

JURISDICTION AND GOVERNING LAWS IN DISPUTES ARISING OUT OF SEAFARER'S EMPLOYMENT AGREEMENT

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ABSTRACT

The Maritime Labour Convention (MLC) 2006 sets a legal framework for the seafarers on a ship to enter into a Seafarer Employment Agreement (SEA) with the owner of the ship or his representative. The SEA contains information as per the guidelines and standards set by MLC. In case the rights of the seafarers are infringed, it is considered as a maritime labour dispute within the ambit of the maritime labour law of the supplying state. Further, the execution of SEA empowers the seafarer to seek legal remedy in case of disputes by filing a lawsuit against the ship-owner. The disputes are dealt with in conformity with the universal law of the seas, conventions, and treaties as set by the United Nations Convention on the Law of the Sea (UNCLOS) that are adopted by the member states. Firstly, this paper will discuss the disputes arising out of SEA, highlighting the welfare aspect of MLC regulations. Secondly, the admiralty laws covering sovereign rights will be covered concerning national and international law perspectives. Lastly, the paper aims to highlight the welfare scheme for seafarers enacted in the ITF-IBC International Collective Bargaining Agreement 2019–2020 that can be considered by India for better welfare development of seafarers.

Keywords: seafarers, jurisdiction, Maritime Labour Convention, Seafarers Employment Agreement, admiralty law.

INTRODUCTION

On 20 August 2013, the Maritime Labour Convention (MLC) came into force which is an International Labour Organization (ILO) convention. It was added to complete the four pillars of the maritime law to the list of existing pillars—SOLAS, STCW, and MARPOL. The convention was ratified by 97 states in September 2019 (ILO, 2006). The convention has not gained pace worldwide but has achieved widespread effect by enabling arrest and penalties for vessels which are of non-signatory states that try to enter the signatory state's ports. MLC sets a

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legal framework for the seafarers on a ship to enter into a Seafarer Employment Agreement (SEA) with the owner of the ship or his representative. There is a total of sixteen articles consisting of five titles that highlight the general regulation to be followed by the ship-owner and seafarers based on the requirement. It has clearly stated the employment conditions regarding the contract of employment that is inclusive of payments to seafarers. The contract should be legally enforceable with a clear interpretation of the clauses which can be easily understood by seafarer while agreeing to it. Every month, the wages are to be paid by the ship-owner to the seafarer that can be transferred to the seafarer's family if desired. The contract gives certain rights to the seafarer related to the rest hours, leaves, repatriation, manning, loss of the ship, and development and opportunities.

In case the rights of the seafarers are infringed, it is considered as a maritime labour dispute within the ambit of the maritime labour law of the supplying state. MLC has harmonized the legal structure to deal with the disputes related to maritime labour by broadly covering the international framework as the restructuring helps to determine jurisdictions and governing laws for such disputes. This chapter closely discusses the essence of seafarer's employment agreement and the related disputes that arise out of such agreement concerning the rights of the seafarer's that are outlined in the MLC regulations. It further addresses the jurisdiction that is followed in Canada, the United Kingdom, European Union (EU), and India based on the type of maritime labour dispute and concerned laws.

SEAFARER'S EMPLOYMENT AGREEMENT

Seafarer's Employment Agreement was introduced with a purpose to ensure fair employment agreement for seafarers, ship owners, and flag states. It is an important document that provides all the information related to employment to the seafarer. In case, the terms of employment are created through a collective bargaining agreement, the provisions are to be incorporated through a reference. At times, the seafarer's are self-employed and the shreds of evidence are stated in the contract regarding the working arrangements that need to comply with the national laws as per the MLC requirements (MLC, 2006). The agreement sets out the basic conditions for working and living for the seafarer on the board.

In the United Kingdom, the seafarer needs to have a written agreement with the ship-owner to work on a UK- seagoing vessel. Even the seafarers, who are engaged for the training purpose, need to enter into a training agreement with the training provider as such agreement is considered equivalent to a seafarer's employment agreement (UK Ship Register, n.d.). The European Union *acquis* has recently made the relevant laws applicable to the seafarers. The laws are mainly related to labour law, equality, and non-discrimination provisions related to working and living conditions of workers on-board a vessel. Additionally, work has been done towards the prevention of accidents that are caused due to human factors. This is an essential step to ensure maritime safety which demands continuous monitoring as per the prevalent international standards. The flag state authorities along with the unions and ship owner hold the responsibility to maintain the level of employment for maritime industry workers in the EU. Majorly, the cargo vessels are from third-country nationals that operate in European waters. To make the sector operational it is essential to allow the vessel to travel towards the desired ports to embark irrespective of the nationality and return home without facing many complexities in the process. Although, EU is not a member of ILO it supports the overall development of MLC as in total there are 60,000

seafarers from worldwide that serve on EU interest ships (European Commission, 2020). The EU Directives of 20 November 2013 was adopted by the European parliament for the port state to include MLC as an integral part of control inspections. At times, the seafarer's go through a closer examination of the vessel as the flag state may not have ratified the MLC. Initially, the MLC was also not ratified by Canada. On 15 June 2010, Canada deposited the instrument of ratification and became the first country of North America as a member of MLC. In 2018, the Seafarers International Union (SIU) of Canada found that jobs were not offered to Canadian seafarers and only \$ 2.41 (CAD) was paid to the foreign seafarers in the national waters. Aggrieved by this SIU took legal actions against the Government of Canada. The government agreed that foreign seafarers are not to be allowed in the national waters for more than 30 days if they do not showcase a written consent to the maritime unions of Canada. This provides the first right of employment to the Canadian seafarers. Since the shipping industry of Canada contributes around \$ 3 million to GDP, there arises a huge scope for the employment of seafarers (Safety4Sea, 2018). Likewise, to facilitate the employment of seafarers, India has established a licensed recruitment process under Merchant Shipping (Recruitment and Placement of Seafarers Rules) 2016. The act applies to the Indian ship-owners who can execute placement services and recruit seafarers for other employers as well as for foreign flagships (Directorate General of Shipping, 2016). To have an on-going business in India, it is mandatory to have the recruitment and placement service registered and licensed under the Act. To maintain the transparency of the process the records of all the recruited seafarers should be recorded properly; in a way that the inspecting authorities can inspect as per the requirement. The Act aims to ensure that the seafarers are informed about their rights and duties before their engagement in employment. The employment agreement should be following the laws of the flag state along with the collective bargaining agreement if it is inclusive in any part of the agreement. The copies of the agreement need to be given to the seafarer before and after signing on. The Act ensures that measures for proper protection are taken up by the ship-owner in the agreement for medical assistance in emergency along with required maintenance. The cost of repatriation needs to be covered by the ship-owner and he has to furnish details of bank guarantee to the seafarer to assure that protection is provided and there are minimal or no chances of being stranded during abandonment. The seafarer can examine and respond to complaints associated with his employment activities and if more complexities are involved, Directorate General can be informed to look into the unresolved matter. Also, the matters related to any casualty, injury, or death or disappearance of seafarer must be informed to the Directorate General within 24 hours from the happening of the event. The labour conditions and work environment of the ship should be as per the collective bargaining agreement signed by the ship-owner and the seafarer. The compensation for the death of the seafarer or any disability should be provided without any delay. Essentially, the agreement must contain the date of commencement as well as the termination clause. Generally, the seafarer is discharged from his duty by completing the signing off process before the master of the ship or his representative or a person authorized by him. The Directorate General of Shipping has issued Notice No.7 of 2020 stating the terms and conditions for employment of seafarer to be engaged on Indian Flagship (Directorate General of Shipping, 2020). It states that the seafarer's employment agreement must include terms and conditions of employment unambiguously, inclusive of type of vessel engaged and details of the trading area. The overtime allowances and other allowances should be fixed either on monthly basis or according to the work done during hours of overtime. In the collective bargaining agreement, there must be a provision for contributions done to the seafarer's welfare

society and towards the provident fund of the seafarers. The purpose to establish such terms and conditions for employment is to ensure that provision of the Merchant Shipping Act, 1958 and the rules and regulations made for the Indian seafarers working on Indian flagships are executed properly within the ambit of the Maritime Labour Convention 2006. The notice also mentions the terms and conditions that need to be followed in case the collective bargaining agreement does not form a part of seafarer's employment agreement or Articles of Agreement. The provisions of any of the agreement (AOA/CBA/SEA) should not contravene any applicable act or rule especially concerning the Merchant Shipping Act 1958 and Maritime Labour Rules 2016. The ship-owner and master of the Indian flagged ship should specify to undertake the liability to provide legal support and bear the losses without curtailing the compensation of the seafarer. In case if any deduction is done from the wages in place of donation or union fee, it is subject to written authorization from the seafarer to the ship-owner. The compensation needs to be paid even in case of death and disability of the seafarer which shall be above the treatment cost and wages as per the applicable laws. A seafarer with 50% of disability or more shall be considered as a fully disabled employee. For reference and record purposes, a copy of the agreement whether entered or renewed shall be submitted to the Shipping Master's office, Directorate General of Shipping, and Seamen's Employment office.

MARITIME LABOUR DISPUTES AND THE GOVERNING LAWS

In the Merchant Shipping Act, Section 150, states the power to refer the disputes between the seafarer and ship owner to the tribunals. If the central government holds the opinion that the dispute related to the matter of employment of seafarer with the ship-owner or employer whether employed or likely to be employed, the central government through a notification in the official gazette may form a tribunal consisting of one or more members. The tribunal so formed shall have the jurisdiction and power similar to a civil court under the Code of Civil Procedure, 1908 (Directorate General of Shipping, 1958).

For decades, massive exploitation of seafarers has taken place around the world. The major problems are related to delayed payments, underpaid wages, and at times even no payment is made by the ship-owner or the employer. Initially, the seafarers never raised their voice against the injustice as they feared losing their job; in return, they waited in anticipation for a long time for their salary but, unfortunately, the shipowner never made the payment. At last, strict legal actions were taken by the seafarers to claim for rightful wages, provided that the claim was initiated within three years as per the Indian Limitation Act, 1963. In case, if the seafarer dies, the period is computed as per the date of his death to the date when a person of proximity is informed about his death. However, the seafarer regardless of nationality has the right to arrest a ship if his wages are unpaid. To obtain the arrest of a ship, the required documents are—salary slip, an agreement signed by the parties, and power of attorney. All the documents should be preferably in or translated into the English language. The Indian High Commission legalizes the power of attorney if the seafarer is not present in the territory of India. The execution is done by the Indian High Commission in the country where it was executed by the seafarer.

Disputes mainly arise when the ship-owner tries to reduce his liability by denying or delaying to pay compensation to the seafarer. In case of injury or death of a seafarer on an Indian Flagship, the compensation can be claimed by the family member under the Employee's Compensation Act (ECA) 1923. The Act applies solely in India for all the seamen and master except if they are

working on a foreign-flagged vessel. Permission from the Director-General of shipping is required to employ foreign seafarers on Indian flagged vessels. The principle of strict liability is imposed on the ship owner under Section 3 of ECA to pay compensation in the event of the death of the seafarer. The onus to seek death compensation by the deceased's family is provided under the Fatal Accidents Act 1855 when the death is caused due to neglect, default, or through any wrongful act. Since the claims are made before the Indian civil courts and there is no existence of the law of torts in India, the compensation payable is generally minimal. In case if the injured seafarer or the members of his family instigate criminal proceedings, they need to prove the culpability of the employer without a reasonable doubt under the Indian Penal code 1860. Also, while the seafarer is on medical leave due to injuries the property left by him on board is lost. Even the family members do not get the property of the deceased. The recent International Bargaining Forum (IBF) Framework Agreement 2019–2022, establishes the duty of the company to safeguard the property of an injured, sick or deceased seafarer under Article 18 (ITF Seafarers, 2019). All the information related to the lost property should be provided by the seafarer to the best of his knowledge. Due to the injuries suffered, the seafarers face the problem of getting directly terminated by the employer without getting a clear explanation about the default committed in course of employment. According to Article 19 of the IBF Agreement, the company must give one month prior notice in a written form to the seafarer, stating the reasons for termination. For situations related to a medical emergency, the company should focus to provide medical attention to the seafarer at the earliest instead of denying liability by terminating the seafarer. The seafarers are entitled to sick pay but often they face difficulty to secure the amount from the ship-owner. Article 22, of the International Transport Workers' Federation (ITF) Agreement, states that subject to medical reports, the seafarer is entitled to medical attention up to 130 days after repatriation along with sick pay. To avail of continuous sick pay, the seafarer needs to submit medical reports endorsed by a doctor appointed by the company. As per the provisions of the ITF Agreement, a seafarer with a permanent disability is entitled to compensation except if the disability is caused by a wilful act.

Not only the physical health but also the mental health of the seafarer plays a vital role during the period of voyage. The seafarer ought to be given shore leave by the shipowner. However, disputation for denial of period break persists between the shipowner and seafarer. It is assumed that shore leave counts in a way as the human right of the seafarer. In recent years, it has been observed that seafarers are denied to go shopping or recreation simply because the shipowner has to bear the expenses for getting the ship transported to the terminal gate. The International Maritime Traffic 1965 (amended) made shore leave a general right of the seafarer and crew members when the ship reaches a port subject to formalities. The provisions of the International Ship and Port Facility Security Code (ISPS) emphasize the duty of concerned authorities on the port to grant shore leave. Indian ports are required to facilitate shore leave to the seafarer through proper documents as per the amendment done to the Port Facility Security Plans (DGS- ISPS Circular No. NT/ISPS/1/2013, 2013). When the ship is in port or enroute, it the duty of the master to ensure that the task of watch keeping is equally shared among the seafarers as per Section 35 of the Marine Labour Act.

A seafarer shall have a proper channel of communication to connect with other ships and authorities whenever required. The masters fall out to meet the demand that leads to quarrels with the seafarers. It is the duty of a master to provide affordable access to communications and internet facility for the seafarer. If due to any technical glitch, the mail is readdressed, then an

additional postage amount cannot be charged by the master. Irrespective of the flag state of the ship, satellite communication for specialist advice should be made available by the competent authority within 24 hours. Alongside communication on voyages, the crew members cannot be denied to be accompanied by partners. The permission is granted by the master and he is obliged to provide insurance coverage against any tragedy or illness of such a partner. For the entire period on voyage, the ship owner cannot deny fulfilling the requirements related to food and water. However, disputes often come up concerning quality, quantity, and absence of food and drinking facilities on board. There are legal provisions for water supply and food that need to be ensured and adhered to by the ship owner. To maintain accuracy for supplies of food and water, monthly inspections must be conducted by the master or his representative. There has to be a proper record of the inspection along with the date, outcomes, and other details as mentioned in Regulation 5.2 of the MLC. With the adherence to the provisions of the agreement and allied laws, the protection of seafarer's data from third parties is crucial. The data of seafarer includes—information on recruitment and placement services, personal information relevant for employment, and medical records. The investigation process should not breach the privacy of data and mandatorily perform as per the guidelines prescribed by the International Labour Organization (ILO). On the ground of accidents and injuries, records should be maintained not limited to information of fatalities involved with the ship. It is the liability of the ship owner concerning any injury, sickness or death caused due to an accident on the ship in the seafarer's course of employment to provide required assistance and support for financial consequences. In case of dispute, the seafarer has the right to seek any other legal remedy. However, the compensation must be assured to the seafarer in the event of death or long-term disability of a seafarer suffered due to occupational injury, hazardous work as mentioned in the provisions of the seafarer's employment agreement. The liability insurance covers medical expenses till the time seafarer recovers from the injury but limitation may exist as per the national laws. The expenses, in any case, should not be less than for sixteen weeks from the commencement of seafarer's injury or sickness. When sickness leave is granted to a seafarer, the employer ship owner often compels the other seaman to increase his hours of work to meet the requirements of the task. Such an act is strictly prohibited as only a maximum of 14 hours of work can be entrusted to a seafarer. In a week, a seafarer shall work for 72 hours and not beyond that in any case. The MLC explicitly defines the suspension of scheduled hours of the work if the work entails immediate safety of persons, cargo, or to give assistance to other ships in distress. Lastly, seafarers are entitled to repatriation without paying for the costs. The conditions and circumstances are specified in the MLC along with the assurance of financial security for each member. A seafarer has to work less than 12 months to be entitled to repatriation including the arrangements for transportation expenses covered by the seafarer. At the beginning of the employment, the ship owners are prohibited to deposit an advance amount of repatriation for the employment of seafarer and to deduct the amount from the wages. The amount can be deducted only when the seafarer has committed an act contrary to the national laws or applicable laws of the collective bargaining agreement. The right of the ship owner to collect the amount of repatriation cannot be prejudiced for third-party agreements under the regime of national laws (Laws Learned, 2024).

SOVEREIGN RIGHTS UNDER ADMIRALTY LAWS AND JURISDICTION

Framed in the 17th century, the doctrine of freedom of the seas has evolved with time intending to limit the jurisdiction of the state over a sea belt surrounded by a coastline of the nation's territory.

The rest of the area can be used by all the other nations for common benefit without exercising control and ownership. The United Nations Law of the Sea Convention 1982 (UNCLOS) works to ensure that relations are maintained between the states for the usage of the sea. It empowers the coastal states to have sovereignty over the territorial sea but ensures that innocent passage is made available for the foreign vessels. Sovereign rights are exercised up to 200 miles in exclusive economic zones by the coastal states and up to 350 miles in the continental shelf to explore sea bed full of resources.

The Stockholm conference and declarations by the General Assembly laid limits for national jurisdiction. The Law of the Sea Convention clearly defines the extent to which resources can be used by nations while exercising sovereignty. Under this, freedom was allotted for navigational rights; the limit for territorial waters is 12 miles from offshore, the exclusive economic zones to be considered from a range of 200 miles from offshore, and 350 miles for continental shelf. There was also the establishment of an international seabed authority to enhance the conflict resolution mechanism (United Nations, n.d.). Under the Constitution of India, admiralty jurisdiction vests with the high courts to deal with the matters relating to foreign ships and inclusive of arrest and detaining of ships. Unless specified by international law regulations and rules, all the matters about persons and things within the national waters fall under the jurisdiction of the Supreme Court of India. Recognition is made to this power by various conventions on the international platform. Except for sovereign ships, the jurisdiction extends to all the injurious acts and ships on high seas.

ITF AGREEMENT 2019–2020 AND TAKEAWAYS FOR INDIA

India should also work and develop mechanisms such as IBF agreement to resolve disputes among ship owners and seafarers in the country. The mechanism can surely help to enhance the welfare scheme for seafarers. The following are the key learnings from the agreement that can be considered by India.

The IBF agreement has been framed for the duration of twenty-four months i.e. from 1 January 2019 to 31 December 2022. Under this Act, the terms and conditions of employment, wages, and compensation are duly agreed between, on behalf of ITF and the company. As per the agreement, the company must provide all the equipment that is for the personal protection of the seafarer following International Maritime Organization (IMO) regulations. The company needs to provide the equipment following the applicable national regulations. This helps to enhance the working of a seafarer on board as with the help of equipment and proper precautions he can save himself from accidents caused due to hazardous work or any act involving danger. Without supplying the equipment, the seafarer shall not be asked or compelled to work. Article 29 of the agreement aims of the protect seafarers from getting affected by accidents. The safety mechanism has also been enhanced by adding the provision of having a Safety Committee. The company needs to establish a committee to look after the safety and health of the seafarers in consonance with the provisions of the ILO Code of Practice on Accident Prevention on Board Ship. There shall be an appointment of a competent person for the post of safety officer who has to ensure that all the policies and programs related to the safety and health of the seafarers are executed in an effective and efficient manner. The crew members have to right to elect their representatives to work with the safety and health committee. The seafarers also have the right to represent themselves in the National Trade Union that is affiliated to ITF. The fee for the membership of

the National Trade Union is to be paid by the company. The special agreements are inclusive of terms and provisions for Welfare and Protection Fund, and International Assistance for seafarer, which shall be funded by the company. The seafarer has all rights to participate in the activities conducted by the trade union, highly acknowledged by the company. The acknowledgment is necessary to protect the seafarer from anti-union discrimination and to ensure and supervise that acts are performed as per ILO conventions (ITF–IMEC, 2019). During the period of voyage, the work environment plays a vital role in the working of the seafarer. The Agreement has added Article 32 for establishing equality in the work culture of a seafarer on board. It has explicitly prohibited any kind of harassment and bullying activity. It ensures that a free environment must be made available by the company for the living period on board. Any kind of infringement to this provision is to be dealt with in serious nature by the company as misconduct on the behalf of the seafarer. While ensuring proper work culture, a seafarer cannot be forced to enter into any document to accept variations in terms and conditions nor can be compelled to return wages to the company. Instead, there must be contributions by the company for the training and upgrading skills of the seafarers. Special emphasis must be made on education and the agreement executed for overall training, upgrading, and educational purpose is to be known as International Maritime Training Fund.

IMO FUND AND ONBOARD TRAINING

Financial security and stability are really important for the seafarers and to ensure that they have a proper backup in case of any distress, the agreement includes provisions related to insurance coverage. The insurance system helps the seafarer especially in situations when they are abandoned. The agreement entrusts the company to ensure financial security is made available to seafarer as per the MLC, 2006. The details regarding the same are to be made available to the seafarer by displaying onboard, particularly at conspicuous places.

CONCLUSION

The rights of the seafarers are exploited massively by the ship owner at various stages of the voyage. At times, the complaints are addressed and heard but majorly, the disputes are neither addressed nor do they get pursued to reach a competent platform. The disputes can be solved at the initial level i.e. by having a fair and effective agreement between the parties. The reasons for disputes should be highly recognized so that provisions for the same are included as a part of the agreement before the commencement of employment. Enacting laws, rules, and regulations to combat the disputes are not enough till the time there exists proper execution. When the agreement is entered into by the parties, it is necessary to check that all the rights of the seafarer, their working environment, onboard facilities including medical assistance are taken care of by the company. There must be provisions defining the liability of the company if it fails to meet the duties and obligations as agreed in the agreement. The ITF model is an exemplary agreement that can be adopted by India to ensure the welfare of the seafarers during their course of employment. All the major concerns and disputes need to be framed with solutions and to be enacted in form of policies and provisions in the legal framework. Indeed, there are disputes in existence and need to be dealt with through proper acknowledgment in legal terms. The life of seafarer should not get affected after the termination of his services, alternatives need to be created for the wellbeing of a seafarer. Moreover, the wages or compensation he is entitled to should never be denied or cancelled. There is a need to enact conventional provisions concerning maritime labour laws in India.

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