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# Abandonment of Sea Farers: Legal Response

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SUCHI SHARMA<sup>1</sup> AND ANKITA AWASTHI<sup>2</sup>

## ABSTRACT

*Shipping industry has seen an enumerable growth in past years. But with growth there also comes unresolved issues, and the same has happened with sea farers. Already concerned about the security of their family members, the problems of sea farers increase when they are abandoned on the ship. When Sea farers are abandoned, it is mostly due to lack of funds by employers which lead to sea farers roaming in a foreign nation and dealing with financial and social crisis. They often lack access to proper legal services. Marine operations are often perceived as “dangerous” because of these issues at hand. Life at sea can be hard as sea farers already face different kinds of abuses, the fact that they are away from their families and friends and, in such scenarios if they lack proper legal measures to save themselves then it is a big issue. The aim of this paper is to highlight the issues faced by sea farers after they are abandoned and potential developments that can be made in order to help sea farers legally in times of abandonment. The paper also consists of cases of abandonment and how were they dealt with in regards to international and Indian maritime law. The objective of this research is to find out whether legal response generated at the time of abandonment of sea farers is sufficient or not. In case laws are found to be invariable, possible solutions have been proposed so that welfare of sear farers may be achieved.*

**Keywords:** *Sea farers, Abandonment, Legal Response, Maritime Industry.*

## I. INTRODUCTION

*“A sailor’s joys are as simple as a child’s”*

*- Bernard Moitessier, Sailor*

This quote by Bernard Moitessier aptly shows the conditions in which sailor’s sail. Their joys and sorrows are all dependent upon the happening on their vessel. Their mental and physical wellbeing, all goes into taking the vessel from one place to another.

And all they want in return is a voice to be heard. Even in recent times of a pandemic hitting the world gravely where all means of transportations were banned, merchant industry and these

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<sup>1</sup> Author is an Advocate at Mitahaar, India.

<sup>2</sup> Author is an Advocate at Delhi High Court, India.

seafarers were continuously performing their jobs.

The crew on the Princess Diana ship was “forced” to work even when they needed to be put in isolation after many passengers on the ship came out to be covid positive. There were many who weren’t able to raise their voice against the injustice and god knows if those who spoke would not have spoken, we would have never known their plight.

Is this what we as ball bearers of justice and legality give to people who serve our needs without looking after theirs?

No, I don’t think any amount of monetary compensation can ever justify the down trodden behavior they had to face. In this era of human rights and international conventions and laws for everyone, I think legal response to issues of sea farers is overlooked upon.

The fast, efficient and competitive marine industry that runs from ancient period but even in today’s 21<sup>st</sup> century sea farers are abandoned, neglected and stranded in foreign ports. Every abandoned ship is a serious hazard to this community. Every such story is a story of physical and mental misery. The fear of non-payment of wages, ill living conditions with no access to home is scary.

It is arduous and back breaking process to survive on these ships. They have to self-sustain in this panic-stricken environment. Many sea farers have to opt for fishing in these chains of events so that their hunger can be satisfied.

Legally, sea farers are prompt to believe that they will be protected by the ship owners or the laws of their own country but when such a situation arises, competent authorities often start blaming themselves instead of finding the right solution to the problem.

Example – First Officer of MV Aman 2017, Mohammad Aisha is one such example who has been stranded and left alone, trying to sustain in that environment for as long as 4 years.<sup>3</sup>

The abandonment of sea farers generally range to people of low classes in this industry. People who lack the knowledge of the rights or people who have so much authority both can be victim of abandonment. Abandonment in case of sea farers means – a situation where the ship owner does not pay the wages, fails to support the crew and fails to pay for repatriation. Basically abandonment of sailors is a condition where they are left with no support – pecuniary or otherwise from the ship owner.

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<sup>3</sup>Chief Mate Stranded on Abandoned Freighter for Four Years, *The Maritime Executive* 03-22-2021(15 APRIL 2021; 3:00 AM) ; <https://www.maritime-executive.com/article/chief-mate-stranded-on-abandoned-freighter-for-four-years>.

## II. DEFINITIONS

Ship owners – Owner of the ship<sup>4</sup>. Ship owners are generally those persons who own a vessel used in commercial or personal purposes.

Sea farers – There are many definitions that define who in general can be regarded as sea farers. According to Black's Law dictionary Sea men are –“Sailors; mariners; persons whose business is navigating ships, or who are connected with the ship as such and in some capacity assist in its conduct, maintenance or service. Commonly exclusive of the officers of a ship<sup>5</sup>.”“A person who by national law or regulation is deemed competent to perform any duty which may be required of a member of the crew serving in the deck department<sup>6</sup>.”

Abandonment – “In Maritime Labor Convention 2006, abandonment is a situation where the ship owners do not communicate with the ship for at least eight week”

## III. LEGAL REGIME FOR ABANDONMENT

### (A) MLC (Maritime Labor Convention, 2006)

Maritime Labor Convention 2006 or MLC 2006 was a much-awaited body in the maritime sector. It was formed because of the absence of a particular set of law under maritime law. Basically, this convention has the certain set of rights and duties for the global shipping industry.

Also, known as the “fourth pillar of maritime industry”, this convention supplements SOLAS, MARPOL and STCW

It will not be wrong if we would call MLC as fundamental rights of sea farers. This code not only provides various rights to sea farers but also lays down other conditions such as methods of repatriation, leaves, compensation in case of lost or damaged ship, medical and other certifications necessary to board a ship, work hours and rest hours of sea farers. This code is really important for decent conditions of sea farers.

### 1. Implementation of MLC, 2006

As far as its implementation is concerned, MLC 2006 also needs to be signed by the flag states and have to include it in their national laws<sup>7</sup>. Although flag states are open to interpret MLC in

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<sup>4</sup>Merriam Webster Dictionary, <https://www.merriam-webster.com/dictionary/shipowner>, 12 April 2021; 2:00 AM

<sup>5</sup> Henry Campbell Black ( 4<sup>th</sup> ed.), Black's law dictionary, St. Paul, Minn, West, 1968, p. 1517, 12 April 2021 2:00 am

<sup>6</sup> J. R Fox, Dictionary of International and Comparative Law, New York, Ocean Publications, 2003, p 294, 12 April 2021; 2:00 AM

<sup>7</sup>MLC 2006 Pocket Guide, GL Systems Certification, [https://epub.sub.uni-hamburg.de/epub/volltexte/2012/17272/pdf/MLC\\_Pocket\\_Guide\\_2011.pdf](https://epub.sub.uni-hamburg.de/epub/volltexte/2012/17272/pdf/MLC_Pocket_Guide_2011.pdf), pg. 8;12 April 2021 2:15 a.m.

accordance with the conditions persistent in their own state.

India being a prime maritime country because of its sea farers, is a party to MLC 2006 and is 66<sup>th</sup> state to ratify it on 9<sup>th</sup> October 2015 .In accordance with MLC 2006 and Article 51 of the Constitution of India, state formed their national law needed to implement the MLC 2006 and amended Merchant Shipping(Maritime Labor) Rules,2016<sup>8</sup>

On 18<sup>th</sup> January 2017, the first amendment that really ensured the protection from abandonment to sea farers and their families was enforced after they were sanctioned from International Labor Conference, 2014. These amendments were made to MLC 2006.

This amendment not only ensured their maintenance but also laid down financial security for abandoned, occupationally disabled, injured sea farers. They further provided proper checks and certificates to ensure financial security of crew before boarding. There is a proper set of procedure through which foreign ships are inspected after entering port states where the MLC 2006 is enforced. There are also penalties and stringent actions in absence of prescribed documentation and safety methods.

Introduction of these provisions ensured the financial safety of sea farers in cases of abandonment.<sup>9</sup> Through these provisions, crew will not be left stranded for long and will have an option of repatriating that was not available with them in the past. Usually, crew members would wait until the ship was sold and their claims were settled but new financial security system has changed that. As of 2020, 97 states have ratified MLC 2006 including India.<sup>10</sup> Various amendments to MLC 2006 clearly denote that, MLC 2006 can be updated in order to fulfill the requirements of ever growing shipping industry so that welfare of sea farers can be facilitated. Amendment of 2017 was finalized in 2014 by a Special Tripartite Committee established in accordance with MLC 2006 Article XIII.

India ratified MLC 2006 on 9<sup>th</sup> October 2015 and added various social security provisions for welfare of sea farers.<sup>11</sup>

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<sup>8</sup>Maritime Labor Convention, Directorate General of Shipping; <https://www.dgshipping.gov.in/Content/MaritimeLabourConvention.aspx>, 12 April 2021 2:15 a.m.

<sup>9</sup>Amendments of 2014 To The Maritime Labor Convention, 2006, Approved By The Conference At Its One Hundred And Third Session, Geneva, 11 June 2014, International Labor Conference Conference internationale du Travail, [https://www.ilo.org/dyn/normlex/en/f?p=1000:51::NO:RP:P51\\_CONTENT\\_REPOSITORY\\_ID:3257890](https://www.ilo.org/dyn/normlex/en/f?p=1000:51::NO:RP:P51_CONTENT_REPOSITORY_ID:3257890), 12 April 2021 2:15 a.m.

<sup>10</sup> Ratifications of MLC 2006 – Maritime Labor Convention 2006, International Labor Organization; [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:312331](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312331), 12 April 2021 2:15 a.m.

<sup>11</sup> India –MLC Country Profile; [https://www.ilo.org/dyn/normlex/en/f?p=1000:80021:0::NO:80021:P80021\\_COUNTRY\\_ID:102691](https://www.ilo.org/dyn/normlex/en/f?p=1000:80021:0::NO:80021:P80021_COUNTRY_ID:102691), 12 April 2021 2:15 a.m.

**(A) Decision VII/27**

The aim of this conference was to decide upon the methods that can be implemented after the ships are abandoned. In the 7<sup>th</sup> meeting, types of ships that were being abandoned was also looked upon and it was found that although a fair number of ships were wide but small sized ships clearly won the race who were involved in domestic trade.<sup>12</sup>

However, I believe that abandonment cases are not limited to what the parties called “domestic trade or small ships” but they ranged from national to international waters. Infact, the cases of abandonment are high from international trade.

Whereas, the decision presented certain observations which included the acceptance of the issue of abandonment and formation of one’s own national laws for this issue.

**(B) 2007 Convention**

The Nairobi International Convention on the removal of Wrecks,2007<sup>13</sup> relatively dealt with abandonment as it was engaged in shipwreck cases and they were indirectly affecting some of the abandonment cases such as instances of maritime casualty.

There were found many reasons for abandonment of ships that included “confiscation due to illegal activities, financial matters and maritime casualty”

**1. Reasons for abandonment**

Abandonment in marine industry is a situation where seafarers are left with no communication, no financial security from the ship owners. When we first hear about the abandonment issue, it seems to be a far possibility but this is a scenario which is common in shipping industry.

The period of eight weeks that are mentioned in the Maritime Labor Convention, 2006 is the period where the crew members have to stay on the ship to ensure the communication.

Abandonment may arise in two major cases – one where there has been a legal dispute and another where the ship owner has faced a financial crisis. According to Maritime Labor Convention 2006, abandonment occurs when a ship-owner-

- Fails to cover repatriation cost
- Abandoned crew from necessary support and maintenance.

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<sup>12</sup>Guidance on dealing with abandonment of ships on land or in ports, Basel Convention 1989, <http://www.basel.int/Portals/4/Basel%20Convention/docs/ships/abandonment/GuidanceOnDealingWithAbandonmentOfShips.English.pdf>

<sup>13</sup>Nairobi International Convention on the removal of Wrecks, International Maritime Organization, <https://www.imo.org/en/About/Conventions/Pages/Nairobi-International-Convention-on-the-Removal-of-Wrecks.aspx>, 14 April 2021 2:25 a.m.

- Non Payment of wages for at least 2 months.

Abandonment can be reported by

1. Flag state- Jurisdiction under whose state the vessel is registered.
2. Port State- A state with an international Port.
3. Labor sending states-
4. Certain NGOs-NGOs as Human Rights at Sea, ITF, Arctic Ocean who work for welfare of sea farers.
5. Sea farers

It is important to report the cases of abandonment so that appropriate parties can endeavor to arrange all the requisites in timely manner.

#### **IV. ANALYSIS OF SEA FARER'S ABANDONMENT CASES**

“Abandonment distress us, we as crew are left with nothing but hope and the hope also reduces after a while. I had debt to pay, so I could not return without wages as this is only economical support for my family.”

When I talked to a sea farer about his views on abandonment, this was his response and much more. These cases discussed below are for reference and do not completely explicate the trauma faced by sea farers. Abandonment generally starts with the failure of payment of wages followed by dereliction of care and unavailability of fuel for vessel and its prevailing conditions. It continues with prevalent in humane conditions for living and surviving on the vessel. In many cases even the shore leaves are cancelled. At times, it than becomes difficult to trace the ship owners or even if they are found, they keep making false promises.

Above mentioned is a series of events that generally takes place in cases of abandonment and these results in temper issues or physical and mental pain to the crew.

##### **(A) OBO BASAK IMO 7329259**

Obo bask was a vessel with Turkish flag which was abandoned in 1997-1998 in Dunkirk. Marti shipping was the owners of obo basak and were considered a prime shipping company at that time. The ship got arrested for the default of creditors and this was not the first arrest for the ship. After some attempts the crew move towards their next destination which was turkey.<sup>14</sup> The crew was abandoned for a period of 9 months and they were forced to come out in order

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<sup>14</sup> 8 Kahveci, E., Abandoned seafarers: The case of Obo Basak, In: Seafarers International Research Centre (SIRC) – Proceedings of the Seafarers International Research Centre's 4th International Symposium, Cardiff University, SIRC, July 2005, ISBN 1-900174-26-X, 12 April 2021 3:14 a.m.

to survive. The mission to seafarers, informed the local ITF inspector to look into the matter while creating a state of confusion within the crew members to take legal action or not. But even after so many months their were unpaid wages which resulted in legal action by the crew against Marti Shipping. Marti shipping in return sent dismissal letters to the crew who agreed to take legal action against the company. After the court decided in the favor of crew members, the second crew also had to face similar situations about unpaid wages and scare of blacklisting. Infact, they had to face isolation, lack of electricity and poor conditions of living. Continued fighting the case in French courts, the second crew, never again joined Marti.

The issue that arose in this case was the jurisdiction of who's who . It also brought up other issues that are associated with abandonment –nonpayment of wages and repartition being the top of the list. Lack of guidelines were another issue that made this case worst.

This case is an exemplary reminder to all those concerned that the issue of abandonment of sea farers need to be resolved at the earliest and also to look towards the warning signs before the actual abandonment.

### **(B) Kish Island Iran**

In the instant case of Kish Island, there were 17 abandoned sea farers victim of negligence of several vessels at the port state of Iran(IRA) . Crew members who hailed from India(12), Ethiopia(3) and Filipino(2) alleged that they had unpaid wages for more than two years. Kish Island is located in the Persian Gulf 19km away from Iran . The ship owing companies namely Baltic Marine Service and Al Matab Shipping ignored their crew and left them stranded on the island with poor and unhygienic food and living conditions.

They had difficulties repatriating back to their respective countries as their supporting documents were retained by the shipping companies themselves.

This case was reported to organization named – Human rights at Sea who after contacting the shipping company found that the human rights violation did not persists in this case.

### **(C) MV Liberty Prrudencia IMO 9250141 (Feburary- March 2017)**

The crew in the present case was waiting for their final sign off and full payments after being deprived of the payments from 2016. With constant fear of unpaid wages and indispensible timeline of being away from their home, the crew and shipping companies came to consensus on payment of a month's wages before sign off and later payments through P&I club.

In this case, it was observed that although the crew was denied payments on the ground of lack of funds but sooner it was found that ship was loaded with cargo and set to sail at the earliest



in 2017.<sup>15</sup>

There were also reported cases of abuse by ship master on crew; there was fear, anxiety of repatriation among crew which is totally understood in such scenarios. However, after the involvement of ITF and legal action against the ship owner in Hong Kong court, ship owner finally settled the wages of crew members who were than repatriated from China to India.<sup>16</sup>

#### **(D) Azraq Moiah IMO 961976(UAE –Flag State)**

Human Rights at Sea, an impeccable organization working for the welfares of sea farers, conducted an investigation and reported the abandonment of 30 crew members of 3 different vessels as claimed by the organization.

The ship's caption Captain Ayyapan Swaminathan informed the abandonment of 30 Indian crew members left stranded on board in anchorage site at Port of Sharjah UAE. These crew members were denied sign off and even payment of wages. With conditions worsening, there was inhuman conditions on ship for the crew. They had no means to cook as well as necessary sanitation was also lacking. Apart from these conditions, the documents of the crew were also confiscated by the company.

The case was filed in Federal Transport Authority who banned the company for the reasons of abandonment but in parallel universe the crew on board had scary stories. The FTA was told that the vessel will be sold off and accounts will be settled. However, continued struggles by crew laid to another letter by them on 11<sup>th</sup> November 2018<sup>17</sup>

#### **(E) Caribana Express IMO 7816123 (Flag State- Panama)**

The crew faced difficulties since the joining of ship. They were denied of wages since their joining. Along with that the minimal requirements necessary for the maintenance of the deck and engine room was also not heard. ITF has contacted the flag state on 15<sup>th</sup> December 2020 about the ship's condition.

The crew who joined in 2021 is also facing similar issues of non-payment of wages and abandoned supplies of goods necessary to maintain the ship. However, P&I Club has

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<sup>15</sup>The Human Impact of Crew Abandonment MV Liberty Prudencia IMO 9250141 Indian Crew Evidence February-March 2017, Human Rights at Sea, <https://www.humanrightsatsea.org/wp-content/uploads/2017/03/20170310-MV-LIBERTY-PRUDENCIA-CREW-CASE-STUDY-FINAL-SECURED-LOW-RES-1.pdf>, 18 April, 12:15 am

<sup>16</sup>Liberty Prudencia crew hails ITF Support, ITF Sea farers, 25 July 2017, <https://www.itfseafarers.org/en/news/liberty-prudencia-crew-hails-itf-support>, 18 April, 12:15 am

<sup>17</sup> Seafarers abandonment in UAE, Human Rights at Sea, <https://www.humanrightsatsea.org/wp-content/uploads/2018/12/HRAS-Case-Study-UAE-Seafarer-Abandonment-Dec-18-SECURED.pdf>, 18 April, 12:15 am

repatriated the Ukrainian crew.<sup>18</sup> Even in 2021, the cases of abandonment have not reduced rather than their gravity is only increasing. But with the constant efforts of authorities as IMO, ILO, ITF, Human Rights at Sea and P& I Clubs, sea farers are provided with assistance and support.

## **V. CRITICISM**

Although MLC was formed through other labor codes zipped into a single one, but it has also not been able to turn around the fate of abandoned sea farers. The incidents and stories of their ill treatment and abandonment continue to haunt them till today. The case of Obo Basak is one such incidence where we can see that financial compensation cannot alone solve the issue. The conditions in which the crew members are forced to survive creates a health hazard. Talking about a socialist state, the nations should give equal amount of importance to social and economic wellbeing of sea farers.

Even after 2013 amendment of MLC coming into force, there have been increasing cases of abandonment, nonpayment of wages and denial of rights of sea farers'. Considering them to be a gross violation of the above mentioned code, nations fail to implement the code and solve the claims of real cases. Conditions prescribed in the code are always very different from the one existing and it is difficult for flag states to dispose of a ship completely at

One more issue with the filing of legal action against the shipping companies or ship owners is the fear of blacklisting. Crew members as known are not from wealthy families. They survive on the earnings made by them in the due course of their voyage. Suing companies in cases of abandonment is often feared by crew as they have a fear that they will not be appointed again. This fear is adamant and true up to a certain level. Crew members also have the responsibilities of their dependents and they do not always have another modus operandi for their survival. Majority of times even the ship owners deny the state of abandonment.

## **VI. CONCLUSION AND SUGGESTIONS**

To resolve the cases of abandonment, there has been formation of laws and treaties into force and ILO/IMO are constantly working upon resolving abandonment issues at the earliest. Implementation begins with reporting as done by the authorities to flag state or port state at first but at times all this bureaucratic process has to go through a lot of hustle and tussle at times.

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<sup>18</sup> Caribana Express, Cases, International Labor Organization, [https://www.ilo.org/dyn/seaf\\_arers/seafarersbro\\_wse.details?p\\_lang=en&p\\_abandonment\\_id=530&p\\_search\\_id=210419205327](https://www.ilo.org/dyn/seaf_arers/seafarersbro_wse.details?p_lang=en&p_abandonment_id=530&p_search_id=210419205327), 18 April, 12:15 am

While it is a fact that abandonment cannot be stopped at whole but there are certain things which can be done in order to make the process of repartition easier for the crew members. There are many cases that stay unresolved for months or years but what is duly needed in that time, is reinforcement and sustenance so that the basic needs of crew could be managed. As most of the world's constitution and even international laws recognizes the concept of "Right to life", this must be practiced and followed in such cases as well.

First and foremost priority of the nations should be safety and life of the crew members . Being an "industry of people" more than shipping industry, it is the fundamental rights of the crew members to be supported and maintained while in times of abandonment. These people deserve to have not only humane but best working environment.

Another noticeable issue is, mere formation of treaties or laws or conventions would not solve the real purpose behind forming them. These efforts are rendered nugatory until implemented properly. And this implementation has to be done by keeping in mind the rights of the sea farers and not the benefits of the shipping sector.

Moving ahead, there should be more of organizations that can report such cases to international authorities. In order to achieve this there should be more offices at port itself so communication can be made easier for sea farers.

As seen in the case of Liberty Prrudencia, with the support of organizations as ITF/Human Rights at Sea and many more, the crew members were able to get justice. With the support of these organizations, there is an external pressure upon the authorities and the shipping companies to treat crew members as human. Also crew members get confidence and support from such organization. Their timely response and action is what saves the crew.

With the crew members of the ship, there should be one field agent who could continuously monitor the cases of abandonment. These recruits should be like arbitrators who would be impartial while reporting.

While human rights organizations are the flag bearers of such kinds of events happening in the world. Be it an animal or a human, they are continuously fighting for proper treatment of such individuals. Such fighting spirit is what is needed in the case of sea farers as well. Ill treatment of sea farers is also one such example of violation of human rights which are still overlooked. Mere formulation of laws have never been successful in correction of a wrongful act, proper implementation is the key to success.

One more noticeable issue of abandonment is that, it is a crime that is often under reported. Its real extent can never be mentioned and is never fully mentioned.

Therefore, I conclude that the adequate support is developing for the abandonment of seafarers but such resources and support comes into existence after the disaster. Even after formation of conventions and laws, the cases of abandonment have not stopped. There should be more stringent action taken towards those shipping companies or ship owners who indulge in such cases and also proper investigations must be carried on in order to help the sea farers. All in all it is a dramatic situation out there for sea farers which not only affects them but their families who have no idea about the sufferings of their counter parts. It creates a cynical and gloomy environment for those who further wish to pursue this field.

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