

Bill No. 227 of 2015

THE MERCHANT SHIPPING (AMENDMENT) BILL, 2015

A

BILL

further to amend the Merchant Shipping Act, 1958

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

1. (1) This Act may be called the Merchant Shipping (Amendment) Act, 2015.

Short title
and com-
mencement.

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

44 of 1958. 5 **2.** In section 3 of the Merchant Shipping Act, 1958 (hereinafter referred to as the principal Act),—

Amendment
of section 3.

(a) after clause 14, the following clause shall be inserted, namely:—

‘(14A) “gross tonnage” and “net tonnage” shall mean respectively the gross tonnage and the net tonnage of a ship as determined in accordance with the provisions of the International Convention on Tonnage Measurement of Ships, 1969;’;

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(b) clause (58) shall be omitted.

Insertion of
new Part
XBA.

3. After Part XB of the principal Act, the following Part shall be inserted, namely:—

‘PART XBA

CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE

Application
of this Part.

352RA. This Part applies to—

(a) pollution damage caused due to escape or discharge of bunker oil by every Indian vessel wherever it is and every foreign vessel while it is—

(i) within the territory including territorial sea of India; and

(ii) at a port or a place in India or within the territorial waters of India or any marine areas adjacent thereto over which India has, or may hereafter have, exclusive jurisdiction in regard to control of marine pollution under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 or any other law for the time being in force;

(b) preventive measures, wherever taken, to prevent or minimise such damage:

Provided that this Part shall not apply to warships, naval auxiliary or other vessels owned or operated by the Government and used, for the time being, only on Government non-commercial service:

Provided further that the Bunker Convention shall not apply to pollution damage as defined in clause (f) of section 352H relating to Civil Liability Convention, whether or not compensation is payable in respect of it under that Convention.

Definitions.

352RB. In this Part, unless the context otherwise requires,—

(a) “Bunker Convention” means the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended from time to time;

(b) “bunker oil” means any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of a ship, and any residues of such oil;

(c) “Civil Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage, 1992, as amended from time to time;

(d) “incident” means any occurrence, or series of occurrences having the same origin which causes pollution damage or creates a grave and imminent threat of causing such damage;

(e) “person” means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent sub-divisions;

(f) “pollution damage” means,—

(i) loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur:

Provided that compensation for impairment of the environment other than loss or profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and

(ii) the costs of preventive measures and further loss or damage caused by such preventive measures;

(g) “preventive measures” means any reasonable measures taken by any person after the occurrence of incident to prevent or minimise the pollution damage;

(h) “registered owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning such ship:

Provided that in the case of a ship owned by a State and operated by a company which in that State is registered as ship's operator, "registered owner" means such company;

(i) "ship" means any seagoing vessel and sea borne craft of any type whatsoever;

5 (j) "ship owner" means the owner including the registered owner, bareboat charterer, manager and operator of the ship;

(k) "State of the ship's registry" means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State flag that ship is entitled to fly;

10 (l) "vessel" includes ship.

352RC. (1) Save as otherwise provided in section 352RD,—

(a) where pollution damage is caused due to discharge or escape of bunker oil on board or originating from a vessel, the owner of the vessel shall be liable—

15 (i) for any pollution damage caused outside the vessel by contamination resulting from the discharge or escape;

(ii) for the cost of any reasonable measures taken for the purpose of preventing or minimising any pollution damage so caused or likely to be caused; and

(iii) for any damage caused by any such preventive measures so taken:

20 Provided that where an incident consists of a series of occurrences having the same origin, the liability shall attach to the owner at the time of the first of such occurrences and where more than one person is liable, their liability shall be joint and several;

25 (b) where there arises a grave and imminent threat of damage being caused outside a vessel, the owner of the vessel shall be liable for the cost of any measures reasonably taken to prevent or minimise any such damage.

(2) Where any incident involving two or more vessels occurs resulting in pollution damage, the owners of all vessels involved in such incident shall, unless the damage is reasonably separable, be jointly and severally liable for such damage.

30 (3) With respect to ships owned by the Government or the Government of any country and used for commercial purposes, the Government or the Government of each of such country shall be liable for pollution damage under this part.

352RD. (1) No liability for pollution damage shall be incurred by the owner of a vessel under this Part, if he proves that such damage,—

35 (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) was wholly caused by any act or omission done with an intent to cause such damage by any person other than an employee or agent of the owner; or

40 (c) was wholly caused by the negligence or other wrongful act of the Government or other authority responsible for maintenance of lights or other navigational aids in the exercise of such function.

45 (2) If the owner of a vessel proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, then, he shall be wholly or partially exonerated from his liability to such person.

352RE. The owner of the vessel shall be entitled to limit his liability under this Part, in respect of any one or more incident, in accordance with the provisions of Part XA:

Provided that the owner shall not be entitled to limit his liability if it is proved that the incident causing pollution damage occurred as a result of his personal act or

Liability for
bunker oil
pollution.

Exemption
from liability.

Right of
owner to
limitation of
liability.

omission, committed or made with an intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Determina-
tion of
limitation of
liability.

352RF. (1) Where the owner of a vessel has or is alleged to have incurred a liability under section 352RC, he may make an application to the High Court for determination of limitation of his liability in accordance with the provisions contained in Part XA in such form and manner as may be prescribed. 5

(2) After receiving the application under sub-section (1), the High Court shall determine the amount of owner's liability in accordance with the provisions contained in Part XA and direct him to deposit such amount with the High Court.

Consolidation
of claims and
distribution of
amount.

352RG. The High Court shall consolidate all claims against the owner of the vessel who has deposited the amount under section 352RF or his insurer and shall distribute the amount rateably amongst the claimants in accordance with the provisions of Part XA. 10

Extinguish-
ment of right
to claim.

352RH. The right to claim compensation in respect of an incident under this Part shall extinguish if such claim is not made within a period of three years from the date of occurrence of damage: 15

Provided that in no case, such claim may be made after six years from the date of incident which caused such damage:

Provided further that where such incident consists of a series of occurrences, the period of six years shall run from the date of the first of such occurrence. 20

Maintenance
of compul-
sory
insurance or
other
financial
security.

352R-I. (1) Every registered owner of a vessel with more than one thousand gross tonnage shall, for the purpose of covering his liability for pollution damage under this Part, be required to maintain compulsory insurance coverage or such other financial security, as may be prescribed, for an amount equivalent to his liability as determined in accordance with the provisions of Part XA. 25

(2) Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the registered owner's liability for pollution damage and in such a case, the insurer or such person may invoke defences (other than bankruptcy or winding up of the owner) which the owner would have been entitled to invoke, including limitation of liability pursuant to section 352RF: 30

Provided that where the owner is not entitled to limitation of liability under section 352 RF, the insurer or such person may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained under sub-section (1): 35

Provided further that the insurer or such person may invoke the defence that the pollution damage resulted from the wilful misconduct of the owner but shall not invoke any other defence which such insurer or person might have been entitled to invoke in proceedings brought by the owner against such insurer or person:

Provided also that the insurer or such person shall have the right to require the owner to be joined in such proceedings. 40

Issue of
certificate.

352R-J. (1) In respect of every vessel which maintains insurance or other financial security under section 352R-I, the Director General shall issue a certificate in such form, containing such particulars and subject to such conditions, as may be prescribed.

(2) On an application made by the owner or agent of any foreign vessel, the Director General may issue a certificate in respect of such foreign vessel on production of satisfactory evidence of maintenance of insurance or other financial security as required under section 352R-I. 45

(3) Every certificate under sub-sections (1) and (2) may be issued on payment of such fee as may be prescribed. 50

(4) Every certificate issued under sub-sections (1) and (2) shall be renewed after its expiry in such manner and on payment of such fee as may be prescribed.

5 352RK. (1) No vessel shall enter or leave or attempt to enter or leave any port or place to which this Part applies, unless it carries on board a certificate issued under section 352RJ.

Ban on entering or leaving port without certificate.

(2) Any certificate issued by a competent authority in any country outside India to a ship registered in that country or any certificate issued by a competent authority of any country which is a contracting party to the Bunker Convention to any ship wherever registered, shall be accepted at any port or place in India as if it were issued under this Act.

(3) No Port Officer shall permit inward entry or outward clearance to any vessel to which sub-section (1) applies unless the master of the vessel produces the certificate referred to in sub-section (1).

15 352RL. Nothing contained in this Part shall prejudice the right of recourse that the owner of the vessel may have against any other person in respect of his liability.

Right of recourse.

352RM. (1) Any decision given by a court under sub-section (2) of section 352 RF shall be recognised in the country where the cause of action has arisen, except where—

Recognition and enforcements of decision of court.

(a) the judgment was obtained by fraud; or

20 (b) the owner or the insurer or the person providing financial security who is a party to the proceedings was not given reasonable notice and a fair opportunity to present his case.

(2) A judgment recognised under sub-section (1) shall be enforceable in each of the affected country as soon as the procedures required in that country have been complied with:

25 Provided that such procedure shall not permit the merits of the case to be reopened.

352RN. (1) The Central Government may make rules to carry out the purposes of this Part.

Power to make rules.

30 (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner of making application under sub-section (1) of section 352 RF;

(b) the other financial securities under sub-section (1) of section 352R-I;

35 (c) the form of the certificate, the particulars it may contain and the conditions subject to which it may be issued under sub-section (1) of section 352RJ;

(d) the fee for issue of certificate under sub-section (3) of section 352RJ;

(e) the manner of renewal of certificate and the fees under sub-section (4) of section 352RJ.’.

40 **4.** For section 390 of the principal Act, the following sections shall be substituted, namely:—

Substitution of new sections 390, 390A, 390B, 390C, 390D, 390E, 390F, 390G, 390H and 390-I for section 390.

‘390. This Part shall apply to the wrecks located within the territory of India including the territorial sea or any marine areas adjacent thereto over which India has, or may hereafter have, exclusive jurisdiction under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976:

Application of this Part to wrecks.

Provided that this Part shall not apply to,—

(a) any measures taken under the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, as amended from time to time;

(b) any warship or other ship owned or operated by the Government for non-commercial service. 5

Definitions.

390A. In this Part, unless the context otherwise requires,—

(a) “authority” means the Director General or any person authorised by him;

(b) “affected country” means the country in whose Convention area the wreck is located; 10

(c) “coasts” include the coasts of creeks and tidal waters;

(d) “Convention” means the Nairobi Convention on the Removal of Wrecks, 2007, as amended from time to time;

(e) “Convention area” means the exclusive economic zone of a State Party established in accordance with the international law or, if a State Party has not established such zone, an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than two hundred nautical miles from the baselines from which the breadth of its territorial sea is measured; 15

(f) “hazard” means any condition or threat that— 20

(i) poses a danger or impediment to navigation; or

(ii) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of India or any other country;

(g) “maritime casualty” means a collision of ships, stranding or other incident of navigation or other occurrence on board a ship or external to it, resulting in material damage or imminent threat of material damage to a ship or its cargo; 25

(h) “operator of the ship” means the owner of the ship or any other organisation or person including the manager or the bareboat charterer who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibilities established under the International Safety Management Code, as amended from time to time; 30

(i) “receiver of wreck” means the person appointed as such under section 391;

(j) “registered owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship at the time of the maritime casualty; 35

Provided that in the case of a ship owned by a State and operated by a company which in that State is registered as the operator of the ship, registered owner shall mean such company; 40

(k) “related interests”, in relation to the interests of India directly affected or threatened by a wreck, means—

(i) maritime coastal, port and estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned; 45

(ii) tourist attractions and other economic interests of the areas concerned;

(iii) the health of the coastal population and the well being of the area concerned, including conservation of marine living resources and of wildlife; and

(iv) offshore and underwater infrastructure; 50

(l) “removal” means any form of prevention, mitigation or elimination of the hazard created by a wreck, and the expressions “remove”, “removed” and “removing” shall be construed accordingly;

5 (m) “ship” means a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources;

(n) “State of the ship’s registry” means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State, 10 whose flag the ship is entitled to fly;

(o) “wreck”, in relation to a maritime casualty, includes—

(i) a sunken or stranded ship; or

(ii) any part of a sunken or stranded ship, including any object or goods or cargo that is or has been on board such a ship; or

15 (iii) any object or goods or cargo that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or

(iv) a ship that is in distress or is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken;

20 (v) a vessel abandoned without hope or intention of recovery.

Explanation.—For the purpose of this sub-clause, any question as to whether the measures adopted to assist the ship or any property in danger are effectively being taken or not shall be decided by the Director General.

25 390B. (1) When any Indian ship, has been involved in a maritime casualty resulting in a wreck in any area to which this Part applies, the master and the operator of the ship shall, without any delay, report such incident to the receiver of wreck and the office of the Director General.

Duty to report wrecks.

30 (2) When an Indian Ship has been involved in a maritime casualty resulting in a wreck in a Convention area of any country, the master and the operator of that ship shall, without any delay, report such incident to the affected country in such manner as may be required by that country and shall also report such incident to the Director General.

35 (3) When any ship other than Indian ship has been involved in a maritime casualty resulting in a wreck in any area to which this Part applies, the master and the operator of the ship shall, without any delay, report such incident to the receiver of wreck and the office of the Director General.

40 (4) The report referred to in sub-sections (1) and (3) shall provide the name and the principal place of business of the owner or the operator of the ship and all relevant information necessary for the receiver of wreck or the Director General to determine whether the wreck poses a hazard as per the provisions of section 390C or not, including the following information, namely:—

(a) the precise location of the wreck;

(b) the type, size and construction of the wreck;

(c) the nature of the damage to, and the condition of, the wreck;

45 (d) the nature and quantity of the cargo, in particular any hazardous and noxious substances; and

(e) the amount and types of oil, including bunker oil and lubricating oil, on board.

(5) The Director General may, if he considers necessary, direct the receiver of wreck or any other person or authority to give report on details of the wreck.

Determina-
tion of
hazard.

390C. For determining whether a wreck poses a hazard, the following criteria shall be taken into account, namely:—

- (a) the type, size and construction of the wreck;
- (b) depth of the water in the area;
- (c) tidal range and currents in the area; 5
- (d) proximity to protected areas including coral reefs and other areas as notified by the Government;
- (e) particularly sensitive sea areas identified and, as appropriate, designated in accordance with guidelines adopted by the International Maritime Organisation, or a clearly defined area of the exclusive economic zone where special mandatory measures have been adopted in accordance with requirements of the United Nations Convention on the Law of the Sea, 1982; 10
- (f) proximity of shipping routes or established traffic lanes;
- (g) traffic density and frequency;
- (h) type of traffic; 15
- (i) nature and quantity of the wreck's cargo, the amount and types of oil (such as bunker oil and lubricating oil) on board the wreck and, in particular, the damage likely to result if the cargo or oil is released into the marine environment;
- (j) vulnerability of port facilities;
- (k) prevailing meteorological and hydrographical conditions; 20
- (l) submarine topography of the area;
- (m) height of the wreck above or below the surface of the water at lowest astronomical tide;
- (n) acoustic and magnetic profiles of the wreck;
- (o) proximity of offshore installations, pipelines, telecommunication cables and similar structures; 25
- (p) proximity of tourist spots and heritage locations; and
- (q) any other circumstances that might necessitate the removal of the wreck.

Locating and
marking of
wrecks.

390D. (1) The Director General may, if he considers necessary, give directions to a receiver of wreck or any other person or authority including the Director General of Light House or the Port Authority or a Maritime Board or Indian Coast Guard, as the case may, within their respective jurisdiction to locate and mark the wreck. 25

(2) When a wreck has been determined to be a hazard under section 390C, it shall be the duty of the owner or the operator of such a ship to immediately mark the wreck at his or its own cost in such manner as may be prescribed and to maintain such marking until the wreck is removed. 30

(3) The cost for locating and marking the ship shall be borne by or recovered from the registered owner.

Measures to
facilitate the
removal of
wrecks.

390E. (1) When it is determined that the wreck constitutes a hazard, the receiver of wreck shall inform the fact to the Director General who shall— 35

(a) at once, inform the Government of the State of the ship's registry and the registered owner of the ship; and

(b) proceed to consult the Government of the State of the ship's registry and other countries affected by the wreck regarding measures to be taken in relation to such wreck. 40

(2) The registered owner of the ship or, as the case may be, the operator of the ship shall remove such wreck which has been determined to constitute a hazard:

Provided that where any dispute arises as to whether the wreck constitutes a hazard or not, the decision of the Director General to whom such dispute may be referred shall be final and binding on all parties.

(3) When a wreck has been determined to constitute a hazard, the registered owner of the ship or any interested person shall provide the Director General or the receiver of wreck or any person or authority so authorised with the evidence of insurance or other financial security maintained by him in accordance with the provisions of section 390G.

(4) The receiver of wreck shall, having regard to the nature of the hazard, set such time limit as may be prescribed for the owner of the ship or its operator to remove the wreck.

(5) If the owner of the ship or its operator or agent does not remove the wreck within the time set under sub-section (4), the receiver of wreck may, at the expense of such owner or operators, remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment and the wreck or any sale proceeds derived from such wreck shall become the property of the Central Government.

(6) In circumstances where immediate action is required and the receiver of wreck has informed the owner of the ship or the operator accordingly, he may, at the expense of such owner or operator, remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

390F. (1) The registered owner shall be liable for the costs of locating, marking and removing the wreck under this Part unless he proves that the maritime casualty which caused the wreck—

Liability of owner.

(a) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) was wholly caused by act or omission done with an intent to cause damage by a third party; or

(c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

(2) Nothing contained in this Part shall affect the right of the registered owner to limit his liability in accordance with the provisions of section 352B.

(3) Nothing contained in this Part shall prejudice any right of recourse available to the registered owner against third parties.

390G. (1) Every registered owner of an Indian ship of three hundred gross tonnages and above shall, for the purpose of covering his liability under this Part, be required to maintain compulsory insurance coverage or such other financial security, as may be prescribed.

Maintenance of insurance or other financial security.

(2) Every owner or operator of a ship other than an Indian ship of three hundred gross tonnages and above, while it is in the area to which this Part applies, shall maintain insurance coverage or other financial security to cover his liability under the Convention and shall carry on board a certificate attesting that such insurance or other financial security is in force in accordance with the provisions of the Convention.

(3) The certificate referred to in sub-section (2) shall, in case the ship is—

(a) an Indian ship, be issued by the Authority;

(b) registered in a Convention country other than India, be issued by or under the authority of the Government of that country; and

(c) registered in a country which is not a Convention country, be a certificate issued or certified by the appropriate authority authorised by any Convention country.

(4) Any ship found contravening the provisions of sub-section (2) shall be liable to be detained by the Authority. 5

(5) Any claim for costs arising under this Part may be brought directly against the insurer or other person providing financial security for the registered owner's liability and in such a case, the insurer or such person may invoke defences (other than bankruptcy or winding up of the registered owner) which the registered owner would have been entitled to invoke, including limitation of liability as provided under section 352B: 10

Provided that where the registered owner is not entitled to limitation of liability under section 352B, the insurer or such person may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained under sub-section (1):

Provided further that the insurer or such person may invoke the defence that the maritime casualty resulted from the wilful misconduct of the registered owner but shall not invoke any other defence which such insurer or person might have been entitled to invoke in proceedings brought by the registered owner against such insurer or person: 15

Provided also that the insurer or such person shall have the right to require the registered owner to be joined in such proceedings. 20

Exception to liability.

390H. (1) The registered owner shall not be liable under this Part for meeting the costs referred to in section 390F if, and to the extent that, liability for such costs is in conflict with—

(a) any other Part or provisions of this Act; 25

(b) the provisions of the Civil Liability for Nuclear Damage Act, 2010; or 38 of 2010.

(c) any other applicable or binding international legal instrument which India adopts.

(2) Where measures are taken under this Part, to the extent such measures are construed to be salvage under the provisions of section 402, the provisions of said section 402 shall apply for the purposes of remuneration or compensation payable to salvors. 30

Explanation.— For the removal of doubts, it is hereby clarified that the provisions of this section shall be construed harmoniously with the provisions of the Indian Ports Act, 1908 and in case of any ambiguity or conflict thereof, the provisions of said Indian Ports Act, 1908 shall prevail. 35 15 of 1908.

Extinguishment of right to claim recovery of costs.

390-I. Any claim for recovery of costs for locating and marking of the ship under sub-section (2) of section 390D shall be made within a period of three years from the date of determination of the hazard:

Provided that in no case such claim shall be made after six years from the date of the maritime casualty that resulted in the wreck: 40

Provided further that where the maritime casualty consists of a series of occurrences, the six year period shall run from the date of first occurrence. .'

Amendment of section 391.

5. In section 391 of the principal Act, in sub-section (1), for the words "such local limits", the words "such limits" shall be substituted. 45

Amendment of section 395.

6. In section 395 of the principal Act, for the words "within any local limits", the words "within the limits" shall be substituted.

Amendment of section 396.

7. In section 396 of the principal Act, for the words "within the local limits", the words "within the limits" shall be substituted.

<p>8. In section 398 of the principal Act, for clause (a), the following clause shall be substituted, namely:—</p>	<p>Amendment of section 398.</p>
<p>“(a) it poses a hazard within the meaning of clause (f) of section 390A;”.</p>	
<p>9. In section 399 of the principal Act, in sub-section (2), for the words “are found on or near the coasts of India”, the words “are found in any area to which this Part applies” shall be substituted.</p>	<p>Amendment of section 399.</p>
<p>10. In section 400 of the principal Act, in clauses (b) and (d), for the words “on or near the coasts of India”, the words “in any area to which this Part applies” shall be substituted.</p>	<p>Amendment of section 400.</p>
<p>11. For section 402 of the principal Act, the following sections shall be substituted, namely:—</p>	<p>Substitution of new sections 402, 402A, 402B, 402C, 402D, 402E, 402F, 402G, 402H, 402-I and 402J for section 402.</p>
<p>‘402. This Part shall apply to a judicial or arbitral proceedings relating to salvage operations in respect of a vessel or any other property which are instituted in India:</p>	<p>Application of this part to salvage.</p>
<p>Provided that this Part shall not apply to the fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of seabed mineral resources:</p>	
<p>Provided further that this Part shall also not apply to warships or other non-commercial vessels owned or operated by the Government which are entitled, at the time of salvage operations, to sovereign immunity.</p>	
<p>402A. In this Part, unless the context otherwise requires,—</p>	<p>Definitions.</p>
<p>(a) “damage to the environment” means substantial physical damage to human health or to marine life of resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents;</p>	
<p>(b) “payment” means any reward, remuneration or compensation due under the Salvage Convention;</p>	
<p>(c) “property” means any property not permanently and intentionally attached to the shoreline and includes freight at risk;</p>	
<p>(d) “Salvage Convention” means International Convention on Salvage, 1989 as amended from time to time;</p>	
<p>(e) “salvage operation” means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or any other waters to which this Part applies and includes,—</p>	
<p>(i) the raising, removal, destruction or rendering a vessel harmless which is sunk, wrecked, stranded or abandoned including anything that is or has been on board such vessel;</p>	
<p>(ii) the removal, destruction or rendering the cargo of a vessel harmless; and</p>	
<p>(iii) the measures taken to avert or minimise loss to a vessel or its cargo or both;</p>	
<p>(f) “salvor” means any person rendering services in direct connection with salvage operation;</p>	

(g) “vessel” means any ship or craft, or any structure capable of navigation.

Salvage payable for saving life, cargo or wreck.

402B. (1) Where services are rendered—

(a) wholly or in part within the territorial waters of India in saving life from any vessel, or elsewhere, in saving life from a vessel registered in India; or

(b) in assisting a vessel or saving the cargo or equipment of a vessel which is wrecked, stranded or in distress at any place to which this Part applies as specified in section 390; or

(c) by any person other than the receiver of wreck in saving any wreck, there shall be payable to the salvor by the owner of the vessel, cargo, equipment or wreck, a reasonable sum for salvage having regard to all the circumstances of the case.

(2) Salvage in respect of the preservation of life when payable by the owner of the vessel shall be payable in priority to all other claims for salvage.

Salvage operations controlled by Government or port and public authorities.

402C. Where salvage services are rendered by or on behalf of the Government or by a vessel of the Indian Navy or of the Coast Guard or the commander or crew of any such vessel or the port authorities or a public authority, as the case may be, it shall be entitled to salvage and shall have the same rights and remedies in respect of those services as any other salvor.

Salvage contracts.

402D. (1) Subject to the provisions of sections 402E and 402F, this Part shall apply to any salvage operations save to the extent a contract otherwise provides expressly or by implication.

(2) The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel.

(3) The master or the owner of the vessel shall have the authority to conclude such contracts on behalf of the owner of the property on board the vessel.

Annulment and modification of contracts.

402E. A contract or any terms thereof may be annulled or modified if,—

(a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or

(b) the payment under the contract is excessive and disproportionate to the services actually rendered.

Duties of salvor and of owner and master.

402F. (1) The salvor shall have the following duties towards the owner of the vessel or other property in danger, namely:—

(a) to carry out the salvage operations with due care;

(b) to exercise due care to prevent or minimise damage to the environment during salvage operations;

(c) to seek assistance from other salvors including port authorities or public authorities when circumstances so require; and

(d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger:

Provided that if it is found that such a request was unreasonable, it shall not prejudice the amount of reward of such salvor.

(2) The owner and master of the vessel or the owner of other property in danger shall have the following duties to the salvor, namely:—

(a) to co-operate fully with the salvor during the course of the salvage operations;

(b) to exercise due care to prevent or minimise damage to the environment during salvage operations;

(c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so; and

5 (d) to provide satisfactory security for the claim, including interest and costs of the salvor for salvage operations, at the request of the salvor.

10 402G. (1) The Central Government shall take such measures, as may be prescribed, to protect its coastline or related interests from pollution or threat of pollution arising out of a maritime casualty or acts relating to such casualty which may result in major harmful consequences.

Rights and duties of Central Government in relation to salvage operations.

(2) The Central Government shall give such directions as it deems fit to the concerned ship owner or the master or the salvor or a port authority or a public authority or any other person in relation to salvage operations.

15 (3) The Central Government shall, for the purposes of efficient and effective salvage operations, saving life or property in danger and preventing damage to the environment, seek cooperation from the concerned ship owner or the master or the salvor or a port authority or a public authority or any other person, to give assistance to vessels in need, to admit to ports of vessels in distress or in need of assistance and to give facilities to salvors.

20 402H. (1) A salvor shall have a right to payment for the services rendered by him relating to salvage operations:

Rights of salvors.

Provided that no such payment shall be made where there is express and reasonable prohibition from the owner or master of vessel or owner of any other property in danger.

25 (2) The Central Government may prescribe the criteria for claiming rewards, the manner of fixing rewards, the payment of special compensation, the apportionment of payment amongst salvors, the salvage of persons, the payment under the contract, the payment for additional services not covered under the contract and the effect of misconduct of salvors on reward or payment.

30 (3) The salvor shall have right to enforce his maritime lien against the owner or master of vessel or owner of any other property in danger when satisfactory security for his claim, including interest and costs, has not been provided by such person.

35 402-I. (1) A dispute relating to claims under this Part shall be determined upon application made by either of the disputing parties to the concerned High Court.

Adjudication of disputes.

(2) Where there is any dispute as to the persons who are entitled to the salvage amount under this section, the High Court shall decide the dispute and if there are more persons than one entitled to such amount, the High Court shall apportion the amount thereof, among such persons.

40 (3) The costs of and incidental to all proceedings before the High Court under this section shall be in the discretion of the High Court and the High Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid and to give all necessary directions for the purpose aforesaid.

45 (4) The High Court may, by interim order, direct that the salvor shall be paid such amount as may appear to it to be fair and just, upon such terms, including terms as to security, as may appear to it to be necessary, fair and just, according to the circumstances of each case:

Provided that where any interim payment is made, the security provided under clause (d) of sub-section (2) of section 402E shall be reduced accordingly.

Extinguish-
ment of
claims.

402J. (1) Any action relating to payment under this Part shall extinguish if such claim is not made within a period of two years.

(2) For the purposes of this section, the period of limitation shall commence from the date of completion of salvage operation.’.

Amendment
of section
404.

12. In section 404 of the principal Act, in sub-section (2), after clause (g), the following 5 clauses shall be inserted, namely:—

“(h) the manner of marking wreck under sub-section (2) of section 390D;

(i) the time limit for removing wreck under sub-section (4) of section 390E;

(j) the other financial security under sub-section (1) of section 390G;

(k) the measures to be taken to protect the coastline related interests from 10 pollution or threat of pollution under sub-section (1) of section 402G;

(l) any other matter for which rule is required to be made for the implementation of the Nairobi Convention on the Removal of Wrecks, 2007 or the Salvage Convention.”.

STATEMENT OF OBJECTS AND REASONS

The Merchant Shipping Act, 1958 was enacted to foster the development and to ensure the efficient maintenance of an Indian mercantile marine sector in a manner best suited to serve the national interest. International Maritime Organisation (IMO), as the global standard-setting authority for the safety, security and environmental performance of international shipping, creates fair and effective regulatory framework for the shipping industry in the form of Conventions for universal adoption and implementation.

2. The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunker Convention) ensures that adequate, prompt, and effective compensation is available to persons who suffer damage caused by spills of oil, when carried as fuel in ships' bunkers. The Convention applies to damage caused on the territory, including the territorial sea, and in exclusive economic zones of States Parties. The Convention provides a separate instrument covering pollution damage only.

3. The Nairobi International Convention on the Removal of Wrecks 2007 (Nairobi Convention) provides the legal basis to remove shipwrecks that may have the potential to affect adversely the safety of lives, goods and property at sea, as well as the marine environment. The Convention fills the gap in the existing international legal framework by providing the first set of uniform international rules aimed at ensuring the prompt and effective removal of wrecks located beyond the territorial sea.

4. The International Convention on Salvage (Salvage Convention) 1989 replaced the prevalent "no cure, no pay" principle where a salvor is only rewarded for services if the operation is successful. By towing a damaged tanker away from an environmentally sensitive area, salvor prevents major pollution incidents. But the prevalent "no cure, no pay" principle acted as a disincentive for operation, where chances of success were slim. The 1989 Salvage Convention remedied this deficiency by making provision for an enhanced salvage award in preventing or minimising damage to the environment and by introducing a "special compensation" to be paid to salvors who fail to earn a reward in the normal way.

5. India is a member of IMO and as and when Government of India approves to be a party to an International Convention by accession/ratification, the Convention is given effect by suitably incorporating its provisions in our domestic legislation. The accession to Bunker Convention 2001 is now approved and, for implementing the Convention, the Merchant Shipping Act 1958 requires further amendments. The amendments incorporate the Convention provisions by inserting Part XBA in the Act titled "Civil Liability for Bunker Oil Pollution Damage" India is already a party to the Nairobi Convention and Salvage Convention. However, in the light of experiences gained in implementing Part XIII titled "Wreck and Salvage", it was felt necessary to amend the Part XIII to make them progressive and in tune with Nairobi Convention and Salvage Convention.

6. Under the provisions of the Merchant Shipping (Amendment) Bill, 2015, the registered owner of a vessel has to maintain compulsory insurance cover which allows claim for compensation for bunker pollution damage to be brought directly against an insurer. Ships of 1000 GT and above has to carry a certificate onboard to the effect that it maintains insurance or other financial security, without which these vessels will not be allowed to enter or leave India. The liability cover for bunker pollution damage shall be equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976.

7. The amendments shall also facilitate more purposeful approach towards removal of wrecks and salvage, protect Indian waters from the wreck hazards and introduce internationally recognised and approved rules for removal of wrecks. Private and public

entities will be encouraged to participate in salvage operations on account of adequate remuneration for services rendered specially to protect the environment or minimise its damage. Salvage services provided for saving life, cargo or wreck will be paid on priority to other claims for salvage. Salvage services provided by the Government shall also be entitled to rights and remedies as those of any other salvor. The Bill provides for duties of the salvor, owner and master of a vessel. It also provides for rights and duties of the Central Government in cases of maritime casualty in protecting its environment and coastline and to pass directions with regard to salvage operations.

8. The Bill seeks to achieve the above objectives.

NEW DELHI;

NITIN GADKARI.

The 24th July 2015.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill seeks to insert a new Part XBA in the Merchant Shipping Act, 1958 relating to Civil Liability for Bunker Oil Pollution Damage. The proposed section 352RN of the said Part XBA confers power upon the Central Government to make rules for carrying out the provisions of the Bill. The matters in respect of which rules may be made are— (a) the form and manner of making application under sub-section (1) of section 352 RF; (b) the other financial securities under sub-section (1) of section 352R-I; (c) the form of the certificate, the particulars it may contain and the conditions subject to which it may be issued under sub-section (1) of section 352RJ; (d) the fee for issue of certificate under sub-section (3) of section 352RJ; (e) the manner of renewal of certificate and the fees under sub-section (4) of section 352RJ.

Clause 12 of the Bill seeks to amend sub-section (2) of section 404 relating to power to make rules respecting wreck and salvage so as to insert clauses (h) to (l) therein, to provide rule making powers in respect of—(a) the manner of making wreck under sub-section (2) of section 390D; (b) the time limit for removing wreck under sub-section (4) of section 390E; (c) the other financial security under sub-section (1) of section 390G; (d) the measures to be taken to protect the coastline related interests from pollution or threat of pollution under sub-section (1) of section 402G; and (e) any other matter for which rules are required to be made for the implementation of the Nairobi Convention on the Removal of Wrecks, 2007 or the Salvage Convention.

The rules made by the Central Government shall be laid, as soon as may be after they are made before each House of Parliament.

The matters in respect of which the rules may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE MERCHANT SHIPPING ACT, 1958

(44 OF 1958)

* * * * *

Definitions.

3. In this Act, unless the context otherwise requires,—

* * * * *

(58) "wreck" includes the following when found in the sea or in tidal water or on the shores thereof—

(a) goods which have been cast into the sea and then sink and remain under water;

(b) goods which have been cast or fall into the sea and remain floating on the surface;

(c) goods which are sunk in the sea, but are attached to a floating object in order that they may be found again;

(d) goods which are thrown away or abandoned; and

(e) a vessel abandoned without hope or intention of recovery;

* * * * *

PART XIII

WRECK AND SALVAGE

Wreck

Definition of "coasts".

390. In this Part, the word "coasts" includes the coasts of creeks and tidal rivers.

Receivers of wreck.

391. (1) The Central Government may, by notification in the Official Gazette, appoint any person to be a receiver of wreck (in this Part referred to as receiver of wreck) to receive and take possession of wreck and to perform such duties connected therewith as are hereinafter mentioned, within such local limits as may be specified in the notification.

* * * * *

Procedure to be observed by persons finding wreck.

395. Any person finding and taking possession of any wreck within any local limits for which there is a receiver of wreck, or bringing within such limits any wreck which has been found and taken possession of elsewhere, shall, as soon as practicable—

(a) if he be the owner thereof, give the receiver of wreck notice in writing of the finding thereof and of the marks by which such wreck is distinguished;

(b) if he be not the owner of such wreck, deliver the same to the receiver of wreck.

Investigation of certain matters in respect of vessels wrecked, etc.

396. Whenever any vessel is wrecked, stranded or in distress as aforesaid, the receiver of wreck within the local limits of whose jurisdiction the vessel is wrecked, stranded or in distress may conduct an investigation into all or any of the following matters, that is to say,—

(a) the name and description of the vessel;

(b) the names of the master and of the owners;

(c) the names of the owners of the cargo;

- (d) the ports from and to which the vessel was bound;
- (e) the occasion of the wrecking, stranding, or distress of the vessel;
- (f) the services rendered; and
- (g) such other matters or circumstances relating to the vessel, the cargo or the equipment, as the receiver thinks necessary.

* * * * *

398. A receiver of wreck may at any time sell any wreck in his custody if, in his opinion,—

Immediate sale of wreck by receiver in certain cases.

- (a) it is under the value of five hundred rupees; or
- (b) it is so much damaged or of so perishable a nature that it cannot with advantage be kept; or
- (c) it is not of sufficient value for warehousing,

and the proceeds of the sale shall, after defraying the expenses thereof, be held by the receiver for the same purposes and subject to the same claims, rights and liabilities as if the wreck had remained unsold.

399.(1) * * * * *

Claims of owners to wreck.

(2) Where any articles belonging to or forming part of a vessel other than an Indian vessel which has been wrecked or belonging to and forming part of the cargo of such vessel, are found on or near the coasts of India or are brought into any port in India, the consular officer of the country in which the vessel is registered or, in the case of cargo, the country to which the owners of the cargo may have belonged shall, in the absence of the owner and of the master or other agent of the owner, be deemed to be the agent of the owner, with respect to the custody and disposal of the articles.

* * * * *

400. No person shall—

Prohibition of certain acts in respect of wreck.

- (b) impede or hinder or attempt in any way to impede or hinder the saving of any vessel stranded or in danger of being stranded or otherwise in distress on or near the coasts of India or of any part of the cargo or equipment of the vessel, or of any wreck; or

* * * * *

- (d) wrongfully carry away or remove any part of a vessel stranded or in danger of being stranded or otherwise in distress, on or near the coasts of India, or any part of the cargo or equipment of the vessel or any wreck.

* * * * *

SALVAGE

402. (1) Where services are rendered—

Salvage payable for saving life, cargo or wreck.

- (a) wholly or in part within the territorial waters of India in saving life from any vessel, or elsewhere in saving life from a vessel registered in India; or
- (b) in assisting a vessel or saving the cargo or equipment of a vessel which is wrecked, stranded or in distress at any place on or near the coasts of India; or

(c) by any person other than the receiver of wreck in saving any wreck, there shall be payable to the salvor by the owner of the vessel, cargo, equipment or wreck, a reasonable sum for salvage having regard to all the circumstances of the case.

(2) Salvage in respect of the preservation of life when payable by the owner of the vessel shall be payable in priority to all other claims for salvage.

(3) Where salvage services are rendered by or on behalf of the Government or by a vessel of the Indian Navy or of the Coast Guard or the commander or crew of any such vessel, the Government, the commander or the crew, as the case may be, shall be entitled to salvage and shall have the same rights and remedies in respect of those services as any other salvor.

Explanation.—"Coast Guard" means the Coast Guard constituted under section 3 of the Coast Guard Act, 1978.

30 of 1978.

(4) Any dispute arising concerning the amount due under this section shall be determined upon application made by either of the disputing parties—

(a) to a Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be, where the amount claimed does not exceed ten thousand rupees; or

(b) to the High Court, where the amount claimed exceeds ten thousand rupees.

(5) Where there is any dispute as to the persons who are entitled to the salvage amount under this section, the Judicial Magistrate of the first class or the Metropolitan Magistrate or the High Court, as the case may be, shall decide the dispute and if there are more persons than one entitled to such amount, such magistrate or the High Court shall apportion the amount thereof among such persons.

(6) The costs of and incidental to all proceedings before a Judicial Magistrate of the first class or a Metropolitan Magistrate or the High Court under this section shall be in the discretion of such Magistrate or the High Court, and such Magistrate or the High Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid and to give all necessary directions for the purpose aforesaid.

* * * * *

LOK SABHA

A

BILL

further to amend the Merchant Shipping Act, 1958

(Shri Nitin Gadkari, Minister of Shipping)