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Maritime Labour Convention: An Indian Perspective into the Labour Perils of the Sea

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ABSTRACT

The Maritime Labour Convention was touted as the foremost legislation in protecting the rights of seafarers. With international shipping accounting for 95% of the world trade, seafarers are both the most essential and at-risk workforce. They are exposed to harsh and unexpected weather conditions coupled with strenuous physical labour and the mental toll of being separated from their family and friends. While at sea, these workers are far away from the well woven umbrella of law. The Maritime Labour Convention was established as a mechanism that can extend this umbrella through mutual cooperation of the port countries and international bodies. However, this aspect of the Convention could very well be part of its own downfall as the convention is only as good as the manner in which they have been adopted by the signatory countries. India being the leader in supplying human resources for shipping and maritime trade as well as a signatory to the Convention has a responsibility to ensure that a robust national legislation is set in place. But the numerous cases of abuse of Indian seafarers who are left without repatriation, abandoned on ships or even forced to accept brutal conditions to retain their low paying jobs proves that the Indian maritime legislation is lagging behind the international standards of labour rights. This article navigates through the deplorable conditions faced by seafarers on international waters and delves into the importance of the comprehensive Maritime Labour Convention. The article further highlights the current maritime legislative tools available in India and analyzes whether these tools are sufficiently protecting the rights of the seafarers.

Keywords: *Martime Labour Convention (MLC), Merchant Shipping Act (MSA), Merchant Shipping (Maritime Labour) Rules, India*

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I. INTRODUCTION

"The sea has never been friendly to man. At most it has been the accomplice of human restlessness."

- Joseph Conrad, Writer

Seafaring has been described as a significant support mechanism for the world economy by the International Maritime Organization (IMO). But at the same time, seafaring is also known to be a high risk occupation, where the life and safety of the seafarers come second to the lives of the shipowner and their precious cargo. There is an estimated 1.6 million² seafarers who are serving on internationally trading merchant ships with India ranking third in the list of the largest seafarer supplying nation to the world maritime industry.

With the demand for efficient and fast transport of goods rapidly increasing, the nature of work on board ships have also changed, with new exposures related to health and safety. A seafarer's job is never a nine-to-five-day trade where they go home at the end of their shift. The ship itself is their home for the months they spend on duty. There is an increasing need to maintain a standard living and working conditions that ensure that the health and safety of the seafarers remain uncompromised.

India, through ratifying international conventions, has a responsibility to ensure that every seafarer that enters its port as well as Indian seafarers who are employed on foreign ships have access to basic labour rights which includes their physical and mental well-being. Many seafarers seek employment on ships due to lack of well-paying job opportunities on land. Such vulnerable workmen are taken advantage of on board these ships, while the law places little accountability upon the shipowners.

II. VOYAGES & ABUSE

A seafarer's job involves a lot of stress caused by the long work hours, strenuous workload, perils of the sea and not to mention having little to no room for a personal life. There is also the emotional toll of being away from family and friends for extended periods of time as well as from being isolated on ships. But the occupational hazards of being a seafarer unfortunately even includes risks of unpaid wages, abuse, denial of shore leaves and repatriation. In the recent case aboard the MT Ocean Pride³, the crew, consisting of six Indians and one each from

² International Chamber Of Shipping, (Sep.10,2020,11:00 AM), <https://www.ics-shipping.org/shipping-facts/shipping-and-world-trade/global-supply-and-demand-for-seafarers>

³ Mt Ocean Pride Investigative Case Study, HUMAN RIGHTS AT SEA, (Sep.09,2020,10:00 PM), <https://www.humanrightsatsea.org/wp-content/uploads/2017/07/20170702-MT-Ocean-Pride-HRAS-Investigative-Case-Study-REDACTED-FINAL-SECURED.pdf>

Pakistan, Bangladesh and Sri Lanka, were left stranded on the damaged and dangerous vessel, anchored off the coast of UAE. The crew were denied basic necessities such as food, water and medical supplies. The entire vessel was understaffed and the existing crew had their passports confiscated and had not received wages for more than 25 months. The seafarers were even subjected to poisoning from consuming contaminated food and water as well as untreated workplace injuries such as loss of fingers and infections. Most of the crew were even desperate to keep the matter under the wraps to protect their families and ended up in severe debts to cover up the non-payment of wages.

This is clearly not a one-off situation. Once out on the open sea, shipowners often tend to ignore the rights of the seafarers. The line that distinguishes a slave from an actual employed seafarer is blurred in most instances. The rise in ship management agencies, which supply crew members for ships, from small trawlers to giant container carriers, are part of this abuse system. This allows seafarers to be brought from different countries at low costs as per the preference of the shipowner. They retain and withhold salaries and passports and trade off the workers from one ship to another without the workers knowledge or consent. These outsourced seafarers have different contracts than other seafarers and are often hired on temporary basis and subject to higher stresses of job insecurity.

Another problem faced by seafarers is lack of on-board training with active involvement of the shipyard personnel. Due to improper and insufficient training, seafarers are more likely to be involved in workplace injuries and hazards. The constant crew changes and introduction of crew members from various language and cultural background also makes on board training even more complex. Moreover, the establishment of unscrupulous training centers, that trick workmen into commercial employment through 'paid placements' force many seafarers into debt even before they begin their employment. This later manifests as a reason to continue working under harsh conditions.

There are also instances where the vessel would have been abandoned by the shipowner or master due to debt leaving the workmen behind with limited resources. While there may be many companies and shipowners who act reasonably and responsibly, overall the industry is poorly regulated with hardly any enforcement of the laws. Even when these abuses are highlighted and published there is still a lack of actual retribution or relief for these workers.

III. INTERNATIONAL CONVENTIONS

One of the biggest reasons why seafarers end up working under harsh and unacceptable conditions is because many ships are from countries that do not exercise effective control or

jurisdiction over them as required by international law. Establishing an international standard especially comes into play as most of a seafarers' working lives are spent outside of their home country with foreign employers.

The International Labour Organisation, which is the global authority on the labour standards aboard shipping vessels, hosts, at periodic intervals, an extra session of its general Conference entirely devoted to the maritime sector and to address problems specific to work in that sector. Since 1920, the ILO has adopted some 40 maritime labour Conventions and 29 maritime labour Recommendations covering a wide variety of issues, including recruitment and placement, minimum age, hours of work, safety, health and welfare, labour inspection and social security.⁴ While such an extensive list of conventions and recommendations existed, there was still a clear need to create a single, coherent and detailed instrument that was adhering to the current standards of existing international maritime labour convention considering that many of the provisions were outdated and irrelevant.

The proposed consolidated Maritime Labour Convention had been under discussion for several years and primarily originated with the resolution concerning the review of relevant ILO maritime instruments that was unanimously adopted by the Joint Maritime Commission (JMC) in January 2001.⁵ The resolution was known as the Geneva Accord between the Shipowner and Seafarer representatives where these representatives had expressed serious concerns about the situation with the existing maritime labour standards and had put forward eight “preferred solutions” to deal with their concerns.⁶ This led to the JMC recommending that the Governing Body convene a Maritime Session of the Conference in 2005 and establish a High-level Tripartite Working Group on Maritime Labour Standards to develop such a consolidated instrument.

The earlier 40 maritime conventions were reviewed out of which 26 maritime labour Conventions, one Protocol and 18 Recommendations were found to be relevant and up to date with the current labour and shipping standards. The framework for the convention was also relied on the fundamental principles in conventions such as the

- Forced Labour Convention, 1930;

⁴*Adoption of an instrument to consolidate maritime labour standards*, INTERNATIONAL LABOUR ORGANIZATION, (Sep.09,2020 5:10 PM), <https://www.ilo.org/public/english/standards/reIm/ilc/ilc94/rep-i-1a.pdf>

⁵ *Id.* at 1

⁶ *High-level Tripartite Working Group on Maritime Labour Standards*, ILO: Final report, TWGMLS/2001/10 (Geneva, 2001), para. 48

- the Freedom of Association and Protection of the Right to Organise Convention, 1948;
- the Right to Organise and Collective Bargaining Convention, 1949;
- the Equal Remuneration Convention, 1951; the Abolition of Forced Labour Convention, 1957;
- the Discrimination (Employment and Occupation) Convention, 1958;
- the Minimum Age Convention, 1973;
- the Worst Forms of Child Labour Convention, 1999

At the 94th convention in 2006, the Maritime Labour Convention (MLC) was introduced as the “fourth pillar” of international maritime law. The convention set up the minimum conditions for work including aspects relating to age, fitness, training as well as conditions of employment such as wages, leave, hours of work, standard of accommodation, food, repatriation, pension and health care. The Convention also set up the seafarers identity document which was an internationally recognized document for seafarers. The convention currently has been ratified by 97 countries including several states that are ‘large flag states’ in relation to the tonnage they transport.

IV. NEED FOR THE MARITIME LABOUR CONVENTION

The MLC changed the way labour rights were guaranteed to international seafarers. By compounding the various agreements into a single agreement, the difficulty of having countries ratify only certain conventions was more or less dissipated. It is abundantly clear that shipping labour regulations can only be effective if majority of the states agree to be bound by it.

The MLC also introduced an MLC certificate to be issued by the state to the ships flying their flag. This certificate, which shall be displayed in a conspicuous place on board the ship, along with the state’s declaration of maritime labour compliance can easily enable and alert the seafarers and workmen aboard the ship of their rights. The biggest complication that often led the way for labour abuse was due to seafarers being unclear as to the country they were being employed under and the jurisdiction applicable to him often on account of the fact that the workmen was hired through an agency or the fact that ship has many foreign bodies invested in it. The certificate and the unified convention allows such workmen to have a guarantee over their rights so long as the country they work under has ratified to the convention.

The social insurance guaranteed by the MLC also allows them to have some form of security in the event of the shipowner’s insolvency or loss and assures financial security. The 2014

amendment of the MLC also requires shipowners to have compulsory insurance to cover abandonment of

seafarers, as well as claims for death or long-term disability of the seafarer if such death or disability is caused while onboard the ship. Moreover, repatriation in the event of insolvency have now been included in most P&I cover as well as repatriation in several other circumstances that are listed out in the MLC.

V. MARITIME LABOUR LAWS IN INDIA

There's no doubt that labour laws which dictate employment relationships on land-based ventures aren't perfectly applicable to the seafaring industry, as seafarers on ships rarely have access to immediate resources and recourses. Though the MLC was set up by the ILO, the real effect can only be seen once the standards are implemented at a national level by countries that have their own ship registry.

Seafarers are the backbone of Indian economy and reasonably so, being a country that is bound by the Indian Ocean, Arabian Sea and the Bay of Bengal. Even Pandit Jawaharlal Nehru pointed out that "By and large it can be said that even in the past and remote ages, it was the seafaring nations that prospered, prospered both from point of view of power and wealth because of trade and commerce. I do not say that landlocked nations have not been powerful, they certainly have been powerful for periods at a time, but on the whole the importance of sea power has been a dominant feature of history." In fact seventy percent of the global trade of oil is through the Indian Ocean along with over fifty percent of container traffic. Today Indian imports and exports by sea is worth roughly over \$450 Billion⁷ and beyond export and import of goods, the seafaring trade contributes to much needed foreign currency exchange.

India ratified the convention on 9th October, 2015 but despite this, India has failed to establish a parent statute that is exclusive to the labour rights of seafarers. Maritime Law in India is guided by the Merchants Shipping Act, 1958 (MSA). The Act, which has been amended from time to time, attempts to ensure the maintenance and continued development of the Indian mercantile sector. It primarily details provisions relating to procedures for registration of ships, ownership of Indian vessels, certification process, administration of the maritime shipping etc. The Act, though it contains a few provisions for seafarer's welfare, does not redress most of the issues faced by a seafarer.

⁷ *World Integrated Trade Solution*, World Bank (Sep. 11, 2020, 7:00 PM), <https://wits.worldbank.org/CountryProfile/en/IND>

(A) The Merchant Shipping Bill 2016

The Merchant Shipping Bill 2016 was introduced to consolidate and amend the law relating to merchant shipping to ensure compliance with the country's obligation under the maritime treaties and International Instruments to which India is a party and also to ensure the efficient maintenance of Indian mercantile marine in a manner best suited to serve the national interest⁸. One of the biggest drawbacks of the Merchant Shipping Act 1958 was that it was far too bulky and large on account of having undergone 17 amendments and spanning over 560 sections.

The 2016 bill seeks to dispense with redundant provisions and formulates a more succinct format with only 280 sections by repealing the Merchant Shipping Act and the archaic Coastal Vessels Act, 1838

The Bill introduced several schemes that are notable in terms of welfare of the seafarer such as:

- Granting seafarers full wages if they are held as captives by pirates till they are released and return to their home
- to monitor the maritime education leading to grant of certificate of competency or certificate of proficiency in accordance with either the provisions of International Convention or otherwise to impart quality education to prospective seafarers, and to facilitate Indian seafarers to work onboard vessels with respective certificate and qualification;
- to make insurance compulsory for the crew engaged on vessels including fishing, sailing, non-propelled vessels and vessels whose net tonnage is less than fifteen and solely engaged in coasting trade of India, by the owner of the vessel⁹;
- to dispense with the requirement of signing of articles of agreement by the crew before the Shipping Master so as to facilitate early employment of seafarers;¹⁰
- Establishment of a **Seafarers Welfare Board that can directly advise the central government on means to promote the welfare of the seafarers and workers with respect to** (i) hostels and boarding, (ii) establishment of hospitals and provision of medical treatment, (iii) educational and other recreational facilities, and (iv) measures

⁸ The Merchant Shipping (Amendment) Bill, 2018, No. 185, Bills of Parliament, 2018 (India).

⁹ *Id.* at 6

¹⁰ *Id.* at 4.

to be taken for the welfare of distressed seafarer or an foreign seafarer abandoned in Indian waters.

- Registration of Indian vessels at various ports of registry thereby enabling the creation of a more accountable shipping trade
- **Establishing standards and certificates of competence to seafarers with respect to their** age limit, medical fitness, training, service and examination.
- **Lastly the introduction of various international conventions** namely, (i) the Intervention Convention, 1969, (ii) the Search and Rescue Convention, 1979, (iii) the Annex VI to the International Convention on Prevention of Pollution from Ships, (iv) the Convention for Control and Management of Ships Ballast Water and Sediments, 2004, (v) the Nairobi Wreck Removal Convention, 2007, (vi) the Salvage Convention, 1989 and (vii) the International Convention for Bunker Oil Pollution Damage, 2001;

Unfortunately, the Bill has been pending since 2016 and the Act is yet to be repealed.

(B) Merchant Shipping (Maritime Labour) Rules

The Merchant Shipping Act 1958, relies heavily on the Merchant Shipping (Maritime Labour) Rules, 2016 (referred to hereinafter as ‘Rules’) for the implementation of the MLC 2006. The key aspects of the Rules include:

- Establishing minimum requirements for seafarers such as minimum age for employment being 15 and the compulsory requirement of training and medical certificate.
- Creation of an employment agreement that details the conditions of employment
- Clarity with respect to wages and hours of work and rest, leave and repatriation
- Assurance of access to decent food, water and recreation facilities as well as health and medical facilities
- Implementation of the MLC and the inspection of the same by the directorate general of shipping

Though both the Act and the Rules follow through with the MLC compliances, there are several aspects in which it is lacking.

(C) Lacunae of the Merchant Shipping (Maritime Labour) Rules

The Rules, rather than creating additional measure to ensure proper implementation of the MLC, only details few of the regulations and instructs to refer to the convention for clarity. Neither the India-specific conditions nor the special consideration for Indian seafarers have been considered in the rules.

1. Repatriation

Under the MLC, repatriation is given priority. Each Member ratifying the convention is required to ensure that there are appropriate provisions in its laws and regulations or other measures or in collective bargaining agreements which provide the circumstances and entitlement of repatriation.¹¹ The Rules places this responsibility upon the shipowner to ensure that such terms are present in the collective bargaining agreement. Listing out the major circumstances within the Rules itself would also rid the ambiguity that could exist in an employment agreement.

Moreover, the only repatriation mechanism in place is through a financial security provider. There have been no attempts to introduce a welfare fund specifically for repatriation which can enable seafarers a more direct access in an expeditious manner. Such a fund would have the added benefit of having governmental oversight which can be accessed in situations where insurance companies delay the repatriation. It is also pertinent to mention the specific time frame within which the financial security provider is to provide the repatriation as an additional measure to endure prompt redressal.

2. Replacement crew

The Rules also do not mention any procedure for hiring replacement crew in case of any termination, repatriation or even injury suffered by any member of the original crew. Since such an obligation is not placed on either the insurance provider in case of repatriation or the placement agency, it is likely that the existing crew will be placed with the burden of picking up the slack. This, yet again, may cause an increase in workplace injuries and stress.

3. Overtime wages/hours

The Rules also do not specify the regulation related to calculation of the overtime wages and hours. Overtime as per the MLC is “overtime means time worked in excess of the normal hours of work”¹². There is no mention of the maximum hours of overtime a seafarer can be engaged

¹¹ Maritime Labour Convention, 2006, Regulation 2.5.

¹² Maritime Labour Convention, 2006, Guideline B2.2.

in. In cases of overtime, it is also pertinent to specify the compensation in terms of either equivalent time off or through additional monetary means.

4. Young Seafarer

The Rules do not specify the number of working hours applicable to a young seafarer who is under the age of 16. However, reasonable conditions of safety for young seafarers have been provided under the compliance notice given by the Director General of Shipping. The MLC also provides for additional rest periods between each two hours and the same has not been mentioned under the Rules.

5. Medical Access

The biggest problem faced by seafarers is suffering a workplace injury and receiving delayed treatment due to lack of medical access and supplies and training. The Rules permit ships to do away with having an onboard medical practitioner so long as there is one seafarer who has completed training in medical care under the Standard of Training Certification and Watch Keeping Convention. However, this may lead to shipowners attempting to skirt around to rule to cut costs which ultimately endangers the life of the seafarer. There is also no consideration given to the psychological effects that a seafarer may be subject to which can arise from the long periods of isolation to bullying from crew mates. There is also a need to address the mental health or provide access to a mechanism that can help them deal with such issues.

Currently, the seafarer labour regulations are completely scattered. The Rules provide only a basic outline of rights available to the seafarer with the remaining responsibility of detailing strict guidelines placed on the Director General of Shipping through notices. Considering this along with the MSA, which is unnecessarily extensive, the question arises as to whether seafarers are even aware of exactly what their rights are. Furthermore, the fact that there exists significant socio-economic and educational disparities in India, it seems counter-productive to create legislative instruments that does not sufficiently address seafarers welfare measures. Most of the repatriation issues that have arisen as of late have only been resolved with media intervention rather than an effective executive action.

VI. FALLACIES OF MLC & IMPLEMENTATION IN INDIA

The MLC though a remarkable convention, it is not without its flaws. One of its primary concern is the actual enforcement of such a large international agreement. Often, the standards put forward by the ILO are referred to as "soft international law" because they "fail to lay down specific, directly enforceable legal obligations, but rather limit themselves to setting forth

standards of conduct deemed desirable by the respective international organizations and their member states."¹³The strength of the Convention heavily relies on the compliance and self-enforcement by the ratifying states.

1. Unfavourable Treatment

As the nature of work is so unique for Seafarers, employment protection too falls in a separate category. Seafarers are bound by the law of the flag that the ship they are employed with are sailing under regardless of the actual location of the ship. This inevitably gives rise to cases where parties in maritime industry attempt to absolve themselves of their responsibilities towards seafarer and expect their flag state to take the responsibility.

While the MLC has developed a grievance procedure for both onshore and offshore disputes, these are more or less restricted to issues relating to matters of employment such as wages and compensation in case of an injury. It does not address any specific issues related to unfavourable treatment but only provides a generic “right to health protection, medical care, welfare measures and other forms of social protection”¹⁴ to the seafarers. This places the burden on the port states to ensure a strict compliance but at the same time allows them the freedom to interpret the “unfavourable treatment” and “abuse” in the form that suits them.

This was seen in the case of the 40 crew members who were stranded on the shipping owned by Elite Way Marine Services EST that is based in Dubai. The Indian crew members were abandoned, some for over 30 months without pay, at the anchorage site of Sharjah, United Arab Emirates (UAE). This was after being treated ‘like slaves’ by the management for the months they were at sea. Their travel and identification documents were confiscated by the UAE authorities, and communication with their families was virtually impossible.¹⁵ It was only after the help of a few charities that some of the seafarers were even able to be repatriated to India.

The current Indian maritime labour law has proved to be insufficient in this factor. There is no mention of the interpretation of unfavourable treatment within either the Merchant Shipping Act or the Merchant Shipping (Maritime Labour) Rules. Whereas in countries such as Netherlands, seafarers are guaranteed protection against even specific issues such as bullying, violence and sexual harassment aboard their ships. While establishment of welfare boards and grievance redressal are a step in the right direction, it cannot invalidate the need for a maritime

¹³ G.E. KURZ, CURRENT MARITIME ISSUES IMPLEMENTING IMO REGULATIONS AND OCEANS POLTY, 353,357(Nordquist and Moore, eds, 1999)

¹⁴Article IV, ILO 2014a.

¹⁵ *Investigative Case Study, HUMAN RIGHTS AT SEA*, (Sep.09,2020, 10:00 PM), <https://www.humanrightsatsea.org/wp-content/uploads/2019/09/New-Internationalist-HRAS-Profile-Article-Sep-Oct-19.pdf>.

labour specific parent act that can distinctly classify the conditions of abuse over granting a discretionary interpretation to welfare boards.

1. Grievance Redressal Mechanism On Board

The MSA does not call for a grievance redressal mechanism on board the ships. Due to the strict hierarchical structure on ships, it is difficult for seafarers to report their grievances for fear of backlash. Though there are companies that do allow for online submission of complaints, it is not a standard practice that is being implemented strictly in India. The Act places the responsibility of resolving disputes on the shipping master which may not be a feasible option at all time. Moreover, the employment agreements do not contain provisions for on board arbitration as a equitable means to ensure fair dispute resolution.

2. Blacklisting

Another cause for concern that has not been sufficiently dealt with either in MLC or in the MSA is the practice of blacklisting. Blacklisting restrains the seafarer from working in the maritime industry and is often used as a threat to manipulate workers into complying with unfair terms and keeping these conditions from being brought to the notice of authorities.

Blacklisting has been detailed in the 2001 report of the ILO in the case of a Turkish crew that was abandoned and did not complain to the authorities for fear of being blacklisted¹⁶. Despite the issue having been brought before the court, many of the crew remained unemployed two years after the incident.

The Merchant Shipping Act does not consider these risks and places the burden of reporting discrepancies within the ship upon the seafarer. Almost 15% of seafarers have stated that they have received strict warning against informing their trade unions.

3. Flags Of Convenience

Another cause for concern is regarding ships that utilize flags of convenience. This term is used to describe a cost cutting mechanism whereby ships choose to sail under the flag of a nation which has lenient registration requirements and weak labor standards. There is always a threat that a country that allows flags of convenience may choose to not ratify the convention. However, it is to be noted that most of the countries that held paltry labour standards have ratified the convention.

¹⁶*Abandonment of Seafarers database*, INTERNATIONAL LABOUR ORGANIZATION, (Sep.09,2020, 10:00 PM), https://www.ilo.org/dyn/seafarers/seafarersBrowse.list?p_lang=en.

Since 2014, India has further allowed domestic shipping companies to operate foreign flag vessels, dumping a major restriction that would help the sector to attract more foreign business.¹⁷ However, no additional regulations have been introduced in the Merchant Shipping Act, 1958 to accommodate such as change.

4. Heavy Reliance On Trade Unions

The MSA places the responsibility of regulating wages primarily on the trade unions which in India are often monopolies. The contribution put forward to the pension or annuity fund to Seamen Provident Fund Organisation is also not implemented effectively.¹⁸ It is known that a large number of trade unions in India are not necessarily focused solely on the interests of their members, and the large number of unions also means that their collective power is not as significant as it could be. The distance between the ship and shore makes the role of the union both more vital and more difficult to carry out.¹⁹ Any foreign vessel wage agreement signed for the Indian seafarers with the employers are bipartite in nature and many clauses included in this valuable document is favourable to a single union and compelling the membership and violate Provident Fund and Gratuity law of the land.²⁰

Moreover, neither the convention nor the MSA discuss the right of the seafarers to strike. In order for seafarers to protect the rights granted to them under this Convention, it is crucial that they have the option to strike once they are isolated on a ship.²¹ In early 2007, the Russian crew of a cargo ship successfully forced the shipowner to release three months of unpaid salary to their families by striking while the ship was docked in the Iraqi port of Umm Qasr.²² Right to strike is part of the Industrial Disputes Act in India as seen as an essential tool in the hands of workmen but the same has been completely ignored in the MSA. Moreover the question arises as in cases where the flag ship belongs to countries such as China that do not consider labour strikes as a right available to workmen.

5. Shore Leave

The second Title of the Convention, Conditions of Employment, requires that seafarers be granted shore leave for their own health and well-being.²³ While this is certainly a step in the

¹⁷ Deepshikha Sikarwar, *India Allows Local Shipping Firms to Operate with Foreign Flags*, E.T Jul 28, 2014, at p 4.

¹⁸ The Merchant Shipping (Amendment) Bill, 2018, No. 185, Bills of Parliament, 2018 (India).

¹⁹ Manasi Dutt, *Indian Seafarers' Experiences of Ill-Treatment Onboard Ships*, S.S.S Cardiff University, 8 (2015).

²⁰ *Id.* at 18.

²¹ Paul J. Bauer, *The Maritime Labour Convention: An Adequate Guarantee of Seafarer Rights, or an Impediment to True Reforms*, 8, Chicago J. I. L., 643 (2008).

²² *Id.* at 657.

²³ Maritime Labour Convention, Regulation 2.4(2).

right direction, the Convention fails to recognize that the availability of shore leave is sometimes dependent on more than the shipowner's discretion.²⁴ There is also the added complexity of port countries and their specific visa requirements.

6. Criminalization Of Seafarers

The general rule of thumb in the shipping industry has always been to criminalize seafarers and hold them solely responsible for maritime accidents regardless of whether or not they actually engaged in negligence or not. There are numerous cases where ship masters and their crews are detained in port countries with little to no access to even basic human rights. This includes cases where seafarers are often used as scapegoats by the shipping company.

As recently as 2019, eighty-seven Indian sailors were detained on various ships by Indonesia for “illegal anchoring”. The ship had dropped its anchor on the outer port limit of Singapore to load up cargo which is a practice that had been ongoing for the last five years. On February 9, 2019, the Indonesian navy took control of the vessel alleging it was anchored in Indonesian waters even though on the British Admiralty chart, used for sailing, the place was marked as international waters.²⁵ The Indonesian naval officers took the ship at gunpoint and used the vessel as a floating prison, while subjecting them to degrading treatment. The MLC and MSA fails to broach the subject of unfair criminalization and lack of due process.

7. Abandonment Of Seafarers

Even with the introduction of the MLC, there has been no reduction in the number of Indian seafarers who have been abandoned. In a recent IMO recorded case, 18 Indian seafarers remain stranded on board the “MV HALANI 1” with unpaid wages, insufficient provisions, physical and mental health problems with two of them were prepared to commit suicide over the non-payment²⁶.

Unfortunately, this is not the first or last case where there is a deliberate abandonment of crew by a ship owner who effectively instigates abusive labour conditions to demoralise hard-working seafarers so that they leave the vessel and return home without fair payment of their

²⁴ Supra at 14.

²⁵ *Case Study Criminalization of 87 Indian Seafarers in Indonesia*, MARINE INSIGHT, (Sep.09,2020 10:10 PM) <https://www.marineinsight.com/maritime-law/case-study-criminalisation-of-87-indian-seafarer-in-indonesia-rights-available-but-denied/>.

²⁶ *Investigative Case Study*, HUMAN RIGHTS AT SEA,(Sep 08, 2020 9:00 PM) https://www.humanrightsatsea.org/wpcontent/uploads/2019/01/HRAS_Case_Study_Abandonment_Walvis_Bay_Namibia_29_Jan_19_single_pages_SECURED.pdf.

owed salaries under legally -binding contracts of employment.²⁷ It is even more concerning that the flag state in this matter had actually ratified the MLC and brought it into force.

If one were to consider the abandonment of ships, despite the existence of the MLC, only 6 out of the 35 reported cases²⁸ of abandonment in 2019 were resolved. While it may be contended that more cases are being reported than in comparison to previous years, if no effective relief is granted to the seafarers by the member states and the ILO, then the overall effectiveness of the MLC itself is questionable. Moreover, India being a larger supplier of seafarers, there is a heightened need to establish a more detailed legislative measure than the MSA to protect seafarers from such harassment.

VII. SUGGESTIONS

The broad-based legislative tools available to Indian seafarers cannot sufficiently meet the needs of the maritime industry. While there have been several schemes established including mechanisms for grievance redressal and repatriation benefits, the responsibility of helping and providing assistance to seafarers is still being passed around from the government, to ship owners, to port countries and eventually non-governmental organizations. The legislative delay in passing a maritime labour act that clearly explains the rights of seafarers with respect to the present-day challenges and standards of labour, can be felt throughout the sphere of the Indian shipping industry. At this stage, it is pertinent that the government come together with the shipping companies and seafarers to overcome the above-mentioned challenges

One suggestion is the inclusion of a dispute redressal body on board ships that is independent from the shipping company and can directly report to the port authorities while at sea. This would allow seafarers to stand up to exploitation without fear of backlash and further onboard isolation and harassment.

Moreover, setting up of regulatory bodies specifically deal with employment agreements of Indian seafarers who have been outsourced to foreign ships would also ensure that they are treated with decent working conditions.

Another mechanism that needs to be adopted is regular data collection from seafarers that can be published online on government run websites providing feedbacks on their employer and their voyages ensuring that fresh candidates as well as experienced seafarers looking for employment can easily assess the legitimacy and the work nature of various shipping

²⁷ *Id.* at 8.

²⁸ As per the ILO database

companies. These feedbacks will raise the accountability of shipping companies and reduce the risks of exposing a seafarer to abusive practices once on-board.

VIII. CONCLUSION

The Maritime Labour Convention (2006) provides a comprehensive guideline for labour rights available to a seafarer which focuses on a tripartite system of compliance. With the consolidation there is clarity into the labour standards to be adopted by the ratifying states. The Convention took 5 years in the making and considers the labour rights of the seafarers from the perspective of both admiralty law and international labour law. Despite its innovative character, the convention is only as effective as the level of international cooperation and national level implementation that the ratifying countries put forth.

There's no doubt that the Convention has significant value, however, this does not mean that it should be implemented as it is. The legislative body must look into the practical fallacies of the Convention and create a robust Act that can sufficiently increase the effectiveness of the Convention. The Merchant Shipping Act has not considered these aspects and have introduced a blanket application of the MLC without much change.

While there may be a reluctance to amend the MLC, there shouldn't be such a reluctance with looking into reforms with the Merchant Shipping Act. Moreover, there is also scope for the introduction of a labour specific act that can support the Merchant Shipping (Maritime Labour) Rules. Ultimately, the safety of those at sea is the rests on the shoulders of those on land and it is about time that we acknowledged and worked towards the same.
