

Draft Coastal Shipping Bill, 2020

In October 2020, the Ministry of Shipping, Government of India recently placed a Draft Coastal Shipping Bill, 2020 for public consultation. This has been drafted in lieu of Part XIV of the Merchant Shipping Act, 1958.

It intends "To consolidate and amend the law relating to the regulation of coastal shipping, to promote coasting trade and encourage domestic participation therein, and to ensure that India is equipped with a coastal fleet, owned and operated by the citizens of India, for its national security and commercial needs".

The Draft Bill proposes various reforms having direct impacts on coastal maritime transport, inland waterways connectivity and trade. It underlines that given the increased need for intra-regional trade, stress on other modes of transportation within India and more and more connections (trade, social and cultural) with Asian countries, there is an imminent need to revamp the Indian coastal shipping and inland waterways sector.

Therefore, to achieve that in a just and sustainable manner with an equal emphasis on its impact on the economy, equity, and environment, it is pertinent to assess its policy imperatives.

The Bill at a Glance

Highlights

- Encourages the Indian shipping industry by listing conditions for issuing licence to foreign vessels
- Recommends the removal of the requirement of licence for Indian flag vessels for coastal shipping if the vessel is registered under the Merchant Shipping Act, 1958
- Includes a general provision for punishment in the form of monetary penalties, fines, detention for those contravening the provisions of the act or conditions of the licence
- Strengthens multi-modal connectivity within India through proposed synergy between coastal shipping, inland waterways routes, and other modes of transportation through the development of National Coastal and Inland Shipping Strategic Plan
- Mandates to maintain a National Register of Coastal Shipping, which will contain information about coastal trade, licences and routes and voyages, and will be updated at least once a month
- Provides legal coverage and easy representations (including consular services) to foreign vessels to the nearest port also in case of detention

Lowlights

- Inadequate focus on how coastal maritime transport sector will be made competitive, cost-effective and technologically advanced and innovative except a mere mention in the Preamble
- Centralisation of powers with regard to rulemaking is entirely in the hands of the Central Government while Director General of Shipping with special approval of the Central Government may direct some power to another authority. But there is less scope for the involvement of state-level authorities while several states have relevant stakes in coastal matters
- Less clarity on how the National Register of Coastal Shipping will be updated, including whether digitalisation of documentations will be done or manual entries will be made at each port and how it will be made available to public or concerned stakeholders
- Much of coastal shipping and inland waterways navigation in India (and neighbouring countries) is done through non-mechanised country boats where registration and other documentations often act as a regulatory burden for small-scale fisher-folks and other relevant stakeholders. But how they will be treated is unclear
- No specificity about how coastal shipping and inland waterways will be dealt with trans-boundary river routes (those designated under the India-Bangladesh Protocol on Inland Water Transit and Trade)

INSIDE

- Action Points
- Introduction
- Discussion
- Conclusion
- Recommendations

Action Points

- Mandatory requirements for necessary documentation should be done in a phased manner with a comprehensive assessment of different sector-specific needs
- Ports and other state-level institutions should be strengthened and aligned with the central institutions to avoid overlaps in the working of different state- and Central Government-level authorities
- A provision should be made for annual updating of the National Coastal and Inland Shipping Strategic Plan. It should be done after thorough consultations with relevant stakeholders. This Plan must also have short- medium and long-term roadmaps and projections
- Coastal Shipping should not be seen in isolation from broader objectives of connectivity and trade. Thus, there should be alignments of its policies and plans of other relevant bodies, such as the Directorate General of Foreign Trade, the Directorate General of Commercial Intelligence and Statistics, the Ministry of Statistics and Programme Implementation, the Inland Waterways Authority of India, Central Board of Indirect Taxes and Customs, the Ministry of Road, Transport & Highways, Ministry of Railways
- Coastal shipping should also be considered as a tool for India's soft diplomacy in the Indo-Pacific region. Thus, while implementing this act there should be regular consultations with relevant bodies, including the private sector in our neighbouring countries, in particular

Introduction

The COVID-19 pandemic has provided a painful but important reminder of why the concept of multi-modal connectivity and the seamless flow of goods is critical. The main principle which underpins seamless connectivity is the need for the right balance between different modes of transportation and the latest technological additions and collecting the right data to make informed decisions.

Therefore, to achieve further competitiveness in the transport and logistics and trade sector of India, a robust approach coupled with necessary legislations and institutions is necessary.

That is why the Central Government has presented a Draft Coastal Shipping Bill, 2020, for public consultation. The bill aims to facilitate easy and seamless connectivity in coastal shipping and inland waterways and other modes of transportation.

The primary advantage of having a Coastal Shipping Act is that it can result in shaping necessary national and state-level policies and programmes targeted towards transportation, logistics, trade and fishing communities. This bill is also aimed to make India's coastal shipping more efficient and less prone to a threat to national security.

India has a coastline of around 5,560 kilometres with 11 major and 168 minor/intermediate ports.¹ There are nine states (viz. Andhra Pradesh, Goa, Gujarat, Karnataka, Kerala, Maharashtra, Odisha, Tamil Nadu and West Bengal), two union territories (Daman & Diu and Puducherry) and two island territories (Andaman & Nicobar Islands and Lakshadweep Islands) that have coastlines.

Thus, a large number of its population is dependent on activities related to seas and bays.

That is why any act or rules governing coastal shipping will have direct and indirect impact on its economy, society and the politics of these states.

The section below discusses some of the key areas under the draft bill, which call for more informed consideration and discussion.

Discussion

The Ministry of Shipping, Government of India has drafted this bill in lieu of the Merchant Shipping Act 1958. It has drafted to make the Indian shipping sector more participatory, transparent and competitive.

As this sector is evolving and growing, there is a need to have separate legislation. The new bill envisages meeting the demands of the Indian Shipping industry by considering coastal shipping as an integral part of the Indian transport chains.

¹ https://www.dgshipping.gov.in/Content/PageUrl.aspx?page_name=ShipManualChap22

Definitions

The bill applies to every vessel, Indian or otherwise, engaging in coasting trade, irrespective of the place of residence or domicile of the owner, and the coastal waters of India. The definitions of coasting trade and coastal waters have been expanded along with specifying the definitions for licence, vessel, register for coastal shipping, etc.

The definition of coasting trade suggests that 'the carriage by sea of goods, and/or passengers from any port or place in India, to any other port or place in India, or performing any service within coastal waters'.

However and because of this definition, more clarity is required whether the bill is applicable to foreign vessels travelling to a single Indian port or not. The bill should include definitions for owners, masters and agents.

Prohibition and Licencing

The bill specifies that 'no vessel, other than a vessel registered under Part V of the Merchant Shipping Act of 1958 shall engage in coasting trade, or the exploration, exploitation, or research, in the coastal waters of India, except under a licence granted by the Director General'.

This means that a vessel Indian or foreign involved in coasting trade needs to be either registered under Part V of the Merchant Shipping Act of 1958 or hold a licence issued by the Director General, Shipping.

This chapter deals with granting licences to vessels not registered under the Merchant Shipping Act of 1958.

It further specifies the conditions of granting a licence, application, suspension, revocation and reporting requirement which mandates all vessels, including vessels registered under the Merchant Shipping Act 1958, participating in the coasting trade in India shall report 'to the Director General for the port or ports which it will visit in the course of its voyage and goods or passengers carried by such vessel and the ports or places where such goods or passengers will be dropped off'.

It is proposed to do away with the requirement of trading licence for Indian flag vessels for coasting trade if registered under the Merchant Shipping Act of 1958.

The bill seeks to create a competitive environment and reduce transportation costs by strengthening the shipping transport chain by developing National Coastal and Inland Shipping Strategic Plan.

The Plan envisages integrating coastal maritime transport with inland waterways. It should include an assessment of the conditions of coastal shipping routes in India and those of inland waterways.

However, detailed identification of operational improvements is required in coastal shipping by analysing the viability and feasibility of the routes. The bill in its draft state seems inadequate in its measures to make the Indian shipping transport chain internationally competitive.

Other inclusions of this chapter are National Coastal Register, no port clearance until licence is produced,

the power to exclude, the power to give directions and power to the Central Government to protect the interests of the Indian shipping sector.

Offences and Penalties

This chapter entails general provisions for punishment which specifies that 'any person who contravenes any provision of this Act or fails to comply with any provision, any direction under this Act or any condition of a license provided thereof, which it was his duty to comply with, shall be guilty of an offence, and chargeable with such penalty'.

Other provisions of this chapter are punishment for illegally detaining a person, place of trial and jurisdiction of the court, special provision regarding punishment, provisions for offences by companies, power to enforce detention of the vessel, the power to amend the schedule, power to enforce detention of vessel and proceedings taken in respect of foreign vessel.

Furthermore, the bill is quite centralised and does not have any provision for redressal.

Rules and Miscellaneous

The different classes of licences to be granted, the form of licence and the period of validity of such licence, conditions to be imposed on licences granted the form and manner of application and its modifications or any other matter required to be or may be prescribed.

Provisions regarding power to delegate, the power to issue directions by the Central

Government, the power to remove difficulties and protect action taken in good faith are covered under the miscellaneous section.

Conclusion

Coastal shipping-based connectivity for trade is not new in western countries. Thus, they already have some regulations but in India reforms in coastal shipping were pending for a very long time. In this context, the Central Government has prepared this draft bill, which is a welcome step.

Simultaneously, it is to remember that India is not a major production centre of vessel manufacturing and coastal shipping usually involves the loading of fishes and other natural resources by local boatmen. Thus, their requirements and concerns are different.

The bill is not very clear about the support that can be given to the Indian ship manufacturing sector and ship logistics sector, which is a usual practice in many developed countries.

Since coastal shipping is usually done within 20 nautical miles of a coastline, the requirements for vessels movement in these areas of

the seas are usually different (smaller vessel and lesser draft) from global standard requirements of deep-sea shipping.

On the other hand, coastal shipping is an energy-saving method of transportation. Reduction of costs and pressure from railways and road transport can lead to increased intra-regional and international trade.

In India, it can move bulk products, such as coal, fertilisers, petroleum products, gas, minerals and ores, cement and steel. At selected locations, it is also engaged in passenger movement through cruise and ferry services.

Therefore, it is a welcome step that the Central Government through this draft bill considered coastal shipping and inland waterways an integral part of transport chains within India.

Recommendations

- Since a large part of coastal shipping in India is in the unorganised sector, state governments and district authorities should also be allowed to issue licences for

smaller vessels and country boats (mainly non-mechanised boats), which are conducting voyages on shorter routes and/or at the cross-border level in border areas.

- The process of getting vessels registered should be made easy with fewer documents in a transparent and digitalised manner, and special assistance should be provided to vessel owners, particularly those from marginalised sections of the society such as boatmen communities.
- National Register of Coastal Shipping must be made available in the public domain through a dedicated new website. Since it will have data on international trade, there should be real-time data entry including data integration from other relevant bodies such as the Directorate General of Foreign Trade.
- A dedicated grievance redressal mechanism should be established in the Ministry of Shipping, Government of India, which should specifically facilitate (not control) coastal shipping along with inland waterways and other modes of transportation.

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