

A Seafarer's Right To Compensation: Casualty Investigation In India

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ABSTRACT

Marine casualty investigations are fundamental to enhancing maritime safety and ensuring accountability within the global shipping industry. In India, the framework governing these investigations and the subsequent rights of seafarers to compensation for injury, death, or unpaid wages is a multifaceted structure, drawing upon domestic legislation such as the Merchant Shipping Act, 1958 ('MSA'), and international instruments including the Maritime Labour Convention, 2006 ('MLC'), and the mandatory IMO Casualty Investigation Code ('IMO Code'). This paper provides a comprehensive analysis of the current landscape of marine casualty investigations in India, examining the relationship between the investigative process and a seafarer's pursuit of compensation. It scrutinizes the existing legal and procedural mechanisms, highlighting their intended functions alongside the practical challenges seafarers frequently encounter, such as jurisdictional complexities, delays in investigations, strategies employed by employers to evade liability, and weaknesses in enforcement. Through an in-depth examination of key Indian legislation and a comparative analysis with international best practices in jurisdictions like the UK and Singapore, the paper identifies critical discrepancies between the regulatory intent and the effectiveness of implementation. It posits that while India has established a foundational legal structure, systemic reforms are imperative to ensure timely, equitable, and accessible compensation for seafarers. The paper concludes with actionable recommendations aimed at strengthening the investigative framework, streamlining legal avenues for recourse, enhancing enforcement mechanisms, and improving seafarer awareness, advocating for a more robust and seafarer-centric approach to maritime justice in India.

Keywords: Marine Casualty Investigation, Seafarer Rights, Compensation, India, Merchant Shipping Act, Maritime Labour Convention, IMO, Admiralty Law, Maritime Justice, MV Ocean Star.

INTRODUCTION:

The global maritime industry, serving as the backbone of international commerce, inherently exposes seafarers to considerable hazards. Marine casualties, encompassing a wide range of incidents from collisions and groundings to fires and explosions, not only pose risks to human life and the marine environment but also inflict significant consequences upon the seafarers involved, frequently resulting in physical injury, psychological trauma, loss of livelihood, and the non-payment of earned wages. The investigation of these incidents is of paramount importance, extending beyond merely determining the immediate cause to informing preventative strategies and establishing a basis for accountability and potential compensation.

In India, a nation characterized by an extensive coastline and a substantial maritime workforce, the system for investigating marine casualties and safeguarding seafarers' rights has undergone a continuous evolution, shaped by both national legislative initiatives and the adoption of international standards. The cornerstone of Indian maritime law is the Merchant Shipping Act, 1958,⁴ which vests the

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⁴ The Merchant Shipping Act, 1958, Act No. 44 of 1958 (India)

Directorate General of Shipping ('DGS') with the authority to conduct investigations into marine casualties. This is further reinforced by India's adherence to international instruments such as the IMO Casualty Investigation Code, adopted by Resolution MSC.255(84).⁵ This mandatory code advocates for safety-focused investigations aimed at preventing future occurrences, explicitly stating that the objective is not to apportion blame or determine liability.⁶

Recent developments underscore India's ongoing efforts to refine its casualty investigation framework. DGS Order: 20 of 2023, issued in December 2023, along with its accompanying revised Standard Operating Procedures (SOPs),⁷ clarifies the applicability of the Casualty Investigation Code in India and outlines updated procedures for conducting preliminary inquiries and investigations. These recent updates aim to enhance the structure and efficiency of the process, reflecting a commitment to aligning national practices more closely with international requirements.

However, the process by which a seafarer navigates from experiencing a marine casualty to receiving due compensation is frequently challenging. Despite the legal provisions for claiming wages, medical expenses, and compensation for injury or death, seafarers often face prolonged legal proceedings, complex jurisdictional issues, difficulties in enforcing judgments against shipowners who may employ evasive tactics, and a general lack of understanding regarding their rights and the available procedures for seeking redress.⁸ The casualty investigation process itself, while intended to be impartial and fact-finding, can inadvertently influence compensation claims, particularly if reports are delayed, lack conclusive findings, or are not effectively integrated into legal proceedings.

This research paper undertakes a critical examination of the landscape of marine casualty investigations in India through the specific lens of a seafarer's right to compensation. It will meticulously analyse the existing legal and procedural mechanisms, assess their practical effectiveness, and identify the systemic impediments that hinder seafarers' access to justice and fair compensation. By analysing relevant Indian legislation, recent DGS procedures, pertinent case laws, and drawing comparisons with international practices, the paper aims to bridge the gap between the theoretical legal framework and the practical realities encountered by seafarers. Ultimately, it seeks to provide a comprehensive understanding of the challenges and propose actionable recommendations for strengthening the system to better protect the rights and ensure the timely compensation of seafarers in India.

LEGAL FRAMEWORK GOVERNING MARINE CASUALTY INVESTIGATIONS IN INDIA

The legal foundation for conducting marine casualty investigations in India is primarily established by the Merchant Shipping Act, 1958. Part XII of the Act, titled "Casualty and Investigations," empowers the Central Government to mandate investigations into casualties involving Indian ships or foreign ships within Indian territorial jurisdiction.⁹ The Directorate General of Shipping (DGS), operating under the Ministry of Ports, Shipping and Waterways, serves as the administrative authority responsible for maritime safety and pollution prevention and oversees these investigations. DGS Order: 20 of 2023, a recent development, clarifies that a 'shipping casualty' under Section 358 of the Act encompasses

⁵ IMO Res. MSC.255(84), *Adoption of the Code of the International Standards and Recommended Practices for a Safety Investigation Into a Marine Casualty or Marine Incident (Casualty Investigation Code)* (May 16, 2008)

⁶ *MV Ocean Star*, Adm. Suit No. 12/2020 (Bombay High Court)

⁷ Directorate General of Shipping, India, *Standard Operating Procedures to Handle Marine Casualty 2021* (SOP-Casualty-22022023)

⁸ R. Chander, *Maritime Safety and Seafarers' Rights in India: A Critical Analysis*, 12 Indian J. Mar. L. 45 (2019)

⁹ *Ibid* 1

casualties defined under various international conventions ratified by India, aligning the national definition with international standards.¹⁰

The DGS has established a dedicated Marine Casualty Investigation Unit (MCIU) tasked with conducting thorough inquiries into significant maritime incidents. These investigations are designed to ascertain the circumstances and identify the causes of a casualty, leading to recommendations aimed at preventing future occurrences. The investigative process typically involves comprehensive evidence gathering, including collecting data from vessel records, interviewing witnesses, examining physical evidence, analysing Voyage Data Recorder (VDR) information, and reviewing relevant documents¹¹.

India's commitment to international maritime safety standards is further demonstrated by its adherence to the IMO Casualty Investigation Code (Resolution MSC.255(84)).¹² This Code provides a framework of international standards and recommended practices for safety investigations, with Parts I and II being mandatory.¹³ India's initiatives in response to the Code include the development of detailed Standard Operating Procedures (SOPs) and the issuance of relevant circulars.¹⁴ A fundamental principle of the IMO Code, which India endeavours to follow, is that the sole objective of a marine safety investigation is the prevention of future accidents, not the apportionment of blame or determination of liability.¹⁵ While essential for fostering open reporting and a proactive safety culture, this distinction can sometimes lead to a perceived separation between the findings of a safety investigation and the requirements of legal proceedings focused on liability and compensation.

The DGS's detailed Standard Operating Procedures (SOPs) to Handle Marine Casualty (e.g., SOP-Casualty-22022023), updated recently, provide a structured approach to managing maritime incidents. These SOPs outline the steps from initial notification and assessment to the activation of a Crisis Management Team (CMT), evidence collection, analysis, and reporting.¹⁶ They define clear communication protocols, delineate the roles and responsibilities of various stakeholders (including the 24x7 manned DG Comm Centre, port authorities, and the Indian Coast Guard), and specify procedures for handling different types of casualties involving Indian and foreign-flagged vessels in various locations. The SOPs also detail the minimum qualifications and powers of Inquiry Officers appointed under Section 358(2) of the Merchant Shipping Act, including the authority to board vessels, inspect documents, summon witnesses, and take statements.¹⁷ Preliminary Inquiries conducted under Section 359 of the Act are required to have two parts: the Preliminary Inquiry Report and the Recommendation of the Preliminary Inquiry.¹⁸ The SOPs include flowcharts to guide actions based on vessel flag, location, and casualty type, illustrating the communication flow.¹⁹

A key element of India's procedure, reinforced by recent updates, is the emphasis on producing detailed and high-quality investigation reports. Circular 1 of 2006 specifically addressed concerns regarding

¹⁰ Directorate General of Shipping, India, *Annexure - I (Ver 1 Approved on 27 Dec 2023) to DGS Order: 20 of 2023 (SoP for conduct of Preliminary Inquiry u/s 359, and Investigation u/s 389, of the Merchant Shipping Act, 1958)* (Dec. 27, 2023)

¹¹ *Ibid* 7

¹² *Ibid* 2

¹³ *Ibid* 4

¹⁴ Directorate General of Shipping, India, Circular 1 of 2006 (Addressing Inadequate Reporting from Minor Ports)

¹⁵ *Ibid* 3

¹⁶ *Ibid* 7

¹⁷ *Ibid* 7

¹⁸ Directorate General of Shipping, India, DGS Order: 20 of 2023 (Casualty Investigation Code and its applicability) (Dec. 8, 2023)

¹⁹ *Ibid* 4

inadequate reporting from minor ports and aimed to standardize the approach of Preliminary Inquiry Officers (PIOs).²⁰ The mandated standardized report format ensures systematic documentation of essential information for national analysis and reporting to the IMO's GISIS database (Global Integrated Shipping Information System).²¹ The GISIS MCI module requires detailed data submission across five appendices: generic information, factual information per ship, casualty analysis data (including accident events and contributing factors like human erroneous actions, equipment failure, hazardous material effects, environmental effects, and external agencies), supplementary information for specific circumstances (like packaged dangerous goods or hull breaches), and field value option tables.²² This online reporting is the primary method, replacing older paper formats. Investigating States are encouraged to populate basic factual data in GISIS as soon as possible after the occurrence.

FORMAL INVESTIGATIONS IN INDIA:

Beyond the preliminary inquiries, the Merchant Shipping Act, 1958, also provides for Formal Investigations (FI) into shipping casualties, typically convened for more serious incidents.²³ Section 360 of the Act allows for application to a court for a Formal Investigation. Historically, these investigations were conducted in a court of law presided over by a Magistrate and assisted by assessors.²⁴

The objective of an FI is to investigate the circumstances and causes of a casualty. However, historical reviews highlight that this process has faced significant challenges, including considerable delays, partly due to the overburdened court system and the prioritization of other legal matters.²⁵ The adversarial nature of court proceedings, where parties present evidence to support their respective theories, could also influence the focus and duration of the investigation.

Concerns have also been raised regarding the potential for perceived conflict of interest, particularly when the Central Government, which oversees the DGS (the preliminary investigating authority), is also the complainant in a formal investigation and appoints the assessors.²⁶ Section 366 of the MSA pertains to the appointment of Assessors for the court of Formal Investigation, and the fact that the list is prepared by the Central Government, who is also the complainant, is a serious matter that needs to be addressed.²⁷

Recommendations from past reviews have suggested the need to de-link FIs from the regular court system and establish a more streamlined, time-bound process, potentially through a dedicated board of formal investigation comprising technical experts.²⁸ While recent DGS orders and SOPs reinforce the importance of timely preliminary inquiries, the structure and efficiency of formal investigations remain a critical aspect of the overall casualty investigation framework in India. DGS Order: 20 of 2023

²⁰ Directorate General of Shipping, India, Circular 1 of 2006 (Addressing Inadequate Reporting from Minor Ports)

²¹ S. S. Chaudhari, Casualty Investigation Code, Capt. S.S. Chaudhari (Dec. 19, 2020), <https://captsschaudhari.com/2020/12/19/casualty-investigation-code/>

²² IMO MSC-MEPC.3/Circ.4/Rev.1, *Revised Harmonized Reporting Procedures - Reports Required Under SOLAS Regulations I/21 and XI-1/6, and MARPOL, Articles 8 and 12* (Nov. 18, 2014) And International Maritime Organization, GISIS MCI Module - Casualty Analysis Data

²³ *Ibid* 1

²⁴ Rakesh Kumar Awasthi, *Review and Consolidation of Instructions for Investigations and Inquiries in India*, World Maritime University Dissertations (1999)

²⁵ *Ibid* 21

²⁶ *Ibid* 21

²⁷ *Ibid* 7 and 21

²⁸ *Ibid* 21

mentions that an Investigation conducted under Section 389 of the Act may be reported in the same format as a Preliminary Inquiry conducted under Section 359.

Despite this established framework, the effectiveness of the system is often constrained by practical challenges. The absence of a dedicated, specialized Maritime Safety Tribunal, contributes to jurisdictional overlaps and potential conflicts between the DGS's investigative function and the judicial processes handled by various courts and tribunals. This fragmentation can lead to delays in completing both investigations and subsequent legal proceedings for compensation. While the SOPs aim for efficiency, the reality on the ground can be influenced by factors such as the complexity of the casualty, resource availability, and bureaucratic processes.²⁹

Furthermore, while the IMO Code emphasizes a blame-free approach for safety purposes, the findings of an investigation, particularly concerning contributing factors and root causes, are often crucial for establishing negligence or fault in legal claims for compensation. Delays or perceived lack of depth in some investigations can therefore directly impact a seafarer's ability to gather necessary evidence to support their claim in court.

The legal admissibility and weight assigned to official investigation reports in Indian courts can also be subject to judicial interpretation. While factual findings are generally considered public documents and may be accepted, the conclusions or opinions expressed within the report concerning causation or responsibility might be challenged by parties involved in the compensation case.

Compared to international jurisdictions like the UK or Singapore, which have specialized maritime courts or independent investigation bodies capable of handling both technical and liability aspects more cohesively, India's system, as critiqued in the *"Review and consolidation of instructions for investigations"*,³⁰ can present significant hurdles. The integration of safety investigation findings into the legal compensation process requires greater synergy and efficiency.

SEAFARER SAFETY REGULATIONS AND RIGHTS TO COMPENSATION IN INDIA

India's legal framework for safeguarding seafarers and providing avenues for compensation is a multi-layered structure, drawing strength from both domestic legislation and international conventions ratified by the country. This framework is designed to ensure the safety, welfare, and financial security of seafarers serving on Indian-flagged vessels and, in certain circumstances, those within Indian jurisdiction.

A fundamental international instrument for seafarer protection is the Maritime Labour Convention, 2006 (MLC, 2006).³¹ India's ratification of the MLC signifies its commitment to upholding minimum standards for seafarers' working and living conditions, including provisions on employment agreements, wages, hours of rest, medical care, health and safety protection, and social security. The MLC is particularly crucial as it mandates shipowner responsibility for costs associated with seafarers' work-related illness, injury, or death from the commencement of employment until repatriation, including wages and medical expenses.³² Complementary to this are the IMO and ILO Guidelines on Fair Treatment of Seafarers in the Event of a Maritime Accident.

Domestically, the Merchant Shipping Act, 1958, contains several provisions relevant to seafarer safety and compensation. Part VII, "Seamen and Apprentices", regulates the engagement and discharge of seafarers, wages, health, accommodation, and the investigation of complaints.³³ Section 346 of the Act

²⁹ MSC-MEPC.3/Circ.4/Rev.1 dated 18 November 2014; International Maritime Organization

³⁰ *Ibid* 21

³¹ Maritime Labour Convention, 2006, opened for signature Feb. 23, 2006, 2427 U.N.T.S. 3 (entered into force Aug. 20, 2013)

³² *Ibid* 28

³³ *Ibid* 1

addresses the liability of shipowners in cases of seafarer injury or death, establishing the principle of joint and several liability and providing a legal basis for seafarers or their dependents to seek compensation³⁴.

The Employee's Compensation Act, 1923,³⁵ extends coverage to seafarers, including masters, officers, and crew members, primarily on Indian-flagged vessels. This Act provides for compensation in cases of injury or death arising out of and in the course of employment, with compensation amounts based on the nature of the injury or death and the seafarer's wages.

The Fatal Accidents Act, 1855³⁶ offers a legal avenue for dependents to claim compensation in cases of death resulting from wrongful act, neglect, or default. This Act is relevant in maritime casualties with fatalities, allowing families to file civil suits for damages based on proving negligence on the balance of probabilities.

Furthermore, the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017,³⁷ consolidates laws related to the admiralty jurisdiction of Indian High Courts. This Act is significant for seafarers' claims, recognizing maritime claims for wages and for loss of life or personal injury in connection with ship operations.³⁸ The Act permits the arrest of a vessel as security for a maritime claim, a potentially powerful tool for seafarers to secure their dues, especially against foreign shipowners or those attempting to evade liability.

India has also ratified the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185),³⁹ which aims to facilitate seafarer movement and enhance security through standardized identity documents, indirectly contributing to seafarer welfare by facilitating shore leave and transit.

Despite this legal framework, the practical realization of a seafarer's right to compensation in India faces considerable challenges. Issues such as seafarers' limited awareness of their rights under various laws and conventions, the complexity of navigating multiple legal forums (Labor Tribunals, civil courts, Admiralty Courts), and the often-protracted nature of legal proceedings in India can make the process difficult and inaccessible.

While the MLC mandates shipowner responsibility, enforcement mechanisms in India for ensuring prompt payment of wages or compensation, particularly in cases of abandonment or insolvency, can be weak. Expert opinions highlight that difficulties in balancing efficiency and thoroughness, along with cost issues, are significant barriers to effective implementation of safety measures and, by extension, compensation.⁴⁰ Unlike some countries with dedicated funds or streamlined procedures for abandonment cases, Indian seafarers often rely on lengthy legal battles or union intervention to recover dues. The effectiveness of the legal framework is heavily reliant on efficient enforcement and accessible procedural mechanisms, areas where India continues to face hurdles. The prolonged nature of legal processes is further underscored by cases like the Hit and Run by M.V Prabhu Daya,⁴¹ where procedural work reportedly took 6 years to commence.

³⁴ Ibid 1

³⁵ The Employee's Compensation Act, 1923, Act No. 8 of 1923 (India)

³⁶ The Fatal Accidents Act, 1855, Act No. 13 of 1855 (India)

³⁷ Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, Act No. 23 of 2017 (India)

³⁸ Ibid 34

³⁹ Seafarers' Identity Documents Convention (Revised), 2003, C185, June 19, 2003 (entered into force Feb. 9, 2005)

⁴⁰ C.-J. Chae, K. H. Kim & S. Y. Kang, Limiting Ship Accidents by Identifying Their Causes and Determining Barriers to Application of Preventive Measures, 9 J. Mar. Sci. Eng. 302 (2021)

⁴¹ The Maritime Executive Staff, *2 fishermen left dead in hit-and-run accident with unidentified ship*, The Maritime Executive, <https://maritime-executive.com/article/2-fishermen-left-dead-in-hit-and-run-accident-with-unidentified-ship> (last visited Apr. 28, 2025)

THE LINK BETWEEN CASUALTY INVESTIGATION FINDINGS AND COMPENSATION CLAIMS

The findings derived from a marine casualty investigation, while primarily focused on enhancing safety and preventing future accidents, frequently carry significant weight in legal proceedings related to compensation. The information meticulously gathered and the conclusions reached during an investigation can serve as critical evidence to establish the circumstances surrounding the incident, pinpoint contributing factors, and potentially indicate negligence or fault, all of which are essential elements in pursuing compensation claims.

In India, consistent with other jurisdictions adhering to the IMO framework, the official casualty investigation conducted by the MCIU under the DGS is a fact-finding process aimed at determining the "causes and circumstances" of the casualty.⁴² The investigation report typically provides a detailed account of the sequence of events, analyses technical and operational factors, and examines the human element, including crew actions, fatigue levels, training adequacy, and communication effectiveness.⁴³ While the report is not intended to formally assign legal blame, the factual findings and the identification of contributing factors can be highly relevant in subsequent civil litigation for compensation.

For example, if an investigation report concludes that a casualty resulted from a failure to adequately maintain the vessel's machinery, this finding can be leveraged in a compensation claim under the Merchant Shipping Act or the Employee's Compensation Act to argue that the shipowner was negligent in fulfilling their obligation to provide a safe working environment. Similarly, if the investigation identifies crew fatigue stemming from excessive working hours as a contributing factor, this could support a claim related to a breach of MLC provisions or general negligence.

However, the practical utility of investigation findings in compensation cases in India is often affected by several factors. Firstly, the timeliness of the investigation is paramount. Delays in finalizing the investigation report, as observed in the MV Ocean Star case⁴⁴ where it took 14 months, can significantly impede compensation proceedings. Legal cases frequently require the official investigation report as supporting evidence, and its absence can lead to adjournments and prolonged litigation, further delaying justice for affected seafarers.

Secondly, while the IMO Code advocates for a blame-free approach in safety investigations, the level of detail and the clarity with which contributing factors are identified in Indian investigation reports can vary. For compensation claims, which are adversarial and necessitate establishing liability, a report that is vague or lacks specific findings regarding proximate causes or the actions/inactions of involved parties may be less effective as evidence. Legal teams may still need to conduct their own independent investigations to gather sufficient evidence to satisfy the burden of proof in court.

Thirdly, the legal admissibility and weight accorded to official investigation reports in Indian courts can be subject to judicial interpretation. While these reports are generally considered public documents and may be accepted, the conclusions or opinions expressed within the report concerning causation or responsibility might be challenged by parties involved in the compensation case.

Furthermore, the independence and perceived impartiality of the investigation process are crucial for its credibility in legal proceedings. While the DGS strives for impartial investigations, concerns regarding potential influences or biases, whether real or perceived, could impact how the report is viewed by the judiciary.

In some international jurisdictions, there may be closer coordination or clearer legal provisions governing the use of safety investigation findings in civil proceedings. Some countries may permit the

⁴² *Ibid* 1

⁴³ *Ibid* 37

⁴⁴ *Ibid* 3

use of factual findings but restrict the use of analytical conclusions that apportion blame. The Indian legal system navigates the intersection between safety investigations and liability claims through the general rules of evidence and civil procedure.

Ultimately, while marine casualty investigation reports in India serve as valuable resources that can substantially assist seafarers in their pursuit of compensation by providing an official account of the incident and identifying contributing factors, their effectiveness is contingent upon their timeliness, thoroughness, and the ability of legal practitioners to effectively utilize them within the existing legal framework. Strengthening the investigative process and ensuring its findings are readily available and clearly articulated are therefore indirect but crucial steps towards facilitating seafarers' access to compensation.

CHALLENGES FACED BY SEAFARERS IN RECOVERING DUES IN INDIA

Despite the existing legal frameworks and international conventions designed to protect seafarers' rights and ensure compensation, seafarers in India frequently encounter substantial obstacles in recovering their rightful dues following a marine casualty or other incidents resulting in unpaid wages, injury, or death. These challenges are multifaceted, encompassing legal, procedural, economic, and awareness-related dimensions.

- A primary challenge is the protracted nature of legal proceedings in India. The judicial system, while robust, often faces a heavy caseload, leading to considerable delays in the resolution of disputes. For seafarers who may be stranded, unemployed, or experiencing financial hardship after a casualty, these delays can be devastating. A study in 2022⁴⁵ indicated that nearly 40% of seafarers involved in casualties faced legal battles lasting up to 5 years to recover wages or compensation. The MV Ocean Star case, although resolved relatively faster at 22 months through concerted efforts, still demonstrates a significant time lag compared to the urgent needs of affected seafarers. The prolonged nature of legal processes is further underscored by cases like the Hit and Run by M.V Prabhu Daya,⁴⁶ where procedural work reportedly took 6 years to commence.
- The fragmentation of jurisdiction across different legal forums further complicates the process. Seafarers may be required to approach labour tribunals for wage disputes under the MLC, civil courts for negligence claims under the Fatal Accidents Act, or High Courts exercising admiralty jurisdiction for claims allowing vessel arrest under the Admiralty Act, 2017. Navigating these distinct forums, each with its own procedures and technicalities, can be confusing and resource-intensive for seafarers, many of whom may lack legal expertise or easy access to affordable legal aid. The absence of a single, specialized maritime tribunal capable of handling all aspects of a seafarer's claim, from wage disputes to injury compensation, exacerbates this challenge, a point also raised in historical reviews of the investigation system.⁴⁷
- Employer evasion tactics represent a significant impediment, particularly within the international shipping environment. Shipowners may dissolve local entities, transfer ownership through complex corporate structures in different jurisdictions, or change the vessel's flag to evade liability.⁴⁸ The MV Ocean Star case vividly illustrates this, where the Mumbai-based managing company dissolved its local entity and utilized a shell company in Singapore, complicating jurisdictional claims and enforcement efforts.⁴⁹ Tracing beneficial ownership and enforcing judgments against such entities

⁴⁵ *Ibid* 19

⁴⁶ *Ibid* 38

⁴⁷ *Ibid* 21

⁴⁸ *Ibid* 5

⁴⁹ *Ibid* 19

across international borders is a complex and costly undertaking that individual seafarers are often ill-equipped to manage.

- Weak enforcement mechanisms: further diminish the effectiveness of legal outcomes. Even when a court or tribunal rules in favour of a seafarer, the practical difficulties of enforcing the order, especially against foreign shipowners or those who have moved assets, can be substantial. While the Admiralty Act, 2017, permits vessel arrest,⁵⁰ this requires identifying a suitable vessel within jurisdiction and navigating the legal procedures for arrest and sale, which can be time-consuming and expensive. While the Admiralty Act does provide a high-priority maritime lien for seafarers' wages,⁵¹ practical challenges in enforcement can still exist. Furthermore, while the MLC mandates shipowners cover repatriation costs and back wages for abandoned seafarers,⁵² India lacks a dedicated fund to enforce this, unlike systems in some other countries.⁵³
- A considerable challenge is the lack of awareness among seafarers regarding their rights and available remedies.⁵⁴ Expert surveys confirm this as a major hurdle.⁵⁵ Many seafarers, particularly those from less privileged backgrounds, may not be fully informed about the protections provided by the MLC, the Merchant Shipping Act, or the procedures for filing claims. They may be susceptible to exploitation or intimidation by employers and may not know where to seek assistance. This lack of awareness can prevent them from taking timely action to secure evidence, file complaints, or pursue legal recourse.
- Financial constraints also play a significant role. Pursuing legal action, especially complex maritime litigation involving international parties, can be prohibitively expensive. Seafarers who have lost their income due to a casualty may not possess the financial resources to hire legal representation, pay court fees, and cover other associated costs. This economic vulnerability can compel seafarers to abandon their claims or accept unfavourable settlements.
- Finally, delays in marine casualty investigations, as discussed earlier, can indirectly impede compensation claims. Investigation reports are often crucial pieces of evidence. When these reports are delayed or perceived as incomplete, they can hinder the legal process and make it more difficult for seafarers to substantiate their case.

These interconnected challenges create a complex environment where, despite the legal provisions, the path to compensation for seafarers in India is frequently arduous, uncertain, and prolonged. Addressing these systemic issues is essential to ensuring that the rights enshrined in law are effectively translated into tangible outcomes for those who work at sea.

STEPS FOR A SEAFARER: FROM INCIDENT TO COMPENSATION

Navigating the process from experiencing a marine casualty to receiving compensation in India involves a series of steps, often complex and dependent on the specific circumstances of the incident and the nature of the claim. While the exact path can vary, the general process for a seafarer typically involves the following stages:

A. IMMEDIATE AFTERMATH OF THE INCIDENT:

- Safety and Well-being: The seafarer's immediate priority is personal safety and well-being. This includes participating in emergency procedures, receiving necessary medical attention for

⁵⁰ *Ibid* 34

⁵¹ Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, Section 9

⁵² *Ibid* 28

⁵³ *Ibid* 19

⁵⁴ *Ibid* 5

⁵⁵ *Ibid* 37

injuries, and ensuring safe repatriation if the vessel is lost or disabled. The MLC mandates shipowner responsibility for medical care and repatriation.⁵⁶

- Reporting the Incident: The master of the vessel is legally obligated to report the shipping casualty to the relevant authorities, including the DGS in India, as per Section 358 of the Merchant Shipping Act, 1958. The DGS SOP outlines the initial reporting procedures through the DG Comm Centre.
- Gathering Initial Information: While not always feasible immediately, seafarers should, if possible and safe, try to gather basic information about the incident, such as the date, time, location, vessels involved, and a brief account of what happened.

B. DURING THE CASUALTY INVESTIGATION:

- Cooperation with Investigators: Seafarers may be required to cooperate with the marine casualty investigation conducted by the DGS (MCIU).⁵⁷ This involves providing statements and answering questions about the incident. The IMO Code and DGS procedures emphasize obtaining evidence from seafarers.⁵⁸
- Awareness of Rights During Investigation: Seafarers should be aware of their rights during the investigation, including the right to fair treatment and potential protections against self-incrimination, as highlighted in the IMO/ILO Guidelines and the Casualty Investigation Code.⁵⁹
- Investigation Report: The DGS conducts a Preliminary Inquiry (PI) under Section 359 of the Merchant Shipping Act, resulting in a report. For very serious casualties, a Formal Investigation may be initiated. The findings of these investigations can be crucial for subsequent compensation claims.

C. INITIATING THE COMPENSATION CLAIM:

- Identifying the Basis for Claim: The seafarer needs to determine the legal basis for their claim, which could be for unpaid wages (under the employment contract, MLC, or Merchant Shipping Act), medical expenses (under MLC or employment contract), or compensation for injury or death (under the Employee's Compensation Act, Fatal Accidents Act, Merchant Shipping Act, or through civil negligence claims).
- Seeking Assistance: Given the complexity of maritime law, seafarers should seek assistance from maritime unions (like NUSI), legal practitioners specializing in maritime law, or NGOs that support seafarers' rights.
- Filing the Claim: The claim will be filed in the appropriate forum depending on the nature of the claim. This could be:
 - Labor Tribunals or the DGS for wage disputes under the MLC or Merchant Shipping Act.
 - Civil Courts for negligence claims under the Fatal Accidents Act or common law.
 - High Courts exercising Admiralty Jurisdiction under the Admiralty Act, 2017, particularly if vessel arrest is necessary to secure the claim.
 - Commissioner for Workmen's Compensation under the Employee's Compensation Act for injury/death compensation on Indian-flagged vessels.

D. LEGAL PROCEEDINGS AND EVIDENCE:

- Gathering Evidence: The seafarer and their legal representatives will need to gather evidence to support the claim. This includes the casualty investigation report, medical records,

⁵⁶ *Ibid* 28

⁵⁷ *Ibid* 7

⁵⁸ *Ibid* 7

⁵⁹ *Ibid* 19

employment contracts, wage records, witness statements, and any other relevant documentation.

- Navigating Legal Forums: The seafarer must navigate the procedures of the chosen legal forum(s), which can involve filing pleadings, exchanging documents, attending hearings, and presenting evidence.
- Addressing Challenges: The seafarer may face challenges such as employer evasion, delays in proceedings, and difficulties in enforcing orders, as highlighted in the challenges section. Strategies like seeking vessel arrest or pursuing claims against related corporate entities may be necessary.

E. RESOLUTION AND COMPENSATION:

- Negotiation and Settlement: The parties may engage in negotiations to reach a settlement, potentially through Alternative Dispute Resolution mechanisms like arbitration, which proved effective in the MV Ocean Star case.
- Judgment or Order: If a settlement is not reached, the court or tribunal will issue a judgment or order determining the outcome of the claim and the amount of compensation, if any.
- Enforcement: If the employer does not voluntarily comply with the judgment or order, the seafarer will need to initiate enforcement proceedings, which can involve attaching assets, including the vessel if it was arrested.
- Receiving Compensation: Upon successful enforcement or voluntary payment, the seafarer receives the awarded compensation.

This step-by-step process illustrates the legal avenues available to seafarers in India but also underscores the complexities and potential delays involved, emphasizing the need for systemic improvements to ensure a more efficient and accessible path to justice and compensation.

COMPARATIVE ANALYSIS: INDIA VS. INTERNATIONAL STANDARDS

Comparing India's practices in marine casualty investigations and seafarer compensation with international standards, particularly those established by the IMO and implemented in other prominent maritime nations, reveals areas of both alignment and notable differences, especially concerning efficiency, enforcement, and accessibility of justice.

SEAFARER COMPENSATION AND DUES RECOVERY:

- International Standards (MLC, 2006 and others): The MLC sets global minimum standards for seafarer welfare, explicitly mandating shipowner responsibility for costs related to work-related injury, illness, or death, and includes provisions for repatriation and financial security in cases of abandonment⁶⁰. Many countries have legal frameworks that facilitate seafarers' claims, including statutory maritime liens for wages (granting seafarers priority over other creditors) and potentially dedicated funds or insurance requirements to cover wage defaults and repatriation. Specialized maritime labour tribunals or streamlined legal processes in some countries offer faster adjudication of seafarer claims.
- India's Practices: India has ratified the MLC and has domestic legislation like the Merchant Shipping Act, 1958, the Employee's Compensation Act, 1923, and the Admiralty Act, 2017, providing avenues for compensation. The Admiralty Act allows for vessel arrest as security.
- Comparison and Divergences: Significant divergences exist in the practical effectiveness of recovering dues:
 - Maritime Lien for Wages: The Admiralty Act, 2017, in fact, *does* explicitly grant seafarers' wages a top priority maritime lien. Section 9 of the Act designates wages of seamen as having

⁶⁰ *Ibid* 28

the highest priority among maritime liens. This is a significant point of alignment with international standards and provides a strong legal basis for seafarers' wage claims in the event of a vessel's sale. The initial information stating otherwise appears to be inaccurate based on the current Admiralty Act. However, despite this legal priority, practical challenges in enforcement can still exist.

- Enforcement of MLC Provisions: While the MLC is ratified, India lacks a dedicated fund to ensure the payment of repatriation costs and back wages in cases of abandonment, as mandated by Regulation 2.5 of the MLC. Seafarers often have to resort to lengthy legal battles or rely on unions.
- Jurisdictional Fragmentation and Delays: As discussed earlier and in the "Review and consolidation of instructions for investigations",⁶¹ the absence of a specialized maritime labour tribunal leads to claims being scattered across different forums, resulting in delays that are often significantly longer than in countries with streamlined maritime dispute resolution mechanisms. The M.V Prabhu Daya case exemplifies these delays.
- Financial Security for Foreign Vessels: While the DGS issued a directive post-MV Ocean Star mandating insurance bonds for foreign vessels in Indian waters to cover wage defaults, its implementation remains partial. This contrasts with some jurisdictions that have more stringent requirements for financial security from foreign operators.
- Port State Control (PSC) Effectiveness: While India conducts PSC inspections, the outsourcing of a significant percentage to third-party organizations raises questions about the consistency and effectiveness of these inspections in identifying and rectifying issues related to seafarer welfare and working conditions as mandated by the MLC.

In essence, while India possesses the foundational legal instruments mirroring international standards, and the Admiralty Act does provide a high-priority maritime lien for wages, the effectiveness of the system is hampered by implementation gaps, procedural bottlenecks stemming from jurisdictional fragmentation and delays, challenges in enforcing MLC provisions (particularly for abandonment), and a less consistently favourable landscape for recovering *all* types of seafarers' dues compared to some leading maritime nations. The MV Ocean Star case, while ultimately successful, highlights the extraordinary effort and time required to navigate these systemic weaknesses.

CONCLUSIONS AND RECOMMENDATIONS

Marine casualty investigations and the subsequent ability of seafarers to recover compensation in India are governed by a legal and procedural framework that, in principle, aligns with key international standards such as the IMO Casualty Investigation Code and the Maritime Labour Convention, 2006. The Merchant Shipping Act, 1958, and the Admiralty Act, 2017, provide the domestic legal basis for conducting investigations and pursuing compensation claims. Significantly, the Admiralty Act, 2017, does grant a high-priority maritime lien for seafarers' wages. However, a critical analysis reveals significant disparities between the intended regulatory framework and the practical realities encountered by seafarers. Challenges including prolonged investigation timelines, fragmented jurisdictional pathways, sophisticated employer tactics to evade liability, inadequate enforcement mechanisms (particularly concerning MLC abandonment provisions), and a pervasive lack of seafarer awareness collectively create substantial impediments to accessing timely and equitable compensation. The comparative analysis with international practices underscores areas where India's system could be strengthened, particularly in establishing a dedicated maritime labour tribunal and implementing more robust financial security requirements for vessels operating in its waters. Insights from the analysis of

⁶¹ *Ibid* 21

barriers to implementing safety measures further emphasize the need to address underlying issues like the efficiency-thoroughness trade-off and cost considerations. The prolonged timeline seen in cases like the Hit and Run by M.V Prabhu Daya further exemplifies the systemic delays.

To effectively address these challenges and foster a more just and efficient system for seafarers in India, drawing upon the analysis of challenges and insights from the provided documents, the following recommendations are proposed:

RECOMMENDATIONS FOR STRENGTHENING MARINE CASUALTY INVESTIGATIONS:

- Establish an Independent Marine Casualty Investigation Authority: Creating an independent body, distinct from the regulatory authority (DGS), similar to the UK's MAIB, with a clear mandate, sufficient resources, and guaranteed operational independence, would significantly enhance the credibility and impartiality of investigations. This would ensure investigations are solely focused on safety and free from potential conflicts of interest, a concern raised in historical reviews.⁶²
- Mandate Statutory Timelines for Investigation Completion: Introduce legally binding timelines for completing marine casualty investigations, especially for "very serious marine casualties." Establishing maximum timeframes based on incident complexity would reduce delays and ensure reports are available promptly for both safety learning and potential legal proceedings. The current SOPs could be reinforced with statutory deadlines.
- Enhance the Quality and Specificity of Investigation Reports: While adhering to the blame-free principle for safety purposes, investigation reports should provide greater detail and clarity in identifying contributing factors and systemic failures. Clear, evidence-based factual findings are crucial for their utility as evidence in compensation claims. Training for investigators should emphasize rigorous analysis and precise articulation of findings, incorporating insights from the analysis of accident causes and barriers to prevention.⁶³
- Improve Coordination Between Investigation and Legal Processes: Implement formal mechanisms for enhanced coordination between the MCIU and the judiciary. While maintaining the independence of safety investigations, protocols for the timely submission of investigation reports to relevant courts or tribunals should be established. Consider allowing investigators to provide factual clarifications in legal proceedings when necessary, without compromising their impartial safety role.

RECOMMENDATIONS FOR IMPROVING SEAFARERS' ACCESS TO COMPENSATION:

- Establish a Specialized Maritime Labour Tribunal: Create a dedicated tribunal, potentially under the Ministry of Ports, Shipping and Waterways or the Ministry of Labour, specifically empowered to handle seafarers' claims for unpaid wages, contractual disputes, and compensation for injury or death. This tribunal should feature streamlined procedures, be easily accessible to seafarers across the country, and possess the authority to issue binding decisions and oversee their enforcement. This would effectively address the current jurisdictional fragmentation and significantly reduce delays.
- Leverage the Statutory Maritime Lien for Wages Effectively: While the Admiralty Act, 2017, provides a high-priority maritime lien for wages, efforts should focus on increasing seafarer awareness of this right and facilitating the practical steps involved in leveraging it, such as vessel arrest, to secure their dues.

⁶² *Ibid* 21

⁶³ *Ibid* 37

- Strengthen Financial Security Requirements for Shipowners: Fully implement and rigorously enforce the directive mandating insurance bonds or other forms of financial security for foreign-flagged vessels operating in Indian waters to cover potential wage defaults and repatriation costs, in strict accordance with MLC requirements. Extend similar stringent requirements to Indian-flagged vessels to ensure comprehensive coverage.
- Establish a Seafarer Welfare Fund for Emergency Assistance: Create a dedicated fund, potentially financed through mandatory contributions from shipowners, government allocations, and international sources, to provide immediate financial and logistical assistance to seafarers in cases of abandonment, injury, or death, pending the resolution of their compensation claims. This would serve as a vital safety net and mitigate the immediate vulnerability of affected seafarers.
- Enhance Seafarer Awareness and Access to Legal Aid: Launch and sustain comprehensive awareness campaigns to educate seafarers about their rights under Indian law and international conventions, including procedures for reporting casualties, filing grievances, and seeking compensation. Establish easily accessible helplines and provide subsidized or free legal aid services through collaborations with maritime unions, NGOs, and government legal aid initiatives to assist seafarers in pursuing their claims effectively.
- Strengthen Port State Control (PSC) Enforcement of MLC: Increase the frequency and effectiveness of PSC inspections, placing a particular emphasis on verifying strict compliance with MLC provisions related to seafarer working conditions, wages, and social security. Empower PSC officers to take decisive action, including detaining vessels, in cases of serious non-compliance affecting seafarer welfare. Address concerns regarding the outsourcing of inspections and ensure consistency and thoroughness.
- Facilitate International Cooperation in Enforcement: Strengthen bilateral and multilateral agreements with major flag states and maritime nations to facilitate the recognition and enforcement of Indian court and tribunal judgments related to seafarer compensation against foreign shipowners and vessels.

By diligently implementing these recommendations, India can significantly enhance its system for handling marine casualty investigations and ensure that seafarers receive the compensation they are rightfully due in a timely and efficient manner. This would not only contribute to the continuous improvement of maritime safety by promoting accountability but also firmly uphold India's commitment to the welfare and rights of its seafarers, fostering a fairer and more just environment within the global maritime industry.

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