
HUMAN RIGHTS AND RIGHTS OF SEAFARERS UNDER ADMIRALTY LAWS OF INDIA

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ABSTRACT

The researcher has tried to shed light on the involvement of human rights in the maritime sector, which contributes to 90% of the global trade, enlightening the rights of seafarers on board vessels. Maritime law and the legislation passed by states both comprise the laws governing seafarers and safeguarding their rights. A seafarer is defined as any individual who is employed, engaged, or acts in any capacity on board a ship to which the Maritime Labour Convention (MLC) 2006 applies. The author has tried to elaborate on the rights of seafarers guaranteed under MLC and other international conventions and will also be dealing with the various issues and challenges faced by the seafarers onboard vessels, such as abandonment, repatriation, working conditions, involvement of labour-supplying agencies, increase in the registration of vessels under the flag of convenience and frequent change in the ownership of the vessel, which directly or indirectly hampers the management and working conditions onboard the vessels. Furthermore, the research will also be dealing with some of the major topics like the concepts of flag state, port state & labour-supplying state and maritime labour certificates and their importance in this sector. Lastly, we'll be addressing the issue in the Indian context with the help of recent landmark cases.

Keywords: Human Rights, Seafarers, Maritime Labour Convention, Abandonment, Repatriation.

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1.1 Introduction to Seafarers' Rights

To say that seafarers are heavily controlled is an understatement. All aspects of a person's life on board ship are subject to strict rules and regulations, including hiring, firing, working conditions, rest, diet, health, illness, leisure and death. Seafarers confront unique dangers, significant physical challenges, stern punishment and heartbreaking absences from family and friends. They lead and perform unique tasks, necessitating unique legal protections.

Courts and governments recognize mariners as a unique group of workers deserving of specific protections. Despite their expertise, seafarers often face prejudice, abuse and exploitation. Their job requires them to travel often, sometimes to different countries. Seafarers are frequently cut off from the stability, predictability and safety nets that those on land take for granted. They have no friends and no one to turn to everywhere they go. They are often regarded with suspicion by port officials since they are foreigners. General marine law and legislation passed by maritime states comprise the rules controlling seafarers and preserving their rights. The laws are often impacted by international treaties and basic marine law.

The conventional international maritime law that governs international shipping is based on old trade traditions. Many of the legal concepts and industrial traditions that arose during this time had no counterpart in the traditional, land-based economy. One of the primary motivations for establishing marine law was the need to safeguard sailors.² Commercial interests also informed the establishment of safety measures for mariners. The success of the marine sector was dependent on attracting and keeping qualified seafarers. Therefore, it was in the best interest of shipowners and the maritime sector to ensure the safety of its crew members. Attracting and keeping talented and dependable ship crews was crucial to the economic achievement and national prosperity of any country. The causes that prompted the establishment of protections for maritime workers are still very much in play today.³

Even by today's high standards, the safeguards offered to sailors by the earliest codified maritime regulations, which emerged in the 11th to thirteenth century, were exceptional. The commercial customs of pre-Christian Mediterranean seafaring served as models for these regulations. The ancient regulations' protections for sailors' health care, for instance, remain superior to those enjoyed by current land labourers. The codes ensured that all crew members

² T Schoenbaum, *Admiralty and Maritime Law* (5th edn, Thomas West, 2011) 371.

³ *Ibid*, 370–4.

could be safely returned home after each expedition. The personnel of ships were also supposed to be fed adequately per the regulations.

The rights of sailors were drastically altered throughout the age of European discovery and colonialism in the seventeenth and eighteenth centuries. Exploration and colonization on the part of the Europeans necessitated several sailing ships. There was a significant shortage of sailors throughout the age of sail. Inmates were released from prison; inebriates were kidnapped and other underhanded tactics were utilized to 'recruit' sailors. Crews on commercial ships back then were known for being rough around the edges. The owners and captains of these ships used extraordinarily repressive methods to keep their people under control. National legislative statute-making increased in tandem with the growth of marine trade in the seventeenth and eighteenth centuries. At the time, maritime countries with an interest in trade expansion were the primary legislators behind the maritime legislation that were enacted. As a result, the laws sought to safeguard commercial maritime interests, such as the regulation of disobedient sailors forced into duty on merchant sailing boats.

The legal protections afforded to seamen are a direct result of the needs of the maritime industry. The regulation that was subsequently written just mirrored the industry's established protocols for ensuring the safest and most reliable seaborne shipment of goods. The legislation eventually veered away from its original purpose of supporting efficient and practical economic interests in an effort to balance the competing priorities of coastal States, flag States, resource exploitation and the protection of freedom of passage. As a consequence, maritime law has grown very intricate.⁴

The Maritime Labour Convention, 2006 (MLC 2006) was approved by the International Labour Organisation in 2006. The Maritime Labour Convention of 2006 represents a watershed moment in the evolution of protections for maritime workers. It consolidates into a single agreement a complete declaration of seafarers' rights that takes into account both time-honoured protections and the realities of today's maritime industry. Regulation of recruitment and placement services, flag and port State inspection systems, health protection, medical care, social security and financial protection for seafarers and other provisions are all addressed in the MLC 2006. The MLC 2006 is the first International Labour Organisation convention to

⁴ For the history of maritime law, see Schoenbaum (n 1) 1–18, 248–50; R Grime, *Shipping Law* (2nd edn, Sweet & Maxwell, 1991) 41–65

provide shore leave for seafarers. The Convention can be ratified, is enforceable and can be understood by a wide range of stakeholders. The fundamental premise of the Convention is respect and honour for those who work on the ocean's surface.

2.1 MLC 2006 Seafarer Definition

The MLC 2006 brought together a number of ILO instruments into a single document and standardised the use of several otherwise inconsistent definitions. The definition of a "seafarer" in the MLC 2006 is one of among the most significant. The definition of a seafarer in the MLC 2006 is crucial since it decides who is eligible for protection under the Convention.

The MLC 2006 definition of seafarer is quite broad. The goal is to ensure that as many employees as possible enjoy the benefits of the Convention. "Any person who is paid or hired or works in any role on board the vessel to which this Convention applies" is the legal definition of a seafarer. According to the Maritime Labour Convention of 2006, a ship's master qualifies as a seafarer. Nearly everyone who works on a ship that falls within the MLC 2006 is likely to qualify as a seafarer and be afforded the safeguards of the Convention. Those who are not directly engaged in the ship's navigation or operation might nonetheless be considered seafarers. The MLC 2006 applies to all seafarers, including those who work on the bridge or in the engine room, as well as the hotel crew, restaurant staff, musicians, hairstylists, casino workers and bartenders. It's obvious that not all ship personnel are qualified MLC 2006 seafarers. The MLC 2006 does not include in its definition of seafarer workers who are generally based on land but sometimes operate on ships, such as port-state inspectors and shipyard maintenance technicians.

The MLC 2006 gives Flag States the authority to decide whether or not a certain group of employees should be considered seafarers for the purposes of the MLC 2006. To what extent can non-standard ship personnel, such as private armed security teams, scientists, guest entertainment, surveyors and so on, count as "seafarers"? The shipowner should contact the flag State for clarification in such instances. The country flying the flag must discuss the matter with the ship's owner and any relevant labour groups. Flag States now have some direction from Resolution 7 of the MLC 2006 on how to determine whether or not certain groups of personnel are indeed seafarers. Consideration must be given to how long the individuals remain on board, how often they work on board, where their primary workplace is located and the nature of their employment.

3.1 Overview of Seafarers Rights in India

Indian admiralty law provides some privileges and safeguards to anyone working on the water. The rights and responsibilities of seafarers, as well as other issues arising from marine activity, are governed by admiralty law, commonly known as maritime law.

- i. Seafarers have the right to a workplace free from unreasonable risks to their health and safety. Preparations for appropriate training, sufficient safety equipment and adherence to applicable international treaties and laws are all part of this.
- ii. Maritime workers have the right to decent working conditions, which include adequate pay, rest times and hours worked. Contracts, repatriation and government benefits are all addressed by the new legislation.
- iii. Maritime workers have the right to get adequate medical treatment while at sea. Owners of vessels are responsible for providing their crew with medical care and insurance.
- iv. Seafarers have the right to receive social security payments in the event of an on-the-job accident, sickness, incapacity, or death. Compensation, disability and death payments for the seafarer's family may be included.
- v. At the conclusion of their contract or in the event of a medical emergency or other unforeseeable occurrence, seafarers have the right to be repatriated to their home country. In most cases, the shipowner will pay for the repatriation.
- vi. The right to legal protection and to equal access to justice for all persons employed in the maritime industry. If their rights have been violated or a contract has been broken, they may seek redress in court.

4.1 Admiralty Jurisdiction and Rights of Seafarers under Admiralty Law in India

4.1.1 Admiralty Courts in India

The High Courts of Telangana, Calcutta, Kerala, Hyderabad, Odisha, Bombay, Madras, Gujarat and Karnataka are the Indian Courts having Admiralty jurisdiction. Each of these courts has admiralty jurisdiction and that jurisdiction is concurrent and extends along the whole coast of India. The Indian Courts with Admiralty jurisdiction have exclusive authority over all

maritime issues. It is provided that the Central Government may, by notification, expand the jurisdiction of the High Court up to the limit as defined in section 2 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Areas Act, 1999, each of these courts' admiralty jurisdiction is concurrent and territorially extends over the coast line of India and is enforceable over the waters up to and including the territorial waters of their respective state jurisdictions.

The Indian Courts possessing Admiralty jurisdiction have jurisdiction over the following claims herein to hear and determine any questions with regard thereto the claims as set out in Section 4 (1) of the Act. The High Court may exercise jurisdiction to hear and determine any question on a maritime claim, against any vessel, arising out of any.

The High Courts of India have admiralty jurisdiction over many claims under section 4(1) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 and the High Court of India can exercise its jurisdiction over all the claims arising out of the vessel or shipowner.

The jurisdiction applies to every vessel, regardless of the place of residence or domicile of the owner; however, the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 shall not apply to an inland vessel as defined in clause (a) of sub-section (1) of section 2 of the Inland Vessels Act, 1917, or a vessel under construction that has not yet been launched, unless it is notified by the Central Government as a vessel for the purposes of the Act. The jurisdiction applies to all ships, whether Indian or not, whether registered or not and wherever the residence or domicile of their owners may be; in relation to all claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and so far as they relate to mortgages and charges, to all mortgages or charges, whether registered and whether legal or equitable, including mortgagors and mortgagees.

4.1.2 Exercise of Admiralty Jurisdiction

Sections 5 and 6 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act of 2017 outline the manner in which admiralty jurisdiction may be exercised, which may be in the form of an action in rem or action in personam. Admiralty jurisdiction is governed by statute, with specific subject matter headings. It entertains both in rem and in personam claims. Ships are peripatetic and accrue international liabilities, with creditors creating, obtaining and enforcing security over them. Transporting cargo and passengers from port to port are merchant

vessels of various nationalities (including ships owned by solvent or insolvent Indian companies). They incur liabilities during their voyage and submit to the authority of other nations when they enter the territorial waters of those states. They are subject to arrest for prosecution of maritime claims, or seizure in execution or fulfilment of judgments in legal actions arising from collisions; salvage, loss of life or personal injury, loss of or damage to commodities and similar causes of action. The main goal of detention is to get security for fulfilment of the judgment in the action in rem and arresting the ship is necessary to establish jurisdiction.

4.1.3 Loss of Life or Personal Injury

When the ship is in Indian territorial waters, a seafarer or his/her family member (in the event of the seafarer's death) can initiate legal action by filing an admiralty suit in the High Court with admiralty jurisdiction, obtain an order of arrest of the offending ship or sister ship owned by the offending ship and claim compensation.

Section 4 (1) (e) of the Admiralty Act (2017) addresses the aforementioned subject in maritime claims and section 9 (1) (b) as a maritime lien shall have priority for loss of life or personal injury occurring on land or water and directly related to the operation of a vessel.

4.1.4 Wages

The crew may file a lawsuit in the Admiralty court either in rem against the ship or in personam against the owner on behalf of any sailor whose pay are overdue. The basic rule is that anybody who has performed any kind of job on board a ship is eligible to file a lawsuit to collect what is owed to him. Foreign sailors aboard foreign ships are subject to the jurisdiction of the court, but when a foreign ship is sued in rem, notice of the action shall be delivered to the consul of the nation to which the ship belongs.

The Admiralty Act of 2017's Section 4 (1) (o) addresses the aforementioned subject claim by a master or member of the crew of a vessel or their heirs and dependents for wages or any sum due out of wages or adjudged to be due which may be refundable as wages or cost of repatriation or social insurance contribution payable on their behalf or any amount an employer is under a responsibility to pay to a person as an employee, whether the obligation arose out of a contract o The limitation period for bringing an admiralty lawsuit shall be a period of two

years from the date on which the wages, sums, costs of repatriation, or social insurance contributions fall due or become payable to the master, officers and other members of the vessel's complement in connection with their employment on the vessel.

The definition of wages, as well as the starting and ending dates at which they accumulate and are due, must be taken into account. For the purposes of an action in the Admiralty court, the funds sought must have been earned on board the ship, not necessarily while at sea, but rather via employment on the vessel or obligations related to it. A maritime lien is dismissed by payment or court action, laches (unreasonable delay in enforcement), or the destruction of the vessel or property. When a ship has been transported into India for the purpose of ship recycling or destruction and its owner no longer intends to use it for navigation, a maritime lien will be discharged.

The above topic is covered in maritime claims under section 4 (1) (o) of the Admiralty Act (2017) and under section 9 (1) (a), a maritime lien has priority over claims for wages and other sums owed to the master, officers and other crew members in connection with their employment on the vessel, including any costs associated with their repatriation and any social insurance contributions that are payable on their behalf.

Seafarer's Rights on Unpaid Wages

If a sailor or member of the crew is owed money, they may have the ship arrested under admiralty law. The seafarer need not be a resident of India in order to file an action for the arrest of the vessel in India and the ship may be registered overseas or flying any flag in order to be arrested in India.

Claims for unpaid wages by crew members must be filed within three years of the original due date; however, if the crew member died while in service, the time period from the seaman's death to when his next of kin were told of his death will be disregarded. The following items must be presented in court: an appointment letter, agreement, or employment contract; a copy of the passport indicating the sign on and sign off dates; a continuous discharge certificate (CDC) indicating the capacity of the crew as well as the sign in and sign off dates; a wage account or wage slips; letters demanding unpaid wages sent directly to or through the ship's master; a power of attorney or letter of authority; and any other relevant documents. If there is more than one crew with outstanding pay, such claims cannot be combined; instead, each crew

will need to bring its own complaint under admiralty law.

Court costs, lawyers' professional fees, copying charges and other miscellaneous expenses are all on top of the total claim amount that must be paid at the time the action is filed.

Most maritime disputes are resolved amicably between the ship's owner and any other parties with an interest in the vessel. In the event that the dispute cannot be resolved out of court, the crew has the right to apply to the court for an auction to take place of the ship pending the suit; however, they will not be able to withdraw or encash the sale proceeds during the interim stage of the case.

What the seafarers are entitled to in terms of unpaid pay

1. Have the ship or a similar ship arrested anywhere in the globe, as long as they are inside territorial seas.
2. File a legal lawsuit in the proper court
3. File a claim in the proper court under Section 19 of the Workmen's Compensation Act of 1923.
4. Filing a claim before a Magistrates Court of competent jurisdiction

The Supreme Court of India ruled in the case of *Epoch Enterrepots v. M.V. Won Fu* that an exclusive claim upon a ship, aircraft, or other marine property which stays connected to the property travels with it across changes in ownership. The absolute title of the 'res' owners is likewise diminished, as is well recognized. In the case of *O. Konavalov v. Commander*⁵, Coast Guard Region, India's highest court ruled that "the seamen's right to their wages has been put on an extremely high pedestal." A sailor's earnings, or as much of them as could be found, were considered to be sufficient for him to hold on to the ship's last plank. As with any worker, a sailor's right to remuneration is fundamental to his or her ability to provide for one's family and is therefore guaranteed under Article 21 of the Indian Constitution.

An order of arrest from a High Court with admiralty jurisdiction is necessary to pursue a

⁵ (2006) 4 SCC 620 (para 20): (2006) 3 JT 567.

maritime lien for seafarers' salaries or any other maritime lien or maritime claim.

The Merchant Shipping Act of 1958, section 145, allows for claims to be brought in the magistrates' court as well.

Wage claims hearings are brief. —

As soon as wages become payable, a seaman or apprentice can go to: -

1. [any Judicial Magistrate of the first class or any Metropolitan Magistrate, as the case may be] exercising jurisdiction in or near the place where his service ended, where he was discharged, or where the person against whom the claim is made is or resides and
2. [such Magistrate] will conduct a summary trial.

Any official specifically or generally authorized by the Central Government in this regard may also make an application under subsection (1).

Seafarers or crew members who believe they are owed compensation from an Indian management or shipowner may file a claim with the Office of the Commissioner of Workmen's Compensation. If a seafarer deposits money with an official of the Workmen's Commissioner, that money may be sent to the seafarer's dependents outside of India.

Wages and other sums due to the master, officers and the rest of the vessel's complement in respect of their employment on the ship, which includes costs of repatriation and social insurance contributions payable on their behalf, are protected by a maritime lien in India thanks to the International Conventions on Maritime Liens and Mortgages of 1993 and 1967.

The right to collect wages and salvage is protected against loss by Section 139 of the Merchant Shipping Act of 1958. No seaman may, by agreement, waive his lien on the ship or any remedy for the recovery of wages to which he would otherwise be entitled, nor may he, by agreement, waive his right to wages in the event of the loss of the ship or waive any right that he may have or acquire in the nature of salvaging and every agreement in any agreement that violates any of the provisions of this Act shall be null and void.

1. Any sailor claiming unpaid pay must have actually done time aboard ship.

2. The reason for this salary lien is due to the work performed for the ship.
3. The Indian Merchant Shipping Act of 1958 further states that a crew member is not entitled to pay for time spent away from the ship or duties.

According to subsection 9(1) of the Admiralty Act (2017), a maritime lien for wages has precedence over a maritime lien for death, personal injury, or property damage. Although there is no direct precedence, common sense suggests that a maritime salvage lien would be given priority over a maritime wage lien. Mortgages, "hypothèques," and charges recorded in a public registry take a back seat to maritime liens as described in Article 4. It doesn't matter who the seafarer's contractual counterparty is; the seafarer remains entitled to a maritime lien over the vessel on which he is employed.

The Marine Liens and Mortgages Convention of 1993 states that marine liens may be erased after a time frame of one year unless the ship has been detained or seized, resulting in a forced sale, before the expiration of such term. However, the Indian Limitation Act of 1963 stipulates that a worker has three years from the completion of the journey in which the earnings were earned to file a claim for those wages. There is no case law from India on whether or not a maritime lien is extinguished after a year. However, the Admiralty Act of 2017 only allows a maritime lien for salaries to be valid for two years.

Demolition of the ship or property, negligence (undue delay in enforcement), payment, or court action all serve to release a maritime lien. When a vessel is transported into India for destruction or ship recycling, the maritime lien is released since the owner no longer intends to use the vessel for navigation.

4.1.5 Unpaid Wages in case of Abandonment

The possibility of abandonment is a significant threat faced by sailors on the job. The number of cases of sailors being abandoned at sea has increased over the previous several years. About 1200 sailors on 85 ships were abandoned in 2020⁶.

The year 2021 saw the abandonment of 1,399 sailors across 94 vessels. When a shipowner fails to repatriate a seafarer or provide the seafarer with necessary maintenance and assistance, the

⁶ Report on Analysis of incidents of abandonment for the period 1 January to 31 December 202, Submitted by the International Transport Workers' Federation (ITF), LEG 109/4(a)/1, 14 January 2022 at para 2

seafarer is considered abandoned. This includes not paying the seafarer's salary for at least two months.

If a shipowner is having financial difficulties, he may decide to discontinue shipping operations and leave his vessel, taking the crew members with him. When a ship is abandoned, the crew members on board have not only had their contractual rights violated but also their basic human rights. The right to life is one of the most fundamental human rights; it is occasionally violated when a ship's members working on the vessel are abandoned and stuck within the ship without food, water and salary⁷. In numerous cases of seafarer abandonment, the port state has also forbidden the abandoned crew members from leaving the ship. All people enjoy the right to life, liberty and security of person under international human rights law. Freedom requires that one be free from constraint. The right to liberty may be violated by port state restrictions that prohibit sailors from disembarking after they have been abandoned aboard a foreign vessel at the port of any country.

Aid organisations often had to step in and provide essentials to stranded sailors at sea. Abandoned sailors aboard ships have been known to make periodic swims to land in search of food and supplies. Their right not to be subjected to inhuman, cruel, or degrading treatment may be violated under such circumstances. It might hurt you emotionally as well as physically. Many countries' Admiralty laws allow for ship arrest due to unpaid salaries, which includes repatriation costs. If the shipowner doesn't show up to defend the case in person and provide security for vessel release, the court may order the vessel to be auctioned to pay off the crew's unpaid salaries and cover the expense of repatriation.⁸ After a creditor (with a maritime claim against the shipowner and vessel) has had the ship arrested, the owner may leave the crew. A stranded crewmember aboard a ship might seek legal redress by joining an ongoing admiralty action.

Maritime matters over which the Admiralty court has authority are detailed in the Admiralty Jurisdiction Act, 2017.⁹ In order to secure a maritime claim, the Admiralty court might issue a decree to arrest a vessel.¹⁰ Unpaid salaries and other costs associated with sailors' repatriation

⁷ Gupta, M. (2023). Right to repatriation of Abandoned seafarers: A study in light of Maritime Labour Convention 2006 and International Covenant on Civil and Political Rights 1966. *The Age of Human Rights Journal*, 21, e7284. <https://doi.org/10.17561/tahrj.v21.7284>

⁸ The Swedish Club Versus V8 Pool Inc. and others Commercial Appeal No. 108 Of 2021 in Interim Application No. 2062 of 2021, para 51

⁹ Admiralty (Jurisdiction and Settlement of Maritime claims) Act, 2017, section 4

¹⁰ Ibid section 5

are one kind of maritime lawsuit.¹¹ Therefore, stranded crew members aboard a vessel in Indian ports or territorial waters have the option of initiating admiralty proceedings in India against the vessel and applying for vessel arrest in order to collect their overdue salaries, including repatriation costs.¹²

When the owner of the vessel is obligated to pay wages or repatriation costs¹³, or when the demise charterer is obligated to do so and such demise charterer remains the demise charterer or turns into the owner when an arrest is effected, the crew can ask for the arrest of the vessel.¹⁴ If the shipowner or demise charterer appears in admiralty court and posts bail, the vessel will be freed from detention and the shipowner or demise charterer will be required to defend the case (in personam). If he fails to show up in court after the detention of his vessel or if he does not provide the security for releasing of the vessel, the seafarers may apply to the court for the sale of the seized vessel and if the court grants the application, the seafarers can collect their dues from the sale proceeds.¹⁵

A marine lien is a specific kind of maritime claim recognized by the law.¹⁶ In contrast to other types of liens, maritime liens remain in effect even if the ship's ownership or flag is changed.¹⁷ The Act's Section 9 details the types of marine claims that might trigger a maritime lien. One nautical claim that amounts to a maritime lien is the seafarer's pay, including any repatriation claim.¹⁸ Abandoned seamen may use this maritime lien to have the vessel they worked on arrested in order to recoup salaries and repatriation expenses.¹⁹ The advantage of this stance is that if the shipowner who employed the abandoned seafarers transfers the vessel to a third party, the abandoned seafarers' claim becomes a maritime lien and the vessel may be detained. It's also worth noting that if a maritime claim is made against one ship, its sister ship may be detained as well under Indian law.²⁰ When a maritime claim is filed, the same owners of a "sister ship" may also be named as defendants.²¹

¹¹ Ibid, section 4 (o)

¹² Ibid section 5 read with section 3

¹³ Ibid section 5(a)

¹⁴ Ibid section 5(b)

¹⁵ ibid, section 11 clause 3

¹⁶ Ibid section 4(w)

¹⁷ Ibid, section 9(2)

¹⁸ Ibid section 9(1)(a)

¹⁹ Ibid, section 5(e)

²⁰ see ibid section 5(2), also see PS Marine v MV Altus, Gujarat High Court order dated 31 January 2020, para 18

²¹ MV Mariner IV, a Foreign Flag Vessel and Ors. Vs. Videsh Sanchar Nigam Ltd, 1998 (1) MhLj 751

Payroll for crew members, supplies given to them and repatriation expenditures incurred during the arrest period should be considered Sheriff's expenses or maintenance charges for the vessel.

In admiralty practice, it is customary to pay for the vessel's upkeep under arrest, as well as any other costs spent in the process of the sale, out of the revenues of the sale before anything else.²² These costs may sometimes be referred to as "Sheriff's Expenses."²³ Sheriff's expenditures have been interpreted by Indian courts to include salaries collected by seafarers during the time of arrest, expenses for essentials given to them during the period of custody and repatriation fees.²⁴ The crew is in this position because they are responsible for maintaining the vessel while it is in arrest and they may be required to stay on board the vessel until it is sold.²⁵ Crew members are entitled to their pay simply by virtue of their being on board, without having to file a lawsuit and provide supporting documentation.²⁶ In a recent case, the Bombay High Court made the following observation:

"The court has repeatedly allowed crew wages accrued post-arrest to be obtained as Sheriff's expenses lacking bringing the crew to the problems of filing a suit, proving their claims, getting a decree, determining priorities and then seeking payment out, which will realistically take several years." This court has, on several instances, requested the Sheriff or the Commissioner for Taking Accounts to check the size and legality of the crew claim if there is any dispute or disagreement on the same."²⁷

Protection & Indemnity(P&I) Clubs are encouraged by Indian admiralty practice to meet their

²² 6 See Bombay High Court (Original Side) Rules. Rule 1084; Rule 1084 reads as follows: "1084. Sheriff's expenses —In the event any expenses are required to be incurred by the Sheriff during the period of the arrest for the safety and preservation of the ship and its crew, the Sheriff shall make a report to the court and the court, shall after hearing the parties direct payment of such sums as the court may deem fit by any party the Sheriff for incurring such expenses, which shall be treated as Sheriff's expenses. These expenses shall be paid in priority to the Sheriff from the sale proceeds of the ship or by the defendant or other party seeking release of the ship, as the case may be and the same shall be reimbursed to the parties who have paid the amounts to the Sheriff in the first instance."

²³ *ibid*

²⁴ See *Axis Trustees Service Ltd v. MT Prem Mala*, Order dated 7 August 2020 passed by Gupte J; also see *Irwin Edmond Sequeira v mv Karnika*, Order dated 5 November 2020 passed by Colabawalla J; also see *DVB Group Merchant Bank (Asia) Ltd v mv Malaviya Twenty Three & Ors.*, Order dated 25 October 2016 passed by Kathawalla, J.; see also *The Swedish Club Versus V8 Pool Inc. and others* Commercial Appeal No. 108 of 2021 in interim Application No. 2062 of 2021, para 48.

²⁵ See argument of council appearing for the Crew Members in *The Swedish Club Versus V8 Pool Inc. and others* Commercial Appeal No. 108 of 2021 in Interim Application No. 2062 Of 2021, para 28

²⁶ *The Swedish Club Versus V8 Pool Inc. and others*, Commercial Appeal no. 108 of 2021 in Interim Application NO. 2062 of 2021, para 47

²⁷ *ibid*

responsibility under the Merchant Shipping (Marine Labour Convention) Act, 2006.

5.1 Conclusion & Recommendation: -

To guarantee complete compliance with international treaties like the MLC, it is imperative that all three nations prioritize the implementation of severe enforcement procedures. This involves frequent checks, stiff fines and close supervision of ships flying a "flag of convenience." Faster settlement of conflicts and stronger protection of seafarers' rights might result from the creation of specialist courts or ombudsman offices. In light of the growing body of research documenting the negative effects of prolonged stress on performance at sea, it is imperative that all nations institute policies and provide resources to improve the mental health of their maritime workforce. Joint initiatives should be undertaken to develop international training centres and certification courses for seafarers to increase the global maritime workforce's proficiency and safety. In order to improve seafarers' rights throughout the world, frequent bilateral or multilateral meetings between India, the UK, the Philippines and other countries may allow the sharing of best practices and create a collaborative approach.

Unfortunately, many sailors are still subjected to various sorts of physical and mental violence. There are several forms of mental abuse and less facilities for social contact, while physical forms include sexual assault, poor medical care, sub-standard housing and inadequate food. Some sailors still often face issues with delayed or underpaid salaries and desertion. Because of the personal and societal factors at play, the issue of desertion is very real and very severe. Abandonment is a complicated problem since it covers issues like repatriation, immigration status, help for the crew/seafarers and unpaid salaries. When sailors are stranded in a foreign country, they are sometimes prosecuted for being illegal immigrants or jobless and sent to jail. Humanitarian concerns include providing for and reuniting with loved ones after abandoning crew members or seafarers. Unfortunately, in some cases, the burden for aiding seafarers and covering the expenses of supplying them with food, lodging and repatriation has fallen on non-governmental groups or philanthropic institutions. Third, there is currently no international mechanism in place to safeguard compensation for seafarers who have suffered death, injury, wage theft, or desertion. It's interesting that even though MLC hasn't gone into effect yet, there are already plans to change some parts of it. This report raises serious questions about the likelihood that the MLC 2006 will enter effect in 2010 as originally planned.

The Convention recognizes fewer marine liens as opposed to that of the Philippines, which

affects the security of the mortgage creditor and so minimises creditors' unwillingness to offer loans for the purchase of ships, so the adoption supports the development of the financial environment. Tax revenue is the government's lifeblood, therefore giving tax liens the prominence and importance they deserve is understandable. Although it is contrary to the Convention to exclude port, waterway and similar costs, most States no longer recognise the same and doing so is also acceptable in order to achieve the goal of fostering an attractive environment for investors. Except for marine liens for necessities, which should be treated like other maritime liens in accordance with the Convention, since they have no bearing on the mortgage creditor, other liens that are not recognised should be disregarded. As both salvage and contract salvage promote salvage of vessels, which helps maintain the vessel and benefits the other security holders, they should be included together.