

Assessment of Role of Admiralty Courts in India in Protecting Abandoned Seafarers Onboard Vessels in Indian Ports

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The present study will discuss the role of admiralty courts in India in protecting abandoned seafarers. Judgments and orders of Admiralty courts are analyzed to decipher the approach adopted by Indian admiralty courts for protecting abandoned seafarers in Indian Ports. Furthermore, it is seen how much time Admiralty Courts in India usually take to judicially auction the vessel in cases where the vessel under arrest has an abandoned crew onboard. Several suggestions are made on how Admiralty courts in India can better protect abandoned seafarers by using the existing legal regime. The study is doctrinal. A significant data source for the study comprises Judgments and orders from Indian Admiralty courts involving abandoned seafarers. In particular, five specific instances where seafarer abandonment was reported on the vessel are assessed, and all of these cases were litigated in the Indian Admiralty court. From work, it can be seen that Admiralty courts in India have played a crucial role in protecting the abandoned seafarers in Indian Ports. Courts have come out as a guardian of seafarers, and it was only due to the intervention of the courts that the seafarers, in numerous cases, were able to recover pending wages, repatriation expenses, and necessities onboard the vessel. Furthermore, it is found from the analysis of case laws that the time the court takes for judicially auctioning the vessel is much longer than the maximum period specified in the Admiralty Act, 2017. From the study, it can be concluded that although Admiralty courts in India have played an important role in protecting abandoned seafarers in Indian ports, still, there is a need for some changes, which include speedy disposal of admiralty litigations in India.

KEY WORDS

- ~ Seafarer abandonment
- ~ Human rights of seafarers
- ~ Maritime labour convention
- ~ Indian Admiralty courts
- ~ Pending wages of seafarers
- ~ Repatriation of seafarers

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1. INTRODUCTION

One of the major risks seafarers face while working on vessels is the risk of getting abandoned. The number of seafarer abandonment instances has risen in the past few years. In 2020, around 1200 seafarers got abandoned onboard 85 ships.¹ In 2021 total of 1,399 seafarers on 94 ships were abandoned.² The definition of seafarer abandonment can be found in Maritime Labour Convention, 2006(MLC)³, which mentions that a seafarer is presumed to have become abandoned when the shipowner

- fails to repatriate a seafarer⁴, or
- has failed to provide required maintenance and support to the seafarer⁵, or
- has severed relationship with the seafarer, including by not paying the wages for at least two months.⁶

A major reason behind seafarer abandonment is the poor financial condition of the shipowner, due to which the shipowner may stop shipping operations and abandon his vessel along with the seafarers. During abandonment, not only do the contractual rights of seafarers get breached, but their fundamental human rights may get endangered. The right to life is one of the basic human rights⁷; this right of abandoned seafarers on the vessel may get breached because abandoned seafarers sometimes get confined within the vessel without having ample supplies of necessities and being paid wages.⁸

It has also been seen in many instances of seafarer abandonment that the port state of the vessel does not allow abandoned seafarers to disembark from the vessel.⁹ Under the Human rights law, all individuals have the right to liberty and security of a person.¹⁰ The liberty of any person implies there should not be confinement.¹¹ When the seafarers are abandoned on a foreign vessel in the port of any country, port state measures preventing seafarers from disembarking may violate the seafarers' right to liberty as such measures may amount to arbitrary deprivation of liberty.

¹ Seafarer abandonment Database, ILO, accessed from https://www.ilo.org/dyn/seafarers/seafarersBrowse.list?p_lang=en; see also Report on the IMO/ILO joint database of abandonment of seafarers Submitted by the ILO and IMO Secretariats Legal Committee 108th session 22nd April 2021 at 8

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

³ Maritime Labour Convention, Standard A2.5.2§2

⁴ Under Maritime Labour Convention, 2006, shipowner should repatriate the seafarer on occurrence of certain events which included, expiry of seafarers' employment contract, termination of the employment contract with seafarer by shipowner; termination of the employment contact with shipowner for justified reasons by the seafarer; when the seafarers become incapable of performing their duties under their employment agreement or they can't be expected to perform duties in the specific circumstances.

⁵ Maritime Labour Convention, 2006, obligates the states to ensure through domestic laws that the shipowners of their registered vessel provide necessities required by seafarers to survive on vessel. MLC incorporates the standards relating to food (Regulation 3.2), accommodation (Regulation 3.1) and medical care(Regulation 4.1)

⁶ Under MLC,2006, Standard A2.2, state parties should ensure that the shipowner of their flagged vessels pay wages to seafarers on monthly basis.

⁷ International Covenant of Civil and Political Right, 1966, Article 6; see also United Nations Declaration on Human Right, Article 3; see Zhang Pengfei, Shan Desai, Zhao Minghua, Pryce-Roberts Nicola. Navigating seafarer's right to life across the shipping industry. Marine Policy, (2019:88)

⁸ Report by Human Right at Sea, A Practice of Human Right Abuse :More than thirty seafarer of three vessels stranded in UAE for three years, pending sign off (2018) at 3 accessed from https://safety4sea.com/wp-content/uploads/2019/01/HRAS-Seafarers-Abandonment-in-the-UAE-2019_01.pdf

⁹ see ILO Seafarer Abandonment Database, abandonment of seafarers on vessel MV Theoxenia, Arybbass, Miss Gaunt, GP B1, AHT Carrier, accessed from https://www.ilo.org/dyn/seafarers/seafarersBrowse.list?p_lang=en

¹⁰ International Covenant of Civil and Political Right, 1966, Article 9(1)

¹¹ CCPR, General Comment no. 35 (2014) on Article 9 of the International Covenant on Civil and Political Rights, 16 December 2014, para 3

On many occasions, abandoned seafarers on vessels had to rely on supplies made by charities to survive.¹² There have been cases where abandoned seafarers on vessels had to swim to shore at regular intervals to get food and other necessities for survival.¹³ Such situations may violate their human right to not be subjected to inhuman, cruel or degrading treatment.¹⁴ It may cause both mental and physical pain. The below illustration demonstrates the plight of seafarers during the abandonment situation.

Seafarer abandonment on board the Zanzibar-flagged vessel MV Jinan was reported to ILO in August 2019.¹⁵ This vessel was abandoned by the owner along with its seafarers in Port of Mombasa, Kenya. Shipowners stopped paying wages and supplies of necessities to the seafarers.¹⁶ There were severe food and water shortages, and many of the crew fell ill.¹⁷ The crew was dependent on assistance from local charities like Mission to seafarers for necessities like food and water.¹⁸ The matter was taken to the admiralty court in Mombasa by the vessel crew through the support of local seafarer unions and the International Transport Workers' Federation (ITF).¹⁹ After that, preliminary orders were issued by the court to arrest the ship. Court later ordered the ship to be sold. Finally, after spending 21 months on board, the 18 crew were all repatriated after payment of pending wages.²⁰

In many cases where seafarers are abandoned on vessels, they invoke the jurisdiction of admiralty courts of the port state to get the order of ship arrest. Under the Admiralty law of many states, non-payment of wages, including repatriation cost, is a ground for ship arrest.²¹ Post arrest, the vessel may be sold by order of the court to settle the pending wages of seafarers and recover the repatriation cost if the shipowner does not appear to defend the case in person and furnish security for vessel release. In some cases, the seafarers are abandoned by the shipowner subsequent to the arrest of the ship by any creditor (who has a maritime claim against the shipowner and vessel).²² In such cases, an abandoned seafarer on a vessel may join in existing admiralty litigation in order to get relief from the court.

The present study will discuss the role of admiralty courts in India in protecting abandoned seafarers. India has been selected because Indian ports see significant vessel traffic; for instance, in 2019, 8211 container ships (above 1000 gross tons) came to Indian Ports.²³ A high number of ships visiting Indian Port implies a greater risk of seafarers getting abandoned on ships in Indian water. Judgments and orders of Admiralty courts are analyzed to decipher the approach adopted by Indian courts for protecting abandoned seafarers. Furthermore, it will be seen how much time usually Indian Admiralty Courts take to judicially auction the vessel in cases where the vessel under arrest has an abandoned crew onboard. Several suggestions will be made on

¹² International Transport Workers Federation, Seafarers treated worse than criminals are finally allowed home, (2021), accessed from <https://www.itfseafarers.org/en/news/seafarers-treated-worse-criminals-are-finally-allowed-home>

¹³ Melania Fidela Ghaida1 and Tobias Binsar Ezra, The Case of Mohammed Aisha: The Efforts in Protecting Seafarers against Abandonment, Padjadjaran Journal of International Law, (2021: 2018)

¹⁴ International Covenant of Civil and Political Right, 1966, Article 7

¹⁵ Seafarer Abandonment Database, ILO Accessed from

https://www.ilo.org/dyn/seafarers/seafarersbrowse.details?p_lang=en&p_abandonment_id=491&p_search_id=220109152154

¹⁶ Mia Jankowicz, , 'Cargo ship owners can disappear and leave their crews unpaid and starving. 10 mariners have been stranded off Kenya for 18 months', Buisness Insider India, <https://www.businessinsider.in/thelife/news/cargo-ship-owners-can-disappear-and-leave-their-crews-unpaid-and-starving-10-mariners-have-been-stranded-off-kenya-for-18-months-/articleshow/82457838.cms>

¹⁷ Seafarer Abandonment Database, ILO; Accessed from

https://www.ilo.org/dyn/seafarers/seafarersbrowse.details?p_lang=en&p_abandonment_id=491&p_search_id=220109152154

¹⁸ International Transport Workers Federation, Seafarers treated worse than criminals are finally allowed home (2021), accessed from <https://www.itfseafarers.org/en/news/seafarers-treated-worse-criminals-are-finally-allowed-home>

¹⁹ Seafarer Abandonment Database, ILO Accessed from

https://www.ilo.org/dyn/seafarers/seafarersbrowse.details?p_lang=en&p_abandonment_id=491&p_search_id=220109152154

²⁰ International Transport Workers Federation, Seafarers treated worse than criminals are finally allowed home (2021)

<https://www.itfseafarers.org/en/news/seafarers-treated-worse-criminals-are-finally-allowed-home>

²¹ see Admiralty Act 1988 (Australia) section 4(t); also see Admiralty Act, 2017(India) section 4(1)(o); also see Admiralty Jurisdiction Act (No. 40 of 1983) section 4(1)(n); also see The Madonna D'Ibra (1811) 1 Dods 37, 40; 165 ER 1224, 1225, where Sir William Scott said '[t]hese are sacred liens, and, as long as a plank remains, the sailor is entitled, against all other persons, to the proceeds as a security for his wages.'

²² The Swedish Club Versus V8 Pool Inc. and others Commercial Appeal No. 108 Of 2021 in Interim Application No. 2062 of 2021, para 51

²³ UNCTAD, Review of Maritime Traffic (2020), at 71 accessed from < https://unctad.org/system/files/official-document/rmt2020_en.pdf >

how Admiralty courts in India can give greater protection to abandoned seafarers by using the existing legal regime. Chapter 2 of the paper will discuss admiralty law in India; chapter 3 evaluates the role played by Indian admiralty courts in protecting abandoned seafarers; Chapter 4 discusses several specific admiralty cases and suggests how admiralty practice in India can be more seafarer friendly. The last chapter is the conclusion.

2. ADMIRALTY JURISDICTION IN INDIA

India follows the common law tradition of Admiralty, where there are designated courts for hearing maritime matters. Until the enactment of the Admiralty Act in 2017, colonial-era laws regulated the admiralty jurisdiction of courts in India.²⁴ In 1993 Supreme Court of India, in a landmark judgment of *M.V. Elizabeth & others Vs Harwan Investment Trading Pvt. Ltd. JT*²⁵, urged the Indian parliament to amend existing admiralty laws and make them in conformity with international treaties, including Arrest Convention.²⁶ Finally, all the colonial laws were repealed in 2017 when the legislature enacted the Admiralty Act.

Admiralty Act of 2017 states that Admiralty jurisdiction can be exercised by all the high courts of coastal provinces in India.²⁷ These are the High Court of Karnataka, High Court of Calcutta, High Court of Bombay, High Court of Kerala, High Court of Madras, High Court of Gujarat, High Court of Orissa, High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh. Each of these High Courts exercises jurisdiction over vessels within its territorial waters.²⁸

The Admiralty Jurisdiction Act, 2017 lists maritime claims on which the Admiralty court has jurisdiction.²⁹ The Admiralty court can pass an order to arrest a vessel to provide security against a maritime claim.³⁰ For instance, pending wages of seafarers, including their repatriation expenses, constitute one of the maritime claims³¹. Therefore, an option available with abandoned seafarers onboard Vessel in Indian ports or territorial water to recover their pending wages, including repatriation expenses, is to initiate admiralty litigation in India against the vessel and apply for vessel arrest³².

Abandoned seafarers can apply for the arrest of the vessel when the vessel owner is liable to pay wages or repatriation cost³³, or when its demise charterer is liable to pay wages or repatriation cost, and such demise charterer remains demise charterer or becomes the owner when an arrest is affected³⁴. After the vessel is arrested, If the shipowner/demise charterer appears before the admiralty court and furnishes security, then the vessel can be released, and the shipowner/demise charterer has to defend the case thereafter (in personam). If he does not appear in court after the arrest of his vessel or fails to furnish the security for release of the vessel, then the seafarers can apply to court for the sale of the arrested vessel, and they can recover their dues after the judicial sale from the sale proceed.³⁵

²⁴ Admiralty Court Act, 1840, the Admiralty Court Act, 1861, Colonial Courts of Admiralty Act, 1890, Colonial Courts of Admiralty (India) Act, 1891 and Letters Patent, 1865; All these legislations have been repealed and replaced now by the Admiralty Act, 2017.

²⁵ *M.V. Elizabeth & others Vs Harwan Investment Trading Pvt. Ltd. JT*, AIR 1993 SC 1014

²⁶ *Ibid* concurring opinion Sahai. J. para 4

²⁷ Admiralty (Jurisdiction and Settlement of Maritime claims) Act, 2017, section 2(1) &2(e)

²⁸ *Ibid* Section 3

²⁹ *Ibid*, section 4

³⁰ *Ibid* section 5

³¹ *Ibid*, section 4 (o)

³² *Ibid* section 5 read with section 3

³³ *Ibid* section 5(a)

³⁴ *Ibid* section 5(b)

³⁵ *ibid*, section 11 clause 3

Under the legislation, one of the special categories of maritime claim is a maritime lien.³⁶ The unique character of a maritime lien is that it continues to exist over a ship irrespective of change in title or flag of the ship.³⁷ Section 9 of the Act provides the list of maritime claims, giving rise to a maritime lien. The seafarer's wages, including repatriation claim, is one of such maritime claims that amount to a maritime lien.³⁸ By virtue of this maritime lien, abandoned seafarers can apply for the arrest of the vessel on which they worked as a seafarer to recover wages and repatriation costs.³⁹ The benefit of this position is that even if the shipowner who is the employer of the abandoned seafarers sells the vessel to some other person, the vessel can be arrested by the abandoned seafarer because their claim amounts to a maritime lien and gets attached to the vessel. It is also important to note that under Indian Law, if a maritime claim arises concerning a particular ship, then its sister ship can also be arrested.⁴⁰ A sister ship is a ship that is owned by the same owners against whom the maritime claim has arisen.⁴¹

The below portion discusses the strategy adopted by Indian Admiralty courts to protect abandoned seafarers on a vessel in Indian ports during the Admiralty proceedings.

3. ROLE OF ADMIRALTY COURT IN INDIA IN THE PROTECTION OF ABANDONED SEAFARERS

When the seafarers have been abandoned on a ship in Indian Port in the past, they have sought assistance from Indian admiralty courts on many occasions. They have applied to the Indian admiralty court to arrest the vessel for the recovery of pending wages for the service performed on the vessel, including repatriation costs.⁴² In the case of Brian Joseph Fernandes & Ors. vs m.v. Neel Kamal, seafarers, applied for the vessel's arrest for recovery of pending wages in Bombay High Court.⁴³ The vessel was subsequently arrested by order of the court.⁴⁴ After the arrest, the shipowner did not appear in court to defend the litigation for almost a year.⁴⁵ As a result, the court ordered that the ship be sold.⁴⁶ Court pointed out-

"In view of the aforesaid and in order to avoid the sinking/ capsizing of the vessel, harm/risk to the lives of the crew onboard the vessel, and damage/harm to any other person/vessel in the sea, the vessel MV Neel Kamal Imo no. 8316558 shall be forthwith sold through the office of Sheriff of Bombay, as per the schedule, set out herein below:"⁴⁷

There have also been occasions where the shipowner has abandoned seafarers after vessel arrest initiated by any person or entity who has a maritime claim against the shipowner. In such situations, abandoned seafarers join as an intervenor in existing admiralty litigation to ensure that their pending dues are settled. In one case, the admiralty suit was initiated in Bombay High Court on 23 June 2017 for arresting the Vessel MV Theoxenia when it was in Indian Port for a claim arising out of supply of marine lubricants to the Defendant's

³⁶ Ibid section 4(w)

³⁷ Ibid, section 9(2)

³⁸ Ibid section 9(1)(a)

³⁹ Ibid, section 5(e)

⁴⁰ see ibid section 5(2), also see PS Marine v MV Altus, Gujarat High Court order dated 31 January 2020, para 18

⁴¹ MV Mariner IV, a Foreign Flag Vessel and Ors. Vs. Videsh Sanchar Nigam Ltd, 1998 (1) MhLj 751

⁴² see Brian Joseph Fernandes & Ors. vs M.V. Neel Kamal, IMO No.8316558 & Ors. Judges order No.218 of 2017 in Admiralty Suit (L) No.530 Of 2017; also see K. George Eassi and 3 ors. Vs M.V. Don Jose and 2 Ors 12th March 2020.

⁴³ Brian Joseph Fernandes & Ors. vs M.V. Neel Kamal, IMO No.8316558 & Ors., Order dated 5 Oct. 2017 para 2

⁴⁴ ibid

⁴⁵ Brian Joseph Fernandes & Ors. vs m.v. Neel Kamal, Notice of motion No. 1890 of 2018 Admiralty Suit No. 13 of 2018, Order dated 19 Dec 2018, para 1

⁴⁶ Ibid para 5

⁴⁷ ibid para 5

Vessel by the plaintiff company.⁴⁸ After concluding that the prima facie case of maritime claim existed, the court ordered the arrest of the Defendant's Vessel.⁴⁹ The shipowner abandoned all the seafarers on board this vessel as he stopped paying the wages.⁵⁰ The shipowner also did not appear in court when his vessel got arrested, nor did he furnish any security for the vessel's release.⁵¹ As a result, the vessel was auctioned by the court. The court confirmed the auction sale in favor of M/s. Aries Shipping & Trading Co on 22 January 2018.⁵² The court directed the Office of Sheriff that from the money raised by judicial sale, the crew should be repatriated to their home country, and their pending wages also be settled.⁵³ Office of Sheriff confirmed during a court proceeding dated 18 April 2018 that the wages for the period from 22 June 2017 till their disembarkation were paid to the seafarers.⁵⁴

It has also been seen in India that on a few occasions, the seafarers have also applied for the arrest of the vessel's sister ship to recover their pending wages.⁵⁵ The below portion now discusses the approach adopted by Indian admiralty courts for protecting abandoned seafarers.

3.1. Treating the wages of seafarers accrued during the period of arrest, necessities provided to them, and repatriation costs as Sheriff's expenses or expenses for maintenance of the vessel during the period of arrest

It is a well-accepted norm in admiralty practice that the expenses for maintenance of the vessel during the duration of arrest are paid out first in priority from the sale proceeds, along with any other expenses incurred in the course of the sale.⁵⁶ Such expenses are sometimes called Sheriff's expenses.⁵⁷ Indian courts, on many occasions, have treated the wages of seafarers accrued during the period of arrest, expenses for necessities provided to them during the arrest period, and repatriation costs as Sheriff's expenses.⁵⁸ The position is such because the crew takes care of the vessel during the duration of arrest, and they may be constrained to remain onboard the vessel from its arrest until its sale.⁵⁹ One benefit of this position is that the crew is not required to

⁴⁸ Granada Energy General Trading LLC. vs. M.V. Theoxenia (IMO 9142980) & Anr. Admiralty Suit (L) NO. 381 of 2017, 23 June 2017 para 1

⁴⁹ Ibid, §3

⁵⁰ ILO Seafarer Abandonment Database, Abandonment on vessel Theoxenia, accessed from <https://www.ilo.org/dyn/seafarers/seafarersbrowse.details?p_lang=en&p_abandonment_id=300&p_search_id=171018024446>

⁵¹ National Bank of Greece SA Versus MV Theoxenia, Admiralty and Vice Admiralty Jurisdiction Commercial Notice of Motion (L) No. 697 Of 2017, in Commercial Suit (L) No.578 of 2017, para 2; also see National Bank of Greece V/s. MV Theoxenia, (IMO No.9142980), Commercial Admiralty Suit No. 792 of 2017 with Notice of Motion No. 363 Of 2018, order dated 7th March 2018 para 1

⁵² National Bank of Greece SA Vs. MV Theoxenia (IMO No.9142980), In Its Commercial Division Notice of Motion (L) No.697 Of 2017 in Commercial Suit No.792 of 2017, Order dated 22 Jan 2018, para 3,

⁵³ ibid para 6

⁵⁴ National Bank of Greece S.A. Vs. M.V. Theoxenia, In Its Commercial Division Notice of Motion No. 187 of 2018 in Commercial Admiralty Suit No. 792 Of 2017 para 2

⁵⁵ Mr. Kumar Vellakkat Achutan & Ors. vs m.v. Neel Akash & Ors. Judges order No.219 Of 2017 in Admiralty Suit (L) No.531 of 2017

⁵⁶ See Bombay High Court (Original Side) Rules. Rule 1084; Rule 1084 reads as follows, "1084. Sheriffs expenses —In the event any expenses are required to be incurred by the Sheriff during the period of the arrest for the safety and preservation of the ship and its crew, the Sheriff shall make a report to the court and the court, shall after hearing the parties direct payment of such sums as the court may deem fit by any party the Sheriff for incurring such expenses, which shall be treated as Sheriffs expenses. These expenses shall be paid in priority to the Sheriff from the sale proceeds of the ship or by the defendant or other party seeking release of the ship as the case may be, and the same shall be reimbursed to the parties who have paid the amounts to the Sheriff in the first instance."

⁵⁷ ibid

⁵⁸ See Axis Trustees Service Ltd v. MT Prem Mala, Order dated 7 August 2020 passed by Gupte J.; also see Irwin Edmond Sequeira v mv Karnika, Order dated 5 November 2020 passed by Colabawalla J); also see DVB Group Merchant Bank (Asia) Ltd v mv Malaviya Twenty Three & Ors. , Order dated 25 October 2016 passed by Kathawalla, J.; see also The Swedish Club Versus V8 Pool Inc. and others Commercial Appeal No. 108 of 2021 in interim Application No. 2062 of 2021, para 48.

⁵⁹ See argument of council appearing for the Crew Members in The Swedish Club Versus V8 Pool Inc. and others Commercial Appeal No. 108 of 2021 in Interim Application No. 2062 Of 2021, para 28

file a suit and prove their wages; the mere fact that the crew member is on board is sufficient to entitle him to his wages.⁶⁰ In a recent case, the Bombay High Court pointed out in this regard-

"the court has repeatedly permitted crew wages accrued post-arrest to be recovered as Sheriff's expenses without putting the crew to the trouble of filing a suit, proving their claims, getting a decree, determining priorities, and then seeking payment out – which will realistically take several years. If there is any doubt or objection on the quantum and validity of the crew claim, this court has, on several occasions, asked the Sheriff or the Commissioner for Taking Accounts to verify the same"⁶¹

Another feature of Indian admiralty practice for protecting abandoned seafarers is the encouragement provided to the Protection&Indemnity(P&I) Clubs to fulfil the obligation under MLC, 2006. This aspect is discussed below.

3.2. Encouraging P&I to fulfil the obligation under MLC, 2006

MLC, 2006 through 2014 Amendment developed a regime of the Financial Security System to protect the abandoned seafarers. The key feature of the 2014 Amendment is that the state parties must require shipowners of all its registered vessels to maintain financial security cover for protecting seafarers in the situation they get abandoned onboard a vessel.⁶² In most cases, shipowners take such financial security cover from the P&I clubs.⁶³ Seafarers can directly approach such financial security providers when they are abandoned⁶⁴. Financial security provider is under obligation to arrange repatriation, furnish necessities like food and water on board vessels, and provide pending wages of a maximum of up to four months to abandoned seafarers.⁶⁵ Once the financial security provider incurs the expenses for assisting the abandoned seafarer, it steps in the shoes of the crew and enjoys the right which the crew had.⁶⁶

In a recent case in India, seafarer abandonment was reported from a vessel named Asphalt when it was under arrest by the Bombay High Court.⁶⁷ Swedish P&I club was a financial security provider under MLC for this vessel.⁶⁸ It came forward to assist abandoned seafarers in the fulfilment of its obligations under MLC.⁶⁹ To recover, the expenses incurred, Swedish P&I Club argued in Bombay High Court that with regard to wages and supply of necessities it did to abandoned seafarer for during duration in which ship was under arrest and, repatriation cost it had incurred, it should be allowed to stand in the shoes of the crew and claim the amounts as Sheriff's expenses.⁷⁰ If this would not be the scenario, then P&I will have to file a suit, prove the claim, determine priorities and then seek reimbursement from the sale proceeds.

Bombay High Court held- "We are of the view that the MLC, which imposes a humanitarian obligation on the P&I Club to make certain payments, also gives the P&I Club the right to stand in the shoes of the crew by subrogation/ assignment/ other mode of transfer. In view of clause 12 of A2.5.2, it cannot be said that once the P&I Club has made the payment, it has to file a suit and recover the amounts after proving it, obtaining a

⁶⁰ The Swedish Club Versus V8 Pool Inc. and others, Commercial Appeal no. 108 of 2021 in Interim Application NO. 2062 of 2021, para 47

⁶¹ ibid

⁶² Maritime Labour Convention, 2006, Standard A2.5.2, § 3

⁶³ Eugene Cheng Jiankai, The Effectiveness Of The Maritime Labour Convention's Financial Security Certificates In Resolving Claims For Unpaid Seafarers' Wages, working paper (2020:8)

⁶⁴ Maritime Labour Convention, 2006, Standard A2.5.2 § 4

⁶⁵ ibid, Standard A2.5.2 § 9

⁶⁶ ibid, Standard A2.5.2 § 12

⁶⁷ The Swedish Club Versus V8 Pool Inc. and others, Commercial Appeal No. 108 Of 2021 in Interim Application No. 2062 of 2021

⁶⁸ ibid para 6, 7

⁶⁹ ibid, para 7, 10 and 11

⁷⁰ ibid para 16

decree, determining priorities, and then seeking payment out. If the crew are entitled to claim such amounts as Sheriff's expenses, so is the P&I Club."⁷¹

In one case, seafarers were abandoned on the Vessel MT GP B4 after the owner stopped the payment of wages. When this vessel was arrested, the P&I showed its willingness to court to arrange the supplies of necessities for the crew and fuel.⁷² The court permitted P&I to do the same.⁷³ Court asserted that the P&I would be paid on a priority basis from the sale proceed of the vessel, or if the arrest order is vacated, the vessel owner will not be allowed to sail the ship unless the debt is discharged.⁷⁴

In the seafarer abandonment situation onboard the Vessel Beas Dolphine, P&I applied to the court to grant assistance to abandoned seafarers.⁷⁵ By order dated 21 September 2019 on an application of P&I, the court directed that the expenses incurred by P&I. on behalf of the crew members towards repatriation expenses, supply of food, fresh water, bunkers, lubricating oil, and other necessities shall be treated as Sheriff's / Admiralty Marshall's expenses.⁷⁶

In one case where vessel MTGP B3 was arrested and was having abandoned seafarers onboard, it was brought to the notice of the court by the P&I insurer that the vessel had very little fuel and there were chances of total blackout on the vessel.⁷⁷ It was pointed out that the port is not allowing the berthing of the vessel for the supply of food and fuel since the Vessels' Certificates have expired.⁷⁸ In the interest of the seafarers, the court directed the Pipavav Port to put all efforts into arranging a tug that could supply fuel to the vessel. The court said that if the tug is not arranged to supply fuel by the end of the day today, the port should permit the vessel to be berthed for a limited purpose of supplying fuel so as to avoid a total blackout situation and do all other acts necessary to enable the vessel to berth.⁷⁹

In this case, the court, considering the condition of the crew, allowed P&I to supply provisions, necessities, and fuel to the vessel, and it ordered that all expenses incurred/ to be incurred will be paid out on a priority basis out of the sale proceeds of the Defendant's Vessel or in the case where the court vacates arrest order, the Defendant vessel shall not be permitted to sail off the Defendant vessel without discharging such debt.⁸⁰

From the above instances, it is seen that admiralty courts have encouraged the P&I to fulfil its obligation under MLC (to provide necessities to abandoned seafarers, providing them pending wages for up to four months and repatriation costs) by treating expenses incurred by P&I as Sheriff's expenses. Implying that such expenses will be paid to P&I on a priority basis from the sale proceed of the vessel. The position can be described as a good development for ensuring that prompt assistance reaches abandoned seafarers on the ship which is under judicial arrest.

⁷¹ The Swedish Club Versus V8 Pool Inc. and others Commercial Appeal No. 108 of 2021 in Interim Application No. 2062 of 2021 para 48,

⁷² National Bank of Fujairah vs Mt Gp B4(Imo No. 9246487) on 5 February, 2021 para 4; see also Celestial Ship Management Pte Ltd vs Mt Gp B4 (Imo No. 9246487) on 15 February, 2021 para 3

⁷³ *ibid* para 4

⁷⁴ *ibid* para 4

⁷⁵ Slovensnov Vadym And 11 Ors vs Osv Beas Dolphin (Imo No. 9413482) on 18 February, 2021, para 2

⁷⁶ *ibid*

⁷⁷ National Bank of Fujairah vs Mt Gp B3 IMO No 9555199, Order dated 17 February, 2021 para 1

⁷⁸ *ibid*, para 1

⁷⁹ *ibid*, para 7

⁸⁰ *ibid*, para 7

3.3. Ordering disembarkation of the abandoned crew-

Abandoned seafarers sometimes require judicial intervention when they are not allowed by the port authorities or the shipowner to sign off from the vessel on which seafarers are abandoned. Port authorities may deny sign-off because unmanned Ships can pose a safety risk for the port.

In one case, the seafarer approached the admiralty court for the recovery of pending wages. Court ordered the arrest of the vessel on 30 August 2013.⁸¹ On 25 October 2013, the crew requested the court to discharge them from the vessel because they had not been paid their wages.⁸² The court did not grant the request on citing safe manning requirements, which prescribe that a vessel cannot be left unattended.⁸³ Subsequently, when the court found that there was a lack of provisions for vessels and crew, it directed the Bombay Port Trust to supply fuel and water.⁸⁴

In another case, a court in India came to the rescue of the abandoned seafarer and gave the order to sign off an abandoned seafarer from the vessels in the Indian Port by invoking its writ jurisdiction. In this case, abandoned seafarers filed the writ of mandamus against the Government in the High Court of Kerala in order to get sign-off from the vessel.⁸⁵ Seafarers were on board a vessel named *M.V. Great Sea Vembanad*, and they were not allowed to sign off from the vessel. Shipowners also stopped providing necessities like food, water, etc., to them.⁸⁶ The court remarked that seafarers' condition onboard the vessel is 'deplorable.'⁸⁷ It passed an interim order stating that seafarers need immediate sign-off as they are starving because of no food, medicines, and other necessities. The Government can keep the responsible officer to monitor the ship when the seafarers have signed off. Later the seafarers were permitted to sign off from the vessel.⁸⁸

In another case, seafarers were abandoned on the Vessel MT GP B4 as the owner stopped the payment of wages. Two seafarers approached Gujarat High Court in order to get off the vessel because of health reasons.⁸⁹ High Court allowed the disembarkation through its order dated 05/02/21 and 15/02/21.⁹⁰ Later after a month court again considered the condition of the crew onboard vessel, who were confined on the vessel for a long time without payment of wages; court-ordered on 15/3/21 that the crew not required to stay on board as per the Minimum Safe Manning Certificate can be permitted to disembark from the vessel and be repatriated⁹¹.

From this portion, it is seen that, in many instances, the abandoned seafarer was able to disembark from the vessel because of the intervention of the judiciary. However, it is important to note that port authorities and courts are reluctant to allow all seafarers to disembark as the unmanned vessel can pose a security risk to the port.

⁸¹ The State Enterprise "Black Sea and Azov Sea Dredging Co." (CHAMP) & Anr. . vs A) Captain Yogesh Chander Malhotra, Master & Ors., Appeal (Lodg) no. 445 OF 2013 in Admiralty Suit (Lodg) No. 597 of 2013, order dated 22 Nov 2013 para 5A

⁸² *ibid* para 5(E)

⁸³ *ibid*

⁸⁴ The State Enterprise "Black Sea & Azov Sea Dredging Co" (CHAMP) ... vs. Captain Yogesh Chander Malhotra Master and others. Appeal No.445 of 2013 in Admiralty Suit Lodging No.597 of 2013, Order dated 29 July, 2014 para 4

⁸⁵ M. Thayu Manavar and others v Union of India and others , WP(C). No. 22693 of 2020(J)

⁸⁶ *ibid*, para 3

⁸⁷ *ibid*, para 5

⁸⁸ *ibid*, para 8, 10

⁸⁹ National Bank of Fujairahpjsc vs Mt Gp B4(IMO No. 9246487), order dated 5 February, 2021; Celestial Ship Management Pte Ltd vs Mt Gp B4 (Imo No. 9246487), order dated 15 February, 2021

⁹⁰ *ibid*

⁹¹ National Bank of Fujairahpjsc vs Mt Gp B4(IMO No. 9246487), order dated 15 March, 2021, para 10

3.4. Humanitarian consideration during auction proceedings of the vessel-

In many cases where the vessel was under judicial arrest, courts viewed that judicial auction, if it is required, should be completed at the earliest to ensure that seafarers' onboard vessel do not suffer, their pending wages are paid timely, and the value of the arrested vessel also is not degraded. For instance, in one case application for the arrest of the Vessel, MT GP B4 was filed in Gujarat High Court by UAE Bank.⁹² (Bank had given a mortgage to the shipowner and for which M.T. GP B4 was security).⁹³ The vessel was arrested⁹⁴. Thereafter court ordered for judicial auction of the vessel.⁹⁵ Bids were invited.⁹⁶ After the bidding was concluded, it was found by the court that the highest bid which came was much lower than the valuation of the vessel.⁹⁷ The court ordered for reauction of the vessel.⁹⁸ In the second auction, only one bid was received.⁹⁹ This bid was lesser than the highest bid received during the first auction.¹⁰⁰ Court, however, finally accepted the bid and was not in favor of having the auction for the third time.¹⁰¹ This was so because the crew on the vessel were suffering, and the plaintiff bank was not willing to replace the crew and maintain the vessel further.¹⁰² The value of the ship was continuously depreciating, which was harming the interest of the creditors.¹⁰³ Furthermore, the expenses of fuel, food for the crew, and their wage were accumulating.¹⁰⁴ As a result, the court, because of commercial and humanitarian reasons, accepted the bid.¹⁰⁵

In another case, an admiralty suit was initiated in Bombay High Court on 23 June 2017 for arresting the Vessel MV Theoxenia by a creditor who supplied marine lubricants to the Defendant's Vessel. The owner of the vessel did not appear, nor was any security furnished for release of the vessel even after several months of the vessel being arrested.¹⁰⁶ It was contended by an advocate of arresting party that the vessel should be auctioned because it is lying in a private port where port charges are very high, and the crews have also not been paid since June 2017, with each day passing claims over the Defendant Vessel are increasing.¹⁰⁷ As a result, the vessel was put for auction in pursuance of the order of the court dated 8 November 2017.¹⁰⁸

In furtherance of the court order dated 8.11.2017, the vessel was inspected by Surveyors.¹⁰⁹ Surveyor submitted a report indicating the fair and reasonable value of the vessel on 17.11.2017¹¹⁰. An auction was conducted, but the court found that the highest bid received was much lower than the value of the ship

⁹² National Bank of Fujairahpjsc vs Mt Gp B4(IMO No. 9246487), order dated 4 January, 2021, para 3

⁹³ Ibid, para 2

⁹⁴ Ibid, para 5

⁹⁵ National Bank of Fujairahpjsc vs Mt Gp B4(IMO No. 9246487, order dated 28 January, 2021 para 3

⁹⁶ Ibid

⁹⁷ National Bank of Fujairahpjsc vs Mt Gp B4(IMO No. 9246487), order dated, 15 March, 2021, para 4

⁹⁸ Ibid para 5

⁹⁹ National Bank of Fujairahpjsc vs Mt Gp B4(IMO No. 9246487), order dated, 23 April, 2021 para 4

¹⁰⁰ Ibid para 7

¹⁰¹ Ibid para 8

¹⁰² Ibid

¹⁰³ Ibid

¹⁰⁴ Ibid

¹⁰⁵ Ibid

¹⁰⁶ National Bank of Greece SA vs MV Theoxenia, Admiralty and Vice Admiralty Jurisdiction Commercial Notice of Motion (L) No. 697 Of 2017 in Commercial Suit (L) No.578 OF 2017, para 2; also see National Bank of Greece V/s. MV Theoxenia, (IMO No.9142980) order, Commercial Admiralty Suit No. 792 Of 2017, with Notice of Motion No. 363 of 2018 dated 7th March 2018, para 1

¹⁰⁷ Ibid at 2

¹⁰⁸ Ibid at 5

¹⁰⁹ National Bank of Greece SA vs. MV Theoxenia (IMO No.9142980), Notice of Motion (L) No.697 Of 2017 in Commercial Suit No.792 of 2017 along with Sheriff Report No.1 Of 2018 Sheriff Report No.40 OF 2017, Order dated 5/1/2018, para 2

¹¹⁰ Ibid

mentioned in the valuation report.¹¹¹ As a result, the court ordered on 30/11/17 that there would be a fresh auction of the vessel.¹¹²

In the second auction highest bid was received from M/s.Aries Shipping & Trading Co., Liberia.¹¹³ The price offered was equivalent to the price indicated in the valuation report by Surveyor.¹¹⁴ Plaintiff advocate contended that the bid should be accepted because the crew of the vessel had been on board for a long time and substantial costs were being incurred on their wages and provisions. Such cost is constantly increasing with every passing day.¹¹⁵ Court agreed with the contention and accepted the bid received in the second auction.¹¹⁶

Thus, from the above cases, it is found that during the admiralty proceeding when vessels are auctioned, the court is also concerned about the welfare of the seafarers who are onboard the vessel without being paid their wages. In both the cases mentioned above, the bid received in the second auction were accepted, although they were less than the valuation of the ship. This was so because the court was aware of the plight of abandoned seafarers onboard vessels who were unpaid.

Overall, the discussion shows that the courts have come to the aid of abandoned seafarers on many occasions in India. Although Indian laws recognize pending wages, including the cost of repatriation, give rise to the maritime claim and maritime lien, it is courts that have made a liberal interpretation of these provisions of law to favour the interest of seafarers. In particular, courts have assisted abandoned seafarers in getting sign-off the vessel in certain situations. In the case where abandoned seafarers are present onboard a vessel under arrest, the admiralty courts have ensured that expenses incurred towards furnishing necessities, payment of wages for the duration of arrest and repatriation costs are treated as sheriff expenses.

4. ASSESSMENT AND SUGGESTIONS

Although Indian Admiralty courts have played a crucial role in protecting abandoned seafarers, there are still several issues with the admiralty practice of Indian courts. Below points discuss the issues and also render suggestions to deal with them.

4.1. Time consumed in the judicial auction of the arrested vessel on which seafarers are abandoned must be reduced.

This segment will first see how much time usually Indian admiralty courts take to auction the vessel. For this purpose, five cases, in particular, are discussed below where admiralty courts in India ordered a judicial auction of an arrested vessel. In all these cases, the vessels under arrest had abandoned seafarers onboard.

a) Evangelia M- Admiralty litigation was initiated against the Vessel Evangelia M and its owner by the mortgagee of the vessel, Piraeus Bank, for recovering the unpaid mortgaged amount. Bank applied for vessel arrest in Andhra Pradesh High Court.¹¹⁷ By the arrest order dated 25/01/19, the vessel was arrested by the High

¹¹¹ *National Bank of Greece SA vs MV Theoxenia, in The High Court of Judicature at Bombay Ordinary Original Civil Jurisdiction Admiralty and Vice Admiralty Jurisdiction Commercial Notice of Motion (L) No. 697 of 2017, In Commercial Suit (L) No. 578 of 2017, order dated 30 November 2017, Para 4, 5, 6*

¹¹² *ibid* Para 7

¹¹³ *National Bank of Greece SA vs. Mv Theoxenia (Imo No.9142980), Notice of Motion (L) No.697 of 2017 in Commercial Suit No.792 of 2017 along with Sheriff Report No.1 Of 2018 Sheriff Report No.40 of 2017, Order dated 5/1/2018, para 4*

¹¹⁴ *ibid*

¹¹⁵ *ibid*

¹¹⁶ *ibid*

¹¹⁷ *see Piraeus Bank vs Evangella, IA No. 18 of 2019 in Commercial suit No. 1 of 2019 order by Justice Venkata Ramana dated 09/09/19, para 3*

Court of Andhra Pradesh.¹¹⁸ The shipowner did not appear to defend the case.¹¹⁹ Application for sale was filled by the Piraeus Bank¹²⁰ and also by the foreign crew of the vessel (as the crew had to recover their pending wages)¹²¹. Court ordered judicial auction of the vessel mentioning that the owner had abandoned the ship by not appearing in court.¹²² Bids were invited, and the ship was finally sold under the supervision of the court.¹²³ The sale was confirmed by the court on 05/10/20.¹²⁴ High Court of Andhra Pradesh, in its order dated 20/11/20, directed that a sale certificate be issued to the new buyer and seafarers' onboard vessel be discharged.¹²⁵

In this matter, the vessel was originally arrested on 25/01/19, and it was finally sold on 20/11/20 when the sale certificate was given to the new buyer. The total time is taken by the court to judicially auction the vessel was one year ten months. This means that in this entire period of 1 year ten months, the seafarers who were manning the vessel were unpaid. This is also true with respect to the pending wages of seafarers who had been repatriated.

b) OSV Beas Dolphin- Seventeen seafarers onboard Mauritius flagged vessel OSV Beas dolphin were abandoned when The Mumbai-based offshore company stopped paying wages to the crew.¹²⁶ Abandoned seafarers on this foreign Vessel in Indian Port approached the admiralty court on 21 September 2019 for the arrest of the vessel in order to recover their pending wages.¹²⁷ The court issued the order of arrest of the vessel after recognizing that the pending wages of the seafarer give rise to a maritime claim under Admiralty Law.¹²⁸ The shipowner appeared in court and gave an undertaking (recorded in the order dated 6 November 2019) to pay the pending wage to seafarers within four weeks.¹²⁹ However, the shipowner failed to respect the undertaking given in the court, where it agreed to pay the pay pending wages to the seafarer.¹³⁰ As a result, the ship was put on sale by order of the court, and it was finally auctioned on 24 September 2020.¹³¹

In this case, the ship was arrested on 21 September 2019, and it was auctioned on 24 September 2020. This implies that the total time taken by the court to judicially auction the vessel after it was arrested was around one year. Although the vessel was sold out and money was with the court, the pending wages were not received by seafarers as of 10 December 2021, as per ILO Database information.¹³²

c) M.T. GP B4- In one case, the shipowner borrowed a loan from the National Bank Of Fujairahpjsc UAE by mortgaging his Vessel, MT GP B4.¹³³ When the payment of the loan defaulted, the Bank applied for the arrest of the vessel in the Gujarat High Court.¹³⁴ Vessel Mt G.P. B4 was arrested by order of the court dated 4 January 2021 when it was in Indian water.¹³⁵ Upon the arrest of the vessel, the shipowner appeared in court but said that

¹¹⁸ ibid, para 3

¹¹⁹ ibid para 3

¹²⁰ ibid para 1

¹²¹ ibid para 4

¹²² ibid, para 6

¹²³ Piraeus Bank vs Evangella, IA No. 18 of 2019 in Commercial suit No. 1 of 2019 order dated 5/10/20

¹²⁴ ibid

¹²⁵ Piraeus Bank vs Evangella, IA No. 18 of 2019 in Commercial suit No. 1 of 2019 order dated 20/11/20 para 20

¹²⁶ See ILO Seafarer abandonment database, abandonment on vessel OSV Beas dolphin, accessed from https://www.ilo.org/dyn/seafarers/seafarersBrowse.details?p_lang=en&p_abandonment_id=382&p_search_id=200522140054

¹²⁷ Slovesnov Vadym and others vs OSV Beas Dolphin (IMO No.9413482), Judge's Order No. 176 of 2019 in Commercial Admiralty Suit (Lodging) No. 63 of 2019, para 2

¹²⁸ ibid para 2 & 3

¹²⁹ Slovesnov Vadym & others . vs. OSV Beas Dolphin, In Comm. Admiralty Suit (L) No . 63 of 2019; order dated 7 November 2020 para 4

¹³⁰ Slovesnov Vadym & others . vs. OSV Beas Dolphin, In Comm. Admiralty Suit (L) No . 63 of 2019; Order Dated 10th December, 2020. para 2

¹³¹ Slovesnov Vadym & others . vs. OSV Beas Dolphin, In Comm. Admiralty Suit (L) No . 63 of 2019; order dated 7 November 2020, para 3

¹³² ILO Seafarer Abandonment Database, Seafarer abandonment on vessel OSV Beas Dolphin, accessed from https://www.ilo.org/dyn/seafarers/seafarersBrowse.details?p_lang=en&p_abandonment_id=382&p_search_id=200522140054

¹³³ National Bank of Fujairahpjsc vs Mt Gp B4(IMO No. 9246487), order dated 4 January, 2021

¹³⁴ ibid

¹³⁵ ibid

he was unable to repay the loan amount and had no objection to the sale of the vessel.¹³⁶ Court ordered to auction of the vessel,¹³⁷ An auction procedure was initiated for the vessel, and the highest bid was accepted by the court.¹³⁸

In this case, the vessel was arrested on 4 January 2021, and the court confirmed the sale on 23 April 2021. This implies that the total time taken by the court to judicially auction the vessel after it was arrested was around 3.5 months. This is comparatively less than the time taken by the court in auctioning the Vessel Evangelia M_and OSV Beas Dolphin

d) MV Theoxena- Seafarers were abandoned on the vessel in the port of Kakinada, India, in May 2017¹³⁹. Later admiralty suit was initiated in Bombay High Court on 23 June 2017 for arresting the same vessel for a claim arising out of a supply of marine lubricants by the company.¹⁴⁰ After concluding that the prima facie case of maritime claim exists, the court ordered the arrest of the vessel.¹⁴¹ The owner of the vessel did not appear, nor was any security furnished for the release of the vessel even after several months of the vessel being arrested.¹⁴² As a result, the vessel was put on sale, and the auction sale was confirmed by the court on 22 January 2018.¹⁴³

In this case, the vessel was arrested on 23 June 2017, and on 22 January 2018, the court confirmed the sale. This implies that the total time taken by the court to judicially auction the vessel after it was arrested was around seven months. Furthermore, the crew was able to recover their pending wages after ten months of vessel arrest.

e) M.T. GP B3- In this matter, the shipowner borrowed a loan from a Bank, and for repayment of the said amount owner executed Secured Loan Agreement and mortgaged his vessel, M.T. GP B3, as security for the payment of the loan amount.¹⁴⁴ When loan repayment defaulted, Bank applied for vessel arrest.¹⁴⁵ Court ordered the arrest on 09 September 2020.¹⁴⁶

The arresting party applied for the sale of the vessel in court and submitted that the owners of the vessel had abandoned it and it had been left to fend for itself.¹⁴⁷ It was pointed out that if the vessel be left in this condition, it is likely to pose a danger to the port and the environment as well as the crew onboard it is likely to suffer.¹⁴⁸

The court ruled in an order dated 11 December 2020 that the vessel to be put on sale¹⁴⁹. While passing this order court considered that the owner of the vessel has not entered appearance and Sec 11 of the Admiralty Act, 2017 provides that if the owner or demise charterer abandons the vessel after its arrest, the High Court is

¹³⁶ National Bank of Fujairah pjsc vs Mt Gp B4(IMO No. 9246487), order dated 28 January, 2021 para 3

¹³⁷ ibid para 8

¹³⁸ National Bank of Fujairah pjsc vs Mt Gp B4(IMO No. 9246487), order dated 23 April, 2021 para 8

¹³⁹ ILO Seafarer Abandonment Database, Abandonment on vessel MV Theoxenia, accessed from https://www.ilo.org/dyn/seafarers/seafarersbrowse.details?p_lang=en&p_abandonment_id=300&p_search_id=220319122813

¹⁴⁰ Granada Energy General Trading LLC. vs. M.V. THEOXENIA (IMO 9142980) & Anr. Admiralty Suit (L) No. 381 of 2017, order dated 23 June 2017 para 1

¹⁴¹ ibid para 3

¹⁴² National Bank of Greece SA Versus MV Theoxenia, Admiralty and Vice Admiralty Jurisdiction Commercial Notice of Motion (L) No. 697 Of 2017 In Commercial Suit (L) No.578 of 2017, para 2; also see National Bank of Greece V/s. MV Theoxenia, (IMO No.9142980), Commercial Admiralty Suit No. 792 of 2017 with Notice of Motion No. 363 Of 2018, order dated 7th March 2018 para 1

¹⁴³ National Bank of Greece SA Vs. MV Theoxenia (IMO No.9142980), In Its Commercial division notice of Motion (L) No.697 of 2017 in Commercial Suit No.792 of 2017, order dated 22 Jan 2018, para 3

¹⁴⁴ National Bank of Fujairah Pjsc vs Mt Gp B3 Imo No 9555199, order dated, 9 September, 2020 para 1

¹⁴⁵ ibid para 2

¹⁴⁶ ibid para 3

¹⁴⁷ National Bank of Fujairah Pjsc vs Mt Gp B3 Imo No 9555199, order dated, 11 December, 2020, para 5

¹⁴⁸ ibid

¹⁴⁹ ibid para 7

entitled to pass the order for the sale of the vessel.¹⁵⁰ An auction took place, and the court directed on 9 April 2021 that the Court commissioner shall issue a Bill of the sale in favor of Global Tanker Private Limited.¹⁵¹

In the above case, the vessel was arrested on 09 September 2020, and a sale bill was issued in favor of the buyer on 9 April 2021. This means that the total time taken in the process was eight months.

Vessel	Time consumed in actioning the vessel after it was arrested
Evangelia M	one year ten months
OSV BEAS DOLPHIN	one year
M.T. GP B4	three months and fifteen days
MV Theoxenia	seven months
M.T. GP B3	eight months

Table 1. Time which Indian Admiralty courts took in auctioning the arrested vessels

Table 1 above summarizes the time taken in the judicial auction of vessels in the cases discussed. In order to draw any inference from table 1, it is essential first to see whether Indian Admiralty law prescribes any time frame for courts within which the auction proceedings of the arrested vessel should be completed. On this point, Section 11 (3) of the Admiralty Act, 2017, is relevant. This provision says that when the owner or demise charterer abandons the ship after it is arrested, the Admiralty court must judicially auction the vessel within a period of forty-five days from the date of arrest or abandonment. In exceptional situations, for reasons to be recorded in writing, the admiralty court may increase the period for a further duration of thirty days.

In all the five cases discussed above, the date of arrest is known, but the exact date on which the shipowner abandoned the vessel is unknown. In any case, when the shipowner does not come forward to furnish security for ship release after the institution of admiralty litigation, it will be presumed that he has abandoned the ship. Therefore, we can say that the date of abandonment of the ship by the shipowner after arrest may be a few weeks ahead from the date of arrest. But even if we count forty-five days from the date of abandonment (presuming the date of abandonment to be two weeks ahead of the arrest date), the time taken for judicial auction of the vessel is still very long, as is visible from Table 1. It was only in one case judicial auction got completed within 3.5 months from the date of arrest of the vessel; in the remaining instances, it took longer than six months for the auction. In some cases, the auction of the vessel was completed after more than a year from the time the court arrested the vessel. Thus, it can be said by relying on the above data that the time court took for judicially auctioning the vessel was much longer than the maximum period specified in Admiralty Act, 2017.

It is important to note that Indian courts have observed in a few cases that there should be timely disposal of admiralty suits.¹⁵² For instance, in *K. George East and 3 ors. vs. M.V. Don Jose and 2 Ors*, Admiralty court, after ordering the arrest of the vessel on the application made by the seafarer for recovery of his pending wages, laid down the time frame for the disposal of the case. Court stated-

"After execution of warrant of arrest, if the arrested vessel is not released by furnishing security or bail amount within 15 days, or an application for vacating the order of arrest is not fled, or the vessel is found abandoned by the person-in-charge of the vessel or owner or is found unmanned, then, in such an event, on an

¹⁵⁰ *ibid* para 3

¹⁵¹ *National Bank of Fujairah Pjsc vs Mt Gp B3 Imo No 9555199*, order dated, 9 April, 2021, para 5

¹⁵² see *State Enterprise "Black Sea and Azov Sea Dredging Co." (CHAMP) & Anr. . Vs Captain Yogesh Chander Malhotra, Master & Ors.*, Appeal (Lodg) No. 445 of 2013 in Admiralty Suit (Lodg) No. 597 of 2013, order dated 22 Nov 2013 para 5A

application being made by the plaintiff, the office of the Sheriff of Mumbai shall present a Sheriff's report for auctioning the vessel within seven days from the date of receiving communication from the plaintiffs' advocate or from the date of knowledge of abandonment of the vessel."¹⁵³

Despite the attempt of courts to resolve the admiralty litigation in a time-bound manner, the delay in the disposal of admiralty cases is visible. A long time taken by courts in the disposal of the admiralty matter is the cause of concern.

It is suggested that the Indian judiciary should take into consideration the time period prescribed by Admiralty Act, 2017, for auctioning the vessel. With speedy disposal, all the creditors, including the abandoned seafarers, will benefit. Abandoned seafarers onboard the vessel could recover their pending dues after completion of the auction sale. Furthermore, any delay reduces the value of the vessel and can raise safety concerns for the port in which the vessel is anchored.

4.2. Indian Judiciary should proactively come to the rescue of abandoned seafarers in Indian Ports, taking into consideration the obligations of India under Human Rights Treaties

India is a signatory to many human rights treaties. International Convention on Civil and Political Rights (ICCPR), 1966 is one of the most important human rights treaties which India has ratified.¹⁵⁴ When the foreign vessel is abandoned in port in India, ICCPR rights are available to the seafarers. This is so because ICCPR says that it applies not only to the land territory of the state parties but also to the territory under the jurisdiction of state parties.¹⁵⁵ Port are within the internal water of the state and under its sovereign jurisdiction.¹⁵⁶ Although it is the Indian executive who signs and ratifies the treaty¹⁵⁷, all three branches of the state, including the judiciary, are required to ensure that treaty provisions are respected.¹⁵⁸ Indian judiciary has, on many occasions, invoked the provisions of the treaties ratified by India to give protection to the people.¹⁵⁹ It is generally agreed that in the absence of contrary legislation, Indian courts are free to interpret domestic laws in light of India's international law obligations.¹⁶⁰

Although the Indian judiciary has often come to the rescue of abandoned seafarers, it has never referred expressly to rights abandoned seafarers have in Indian ports by virtue of the human rights treaties India has ratified. In the situation of abandonment of the seafarers, their right not to be subjected to inhuman, cruel or degrading treatment may get breached.¹⁶¹ Port state measures preventing abandoned seafarers from disembarking from the vessel may breach the right to life¹⁶² and liberty¹⁶³ of abandoned seafarers. Although there have been many cases where Indian courts have allowed the abandoned seafarer to disembark from the

¹⁵³ K. George Eassi and 3 ors. vs M.V.Don Jose and 2 Ors., Judge's Order No. 37 of 2020 in Commercial Suit (L) No. 77 of 2019, para 6

¹⁵⁴ United Nations Treaty Body Database, accessed from https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en

¹⁵⁵ International Covenant on Civil and Political Rights, 1966, Article 2(1)

¹⁵⁶ See United Nations Convention on Law of the Sea, 1982, Article 2(1)

¹⁵⁷ National Commission to Review the Working of The Constitution, A Consultation Paper on Treaty-Making Power Under Our Constitution. (2001) para 5, accessed from <https://legalaffairs.gov.in/sites/default/files/Treaty-making%20power%20under%20our%20Constitution.pdf>

¹⁵⁸ See Article 51(c) read with Article 12 of Indian Constitution, 1950; For the purpose of law of State responsibility judiciary is considered as an organ of state, see Article 4 of ILC Draft articles on Responsibility of States for Internationally Wrongful Acts, 2001

¹⁵⁹ See the National Legal Services Authority v. Union of India, 2014, also see Vishaka v. State of Rajasthan, 1997

¹⁶⁰ See Sehrawat, Vivek, Implementation of International Law in Indian Legal System," Florida Journal of International Law: Vol. 31 : Iss. 1 at 114

¹⁶¹ International Covenant on Civil and Political Rights, 1966, Article 7

¹⁶² International Covenant on Civil and Political Rights, 1966, Article 6(1)

¹⁶³ International Covenant on Civil and Political Rights, 1966, Article 9(1)

vessel, taking into consideration the plight of abandoned seafarers,¹⁶⁴ there are also cases where the Indian judiciary has denied issuing an order for disembarking from the vessel by saying that the vessel cannot be left unmanned.¹⁶⁵ In the latter category of cases, the courts have not considered the human rights of abandoned seafarers under human rights treaties India has ratified. It is highlighted here that upon breach of contract and abandonment by the shipowner, the crew cannot be forced to stay on the vessel to discharge their duties towards the ship as it may amount to arbitrary deprivation of life and personal liberty. In such a situation, in order to ensure that seafarer's rights under human rights treaties are not breached, the judiciary can direct the port authorities to keep some personnel for safe keeping of the vessel till the time vessel is auctioned or to shift the vessel to a place where it can be kept unmanned.

On the basis of discussion, it is suggested that the Indian judiciary, while dealing with cases of seafarer abandonment, should take cognizance of India's obligations under human rights treaties, particularly ICCPR, towards seafarers abandoned in Indian Ports. It should ensure that abandoned seafarers are granted ample protection so that their human rights are not breached.

5. CONCLUSION

Seafarer abandonment is one of the major issues today faced by the crew onboard, which may lead to violation of internationally recognized human rights of the seafarers. The judiciary of the port states where seafarers are abandoned on the vessel can play an important role in resolving the crises. From work, it can be concluded that Admiralty courts in India have played a significant role in protecting the abandoned seafarers on Vessel in Indian Ports. Courts have come out as a guardian of seafarers, and it was only due to the intervention of the courts that the seafarers, in numerous cases, were able to recover pending wages, repatriation expenses, and necessities onboard the vessel. This position may also deter shipowners from abandoning the seafarers in the first place because the seafarers can take legal recourse and can get the ship arrested.

It has been seen from the study that significant time has been consumed in the number of cases in a judicial sale of the vessel after it was arrested or abandoned. Indian law requires that after the judicial arrest of the vessel, if the shipowner charterer does not appear within a reasonable time, the vessel should be immediately put for judicial sale. There is a need for speedy disposal of admiralty proceedings in India. Delay in court proceedings also adds to the woes of seafarers who are onboard the vessel unpaid during the ship arrest period. On the basis of the discussion in the paper, it can also be said that Indian admiralty courts need to take cognizance of the human right obligation of India under human rights treaties while dealing with seafarer abandonment cases.

CONFLICT OF INTEREST

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¹⁶⁴ M. Thayu Manavar and others v Union of India and others , WP(C). No. 22693 of 2020(J) para 8, 10; see also Arjun Singh Kalra & Others Vs Union of India & Others, Writ Petition (LODG.) NO.1500 of 2019, para 3 and 7

¹⁶⁵ The State Enterprise "Black Sea and Azov Sea Dredging Co." (CHAMP) & Anr. . Vs A) Captain Yogesh Chander Malhotra, Master & Ors., Appeal (Lodg) no. 445 OF 2013 in Admiralty Suit (Lodg) No. 597 of 2013, order dated 22 Nov 2013 para 5E

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