

# A Comparative Analysis of Different Countries with the Indian Legal System for Legal Protection of Seafarers

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## Abstract

An estimated 90% of global trade is transported by sea or river, which necessitates the use of seafarers to run the ships. As a result, seafarers are critical to international trade and the international economic system. It should be noted that maritime transport was the first globalized industry.

The International Labour Organisation (ILO) has approved over 70 instruments (41 Conventions and associated Recommendations) at special marine sessions of the International Labour Conference to protect the world's seafarers and their contribution to international trade. The International Labour Organization's international standards for this sector establish the minimum conditions for "decent work" and address almost all aspects of work, including minimum requirements for work on a ship (such as minimum age, medical fitness, and training), provisions on working conditions, such as hours of work and rest, wages, leave, repatriation, accommodation, recreational facilities, food and catering, occupational safety and health protection, welfare and social security protection, and so on. They also address pensions and a globally recognized document for mariners (a seafarers' identity document) to help with border control. Humane treatment of seafarers has long been an issue that has evolved alongside the growth of seafaring. Their classification as a distinct group of marine workers stemmed from the unique nature of their employment on board the ship.

Because of the vastness of the sea, they were cut off from the protection of a legal system that would ordinarily end or change at every territorial State's border. In the face of legal difficulties and ambiguities, the seafarer's human rights and welfare become vulnerable. The present study aimed to assess the human rights protection of seafarers and focused on a comparative analysis with the Indian legal system for the legal protection of seafarers.

**Keywords:** Seafarers, Human Rights, Maritime Law, International Standards, Seafarer welfare.

## INTRODUCTION

*“The punishing treatment meted out to seafarers, on whom international sea trade and the prosperity of nations depend, not only was disrespectful, wrong, unfair and unjust but also contrary to international law.”<sup>1</sup>*

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<sup>1</sup> Maria R. S. B. Hubilla. An analytical review of the treatment of seafarers under the current milieu of international law relating to maritime labour and human rights. World Maritime University, The Maritime Commons: Digital Repository of the World Maritime University. 2009

- E.E. Mitropoulos, IMO Secretary General-

The shipping industry is global in nature and encompasses various areas. Maritime law governs the seas and oceans, which make up more than 70% of the Earth's surface. Its purpose is to regulate the increasing number of human activities taking place in the marine environment, and it impacts the political, strategic, economic, and other significant interests of nations. It is a longstanding aspect of international law that has evolved over centuries through the practices of nations. The law of the sea is one of the earliest branches of public international law.

Although seafarers make significant contributions to civil society, the maritime industry has not given enough attention to their well-being. The "Maritime Labour Convention, of 2006" has improved living and working conditions for seafarers, but many challenges still exist. Seafarers face social isolation, fatigue, stress, and fear of criminalization and targeting in certain parts of the world. Crew contracting and Open Registries in the globalized industry also pose problems for seafarers. The new International Maritime Labor Convention, which started on August 20, 2013, offers a chance for sailors worldwide to consider the future. However, stringent marine security rules are a unique challenge, and there is a lack of standard laws to protect seafarers' human rights. This paper aims to analyse seafarers' living and working conditions on board ships and draw attention to regulations that safeguard them. It also examines the bodies responsible for setting a regulatory framework for maritime to ensure the safety of ships and a better working environment for personnel on board with minimum working standards. The article also compares the legal protection provided to seafarers under the Indian legal system with that of other countries.

The treatment of seafarers has long been a cause for concern due to the nature of their work on ships. They are isolated and far from legal protection as they travel through different territories, which puts their human rights and welfare at risk. As the most vulnerable members of the shipping industry, they have experienced significant violations of their rights, such as maritime accidents, denial of shore leave, and abandonment. To address these issues, international laws and instruments have been put in place to protect seafarers' rights and interests. However, there is still a lack of specific protection for their human rights and welfare. This mistreatment has caused a shortage of ship officers and a decline in interest in seafaring careers, which could impact the world's fleet. It is crucial to evaluate the effectiveness of these legal regimes in protecting seafarers' rights and ensuring they receive the protections they deserve.

The humane treatment of seafarers has been a persistent issue since the development of navigation. Seafarers are a unique group of maritime workers due to the nature of their work on board ships. The territorial State's legal system, which typically ends or changes at every border, has made seafarers isolated and inaccessible due to the vastness of the sea. As a result, seafarers' welfare and human rights are most at risk due to the complexity and unpredictability of the law. To tackle these issues, various international laws and legal instruments have been developed and implemented by various international bodies and entities. These laws aim to protect the rights of the lowest strata of the shipping society and prevent widespread violations of their rights due to the increasing trend of criminalizing seafarers in the event of maritime accidents, denying shore leave, and abandoning seafarers. This paper will critically analyse the various legal frameworks relevant to seafarers' rights to ensure their protection.<sup>2</sup>

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<sup>2</sup> Pan Haixia, Protection on the Rights and Interests of Chinese Seafarers Under MLC 2006, World Maritime University Dalian, China. 2021

## LITERATURE REVIEW

According to Stannard (2020), seafarers encounter various difficulties such as crew changes, limited access to medical and welfare services while in ports, issues with shore leave, and contract extensions. Meanwhile, Henry (2020) has emphasized the collaborative efforts of organizations like WHO, IMO, ILO, and ICAO, as well as governments, to promote the welfare of seafarers. Joint action is needed to ensure their protection and well-being.

To safeguard the rights and interests of seafarers, Chen (2020) suggests improving laws and regulations, enhancing onboard anti-epidemic measures, increasing seafarer training for emergencies, and utilizing remote government services. Previous research has looked at the effectiveness of MLC 2006 in protecting seafarers' rights and interests, which provides valuable insights on the topic. However, most scholars have focused on analysing the issue of Indian seafarers' rights and interests from a legal perspective and proposing specific solutions to individual problems, rather than comprehensively examining the challenges. This paper aims to address urgent issues faced by Indian seafarers by referring to relevant provisions of MLC 2006 and proposing ways to enhance their rights and well-being.

Pieiro & Kitada (2020) have analysed the current situation of sexual harassment towards female seafarers who are reluctant to report it. They suggest that increasing gender diversity on ships, providing better education and training, and raising awareness among seafarers are some of the solutions to this problem. Nittari et al. (2019) have stated that the use of advanced technology has enhanced telemedicine healthcare services for seafarers on ships. It is important to address ethical concerns regarding consent and care to safeguard the well-being of both patients and doctors, as direct contact is absent.

In an interview conducted by Fotteler et al. (2018), Danish seafarers were questioned regarding the effects of MLC 2006 on their living and working conditions. Out of the respondents, 43.6% stated that their conditions had improved to some degree due to MLC 2006. However, one-third of the respondents reported no improvement and even an increase in paperwork.

Saeed (2015) surveyed Pakistani seafarers and found that the welfare of seafarers in developing countries is lacking. Effective enforcement by MLC 2006 administration is important to improve seafarers' welfare.

Cao & Ma (2020) suggest that to establish the "right of repatriation" as a legal right, it should be incorporated into the Maritime Law. They argue that China's laws fail to clearly define the nature of crew repatriation rights, leading to inconsistent handling of such issues in judicial proceedings.

## RESEARCH METHODOLOGY

- A **literature analysis** has been conducted on various internet sites to explore the protection of seafarers' rights and interests, the implementation of measures to counter MLC 2006, and the impact of these measures on seafarers. This study has condensed and analysed the research's contents, selecting the most relevant pieces as literature references.
- A **case analysis approach** has also been employed to examine the shortcomings in implementing MLC 2006. This approach involves reviewing literature and analysing typical cases where Indian seafarers' rights and interests have been violated. The reasons for these infringements have been investigated, and potential solutions and approaches have been explored to enhance the scientific nature and applicability of the research findings.
- This paper utilizes the method of **analytical synthesis** to investigate the current state of implementation of MLC 2006, relevant legislation, and the protection of Indian seafarers' rights and interests. It provides a thorough examination of effective countermeasures to safeguard seafarers'

rights and interests, as well as identifying the typical challenges in protecting these rights. The paper aims to ensure fair treatment and protection of Indian seafarers.

## ANALYSIS OF THE LEGAL FRAMEWORK FOR SAFEGUARDING SEAFARERS IN INDIA

- **"The Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)<sup>3</sup>".** This framework aims to establish a strict identity system for sailors to ensure their safety and freedom of movement, as well as facilitate global trade. The convention provides essential guidelines and allows for future technical advancements in its annexes. One crucial component of the identification system is a biometric template based on a fingerprint. The accompanying Convention resolution urges the ILO Director-General to establish a biometric interoperability standard globally, especially in conjunction with the ICAO. The convention also simplifies transit and leave for seafarers by waiving the visa requirement for those taking shore leave. Member States ratifying the Convention must maintain a correct database, open for international review by authorized authorities, and follow proper procedures for issuing IDs to reduce the likelihood of identity fraud. These measures, including data protection, will be monitored under public international procedures to ensure both security and individual rights are safeguarded.
- **Section 346 of the Merchant Shipping Act of 1958<sup>4</sup>** states that if someone onboard a ship is injured or killed because of that ship or any other ship, the owners of those ships are jointly and severally liable. This means that the person responsible for employing workers on behalf of the ship's owners is responsible for compensating anyone who is injured or killed while working on board. It's important to note that this section doesn't take away any rights of defence that a person might have in a legal action brought against them.
- **Maritime Convention Law of 2006**, ship owners have the responsibility of safeguarding seafarers from any financial consequences arising from illness, accidents or death related to their work. The ship owner must bear the cost of any illness or injury sustained by the seafarer while working on their ship from the beginning of their duty till they are repatriated, or from any employment within that period.
- **The Employee's Compensation Act, 1923**, employees, including masters, seamen, and other crew members, are entitled to seek compensation for injuries and deaths suffered while working as sailors. However, Indian seafarers who work on foreign-flagged ships are not covered by this law. Indian law requires foreign sailors to work only on Indian-flagged ships unless they have received approval from the Director General of the Indian Federal Government's Shipping Agency.
- **The Fatal Accident Act 1855**, the party seeking compensation can claim that the person they are seeking compensation from was negligent. However, in India, it is necessary to prove the tortious obligations, including negligence and non-fouling, which led to harm or death of the seafarer, based on the balance of probabilities.<sup>5</sup>

## ANALYSIS OF LEGAL FRAMEWORK FOR SAFEGUARDING SEAFARERS IN OTHER NATIONS

<sup>3</sup> Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)

<sup>4</sup> The Merchant Shipping Act, 1958 No.44 of 1958

<sup>5</sup> Godara, Sarita & Kumar, Harsh. (2022). Legal Protection of Seafarers: A Comparative Analysis of Different Countries With Indian Legal System. Volume 23. 132-141.

### USA<sup>6</sup>

- Under the Jones Act, which allows sailors to sue their employers when they are negligent, you may be entitled to compensation if you have been hurt while working at sea. The Jones Act primarily relates to high seas incidents and American shipping lanes.
- The maritime industry has long regarded the law as "admiralty," and as such, it merits legal protection. Admiralty law is the name for maritime law. If a seafarer is hurt or ill, the shipowner who employs them has responsibility for them. This obligation dates back to earlier times and is included in the maritime laws of the Middle Ages.
- The Jones Act offers assistance to injured seafarers in the maritime industry and ensures that they will be compensated fairly for their harm in maritime litigation, also known as "Jones Law", claims. According to the Jones Act, a sailor may sue his employer for damages if he sustains injuries while on the job and employer negligence contributed to the harm. Even if the shipowner's negligence was slight, a wounded seaman may be entitled to compensation under the Jones Act.
- Additionally, if an employee perishes as a result of the negligence of the employer, the family may seek compensation under The Death on High Seas Act 5.
- In *Hellenic Lines Ltd v. Rhoditis*,<sup>7</sup> "a Greek citizen with a signed employment contract with Greece, where the Greek law was appealed before the Greek Court, injured in New Orleans, but owned by the United States-based ship owning company with offices in New York and New Orleans and earned full profit from trade between ports in the United States and non-US." In this decision, the Court established the 8th criterion, a base of operations, and held that if the US-based employer was not subject to the Jones Act and received its entire income from commerce to and from the USA, it may be too simple to undermine the goals of the Jones Act.

### CANADA<sup>8</sup>

- According to the Maritime Labour Convention of 2006, all crew members must be covered by a Seafarer Employment Agreement (SEA), which must be signed by the shipowner and the seafarer or by their respective representatives. The seafarer must also be given adequate time to review or consult on the agreement before it is finalised.
- Before signing, each seafarer must voluntarily accept the terms and conditions to ensure that their service doesn't last more than 11 months from the date they joined the ship and lasts until they are repatriated. The shipowner shall use all reasonable endeavours to repatriate the crew. the taking of enforcement measures, such as, but not limited to, detention and/or the imposition of financial penalties, against foreign vessels operating in Canadian waters without a valid Sea for the entire crew.
- If a ship has crew members who have been on board for more than 11 months, you must show that all reasonable efforts have been made to repatriate the crew members and that the unexpected event(s) that are beyond the navigator's control have prevented the crew from making a change. The crew

<sup>6</sup> Your Legal Rights as a Seaman Under the Jones Act, MORROW & SHEPPARD LLP (<https://www.morrowsheppard.com/blog/your-legal-rights-as-a-jones-act-seaman/>) {Last assessed on 30 Nov.2024}

<sup>7</sup> *Hellenic Lines Ltd v. Rhoditis*, 398 U.S. 306 (1970)

<sup>8</sup> OKERMAN, JUSTIN, and BARBARA VON TIGERSTROM. "Any Port in a Pandemic: International Law and Restrictions on Maritime Traffic during the COVID-19 Pandemic." *Canadian Yearbook of International Law/Annuaire Canadien De Droit International* 58 (2021): 194–224. doi:10.1017/cyl.2021.3. {Last assessed on 30 Nov.2024}

members must also show that the seamen freely agreed to the extension of your plan, which was agreed to under the flag state of your ship, to return the seamen to their country of origin (repatriate).

- To make sure you abide by the Canada Shipping Law, 2001 and international treaties, a vessel can be examined as a foreign vessel operating in Canadian waters. During port state control inspections, PSC officers will confirm any crew who have been on board for more than 11 months. The officers should verify the number and length of any subsequent contracts that the seafarer has signed, such as the entry date. If any issues arise, the officers won't let the ship set sail until the non-conformities have been fixed or a flag-approved action plan to address the non-conformance has been agreed upon and they are confident that the plan is carried out as quickly as is practical.

### **AUSTRALIA<sup>9</sup>**

- The Convention was implemented in Australia by Schedule 13 of Marine Order 11, a piece of legislation passed under the Navigation Act 2012. All foreign vessels operating in Australian waters are required to have a marine labour certificate (MLC), regardless of whether their flag country has ratified the Convention. MLCs are certifications of maritime labour conformity issued by a ship's flag country after that country has confirmed that the working conditions on board the ship are compliant with its applicable labour laws (such as Australia's Fair Work Act 2009) and any regulations implementing the Convention.
- The MLCs must be in good standing for five years and be subject to routine national flag inspections. They state the shipowner's intention to make sure that its flag country continues to abide by all applicable labour, health, and safety laws in the interim between inspections. Signatories to the Convention must be able to inspect the ship in a foreign port to confirm conformity with the plans. The Australian Marine Safety Authority may take several actions when a vessel is found to violate the Convention standards, up to and including preventing the vessel from setting sail until all violations have been corrected or a corrective action plan has been established.

### **Case Laws**

- *Cama v. CKP Fishing Company Ltd.*<sup>10</sup>-The Limitation Act restricts the liability for injuries sustained on board a vessel. When the defendant, in this case, neglected to provide safety gear like insulated gloves, the plaintiff, in this case, sustained severe frostbite injuries to his fingers while working in a freezer on a ship. After filing a notification under the Workers Compensation Act, the plaintiff initially received no response after three years. To file a negligence claim against the vessel owner, the plaintiff filed a request asking the court to extend the three-year deadline outlined in the Limitation Act. The court turned down the request. Despite the plaintiff's negligence, the court determined that the plaintiff's action could not qualify as a situation where the court could use its authority to extend time.
- *Dorval Tankship Pty Ltd v Department of Finance*<sup>11</sup> "SEAFARERS- Employers may raise crew rights when seeking a declaratory judgement on salary taxes. In this case, the plaintiffs are time charterers of an oceangoing fuel tanker. They claimed that the defendants were attempting to assess and impose

<sup>9</sup> Jaan Murphy, *Protecting seafarers in Australian waters: the implementation of the Maritime Labour Convention*, PARLIAMENT OF AUSTRALIA, ([https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/FlagPost/2013/September/Protecting\\_seafarers\\_in\\_Australian\\_waters\\_the\\_implementation\\_of\\_the\\_Maritime\\_Labour\\_Convention](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2013/September/Protecting_seafarers_in_Australian_waters_the_implementation_of_the_Maritime_Labour_Convention)) {Last assessed on 30 Nov.2024}

<sup>10</sup>[Cama v CKP Fishing Company Ltd \[2004\] FJHC 349; HBC0205D.2003S \(24 February 2004\) \(paclii.org\)](#) {Last assessed on 30 Nov.2024}

<sup>11</sup> [\[1997\] FMSC 24](#) {Last assessed on 30 Nov.2024}

FSM gross revenue taxes on them as well as pay and salary taxes on the crew of the vessel in a Declaratory and Injunctive Relief Complaint. The plaintiffs had been informed by the defendants that they owed gross revenue taxes as well as pay and salary taxes on the crew of the vessel. The plaintiff, the crew, is a non-party to the lawsuit, according to the defendant, who filed a request to dismiss. According to the court, the request was denied because the plaintiffs were just asserting their rights. The plaintiff will be held to the same obligations and obligations as an employer if the crew is subject to FSM pay and salary taxes, and failing to fulfil such obligations will result in civil and criminal penalties.

- *Captain & Crew of the MV Voseleai vs. Owners of the MV Voseleai*<sup>12</sup> In this instance, the ship was sailed from Honiara to Suva for repairs. Ten months after her arrival, the Master and crew brought an action in rem for unpaid wages and grants. The owner of the vessel requested the dismissal of the arrest warrant because the actions of the crew were improper and in contravention of the Shipping Act. The vessel was ordered to be released pending the payment of an F\$25,000 bail after the court determined that the crew's actions were legal and that the court had jurisdiction. According to the Court, an action in rem for the wages of the crew on that vessel was supported by the Supreme Court Rules and British Admiralty law. The Court further ruled that the ship could only be released after the plaintiff's claim was successfully defended. After applying for vessel release, the plaintiff is entitled to request as much security as is required to cover his case, and it is the plaintiff's responsibility to determine that amount.
- *Metutera v. Kiribati Shipping Services Ltd.*<sup>13</sup>; Seafarers' right to a hearing before the Board of Directors dismisses them under their employment contract's interpretation. The Board in this instance disregarded the seafarer's right to an audience. Seafarer was not given the chance to argue his case before the suspension. A contract that the seafarer also signed stated that he would have a chance to be heard if any proceedings were to be brought against him for his actions.
- *Robert v. Sonis*<sup>14</sup>- "SEAFARERS- marine lawsuits, including requests for seaman's pay," The plaintiffs are port operators and sailors employed by the Chuuk State Department of Transportation. The Plaintiffs demanded payment from the Defendant for their risky work. The request was granted in this instance, and the dispute was decided.
- *Momoivalu vs. Nauru Air & Shipping Agency*<sup>15</sup>- The duty of care owed by the vessel owner to the crew members on a vessel does not include stopping an unprovoked attack on one crew member by another.

## CONCLUSION

The backbone of the global supply chain and the primary force behind India's international and domestic trade are seafarers. Seafarers are at the forefront of the current era, ensuring the stability of global production, human life, and the smooth operation of the global economy. India is a major supplier of seafarers, but the safeguarding of the privileges and concerns of the 2 lakh seafarers has been disregarded. Through case studies, in-depth analysis methods, and literature analysis, this paper examined the shortcomings in the protection of Indian seafarers' rights and interests. Seafarers face a high degree of career risk, but their pay is not as competitive as it once existed. The wage difference between seafarers

<sup>12</sup> [Captain & Crew of the MV Voseleai vs. Owners of the MV Voseleai \[1994\] FJHC 4](#) {Last assessed on 30 Nov.2024}

<sup>13</sup> [Metutera v. Kiribati Shipping Services Ltd \[2007\] KICA 16](#) {Last assessed on 30 Nov.2024}

<sup>14</sup> [Robert vs. Sonis \[2002\] FMCSC 7](#) {Last assessed on 30 Nov.2024}

<sup>15</sup> [Momoivalu vs. Nauru Air & Shipping Agency \[1992\] FJHC 5](#) {Last assessed on 30 Nov.2024}

and shore employees is decreasing over time and is also lower than the wage gap for seafarers in other developed shipping nations. Indian seafarers' access to food, entertainment, and healthcare on the ship needs to be further enhanced. Due to the distinctive nature of seafarers' work, the probability of them obtaining medical care covered by insurance is reduced. All relevant parties must work together to strengthen the protection of Indian seafarers' rights and interests. First, the government needs to promote seafarers' legislation, strengthen MLC 2006 implementation, increase tax incentives, lower social insurance premiums, give preference to seafarers' families, and establish a supervision centre to safeguard seafarers' rights and interests to improve the social status of seafarers. Second, to improve the well-being of seafarers, organizations must focus on several key areas. This includes increasing wages, providing better food and entertainment options, prioritizing mental health care, and offering more opportunities for continuing education and skill development. Thirdly, education and training institutions should focus on developing high-quality seafarers, improving collaboration between schools and organizations, and enhancing psychological and rights-protection training for seafarers. Finally, seafarers need to strengthen their sense of professional identity, take the initiative to learn MLC 2006, improve their awareness of employment risk prevention, improve their awareness of safeguarding rights, and improve their psychological health. Indian seafarers experienced challenging crew changes, mental exhaustion, challenges accessing healthcare on shore, and decreased pay. It is suggested that the government create a seafarer support policy during a specific period to make it easier for Indian seafarers to change crews and create a "green channel" for them to access healthcare. Organizations need to ensure that seafarers are adequately protected against epidemics. Additionally, they should be provided with benefits that cannot be altered or taken away on a set schedule. Furthermore, any costs associated with medical isolation should be covered by the organization. The problems and solutions in this paper are not all-inclusive due to the limitations of the research. For example, the issue of crew fatigue, which is considered a silent but deadly long-term problem, has not received sufficient research attention. As the author moves forward, they remain committed to advocating for the rights and well-being of seafarers and doing their part to contribute to a positive future for them.

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