



MAROONED IN VIEW OF THE SHORELINE: A COMPREHENSIVE ANALYSIS OF MARITIME LABOUR RIGHTS WITH REFERENCE TO INTERNATIONAL MARITIME LABOUR LAW

Renuka Madhav¹

1. ABSTRACT

Seafarers' role is significant in the maritime sector. They form backbone of the global economy. Therefore, to them, the international sea trade and the success of nations owe a lot. Violation of seafarers' human rights is not only disrespectful, wrong and unfair but also contrary to international law. This paper will address the pertinent issues pertaining to inadequate wages, substandard living conditions, abandonment by shipowners, impact of technological advancements, globalization and covid 19 pandemic. This paper also aims at analyzing the challenges faced by women seafarers such as sexual assault, sexual harassment and gender discrimination. This research paper aims to examine the critical conditions of employment of the seafarers. This research paper will critically evaluate the international maritime labour law framework and its implications. The Maritime Labour Convention is considered as a fourth pillar of the International Labour Organization but it still lacks in addressing some of the underlying issues of the employment contract. Seafarers' employment conditions not only affect their socio-economic well-being but also their families, communities and the wider maritime sector. The object of this research paper is to scrutinize the key instruments, regulatory bodies, international organizations, and industry stakeholders governing seafarer employment and assess their effectiveness in safeguarding the rights and well-being of seafarers. This paper will also offer insights and recommendations for enhancing the protection of seafarers' rights and improving their working conditions. This critical analysis is essential in fostering a more equitable and sustainable maritime sector, recognizing seafarers as crucial contributors to the global economy.

Keywords: International maritime law, Maritime labour convention, abandonment of seafarers, inadequate wage, gender discrimination

¹ 5th year, BA.LLB, Presidency university, Bangalore

2. INTRODUCTION

Throughout history, being a seafarer has been an incredibly challenging occupation. Those working on ships face constant exposure to the dangers of the sea, cut off from all the comforts that land provides.² Additionally, seafarers often find themselves vulnerable to exploitation by their employers due to an inherent power imbalance.³ Recognizing these difficulties, the courts have consistently shown empathy towards the causes of seafarers, acknowledging their unique need for protection.⁴ This commitment to safeguarding seafarers has become deeply rooted over the years. Going back to the early nineteenth century, the courts have acknowledged that a wage claim for services rendered to a ship holds a special status, known as a maritime lien.⁵ This principle has now become firmly established in most Common Law jurisdictions.⁶

The protection of seafarers extends beyond the assistance offered by admiralty courts. On February 7, 2006, the International Labour Organization (ILO), along with the International Shipping Federation, the International Transport Workers Federation (ITF), and other stakeholders, collaboratively established the Maritime Labour Convention 2006 (MLC).⁷ In broad terms, the MLC outlines minimum standards and fair working conditions for seafarers globally.⁸ It is widely recognized as the 'fourth pillar' of the international regulatory regime for quality shipping, complementing three other key maritime conventions⁹ of the International Maritime Organization (IMO).

10

Despite its acclaim, the MLC has not proven to be a panacea for addressing the primary challenges faced by seafarers in their claims for unpaid wages. The issue of shipowners abandoning seafarers due to financial difficulties persists.

² Eugene Cheng Jiankai, *The Effectiveness Of The Maritime Labour Convention's Financial Security Certificates In Resolving Claims For Unpaid Seafarers*, NUS Law Working Paper 2020/008 NUS Centre for Maritime Law Working Paper 20/01

³ *THE "ANL PROGRESS" (formerly "STARSHIP")*, (2003) 1 Lloyd's Rep. 423.

⁴ *The Juliana* (1822) 2 Dods 504, 165 ER 1560

⁵ DC Jackson, *Enforcement of Maritime Claims*, 4th edn, LLP (2005) para 18

⁶ *The Daien Maru No 18* [1984] SGHC 43, [1983- 1984] SLR(R) 787 [17]– [19].

⁷ Preamble of the Maritime Labour Convention 2006

⁸ SANDRA LIELBARDE, *CONCEPT OF SEAFARER BEFORE AND AFTER THE MARITIME LABOUR CONVENTION 2016: Comparative analysis of the legal effects of defining legal concepts in the shape of legal terminology* RGSL RESEARCH PAPER No. 17 (2017)

⁹ *International Convention for the Safety of Life at Sea 1974; the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978; and the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978.*

¹⁰ Dorota Pyc, *compliance and enforcement of maritime labour conditions – the polish legal perspective* XXXVI POLISH Yearbook of international law 2016

b) HEALTH PROTECTION AND MEDICAL CARE

Regulation 4.1 within MLC 2006 requires Member States to ensure that shipowners offer comprehensive health protection to seafarers, including immediate access to necessary medical care while onboard. This extends beyond treatment to encompass preventive measures like health education. Additionally, compensation is offered based on the severity of injuries sustained during work-related accidents.

Guideline B4.1 emphasizes that when ships are not mandated to have a medical doctor onboard, at least one designated seafarer should possess approved medical first-aid training according to STCW requirements. These trained individuals can promptly respond to accidents or illnesses onboard using medical advice communicated through radio or satellite.¹⁷

Technological advancements have improved medical access for seafarers, allowing sophisticated systems to transmit medical information, such as X-rays and electrocardiograms, to onshore specialists, enhancing passenger care.

The Seafarers International Research Centre's project revealed discrepancies in inspection focus, with some inspections prioritizing technical aspects over hygiene and living conditions. Balancing assessments in line with MLC 2006 regulations is crucial. Training port state inspectors and ensuring consistency in inspections through regional agreements are vital for implementing MLC 2006 effectively.¹⁸

c) WELFARE AND SOCIAL SECURITY PROTECTION

Regulation 4.4 of MLC 2006 stipulates that Member States must ensure seafarers have access to shore-based facilities regardless of nationality, race, or other discriminatory factors. Shipowners are urged to cooperate with the state to provide adequate welfare facilities for seafarers when their ships are in ports. However, some seafarers have reported restrictions or denial of shore-leave due to diplomatic issues, contradicting the Convention's intent.

Prof. Erol Kahveci's report on welfare services for seafarers emphasized the significance of shore-leave for their physical and mental well-being. Surveys indicated overwhelming agreement among seafarers about the importance of shore-leave, contrasting with statistics showing a decline in seafarers' ability to access shore-leave in recent years. Moreover, when available, the duration of shore-leave was limited for many, with most unable to venture far from the port area.¹⁹

Nonetheless, Guideline B4.4.1 underscores the need for Member States to consider seafarers' specific needs based on port facilities and permissible activities during their spare time. Regulation 4.5 highlights shipowners' responsibility to ensure seafarers' employment agreements incorporate provisions for social security protection,

¹⁷ Maunikum, Veganaden, "The potential implications of the Maritime Labour Convention, 2006, for policy and management in the maritime sector: a critical analysis", *World Maritime University Dissertations*, 174, 2007

¹⁸ Hansen, H and Petersen, G, *Influence of occupational accidents and deaths related to lifestyle on mortality among merchant seafarers. International Journal of Epidemiology*, 25(6):1-6, (1990).

¹⁹ Erol Kahveci, *SIRC, Cardiff University, Symposium 2007*.

including deductions from wages and contributions to national social security schemes as required. This regulation aims to safeguard seafarers' access to necessary social security benefits and deductions.

d) ACCOMMODATION AND RECREATIONAL FACILITIES

Regulation 3.1 within the MLC 2006 outlines crucial requirements for ship construction, including crew accommodation standards, specific facilities, and dimension limits. Shipowners are obligated to adhere to these stipulations in conjunction with the guidelines set forth by the International Maritime Organization (IMO).

Ergonomics, as defined by the IMO, encompasses the study and design of various elements within working environments—such as workstations, ship bridges, and cockpits—alongside their components, practices, and procedures. This design aims to enhance workers' productivity, health, comfort, and safety on board vessels.

Considering a ship as a floating platform, it remains susceptible to both external and internal environmental factors. These encompass weather conditions, temperature fluctuations, humidity levels, noise, vibrations, and various ship movements, including pitching, rolling, and slamming. The underlying objective of Regulation 3.1 in the MLC 2006 is to address these factors that could compromise the safety and well-being of those working and residing aboard.²⁰

Expanding on this regulation, it is essential to acknowledge that the ship's construction significantly influences the living and working conditions for seafarers. Compliance with ergonomic principles and adherence to specified standards not only ensures regulatory adherence but also fosters an environment conducive to optimal productivity and crew well-being. Additionally, considering the dynamic nature of a ship's operating environment, continual assessment and improvement of ergonomic factors are pivotal to safeguarding the health, safety, and efficiency of onboard personnel. Regular evaluations, coupled with technological advancements, play a vital role in enhancing ergonomic standards and mitigating risks associated with adverse environmental conditions on vessels.

e) FOOD AND CATERING

Regulation 3.2 of MLC 2006 ensures seafarers access good quality food and drinking water in hygienic conditions, meeting nutritional needs, and considering cultural and religious backgrounds.

Professor James Brewer, in a Lloyd's List article,²¹ highlighted the need for shipowners to prioritize crew health and fitness. Poor diets contribute to heart issues, obesity, and fatigue among seafarers, leading to accidents at sea. Insurers stress that excessive starch or sugar intake poses risks, impacting maritime safety and cargo care. He also emphasized proper nutrition, rest, exercise, and hygiene to prevent diseases and improve overall performance.

²⁰ *International Maritime Human Element Bulletin, Alert, Issue No.3: The Nautical Institute, (2004).*

²¹ *James Brewer, P&I diet, and lifestyle gurus turn attention to seafarers, Lloyd list, (2006)*

He further underscores shipowners' responsibility for crew health, linking poor diet to health issues like heart problems, obesity, and fatigue, affecting performance, especially when regular meals or breakfasts are skipped. Prioritizing nutrition and health are crucial for maritime safety and seafarer well-being.

4. CHALLENGES ENCOUNTERED BY THE SEAFARERS

I. ABANDONMENT OF THE SEAFARERS²²

Seafarer abandonment, a severe form of exploitation, poses dire challenges. In 2019, 40 abandonment cases were reported, but the COVID-19 crisis worsened the situation, escalating cases to 85 in 2020.²³ Abandoned seafarers endure prolonged periods without pay, often being the sole financial support for their families.²⁴ Despite recovering over US\$44.6 million in unpaid wages in 2020, the International Transport Workers Federation (ITF) believes this is just a fraction of the total unpaid wages.²⁵

Stranded on ships for over a year, abandoned seafarers suffer grave physical and mental health consequences.²⁶ Mohammed Aisha's experience on the MV Aman exemplifies these hardships. For four years, he lived on the abandoned ship, powerless and infested with insects and rodents, after Egyptian authorities impounded it. To survive, Aisha swam ashore for food, water, and phone charging, breaching immigration laws due to his lack of legal status and COVID-19 tests.²⁷

His ordeal led to malnutrition, anemia, pain, and psychological trauma, reflecting the plight of many abandoned seafarers. Isolation, limited access to essentials, withheld wages, and the inability to disembark not only affect seafarers but also detrimentally impact their families and communities, often reliant on remittances. Such hardships are widespread among abandoned seafarers, creating profound and lasting repercussions beyond their own suffering.²⁸

²² J. Sam Chase, *Stranded Within Sight of Land: Maritime Labor Rights and Seafarer Abandonment in the Time of COVID-19*, 37 *Md. J. Int'l L.* 70 (2022).

²³ *Seafarers and Abandonment: The Impact on Wellbeing*, INT'S SEAFARERS' WELFARE & ASSISTANCE NETWORK ('ISWAN') (Jul. 26, 2021), <https://www.seafarerswelfare.org/news/2021/seafarers-and-abandonment-the-impact-on-wellbeing>

²⁴ *Seafarer Abandonment*, INT'L MARITIME ORG., <https://www.imo.org/en/OurWork/Legal/Pages/Seafarer-abandonment.aspx>

²⁵ INT'L TRANSP. WORKERS' FED'N, 'Tip of the Iceberg': ITF Inspectors Recover \$45m in Seafarers' Wages Amidst Record-High Abandonments (Jun. 7, 2021),

<https://www.itfseafarers.org/en/news/tip-iceberg-itf-inspectors-recover-45m-seafarers-wages-amidst-record-high-abandonments>.

²⁶ *Ibid*

²⁷ INT'L TRANSP. WORKERS' FED'N, *Seafarer Mohammad Aisha is Going Home Thanks to ITF, Ending Four Years on Abandoned Ship* (Apr. 22, 2021), <https://www.itfseafarers.org/en/news/seafarer-mohammad-aisha-going-home-thanks-it-ending-four-years-abandoned-ship>.

²⁸ *Supra* note 18.

II. UNPAID WAGES

That excerpt examines various challenges faced by seafarers, especially concerning the financial security certificates (FSCs) and the Maritime Labour Convention of 2006. The limitations of FSCs become evident when looking at outstanding wages and the extent of coverage. While it seems reasonable to cover four months' wages, seafarers often contact protection and indemnity (P&I) Clubs when they are owed more than that, depleting the allocated coverage before external assistance is even sought.²⁹

Real-life cases from different countries illustrate this problem. Seafarers in the United Arab Emirates were abandoned for 18 months,³⁰ while in Singapore, numerous claims involved unpaid wages surpassing the FSC coverage.³¹ These patterns continue post the MLCA adoption, indicating persistent wage discrepancies.³²

Seafarers' reluctance to take legal action against employers is another issue. Emotional ties, loyalty, and fear of repercussions on their families inhibit their actions even when wages go unpaid for extended periods. This leads to situations where seafarers are owed more than the FSC coverage allows.³³

Furthermore, the FSCs fail to address replacing repatriated seafarers. Minimum manning requirements demand timely replacements, but the responsibility and costs for this are unaddressed. The ease with which FSCs can be terminated by P&I Clubs adds another layer of vulnerability. The financial default of shipowners can lead to termination, rendering FSCs practically ineffective.

Even if FSCs cover payments, recovery from shipowners becomes challenging due to their financial instability. In instances of legal action, maritime liens and priority claims further complicate the recovery process for P&I Clubs. The ambiguity regarding the transfer of rights from seafarers to P&I Clubs underlines the complexities and uncertainties in enforcing these agreements.

III. WOMEN SEAFARERS

The maritime industry has long been dominated by men, a perception that still holds in many regions. Accurate statistics on women in this field remain elusive. The International Maritime Organization's (IMO) 1998 report indicated around 2% women in seafaring roles, including non-operational sectors.³⁴ By 2018, women in deck and engine departments constituted a mere 1% of all seafarers, with only 0.5% holding Certificates of Competence (CoC).³⁵ These numbers exclude the cruise sector, possibly employing up to 30% of seafarers.³⁶ Despite

²⁹ *Rankin v The Ship, Eliza Fisher (1895) 4 ExCR 461, 469*

³⁰ *The Guardian, 'Seafarer abandoned for three years off UAE will be home in time for Christmas' (2019)*

³¹ *In The Ao Hong Ma (HC/ADM 55/2016) (Singapore)*

³² *The Long Bright [2018] SGHC 216, [2018] 5 SLR 1397 [2]*

³³ *The Ever Success [1999] 1 Lloyd's Rep 824, 835*

³⁴ *P. Belcher, H. Sampson, M. Thomas, J. Veiga, M. Zhao, Women Seafarers: Global Employment Policies and Practices, International Labour Organization, Geneva, (2003).*

³⁵ *Drewry, ILO, & ITF, Manning 2009, Drewry, ILO, & ITF, London, (2009).*

³⁶ *BIMCO and ICS, Manpower Report: The Global Supply and Demand for Seafarers in 2015, Maritime International Secretariat Services Limited, London, (2016).*

international efforts since 1988, including the IMO's Integration of Women in the Maritime Sector (IWMS) program, progress remains slow.³⁷

Studies suggest that gender perceptions still put women at risk on ships, evident in a 2014 survey that revealed 17% of women seafarers experienced sexual harassment.³⁸ The impact of these experiences on junior versus supervisory roles showcases vulnerabilities linked to power dynamics in the workplace.³⁹ Harassment not only discourages women from staying but also affects their mental well-being due to isolation during long periods at sea. Bullying, discrimination, or harassment were reported by 79% of respondents in a Nautilus survey, indicating a significant impact on morale, productivity, and business profit.⁴⁰

From a socio-legal perspective, addressing sexual harassment requires effective laws, social involvement, and international cooperation. While some international conventions like CEDAW address discrimination against women, others like ILO and IMO frameworks emphasize gender equality in employment. However, legal discrepancies among countries' laws and policies complicate enforcement, hindering a unified zero-tolerance approach to sexual harassment.⁴¹

The maritime sector's international nature adds layers of complexity to jurisdiction and legal frameworks. Although ILO conventions call for the elimination of discrimination, challenges arise in applying consistent rules across various jurisdictions and cultural contexts. Harmonization of laws is crucial to create a safe work environment and effectively combat sexual harassment.⁴²

In the pursuit of a discrimination-free workplace, the socio-cultural diversity on ships amplifies the challenge of establishing universal gender equality standards. Gender perceptions differ across cultures, influencing behaviors toward the opposite gender, creating added hurdles. Additionally, the confined spaces on ships contribute to increased vulnerability for women professionals, leading to physical and verbal harassment incidents.⁴³

International institutions like ILO and IMO play vital roles in setting global standards for gender equality in maritime employment. However, legal discrepancies across jurisdictions, despite these international efforts, remain a significant obstacle. Harmonization of laws and a zero-tolerance approach to sexual harassment are crucial to ensure a safe and inclusive work environment for all seafarers, irrespective of gender.⁴⁴

³⁷ ILO, *Recruitment and retention of seafarers and the promotion of opportunities for women seafarers*, in: *Report for Discussion at the Sectoral Meeting on the Recruitment and Retention of Seafarers and the Promotion of Opportunities for Women Seafarers*, Geneva, (2019).

³⁸ International Maritime Health Association, *International Seafarers' Welfare and Assistance Network, International Transport Workers' Federation, Seafarers Hospital Society, Women Seafarers' Health and Welfare Survey*, London, (2015)

³⁹ <http://canadianlabour.ca/issues-research/ending-violence-against-women>.

⁴⁰ Nautilus, *Report: Bullying, Discrimination & Harassment Survey 2010*, Nautilus, London, (2010).

⁴¹ <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>

⁴² ILO, *Ending Violence and Harassment against Women and Men in the World of Work. Report V (1) Prepared for the International Labour Conference, 107th Session, 2018, International Labour Organization, Geneva, (2017).*

⁴³ C.A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination*, Yale University Press, New Haven, CT, (1979).

⁴⁴ Laura Carballo Pineiro, Momoko Kitada, *Sexual harassment and women seafarers: The role of laws and policies to ensure occupational safety & health*, *Marine Policy*, Volume 117, 2020,

5. CONCLUSION

The maritime industry is at a pivotal moment, shining a spotlight on labour rights within international maritime law. This framework, known as International Maritime Labour Law, has been crucial in protecting the rights of seafarers. Yet, challenges persist in creating fair labour conditions, particularly concerning gender equality, and putting an end to harassment. These issues call for a reevaluation of our current laws and practices.

Throughout time, the International Labour Organization and the International Maritime Organization have played key roles in crafting rules that champion the rights of those working in the maritime sector. However, concerning stats on gender disparities and harassment incidents in this field remind us of the gaps in enforcing these rules. Even with efforts like the Integration of Women in the Maritime Sector program, the number of women in seafaring roles remains shockingly low. Fixing these disparities means coming together to change laws, step up enforcement, and shift the culture within the industry.

There is a need to update existing maritime labour laws. It is crucial to explicitly address gender equality and put a stop to harassment. This involves clear reporting procedures, thorough training programs, and strong enforcement mechanisms that work across different regions. Collaborating internationally between maritime groups, governments, and stakeholders is vital. If we align laws and share the best ways to tackle labour rights issues, we will have a more unified approach.

Regularly checking in on how labour laws are working within the maritime industry is key. Having a framework for ongoing assessment and reporting will help us quickly fix any problems that crop up.

In conclusion, looking at maritime labour rights under international maritime labour law shows us progress and ongoing challenges. Fixing these issues will take changes in the law, shifts in culture, and more awareness. By putting these recommendations into action, we can create a maritime industry that is fair, inclusive, and safer for everyone involved, upholding the core values of labour rights and human dignity.