Piracy from Australia, UK, New Zealand, and Sri Lanka were also consulted in the process.”

1.13 Elaborating further on the necessity of involving other agencies to frame the Bill, the representative of Ministry of External Affairs stated as under:

–The Bill would also fulfil the obligations undertaken by India when it ratified the UN Convention on the Law of Sea (UNCLOS) in 1995, when we had signed it in 1982. UNCLOS requires States to cooperate in the repression of piracy on the high seas or in any other place outside the jurisdiction of the States.

As the subject of UNCLOS is dealt with by the Ministry of External Affairs, it was decided that the Ministry of External Affairs would undertake to pilot the Bill. The draft Bill was prepared by MEA in consultation with the Ministries of Defence, Shipping, Home Affairs, Law and Justice, and Indian Navy, Coast Guard, Directorate General of Shipping, etc.....”

1.14 The Committee further enquired about the clarity in area of Jurisdiction of the legislation and inclusion of Exclusive Economic Zones and the representative of the MEA in his reply stated as under:

—...The question of this jurisdiction being anywhere in the open high seas is under Article 101 of the UNCLOS. It also talks about the fact that this is something on

the high seas. Piracy consists any of the following acts like any illegal acts of violence, detention or any act of depredation committed for private ends by the crew or the passengers of a private ship or a private aircraft and directed on the high seas. So, Sir, technically we have taken it from the UNCLOS definition which has been adopted by all the countries.....”

1.15 During the course of evidence, when the Committee desired to know the jurisdiction of the Act, the representative of the Ministry of Law and Justice stated,

—In this regard I would like to bring to your notice the provisions of section 188 of the Code of Criminal Procedure, 1973. This will perhaps dissipate any of the doubts in this regard. When an offence is committed outside India, whether on the high seas or elsewhere outside India, the basic consideration is by a citizen of India under clause (a). So, even under the existing provisions, the jurisdiction is there. The second part relates to ‘by a person not being such citizen on any ship or aircraft registered in India’. So, even if a person is not a citizen of India, still the offence is triable by virtue of Section 188 of the CrPC. The only proviso to it is that it requires the sanction of the Central Government. So, there is nothing which debars the trial of an offence even in the present proposed Bill in India. I do not think that there will be any jurisdictional issues. Even apart from it, let us resort to Section 3 of the Indian Penal Code. That also speaks of punishment of offences committed beyond but which, by law, may be tried within India. So, by virtue of both these Sections, I do not think, there would be any jurisdictional issues.”

1.16 Elaborating further on the same issue, the representative of Border Management, Ministry of Home Affairs stated that there is a legislation which covers the exclusive economic zone. This is the SUA Act. If you read the jurisdictional part, sub-section (2) of Section 1, it says, it extends to the whole of India including the limit or the territorial water with continental shelf, the exclusive economic zone or any other maritime zone of India.

1.17 When the Committee desired to be acquainted with the role of Ministry of Defence in implementation of provisions made in the Bill. The Ministry of Defence in its written reply submitted as under:

—From an operational perspective, the role envisaged for the Indian Navy is broadly in conformity with United Nations Convention on Law of the Sea (UNCLOS) and the following clauses of the proposed Anti-Piracy Bill, 2019, specify the exact role:-

- Clause 6. Notwithstanding anything contained in the Code, the Central Government may, for the purpose of this Act, by notification, confer the powers of arrest, investigation and prosecution of any person exercisable by a police officer under the Code on any of its Gazetted officer or such officer of a State Government.

- Clause 7(1). On the high seas, or in any other place outside the jurisdiction of India, a pirate-ship or aircraft, or any ship or aircraft taken for privacy and under the control of pirates may be seized and the persons on board may be arrested and the property on board may be liable to be seized.

- Clause 7(2). A seizure on account of piracy under sub-section (1) may be carried out only by warships or military aircraft of the Indian Navy or the ships or aircrafts of the Coast Guard or other ships or aircraft clearly marked and identifiable as being on Government service and authorised for such purpose.

- Clause 9.(1) The Designated Court shall have jurisdiction to try an offence punishable under this Act where such offence is committed-

(i) by a person who is apprehended by, or is in the custody of, the Indian Navy or the Coast Guard, regardless of the nationality or citizenship of such person;”

Thus, the primary role of the Indian Navy, for implementation of this Bill, would be seizure/apprehension of person(s)/vessel(s) suspected to be involved in piracy related activities in accordance with clauses 7(1) & (2).”

1.18 On being questioned about the role of Ministry of Shipping in implementation of provisions of the Bill, the Ministry of Shipping in a written note submitted and stated as under:

–Ministry of Shipping is the nodal Ministry along with Directorate General of Shipping as the nodal agency for dealing with welfare of seafarers and issues related to hostages, insurance and shipping and will co-ordinate and deal with other Ministries/Departments as may be required.”

1.19 In response to the specific query about the role of various Ministries/Departments in formulation and implementation of various provisions of the Bill, the Ministry of External Affairs in its written reply, submitted as under:

–The subject of Piracy involves many Ministries and Agencies.

(i) The nodal Ministry dealing with the issue of piracy in the international context is the Ministry of External Affairs (MEA). MEA will be involved in all cases requiring international cooperation or coordination with other countries.

(ii) The nodal Agency dealing with welfare of seafarers and issues related to hostages, insurance and shipping is the Ministry of Shipping along with its Directorate General of Shipping.

(iii)The nodal Agencies for conducting action against suspected pirates on sea are the Ministry of Defence, Indian Navy and Coast Guard.

(iv)The nodal Agencies for prosecution of pirates are the Ministry of Home Affairs and State authorities where pirates are being tried.”

1.20 When the Committee desired to know from the Ministry of External Affairs the role of each Ministry/Department/Agency in prosecution of pirates and Standard Operation Procedures (SOPs) to be framed, the representative of MEA during the course of evidence stated as under:

–The respective role of each ministry, department and agency in prosecution of pirates is clear and has been aligned with their standard duties and jurisdiction, that is to say, Ministry of Defence, Indian Navy, Indian Coast Guard will be responsible for taking action to apprehend suspected pirates at sea, to transport such persons to the next port of call and for handing apprehended suspects over to State law enforcing authorities for prosecution. MHA and State law enforcement authorities would then make arrangements for detention of suspected pirates and to bring them to trial by the designated court. The convicted pirates would serve the sentences in Indian jails as directed by the designated courts. They would then be deported to their countries of origin upon completion of their sentences. MEA would be required to intervene in such cases where Indian authorities seek extradition of a pirate held by another country or if a request for extradition of a pirate in India’s custody is received from another country.”

1.21 Elaborating further on SOPs he submitted as under:

–In this context, Ministry of Home Affairs has conveyed that Standard Operating Procedures regarding deportation and extradition are already in place. Further, SOPs, if required, will be designed and notified by that Ministry.”

### **General Observations**

**1.22 The Committee observe that after a major spurt in piracy attacks in the extended region of Indian Ocean after 2008, United Nations Security Council (UNSC) recognized piracy as a crime having universal jurisdiction under customary international Law and was codified under UN Convention of Law of the sea (UNCLOS), 1982. In a number of adopted resolutions, the UNSC urged the Member States to cooperate in Investigation and prosecution of all persons responsible for acts of Piracy and further called upon States to criminalize piracy under their domestic law and to favourably consider the prosecution of suspected and imprisoned pirates. India does not have a separate domestic Legislation on piracy and prosecution for piracy as a crime has not been included in the IPC or CrPC. Thus, in the same backdrop, the Ministry of External Affairs on 24<sup>th</sup> April 2012 had piloted a separate comprehensive domestic Anti-Piracy legislation to deal with piracy, especially the enabling procedure and mechanism for prosecution of pirates in Indian courts. The Bill was referred to the Standing Committee on External Affairs and the Committee had approved the Bill with suggestions which included 18 recommendations and submitted their**

**Report on 14<sup>th</sup> August 2012. The Bill was again approved by the Cabinet on 18<sup>th</sup> March, 2013, incorporating the recommendations of the Committee and introduced in the Parliament. The Committee, however, find that such an important and urgent Bill lost its pace and urgency due to reluctance of the Government as it did not come up for discussion during 15<sup>th</sup> Lok Sabha, it was redrafted in 2015, approved again by the Cabinet on 1<sup>st</sup> August, 2018 but could not be introduced and lapsed with the last Lok Sabha and finally after fresh Cabinet approval in November, 2019, Anti-Maritime Piracy Bill, 2019 was re-introduced in Lok Sabha on December, 2019. The Committee deplore such lackadaisical approach of the government in bringing such an important legislation when there is an urgent need of the comprehensive domestic legislation on Piracy which can provide the necessary framework within the country for prosecution in piracy related crimes. The Committee are also not aware about the other efforts made in between by the Government to enhance international cooperation on the issue of maritime piracy as well as to address the factors that have led to rise and spread of piracy in many more regions. The Committee, therefore, would like that the Government should, now, make all possible efforts for an earlier enactment of anti-piracy legislation so that India becomes a part of an international endeavour to combat piracy as well as it may provide for a sound legal basis for prosecuting and punishing persons committing acts of piracy and also safety and security of India's maritime trade including the safety of our vessels and crew members. Further, the Committee would also like to reiterate their recommendation made in the 16<sup>th</sup> Report on the Piracy Bill 2012, and desire that MEA should make sincere efforts to enhance international cooperation on maritime piracy and by taking adequate and proactive measures to ensure the welfare of Indian seafarers captured by pirates simultaneously.**

**(Recommendation No. 1)**



**1.23 The Committee observe that the subject of Piracy involves several Ministries like MEA, MHA, Defence, Shipping, Law and Justice, etc. and each Ministry / Department has been assigned with specific duties and jurisdictions, right from apprehending the suspected pirates till conviction of pirates by designated courts. Various clauses of the Bill specifically address the issues of arrest, investigation and seizure of property, designated court and its jurisdiction and trial of the offences by the designated court. The Bill as a whole is a minor criminal Law and in that case Ministry of Law and Justice and MEA have opined that the rule making powers of the Government are restricted to recruitment of human resources or regulation of their service conditions. However, as suggested by the Ministry of Home Affairs, the Committee desire that the clear cut roles of various agencies/departments should also be defined and reflected appropriately in the Rules with establishment of an effective coordination mechanism involving all concerned agencies including State Governments. The Committee also desire that the Standard Operating Procedures (SOP"s) regarding deportation and extradition of pirates should be designed by the Ministry of Home Affairs in a specific time frame so that by the day the enactment of Law is completed the SOPs are ready to be notified immediately and there is no delay in implementation of the Law.**

**(Recommendation No.2)**

**1.24 The Committee observe that the Bill has been drafted in accordance with UNCLOS 1982 i.e. the United Nations Convention on the Law of the Sea adopted by India in 1982 and ratified in 1995. The Committee now hope that the new proposed legislation will definitely enable the authorities to prosecute the apprehended pirates irrespective of their nationalities. The Committee also note that a number of UN resolutions have been passed to facilitate the Nations to enact legislation on piracy by adopting the definition of UNCLOS, so that the process of trying foreign nationals is in accordance with internationally accepted**

**provisions of law and procedure. The Committee desire that in addition to an anti-piracy domestic legislation, the Government should also make efforts on the issue of extradition of persons of Indian origin suspected for acts of piracy on high seas. The Committee have a strong view in this regard that India must also be a part of every international co-operation created to combat piracy and smooth extradition of the guilty persons/agencies involved.**

**(Recommendation No. 3)**

## CHAPTER II

### CLAUSE BY CLAUSE EXAMINATION OF THE ANTI-MARITIME PIRACY BILL, 2019

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

The Preamble of the Anti-Maritime Piracy Bill, 2019 reads as under:

#### THE ANTI-MARITIME PIRACY BILL, 2019

*“A Bill to make special provisions for repression of piracy on high seas and to provide for punishment for the offence of piracy and for matters connected therewith or incidental thereto.*

*WHEREAS India is a party to the United Nations Convention on the Law of the Sea adopted by the United Nations on the 10th December, 1982 and has ratified the same on the 29th June, 1995;*

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

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

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

2.2 This clause provides for the definition of maritime – piracy so as to include the definition of piracy given in UNCLOS which is used to try the pirates under national legislation and reads as under:-

*Be it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—*

*(1) This Act may be called the Anti-Maritime Piracy Act, 2019.*

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

*(3) The provisions of this Act shall apply to all parts of the sea adjacent to and beyond the limits of Exclusive Economic Zone of India.*

During the course of evidence the Committee pointed out about non clarity of area of jurisdiction in section 1 sub clause 3 (i) of the Bill. The representatives of the MEA explaining on the provision stated as under:

—will request my colleagues to supplement. But let me just say that the definition of high seas in UNCLOS is anywhere in the high seas. That is the definition which has been laid down by UNCLOS. The question of this jurisdiction being anywhere in the

high seas is under Article 101 of the UNCLOS. It also talks about the fact that this is something on the high seas.”

**2.3 The Committee first and foremost recommend that the word „Seventieth Year“ may be substituted by the word „Seventy second year“ of Republic of India in the long title of the Bill as it would synchronise with the current year of now 2021.**

**(Recommendation No. 4)**

**2.4 While discussing the nomenclature of the Bill, the Committee considered the scope and aims of the legislation and noted that the Bill provides legal framework for prosecution and punishment for an act of maritime piracy. Therefore, the nomenclature should reflect both the issues appropriately. The Committee, therefore, desire that to connote the complete and perfect sense for which the Bill is being brought, the word Anti-Piracy should be in centre and the nomenclature of the Bill should be „Maritime Anti-Piracy Bill, 2019 in place of „Anti-Maritime Piracy, 2019 and accordingly the name of the Act in Clause 1(1) may be modified as „Maritime Anti-Piracy Act, 2020“ in place of „Anti-Maritime Piracy Act, 2019“.**

**(Recommendation No.5)**

**2.5 In the Clause 1(3) of the Bill the Committee find that it limits India’s ability to undertake Anti-Piracy operations beyond EEZ as its application part mentions „shall apply to all parts of the sea adjacent to and beyond the limits of EEZ of India. The Committee also refer that the meaning of Article 58(2) of UNCLOS, 1982 is that the EEZ retains the characteristics of high seas barring the sovereign rights of the Coastal State. Moreover, in the definition in Section 2(i)(f) of the Bill „Piracy“ is considered as an act on high seas. The Committee, therefore, desire that it should be amended to bring it in consistent with the**

title and definition of „piracy“ in the Bill as well as Article 58(2) of UNCLOS, 1982. The article (3) may be worded as under:

**Clause 1 (3) The provisions of this Act shall apply to the high seas, which for the purposes of this Act, includes Exclusive Economic Zones (EEZ) in accordance with paragraph 2 of Article 58 of the Convention.**

**(Recommendation No. 6)**

### **Clause 2 – Definitions**

2.6 The Clause provides for the definitions of various terms used in the provisions of the Bill. In sub-clauses (f) and (g) the definition of „piracy“ and „pirate ship or aircraft“ is provided for and reads as under:

*(f) "piracy" means—*

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

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

*(B) against a ship, aircraft, person or property in a place outside the jurisdiction of India;*

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

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

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

*(g) "pirate ship or aircraft" means a ship or aircraft which—*

*(i) is intended by the person in dominant control to be used for the purposes of committing any of the acts referred to in sub-clauses (i) to (iv) of clause (f); or*

*(ii) has been used to commit any such act, referred to in sub-clause (i) of this clause, so long as it remains under the control of the person guilty of that act.*

2.7 When the Committee raised their concern over the implications arising out of the provision of word „ship“ which required to be defined, the representative of the MEA clarified as under,

“I have taken your point, Sir. If in the Indian Penal Code, the definition of „ship“ includes a boat, it will also apply here. If there is a need to include within the definition of „ship“ a boat, we will immediately do that.”

2.8 Explaining further the position in this regard the Secretary (Department of Legal Affairs) stated as under:

~~We can also consider adding the word „vessel“. This will perhaps include any sort of ship or boat.”~~

**2.9 The Committee observe that piracy has been defined in the clause 2 (f) of the Bill in accordance with UNCLOS, 1982. Clause 2 (f) (i) defines the nature of act by individuals on the ship or aircraft. The Committee, however, find that in the definition, words ship has been used but a ship has not be defined anywhere. Mention of word „ship“ does not include yacht, boat or watercraft etc. of any description. The Committee, therefore, desire that to cover all the means of transport on water and sea the word „vessel“ should be added along with ship and aircraft. Moreover, alongwith crew and passengers the presence of any other person on ship/aircraft and private ship is also possible. The Committee, therefore, would like that the words „any person“ should also be incorporated suitably and „ship“ and „aircraft“ should also be defined in two separately sub clauses in the light of definition of these objects in other relevant acts to cover all types of possibilities. To incorporate all the suggestions of the Committee the Clause 2 (f) may be amended as under:**

- (i) Any illegal act of violence or detention or any act of depredation committed for private ends by any person or the crew or any passenger of a private ship or vessel or a private aircraft and directed-**
  - (A) on the high seas including a EEZ against another ship or aircraft or against and person or property on board such ship, vessels or aircraft; or**
  - (B) against a ship, vessels aircraft, person or property in a place outside the jurisdiction of any State;**
- (ii) any act of voluntary participation on the operation of a ship or vessel or of an aircraft with knowledge of facts, making it a pirate ship or aircraft;**

**(iii) any act of inciting or of intentionally facilitating an act described in sub clause (i) or sub clause (ii) or**

**(iv) any other act which is deemed piratical under the international law including customary international law.**

**Further, as agreed the Committee desire that the definition of „ship“ and „aircraft“ may be incorporated in clause as 2(f) sub clause (i) and (j) as mentioned below:**

**(i) “Ship” means „vessel“ or water craft of every description, including non displacement craft and sea planes, used or capable of being used as a means of transportation on water or engaged in any operations at sea.**

**(j) “Aircraft” has the same meaning as mentioned under section 2 (1) of the Aircraft Act, 1934.**

**(Recommendation No. 7)**

**2.10 The Committee note that the Clause 2 (2) is a general clause which refers the other related legislations for the meaning of the words and expressions which have been used in this Act but not defined here. But surprisingly, it does not mention the „UN Convention“ which is the most important reference in this regard. The Committee, therefore, suggest that the word „the Convention“ should be added in the first line after „defined in“ and also before the word „code or the Act“ in the last line of clause 2 (2).**

**(Recommendation No.8)**

### **Clause 3 – Punishment for Piracy**

**2.11 Clause 3 of the Bill makes a provision of punishment for the acts of piracy and reads as under:**

*Whoever commits any act of piracy, shall be punished—  
(i) with imprisonment for life; or*

*(ii) with death, if such person in committing the act of piracy causes death or an attempt thereof,  
and in addition shall also be subject to restitution or forfeiture of property involved in the commission of such offence.*

2.12 The Committee noted that while drawing up this Bill, National legislations framed by some other countries like Australia, UK, New Zealand etc., have been considered and hence the Bill carries a Universal Jurisdiction for prosecution of pirates alongwith the power of Death penalty as provisioned in Clause 3 (ii) of the Bill. The representative of Ministry of External Affairs during the course of oral evidence held on 18 March, 2020 submitted as under:

—...we are saying death has been caused either by piracy or by attempt to commit piracy. That is why, we have now made it clear.

With death, if such person is committing the act of piracy or an attempt thereof which causes death.”

2.13 The representative of the Ministry of Law and Justice further opined and elaborated on Section 307 IPC in connection with the punishment provisions made in this clause and stated as under:

—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.”

So, punishment, in case of an attempt to murder, it would be an imprisonment for life, as per Section 307.”

2.14 The Committee specifically referred to the instances where problems are faced by the Government in extradition of accused due to death penalty clause in Indian Law. During the course of briefing, the representative of Ministry of External Affairs stated as under:

—We had got some cases earlier where we waived the death penalty in order to enable them to extradite the accused to us. So, we gave a commitment that “Please extradite. We will ensure that the death penalty is not imposed.” We have given that commitment and ensured that extradition has taken place.”

2.15 Elaborating further on the provision of death penalty, the representative of Ministry of External Affairs explained as under,

—...coming back to the issue of death penalty, penalty *per-se* is not abolished under international law. In fact, many of the countries like Singapore, Thailand and Malaysia have death penalty for the crime of piracy in their domestic legislations



and United States though have not abolished death penalty, but the punishment for the crime of piracy is 20 years. It is beyond 14 years life imprisonment.”

—I would just like to submit for the consideration of the Committee that firstly we are not imposing mandatory death penalty because our courts have very clearly said that it will be only in the rarest of rare cases.”

**2.16 The Committee observe that the Bill has been drafted in accordance with the United Nations Convention on the Law of the Sea (UNCLOS) adopted by India in 1982 and ratified in 1995. The Committee further observe that countries such as USA, Australia, Italy and Sri Lanka do not provide for death penalty inspite of passing anti-maritime law similar to India. Under this, if a person while committing an act of Piracy causes or attempts to cause death, he will be punished by death. The Committee also note that the Supreme Court of India has ruled that awarding a mandatory death penalty for an offence violates the Articles 14 and 21 of the Indian Constitution and hence it is arbitrary and unfair in nature. Even the Section 303 of IPC and Section 27(3) of the Arms Act 1959 which provided mandatory death penalty for offenders has been struck down by the Supreme Court.**

**The Committee, however, feel that committing an act of piracy in itself is a crime and to the top it if the act of accused causes a death it will be a double crime in nature and should be viewed very seriously as a crime nothing short of one against humanity.**

**The Committee, therefore, recommend that clause 3 should be reframed to make a provision of punishment for death when death of any person is caused while committing or making an attempt of piracy. It may be reworded as under:**

**„Whoever commits any act of piracy, shall be punished –**

**(i) with imprisonment for life or**

**(ii) with death if such person in committing the act of piracy, or an attempt thereof, causes death of a person and in addition shall also be subject to restitution or forfeiture of property involved in the commission of such offence.**

**(Recommendation No. 9)**

**Clause 4 – Punishment for attempt to commit piracy, etc.**

2.17 This clause contains provision of punishment for the Act of Piracy with an imprisonment for a term extendable to fourteen years with time and reads as under,

*Whoever attempts to commit the offence of piracy or aids or abets or counsels or procures for the commission of such offence shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.*

2.18 The Committee during the course of evidence enquired the Secretary Law (Department of Legal Affairs) whether the work to counsel also includes conspiracy and he replied as under:

—Section 120A of IPC talks of conspiracy. It defines conspiracy. It is like when two or more persons agreed to do or cause to be done, an illegal act, or an act which is not illegal by illegal means, this is criminal conspiracy. The word ‘counsel’ is normally not used in our IPC”.

**2.19 Clause (4) relates to punishment for all concerned persons responsible for an attempt to commit the offence of piracy etc. It includes punishment for everyone either who attempts to commit the offence or aids or abets or counsels or procures for commission of offence.**

**The Committee find that the word „counsels“ is used in the clause for the person/persons who „conspires“ in the crime. Section 120A of the IPC defines conspiracy and specifies that when two or more persons agree to cause an illegal act by illegal means it is „criminal conspiracy“. The Committee, therefore, recommend that the word „counsels“**

**in this clause may be substituted with the word „conspires“ to convey the exact meaning of the purpose to use this word in this Clause.**

**(Recommendation No. 10)**

**Clause 7 – Arrest and seizure of property**

2.20 The Clause empowers the State to arrest and seize property in the high seas. It can only be carried out by warships or military aircraft of the Indian Navy or the ships/aircraft of Indian Coast Guard clearly marked and identifiable as being on Government service and authorized for such purpose, it reads as under,

*(1) On the high seas, or in any other place outside the jurisdiction of India, a pirate ship or aircraft, or any ship or aircraft taken for piracy and under the control of pirates may be seized and the persons on board may be arrested and the property on board may be liable to be seized.*

*(2) A seizure on account of piracy under sub-section (1) may be carried out only by warships or military aircraft of the Indian Navy or the ships or aircraft of the Indian Coast Guard or other ships or aircraft clearly marked and identifiable as being on Government service and authorized for such purpose.*

2.21 Referring to the jurisdiction mentioned in the clause 2 (i) of the Bill, the Committee pointed out towards any other place outside the jurisdiction of India as inappropriate and the jurisdiction of India should be replaced with the words any State. In response thereto, the representative of Border Management, Ministry of Home Affairs during the course of oral evidence before the Committee on 18.3.2020 agreed to the suggestion and clarified that we will substitute India with any State.

2.22 On being asked to further elaborate on the Clause 7 (i) where definition of ship/vessel is concerned, the representative of Ministry of External Affairs explained as under:

–As far as definition of ship or vessel is concerned, that is already taken care of in the definitions aspect where we say ship means vessel or watercraft of every description including non-displacement craft and sea planes used or capable of being used as a means of transportation on water or engaged in any operations at sea”.

2.23 Explaining further, the Secretary of Law Ministry (Department of Legal Affairs) commented as under:

–As per the conventions, the definition of a ship means all the things as brought out by the Secretary, MEA. It is a clear statement as per the international norms. Displacement means it is submerged partially in water and if it does not displace means it is above water. Over craft can also be used. So, all terminologies are in sync with the international definitions”.

2.24 Elaborating further on the provisions in Clause 7(2) the representative of MEA stated that a seizure on account of piracy under sub-section (1) may be carried out only by warships or military aircraft of the Indian Navy or the ships or aircraft of the Indian Coast Guard or other ships or aircraft clearly marked and identifiable as being on Government service and authorised for such purpose.

**2.25 Clause 7 (i) relates to the provision of arrest and seizure of property pertaining to the pirate ship or aircraft. The Committee, however, find that the mention of jurisdiction from where pirates ship/vessels/aircrafts be apprehended is not complete as it denotes the term on „high seas or in any other place outside the jurisdiction of India“. Agreeing to the suggestion made by the Navy and Coast Guard, the Committee desire that in place of „India“ it should be „any State“ to make this clause in consistency with the universal jurisdiction to permit such seizure in waters outside the jurisdiction of any State as well as Article 105 of UNCLOS may be inserted. Similarly, word „vessel“ in between the word „pirate ship“ and word „any vessel“ in line 17 and 18 respectively as the words ship/vessel will encompass every kind of watercraft including non-displacement craft and sea-planes capable of being used as means of transportation on water. The Committee also note that in this clause there is no provision about the procedure for disposal of property after seizure of the ship or the property on board. Therefore, the Committee desire that a sentence „and such ship, vessel, aircraft or property may be disposed off by the order of Court“ should be added after the last word „seized“ in the clause 7 (1) in the Bill.**

**(Recommendation No.11)**

**2.26 Clause 7 (2) empowers the warship or military aircraft of Indian Navy or the ships or aircraft of Indian Coast Guard or other ships or aircrafts on Government service to carry out the seizure. However, it does not mention „boarding“ and there is no specific mention of the role of officers/sailors assigned to ships or aircrafts and also of the members of Indian Coast guard in the process of arrest and seizure of offenders.**

**The Committee, therefore desire that all these should be incorporated and the clause may be amended as under:**

**Clause 7 (2): A boarding and seizure on account of piracy under sub-section (1) may be carried out by officers or sailor assigned to warships or military aircraft of the Indian Navy or members of the Coast Guard assigned to ships or aircraft of the Indian Coast Guard or other authorised personnel of other ships or aircraft clearly marked and identifiable as being on Government service and authorised for such purpose.**

**Moreover, the Bill specifically mentions that only pirate ship or aircraft or pirates may be arrested thus the person committing offence under definition of piracy is only liable for arrest. No scope of suspicion is allowed. Under these circumstances enforcement agencies may not initiate any action based on initial suspicion. The Committee, therefore, strongly recommend that a separate clause 7 (3) may be incorporated to allow a right of visit by Indian Naval Ships or Indian Coast Guard or aircraft based on suspicion of act of piracy. The Clause 7 (3) may be framed as under:**

**(3) Authorized personnel under such section (2) may also exercise the right of visit on reasonable grounds for suspicion that a ship or vessel is engaged in piracy.**

**(Recommendation No.12)**

## **Clause 8 – Designated Court**

2.27 This clause provisions for providing speedy trial of offences under this Act, the Central Government shall, after consulting the Chief Justice of the concerned High Court, by notification, specify as under—

- (i) one or more Courts of Sessions in a State, to be the Designated Court for the purposes of this Act; and*
- (ii) the territorial jurisdiction of each such court.*

## **Clause 9 – Jurisdiction of Designated Courts**

2.28 The Clause covers the territorial jurisdiction of the Designated Courts and states as under,

*(1) The Designated Court shall have jurisdiction to try an offence punishable under this Act where such offence is committed—*

- (i) by a person who is apprehended by, or is in the custody of, the Indian Navy or the Indian Coast Guard, regardless of the nationality or citizenship of such person;*
- (ii) by a person who is a citizen of India or a resident foreign national in India or any stateless person:*

*Provided that where such offence is committed on board a foreign flag ship, such court shall not have jurisdiction to try such offence unless the law enforcement agency or the public authority of the port or place, where the ship is located, has been requested to intervene by the concerned State whose flag the ship is entitled to fly or by the owner of the ship or its master or any other person on board the ship:*

*Provided further that nothing in this sub-section shall apply to a warship or its auxiliary ship or a Government owned ship employed for non-commercial service and is under the control of Government authorities at the time of commission of the offence of piracy.*

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

2.29 A significant aspect of the Bill is that it seeks to allow in-absentia prosecution and trial of a proclaimed offender. On being asked about the nodal agency to ensure prosecution of pirates in case of ‘in-absentia’, the Ministry of Law and Justice in a written reply stated as under:

–Sub-Clause (3) of clause 10 of the Bill provides that a Designated Court may, upon a perusal of a complaint made by an officer of the Central Government, as the case may be, authorized in this behalf, take cognizance of that offence without the accused being

committed to it for trial. Hence, the nodal agency is the authorized officer of the Central Government or the State Government, as the case may be.”

2.30 During the course of oral evidence held on 18.03.2020, the representative of Ministry of Law and Justice elaborated on the subject as under:

“I have already expressed my reservations in this regard for trying a proclaimed offender in-absentia. You see, till the extent he is declared as a proclaimed offender, the answer is yes. But, where a punishment or death penalty has been provided, a person may not be available for reasons a, b or c. But, inflicting a punishment or something in absentia, I think that requires the consideration by the Committee.”

2.31 Explaining further on the reasonable opportunity of hearing to be afforded for a person undergoing in-absentia trial, the Law Secretary during the course of evidence stated as under:

*“The basic rule of natural justice is to afford an opportunity of hearing. Here, the opportunity is being denied for the reason a, b and c and we are presuming that he is a proclaimed offender.*

*After the trial has been held what sort of opportunity would you give to a person?*

*I think that it may not be feasible. Even in the laws relating to terrorism no such clause has been incorporated. It is well and good for the purpose of declaring proclaimed offender and that is settled.”*

2.32 On the issue of legal positions of the trial in-absentia in India and international law, the Ministry of law and Justice submitted its views as under:

**–Trial in absentia** is a criminal proceeding in a court of law in which the person who is subject to it is not physically present at those proceedings. In common law legal system, conviction for a trial in which the accused/defendant is not present to answer the charges is held to be violation of natural justice. Specifically, it violates the principle of natural justice, *audi alteram partem*(no one shall be condemned unheard).

In some legal systems as that of Italy, absentia is a recognized and accepted defensive strategy. Such trials may require the presence of the defendant’s lawyer depending upon the country in which trial is proceeded with.

In *Hussain and Another v. Union of India (2017) 5 SCC 702*, it was observed that timely delivery of justice is a part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice. In the context of speedy conclusion of criminal trials and appeals, a suggestion cropped up as referred in para 23 during hearing of the case relating to remedying the situation of delay in trial on account of absconding of one or the other accused during trial.

In aforesaid context, attention of Hon’ble Court was drawn to an amendment in the Code of Criminal Procedure, 1898 of Bangladesh by way of adding Section 339-B to the following effect :

**“339-B. Trial in absentia.-**(1) *Where after the compliance with the requirements of Section 87 and Section 88, the Court has reason to believe that an accused person has absconded or concealing himself so that he cannot be arrested and produced for trial and there is no immediate prospect of arresting him, the Court taking cognizance of the offence complained of shall, by order published in at least two national daily Bengali Newspapers having wide circulation, direct such person to appear before it within such period as may be specified in the order, and if such person fails to comply with such direction, he shall be tried in his absence.”*

Hon'ble Supreme Court in para 24 observed as under:

*“24. It is for the authority concerned to take cognizance of the above amendment which may considerably reduce delay in cases where one or the other accused absconds during the trial.”*

In the aforesaid context, it may also be observed that presently Section 82 & 83 of the Code of Criminal Procedure (Cr.P.C.) deal with the provisions for proclamation for person absconding and attachment of property of such absconding person. Further, Section 299 of Cr.P.C. deals with record of evidence in absence of accused;

*“299. Record of evidence in absence of accused.- (1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try, or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.*

(2) It may also be noticed that Section 273 of Cr.P.C. provides for evidence to be taken in presence of accused or when his personal attendance is dispensed with, in the presence of his pleader. As such, presence of accused is warranted during the course of trial in order to enable him to answer the charges, failing which entire process may stand vitiated.

As such, presently there does not appear to be any provision relating to trial and sentencing of accused in absentia. It may also be appropriate to notice that Article 21 of the Constitution provides that no person shall be deprived of his life or liberty except according to the procedure established by law.”

2.33 The Ministry of Law and Justice candidly submitted their view about the inclusion of some of the provisions in the Bill as under:



—The matter, as such, needs to be appropriately considered by the Hon'ble Committee in case the provision for trial in absentia needs to be incorporated subject to suitable safeguards. Further, it needs to be considered whether such a mechanism needs to be incorporated in respect of persons, who right from the inception failed to participate during the stage of investigation and remained untraceable or in respect of accused who participated and appeared during the course of investigation and subsequently failed to appear before the competent court of law. The clause, if incorporated, would be subject to procedure/provisions in respect of the offences relating to Anti-Maritime Piracy Bill.”

**2.34 The Committee note that the clause 9 relates to jurisdiction of Designated Court to try an offence punishable under this Act and 9 (i) mentions the name of Indian Navy or the Indian Coast Guard for the purpose of apprehension and custody of pirates but there is no mention of police because state police may also be engaged in the process of apprehension in many cases. The Committee, therefore, desire that alongwith Indian navy and Indian Coast Guard „or the Police“ may be inserted in 9 1 and (ii).**

**The Committee also find that 9 (1) (ii) has two proviso. In view of long discussion with the Committee and as agreed during inter-ministerial discussion the Committee desire that the First proviso may be deleted completely. The Committee, however desire that since second proviso corresponds to Article 95 and 96 of UNCLOS which gives complete immunity to warship and ships owned and operated by the Government from the jurisdiction of any State ordered in the flagged State, it should remain the part of clause 9 (1) (ii) except deleting the word „further“ in view of removal of first proviso and substituting the word „nothing in this sub section“ with provision of this Act.**

**(Recommendation No. 13)**

**2.35 The Committee note that clause 9 (2) makes a provision for trials of proclaimed offender in-absentia. The Committee, however, feel that for the principle of natural justice to prevail, this provision should provide some reasonable opportunity of hearing to the person under trial at some stage prior to execution of his sentence. Further, the Committee also understand that in-absentia trial will not withstand the scrutiny of law being in contradiction to Article 21 of the Indian Constitution which provides that no person shall be deprived of his life or liberty except according to the procedure established by law. This right is available to all persons, citizens as well as non-citizens of India. Moreover, the Committee also note that in-absentia trials are barred in some of the member States of European Union and if the convicted person is brought back to India to serve his sentence, he can again access his right to basic principle of natural justice. The Committee, therefore, desire that in view of well settled principles already laid down by the Hon<sup>ble</sup> Supreme Court on the rights of accused person during the course of trial. Clause 9 (2) should at least incorporate the following suitable safeguards under which the trials in-absentia may be recognized:**

- (i) If the person can be said to have been aware of the trial;**
- (ii) If a counselor took their place at the trial;**
- (iii) If they do not request an appeal in due time; and**
- (iv) If they are to be offered an appeal.**

**Further, the Committee desire that such a mechanism needs to be incorporated in respect of persons who right from the inception failed to participate during the stage of**

**investigation and remained unreachable or in respect of accused who participated and appeared during the course of investigation and subsequently failed to appear before the competent court of law.**

**(Recommendation No. 14)**

2.36 Clause 12 – Provisions as to bail- This clause provides for grant of bail to the accused for the Crimes of Piracy and also an opportunity to the Public Prosecutor to oppose it reads as under:

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

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

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

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

2.37 The Significant aspect of the Bill is that it provides for grant of bail to the accused after hearing both the parties and affording a reasonable opportunity of hearing to the Public Prosecutor to oppose the application for such release.

2.38 On the particular issue of grant of bail to the accused, the representative of Ministry of External Affairs during the course of oral evidence stated as under:

—The second clause clearly ensures that any limitations placed at the level of subordinate courts will not be taken up to the High Court. It is just clarificatory in nature”.

2.39 During the course of evidence held on 29.07.2020 the Committee pointed out that the provision made the clause 12 (2) was of superfluous nature and it ensured that any limitation placed at the level of subordinate courts will not be taken up to the High Court.

The representative of Law Ministry was in consonance with Committee’s observations and submitted as under:

—- I concur with your observation. It appears to be superfluous because the powers of High Court cannot be curtailed in any manner.”

2.40 Agreeing with the Committee's suggestion the representative of Ministry of External Affairs stated that as under:

–we concur with the suggestion. We will delete it.”

**2.41 Clause 12 (i) of the Bill deals with the provision of release on bail of the accused and sub clause (a), provides an opportunity to be given to the Public Prosecutor to oppose such release. In Committee's view the accused may be granted bail only when the court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail and to plead the case, the Public Prosecutor may need sufficient opportunity. The Committee, therefore, desire that the word „an opportunity“ being given to the Public Prosecutor may be substituted with a word „a reasonable opportunity“ for the public prosecutor so that the bail can be opposed appropriately. The Committee, further note that clause 12 (2) is of clarificatory nature as the powers of High Court may not be curtailed in any manner. The Committee, therefore find the clause 12 (2) as of superfluous nature and as agreed by the Ministry of External Affairs and Ministry of Law and Justice, it may be deleted completely.**

**(Recommendation No.15)**

#### **Clause 14 - Provision as to extradition**

2.42 This clause provides for the extradition of offenders and specifies extradition treaties between India and other Convention states and states as under:

*“(1) The offences under this Act shall be deemed to have been included as extraditable offences and provided for in all extradition treaties made by India with Convention State and which extend to and are binding on India on the date of commencement of this Act.*

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

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

2.43 During the course of evidence held, the Committee pointed out the discrepancy in clause 14 (3) wherein the word ‘\_Convention’ was to be required to be placed before the word ‘\_State’ the representative of Ministry of External Affairs replied as under:

–Because of the application of the extradition act, I believe so.”

2.44 Elaborating further, representative of Ministry of External Affairs state,

–We want to remove the word Convention State. We just say State.”

2.45 Agreeing with the Committee’s suggestion the representative of Ministry of External Affairs stated,

–In clause 14, the language will be changed for clarity regarding extradition”.

**2.46 The Committee find that clause 14 specifically relates to the provision to extradition and refers treaties with other countries in clause 14 (2) for the reference of other countries word „Convention State“ has been used. In view of deletion of definition of Convention State in the definition of clause (2) of the Bill the word „Convention State“ used in clause 14 (1) may be substituted with the word „other States“ and similarly for similar terms of „Convention State“ word in sub clause (2) and (3) „States“ and in sub clause (3) „a state“ and „state“ may also be substituted. The Committee also desire that for the word „plying“ used in sub clause (3) word „operating“ may be used to make it more appropriate.**

**(Recommendation No. 16)**

#### **Clause 15 – Protection of action taken in good faith**

2.47 This clause states that no legal proceedings will be undertaken against a person or Central Government for any damage caused due to an act of good faith and reads as under,

*(1) No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.*

*(2) No suit or other legal proceeding shall lie against the Central Government for any damage caused or likely to be caused for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.*

2.48 Elaborating on the provision during the course of briefing, the representative of Ministry of External Affairs stated as under:

–In 15 (2), why the State Government is not mentioned is because any damage caused or likely to be caused is normally only by central forces. The State forces are not going to take action piracy. Therefore, here the damage caused or likely to be caused in good faith, done or intended to be done, that normally lies only with the central forces.”

**2.49 The Committee observe that the crime of piracy itself is of heinous in nature and all the efforts made to combat piracy should be applauded and supported with provisions for legal immunity for acts done in good faith. Although the Committee find that this kind of legal immunity is inherent in the body of main Bill, the Committee strongly recommend that the Security personnel of all State Governments should also be covered along with the Central Government personnel under immunity provisions and no legal proceedings should be undertaken against all of them for acts done in good faith. Accordingly in clause 15 (2) after „against the Central Government“ words „or any State Government“ should be added to protect all the concerned agencies.**

**(Recommendation No. 17)**

**2.50 The Committee, therefore approve, the “Anti-Maritime Piracy Bill 2019” subject to the appropriate inclusion of suggestions/recommendations made by the Committee in the preceding paragraphs of the current Bill or through other appropriate methods like Rules or Standard Operating Procedures (SOPs) to be executed in connection therewith.**

**(Recommendation No. 18)**

**MINUTES OF THE TENTH SITTING OF THE STANDING COMMITTEE ON  
EXTERNAL AFFAIRS HELD ON 16 JANUARY, 2020**

The Committee sat from 1130 hrs. to 1330 hrs. in Committee Room \_D, Parliament House Annexe, New Delhi.

**Present**

**Shri P.P. Chaudhary – Chairperson**

**Members**

**Lok Sabha**

2. Smt. Meenakashi Lekhi
3. Smt. Poonam Mahajan
4. Shri Ritesh Pandey
5. Shri Achyutananda Samanta
6. Shri Manoj Tiwari

**Rajya Sabha**

7. Shri K. J. Alphons
8. Shri P. Chidambaram
9. Shri Swapan Dasgupta
10. Shri Neeraj Shekhar

**Sl. No.            Name & Designation**

**MINISTRY OF EXTERNAL AFFAIRS**

- |    |                          |   |                                |
|----|--------------------------|---|--------------------------------|
| 1. | Shri Shri T.S. Tirumurti | - | Secretary (ER)                 |
| 2. | Ms. Uma Shekar           | - | Additional Secretary (L & T)   |
| 3. | Shri Mayank Joshi        | - | Director (D & ISA)             |
| 4. | Shri Sanjay Rana         | - | Joint Secretary (UNP)          |
| 5. | Shri Robert Shetkingtong | - | Joint Secretary (Parl & Coord) |

**MINISTRY OF DEFENCE**

- |    |                              |   |                              |
|----|------------------------------|---|------------------------------|
| 1. | General Bipin Rawat          | - | Chief of Defence Staff       |
| 2. | Shri Ajay Kumar              | - | Defence Secretary            |
| 3. | Ms. Richa Misra              | - | Joint Secretary (Navy)       |
| 4. | Vice Admiral M A Hampi Holi- | - | Vice Admiral, (DGNO, NHQ)    |
| 5. | Commander Himadri Das        | - | Commander (NHQ)              |
| 6. | IG K R Suresh                | - | DDGI (Ops & CS), Coast Guard |

**MINISTRY OF SHIPPING**

- |    |                           |   |                                 |
|----|---------------------------|---|---------------------------------|
| 1. | Shri Sanjay Bandopadhyaya | - | Additional Secretary (Shipping) |
| 2. | Shri Satinder Pal Singh   | - | Joint Secretary (Shipping)      |

**MINISTRY OF HOME AFFAIRS**

1. Shri Nagendra Nath Sinha - Secretary (BM)

**MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT)**

1. Shri K. Biswal - Additional Secretary

**MINISTRY OF LAW AND JUSTICE (DEPARTMENT OF LEGAL AFFAIRS)**

1. Shri Anoop Kumar Mendiratta Secretary (LA)

**Secretariat**

1. Dr. Ram Raj Rai - Director  
2. Shri Paolienlal Hoakip - Additional Director

2. At the outset, the Chairperson welcomed the Members of the Committee, Chief of Defence Staff, Secretary and other officers of Ministry of External Affairs, Ministry of Defence, Ministry of Shipping, Ministry of Home Affairs and Ministry of Law and Justice (Legislative Department and Legal Affairs) and drew their attention towards Direction 55 (I) of the Directions by the Speaker, Lok Sabha. The Chairperson informed the Committee that the ‘\_Anti Piracy Maritime Bill 2019’, as introduced in Lok Sabha was referred to Standing Committee on External Affairs for examination and Report thereupon.

3. After introductions, the representative of the Ministry of External Affairs briefed the Committee on the ‘\_Anti Maritime Piracy Bill 2019’ and the benefits of enactment of this legislation including the greater degree certainty and clarity in law and legal basis it would provide for prosecuting and punishing persons committing acts of piracy in high seas. The aggregation of the problem of piracy in the areas in immediate proximity to India’s Exclusive Economic Zone was elaborated upon. The purpose for enacting new domestic legislation on piracy for more effective prosecution of pirates apprehended by Indian Navy and the Coast Guard was discussed wherein Indian Courts will have authority of *in absentia* prosecution of pirates.

4. During deliberations, the Members of the Committee *inter-alia* raised various queries related to the subject particularly, MEA’s involvement in piloting the Bill, nomenclature of the Bill, geographical scope of the Bill, substitution of death penalty under clause 3 by life



imprisonment and its ramifications for extradition of the pirates, etc. Other issues discussed included such other national legislations, structural arrangements and institutional framework to deal with the issue of maritime piracy. The witnesses were asked to furnish written replies on some queries to which replies were not readily available.

*The Committee then adjourned*

*(The witnesses then withdrew)*

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

**MINUTES OF THE EIGHTEENTH SITTING OF THE COMMITTEE ON EXTERNAL AFFAIRS HELD ON 18 MARCH, 2020**

The Committee sat from 1500 hrs. to 1705 hrs. in Committee Room B, Parliament House Annexe, New Delhi.

**Present**

**Shri P.P. Chaudhary – Chairperson**

**Members**

**Lok Sabha**

2. Shri Dileshwar Kamait
3. Smt. Preneet Kaur
4. Shri Pakauri Lal Kol
5. Smt. Poonam Mahajan
6. Shri Ritesh Pandey
7. Dr. K.C. Patel
8. Shri Achyutananda Samanta
9. Shri Ram Swaroop Sharma
10. Shri Rebati Tripura
11. Shri N.K. Premchandran

**Rajya Sabha**

12. Shri K. J. Alphons
13. Shri Swapan Dasgupta
14. Shri Shamsher Singh Manhas
15. Shri Abdul Wahad

**MINISTRY OF EXTERNAL AFFAIRS**

S.No.	Name	Designation
1.	Shri Vikas Swarup	Secretary (West)
2.	Shri Indra Mani Pandey	Additional Secretary (D&ISA)
3.	Shri Vikram Doraiswami	Additional Secretary (BM,IO&Sumrnits)
4.	Ms. Uma Sekhar	Additional Secretary (L&T)
5.	Shri Sanjay Rana	Joint Secretary (UNP)
6	Shri Robert Shetkintong	Joint Secretary (Parl & Coord)

**MINISTRY OF HOME AFFAIRS**

<b>S.No.</b>	<b>Name</b>	<b>Designation</b>
1.	Shri Nagendra Nath Sinha	Secretary (Border Management)

**MINISTRY OF SHIPPING**

<b>S.No.</b>	<b>Name</b>	<b>Designation</b>
1.	Shri Sanjay Bandopadhyaya	Additional Secretary
2.	Shri Satinder Pal Singh	Joint Secretary

**MINISTRY OF LAW & JUSTICE (LEGAL AFFAIRS)**

<b>S.No.</b>	<b>Name</b>	<b>Designation</b>
1.	Shri Anoop Kumar Mendiratta	Secretary

**MINISTRY OF LAW & JUSTICE (LEGISLATIVE DEPARTMENT)**

<b>S.No.</b>	<b>Name</b>	<b>Designation</b>
1.	Shri S.R. Mishra	Addl. Secretary (LA)
2.	Shri R.K. Srivastava	Addl. L.A
3.	Shri N.R Battu	JS&LC

**Secretariat**

1. Shri P.C. Koul - Joint Secretary
2. Dr. Ram Raj Rai - Director

2. At the outset, the Chairperson welcomed the Members of the Committee and the representatives of the Ministries of External Affairs, Home Affairs, Law and Justice, Shipping and Defence to the Sitting of the Committee convened to have evidence on the Anti-Maritime Piracy Bill, 2019. After giving cue of the forthcoming deliberations, the Chairperson drew the attention of all the witnesses about the provisions of Direction 55(1) and Direction 58 of Directions by the Speaker, Lok Sabha in order to maintain confidentiality of the proceedings.

3. Thereafter, the representative of Ministry of External Affairs briefed the Committee about their written responses to the List of Points received from the Secretariat and the purpose and the contours of the Anti-Maritime Piracy Bill, 2019.

4. The Committee then took up Bill for clause by clause discussion with the representatives of Ministries/Departments concerned. The major among issues discussed during the evidence inter-alia included incorporation of word Anti in the title of the Bill, the nomenclature of the Bill, jurisdiction of the courts in India, expression of outside the jurisdiction of India, treatment of Exclusive Economic Zone as high seas, United Nations Conventions on the issue, definition of Ship in the Bill, definition of drone under aircraft, definition of small island under high seas, use of word conspire in place of counsel, role of agencies in the Bill, judicial scrutiny in absentia etc. The witnesses also responded to the queries/suggestions of the Members.

5. Before the Sitting concluded, the Chairperson directed the witnesses to compile the suggestions of the Members of the Committee and furnish them with their comments on clauses that remained to be discussed to the Secretariat in tabular format at the earliest.

*The Committee then adjourned*

*(The witnesses then withdrew)*

A verbatim record of the proceedings has been kept.

**MINUTES OF THE NINETEENTH SITTING OF THE STANDING COMMITTEE  
ON EXTERNAL AFFAIRS HELD ON 29 JULY, 2020**

The Committee sat from 1030 hrs. to 1230 hrs. in Main Committee Room, Parliament House Annexe, New Delhi.

**Present**

**Shri P.P. Chaudhary – Chairperson**

**Members**

**Lok Sabha**

2. Smt. Meenakashi Lekhi
3. Shri P.C. Mohan
4. Shri Ritesh Pandey
5. Shri Manoj Tiwari
6. Shri N.K. Premchandran

**Rajya Sabha**

7. Shri K. J. Alphons
8. Shri Swapan Dasgupta
9. Shri Ranjan Gogoi
10. Shri Shamsher Singh Manhas

**Sl. No.            Name & Designation**

**MINISTRY OF EXTERNAL AFFAIRS**

<b>S.No.</b>	<b>Name</b>	<b>Designation</b>
1.	Shri Vikas Swarup	Secretary (West)
2.	Shri Vikram Doraiswami	Additional Secretary (IO & Summits)
3.	Ms. Uma Sekhar	Additional Secretary (L & T)
4.	Shri Sanjay Rana	Joint Secretary (UNP)
5.	Shri Robert Shetkingtong	Joint Secretary (Parl & Coord)

**MINISTRY OF HOME AFFAIRS**

<b>S.No.</b>	<b>Name</b>	<b>Designation</b>
1.	Shri Piyush Goyal	Joint Secretary (BM)

### **MINISTRY OF DEFENCE**

<b>S.No.</b>	<b>Name</b>	<b>Designation</b>
1.	Dr. Ajay Kumar	Defence Secretary
2.	Vice Admiral R. Harikumar	CISC
3.	DG K Natarajan	DGICG
4.	Ms. Richa Mishra	Joint Secretary (AF)
5.	RAdm K.M. Dhir,	Joint Secretary (Navy)

### **MINISTRY OF SHIPPING**

<b>S.No.</b>	<b>Name</b>	<b>Designation</b>
1.	Dr. Sanjeev Ranjan	Secretary
2.	Shri Sanjay Bandopadhyaya	Additional Secretary

### **MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT)**

<b>S.No.</b>	<b>Name</b>	<b>Designation</b>
1.	Shri K. Biswal	Additional Secretary
2.	Shri R.K. Pattanayak	Additional Legislative Counsel

#### **Secretariat**

1. Shri P.C. Koul - Joint Secretary
2. Dr. Ram Raj Rai - Director
3. Shri Paolienlal Hoakip - Additional Director

2. At the outset, the Chairperson welcomed the Members of the Committee, JS (West) and other officers of Ministry of External Affairs, Ministry of Defence, Ministry of Shipping, Ministry of Home Affairs and Ministry of Law and Justice (Legislative Department and Legal Affairs) and drew their attention towards Direction 55 (I) of the Directions by the Speaker, Lok Sabha.

3. After introductions, the representative of the Ministry of External Affairs briefed the Committee on the clauses 2,7 and 12 of the ‘Anti Maritime Piracy Bill, 2019’ and changes

incorporated in the draft Bill as per the suggestions of the Committee made during previous Sittings, consultations held with other concerned Ministries and changes made in definition of Piracy under clause 2 (i) (f) as per guidance of Committee Members. The purpose for enacting new changes in the various Clauses of the Bill were in accordance with Articles of United Nations Convention on the Law of the Sea (UNCLOS) that has been accepted by other Nations for drafting of their own Anti-Piracy Laws.

4. During deliberations, the Members of the Committee *inter-alia* raised various queries related to the subject particularly, various Articles of UNCLOS, in absentia trials of pirates, involvement of Navy and Coast Guard in apprehension of pirates etc. Other issues discussed included such other national legislations, Standard Operating Procedures (SOPs) and institutional framework to deal with the issue of maritime piracy. The witnesses were asked to furnish written replies on some queries to which replies were not readily available.

*The Committee then adjourned*

*(The witnesses then withdrew)*

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

**MINUTES OF THE SITTING OF THE COMMITTEE ON EXTERNAL AFFAIRS**  
**(2020-21) HELD ON 11 JANUARY, 2021**

The Committee sat on Monday, 11 January, 2021 from 1630hrs. to 1700 hrs. in Committee Room \_D' Parliament House Annexe, New Delhi.

**PRESENT**

1. **Shri P.P. Chaudhary, Chairperson**

**Lok Sabha**

2. Kunwar Pushpendra Singh Chandel
3. Smt. Meenakashi Lekhi
4. Smt. Goddeti Madhavi
5. Shri P.C. Mohan
6. Dr. K.C Patel
7. Shri Rebati Tripura

**Rajya Sabha**

8. Shri K. J. Alphons
9. Shri Swapan Dasgupta
10. Shri Shamsher Singh Manhas
11. Shri Brijlal

**Secretariat**

1. Dr. Ram Raj Rai - Director
2. Md. Aftab Alam - Additional Director
3. Shri Paolienlal Haokip - Additional Director

2. At the outset, the Chairperson welcomed the Members to the Sitting of the Committee.
3. The Committee took up for consideration the draft Report on \_The Anti-Maritime Piracy Bill, 2019'.
4. The Chairperson invited the Members to offer their suggestions, if any, for incorporation in the draft Report. The Members suggested some minor modifications. The Committee adopted the draft Report with the minor modifications.
5. The Committee then authorized the Chairperson to finalize the Report incorporating the suggestions made by the members and present the same to Parliament.

*The Committee then adjourned.*



**Bill No. 369 of 2019**

THE ANTI-MARITIME PIRACY BILL, 2019

A

BILL

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

WHEREAS India is a party to the United Nations Convention on the Law of the Sea adopted by the United Nations on the 10th December, 1982 and has ratified the same on the 29th June, 1995;

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

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

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Anti-Maritime Piracy Act, 2019.

Short title,  
commencement  
and  
application.

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

(3) The provisions of this Act shall apply to all parts of the sea adjacent to and beyond the limits of Exclusive Economic Zone of India.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—
- (a) "Code" means the Code of Criminal Procedure, 1973; 2 of 1974.
- (b) "Convention" means the United Nations Convention on the Law of the Sea, 1982;
- (c) "Convention State" means a State party to the United Nations Convention on the Law of the Sea, 1982; 10
- (d) "Designated Court" means a Court of Session specified as such under section 8;
- (e) "notification" means a notification published in the Official Gazette; (f) "piracy" means—
- (i) any illegal act of violence or detention or any act of depredation committed for private ends by the crew or any passenger of private ship or a private aircraft and directed—
- (A) on the high seas against another ship or aircraft or against person or property on board such ship or aircraft;
- (B) against a ship, aircraft, person or property in a place outside the jurisdiction of India; 20
- (ii) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts, making it a pirate ship or aircraft;
- (iii) any act of inciting or of intentionally facilitating an act described in sub-clause (i) or sub-clause (ii); or 25
- (iv) any act which is deemed piratical under the international law including customary international law;
- (g) "pirate ship or aircraft" means a ship or aircraft which—
- (i) is intended by the person in dominant control to be used for the purposes of committing any of the acts referred to in sub-clauses (i) to (iv) of clause (f); or 30
- (ii) has been used to commit any such act, referred to in sub-clause (i) of this clause, so long as it remains under the control of the person guilty of that act.
- (h) "stateless person" means a person who is not considered as a national by any country by virtue of its laws. 35
- (2) The words and expressions used in this Act and not defined but defined in the Indian Penal Code, the Code or the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, shall have the meanings respectively assigned to them in such Code or the Act. 45 of 1860. 80 of 1976.
- (3) Any reference in this Act to a law which is not in force in any area, shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area. 40

3. Whoever commits any act of piracy, shall be punished— (i) with imprisonment for life; or  
 (ii) with death, if such person in committing the act of piracy causes death or an attempt thereof,  
 5 and in addition shall also be subject to restitution or forfeiture of property involved in the commission of such offence. Punishment for piracy.
4. Whoever attempts to commit the offence of piracy or aids or abets or counsels or procures for the commission of such offence shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine. Punishment for attempt to commit piracy, etc.
- 10 5. Whoever participates or organises or directs other person to participate in an act of piracy shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine. Punishment for organising, directing others to participate in an act of piracy.
6. Notwithstanding anything contained in the Code, the Central Government may, for the purposes of this Act, by notification, confer the powers of arrest, investigation and prosecution of any person exercisable by a police officer under the Code on any of its  
 15 Gazetted officer or such officer of a State Government. Conferment of power of arrest, investigation, etc.
7. (1) On the high seas, or in any other place outside the jurisdiction of India, a pirate ship or aircraft, or any ship or aircraft taken for piracy and under the control of pirates may be seized and the persons on board may be arrested and the property on board may be liable to  
 20 be seized. Arrest and seizure of property.
- (2) A seizure on account of piracy under sub-section (1) may be carried out only by warships or military aircraft of the Indian Navy or the ships or aircraft of the Indian Coast Guard or other ships or aircraft clearly marked and identifiable as being on Government service and authorised for such purpose.
- 25 8. For the purposes of providing speedy trial of offences under this Act, the Central Government shall, after consulting the Chief Justice of the concerned High Court, by notification, specify— Designated Court.
- (i) one or more Courts of Sessions in a State, to be the Designated Court for the purposes of this Act; and
- 30 (ii) the territorial jurisdiction of each such court.
9. (1) The Designated Court shall have jurisdiction to try an offence punishable under this Act where such offence is committed— Jurisdiction of Designated Court.
- (i) by a person who is apprehended by, or is in the custody of, the Indian Navy or the Indian Coast Guard, regardless of the nationality or citizenship of such person;
- 35 (ii) by a person who is a citizen of India or a resident foreign national in India or any stateless person:
- Provided that where such offence is committed on board a foreign flag ship, such court shall not have jurisdiction to try such offence unless the law enforcement agency or the public authority of the port or place, where the ship is located, has been  
 40 requested to intervene by the concerned State whose flag the ship is entitled to fly or by the owner of the ship or its master or any other person on board the ship:
- Provided further that nothing in this sub-section shall apply to a warship or its auxiliary ship or a Government owned ship employed for non-commercial service and

is under the control of Government authorities at the time of commission of the offence of piracy.

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

Trial of offences by Designated Court.

**10.** (1) Notwithstanding anything contained in the Code,— 5

(a) all offences under this Act shall be tried by the Designated Court notified as such under sub-section (1) of section 8;

(b) where a person accused of, or suspected of, the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code, such Magistrate may authorise the detention of such person in such custody, as he thinks fit, for a period not exceeding fifteen days in the whole, where such Magistrate is a Judicial Magistrate, and seven days in the whole where such Magistrate is an Executive Magistrate: 10

Provided that where such Magistrate considers—

(i) at the time when such person is forwarded to him under this sub-section; or 15

(ii) at any time before the expiry of the period of detention authorised by him,

that the detention of such person is not necessary, he shall order such person to be forwarded to the Designated Court having jurisdiction. 20

(2) The Designated Court may exercise, in relation to the person forwarded to him under clause (b) of sub-section (1), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code, in relation to an accused person in such case who has been forwarded to him under that section.

(3) A Designated Court may, upon a perusal of a complaint made by an officer of the Central Government or the State Government, as the case may be, authorised in this behalf, take cognizance of that offence without the accused being committed to it for trial. 25

(4) While trying an offence under this Act, a Designated Court may also try an offence under any other law, other than an offence under this Act, with which the accused may be charged at the same trial under the Code. 30

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

Presumption.

**11.** Where a person is accused of having committed an offence punishable under this Act and, if,—

(a) the arms, ammunitions, explosives and other equipments are recovered from 35 the possession of the accused, and there are reasonable grounds to believe that such arms, ammunitions, explosives or other equipments of similar nature were used or intended to be used in the commission of the offence;

(b) there is evidence of use of force, threat of force or any other form of intimidation caused to the crew or passengers of the ship in connection with the 40 commission of the offence; or

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

then, the Designated Court shall presume, unless the contrary is proved, that the accused person had committed such offence.

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

Provisions as to bail.

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

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

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

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

Application of Code in proceedings before Designated Court.

**14.** (1) The offences under this Act shall be deemed to have been included as extraditable offences and provided for in all extradition treaties made by India with Convention State and which extend to and are binding on India on the date of commencement of this Act.

Provision as to extradition.

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

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

**15.** (1) No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

Protection of action taken in good faith.

(2) No suit or other legal proceeding shall lie against the Central Government for any damage caused or likely to be caused for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

## STATEMENT OF OBJECTS AND REASONS

In today's times, the menace of piracy is growing. The Gulf of Aden, which separates Somalia and Yemen and connects the Arabian Sea to the Red Sea and through the Suez Canal to the Mediterranean Sea, has seen a major spurt in attacks by pirates operating from Somalia since 2008. This route is used by about 2000 ships each month for trade between Asia and Europe and East coast of Africa. With the enhanced naval presence in the Gulf of Aden, pirates shifted their area of operations eastwards and southwards. This led to a flurry of piracy incidents towards the western coast of India as well.

2. India does not have a separate domestic legislation on piracy. The provisions of the Indian Penal Code pertaining to armed robbery and the Admiralty jurisdiction of certain courts have been invoked in the past to prosecute pirates apprehended by the Indian Navy and the Coast Guard but in the absence of any specific law relating to the offence of maritime piracy in India, problems are being faced in ensuring effective prosecution of the pirates.

3. Given the increasing incidences of piracy, including within India's Exclusive Economic Zone, and the increasing number of pirates apprehended by the Indian Naval forces, the need is felt for a comprehensive domestic legislation on piracy, which is an outcome to the commitment made by India by signing the United Nations Convention on the Law of the Sea (UNCLOS) in the year 1982 and ratified in the year 1995.

4. In view of the above, it has been decided to bring about a domestic anti-piracy legislation for the prosecution of persons for piracy-related crimes and to promote the safety and security of India's maritime trade including the safety of our vessels and crew members.

5. Accordingly, the Anti-Maritime Piracy Bill, 2019, *inter alia*, provides for the following.

(a) to make the provisions of the proposed legislation applicable to all parts of the sea adjacent to and beyond the limits of Exclusive Economic Zone of India;

(b) to make the act of piracy on high seas as an offence punishable with imprisonment for life or with death;

(c) to provide for punishment for attempt to commit offence of piracy or being an accessory to the commission of offence;

(d) to provide for presumption of guilt in case certain conditions are satisfied;

(e) to make the offence extraditable;

(f) to enable the Central Government, in consultation with the Chief Justice of the concerned High Court, to specify certain courts as Designated Courts for speedy trial of offences of piracy under the proposed legislation.

6. The Bill seeks to achieve the above objectives.

NEW DELHI;  
The 2nd December, 2019.

DR. S. JAISHANKAR

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to make special provisions for repression of piracy on high seas and to provide for punishment for the offence of piracy and for matters connected therewith or incidental thereto.

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*(Dr. S. Jishankar, Minister of External Affairs)*

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