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IMPLEMENTATION OF CONTROLLING THE PRIVATE RECRUITMENT AND PLACEMENT SERVICES UNDER MLC 2006: A CASE STUDY OF BANGLADESH.

Sabbir Mahmood

Abstract

In 2006, the ILO adopted the MLC, 2006 a comprehensive framework convention which codifies the human, labour and social rights of seafarers, through unifying the legal regime of labour law and international maritime law. The success story of the MLC, 2006 will be written only after effective implementation of the convention at a national level and will be tested by the experience of more than 1.6 million seafarers working on board plying the world’s ocean.

The manning agencies and recruiting companies played a vital role to supply the seafarer for maritime industry and stabilize the maritime labour market. However, without an effective control and supervision system, it is very likely for seafarers to be exploited by some greedy manning agents. Therefore, Regulation 1.4 of title 1 of MLC 2006 provides legislative framework to prevent the exploitation by regulating the recruitment and placement service providers. The implementation of regulation 1.4, including its standard and guidelines are most critical in the convention, as they envisage multi directional activities and various forms of state responsibilities.

The ultimate goal of the provision is to ensure efficient, adequate and accountable system for finding employment by seafarers without any charge, harassment or exploitation. Research shows that, the charging to seafarer for employment and many other irregularities are still going on in many developing countries, though they are signatory to the convention. The quantitative analysis of the study helps to find out the seafarer’s situation of the employment and dealing of RPS. We further conducted qualitative survey and desk study of the existing laws and institutions of Bangladesh to find out the capability of competent authority to implement the Regulation 1.4 of MLC 2006. Finally, we have identified the gaps and make recommendations on an approach that could be taken by Bangladesh to ensure successful implementation of regulation 1.4 of MLC.

Key Words: Seafarer, Recruitment, Control, Accountable, Charge, License.

1. INTRODUCTION:

Maritime transport is the backbone of world trade, which carries about 90 per cent of the cargo through 50,732 ships (UNCTAD, 2018), crewed by 1.6 million seafarers (BIMCO-ICS, 2015), those are tolerating unique pressures and risks in their work place. International Labour Organization (ILO) is working to prevent the exploitation of seafarers, confirming decent working environment and establish labour rights. ILO adopted the Maritime Labour Convention, 2006 (MLC, 2006) on 23 February 2006 on an almost unanimous basis which is popularly lauded as the ‘fourth pillar’ of international maritime law as well as ‘bill of rights for seafarers’ (Moira L. McConnell et al, 2011).
However, the success of the MLC, 2006 is dependent to large extent on effective national implementation of the convention, particularly by flag State, port state and labour supplying state. Ultimately, its success will be truly tested by the experience of seafarers working on board, plying the world’s ocean. The job market of seafarers is open and competitive, as such the ship-owners are interested to recruit the seafarers from various sources. The manning agencies and recruiting companies played a vital role to supply the seafarer for maritime industry and stabilize the maritime labour market (Zhang, 2016). However, without an effective control and supervision system, it is very likely for seafarers to be exploited by some greedy manning agents. Therefore, Regulation 1.4 of title 1 of MLC 2006 provides legislative framework to prevent the exploitation by regulating the recruitment and placement service providers.

The implementation of regulation 1.4, including its standard and guidelines are most critical in the convention, as they envisage multi directional activities and various forms of state responsibilities. In Bangladesh, the seafarer’s number is very small, and the job market is limited. As such, the risk to exploit the seafarer prior employment is high. Therefore, it is timely to carry out a study analysing the existing institutions, legal regime, policy, customary practice in seafarer’s employment market to identify the critical issues in relation to the recruitment and placement of seafarer in national and foreign ships. The purpose of the study is also to identify gaps and make recommendations on possible solutions and approaches that could be taken to ensure successful implementation of Regulation 1.4 of MLC, 2006, so that the seafarer may have access to an efficient, adequate and accountable system for finding employment on board ship, without any kind of harassment and financial burden.

2. REGULATION 1.4 RECRUITMENT AND PLACEMENT:

The seafarers found the regulation very important, as they are concern about the exploitation through the largely unregulated middle person services. The MLC provides the right of access to an efficient, adequate and accountable system for finding employment on board ship without charging to the seafarer. The convention specifically prohibits any kind of fees or charges, directly or indirectly from seafarers for employment other than the cost of medical certificate, seafarer’s book, passport or similar travel document, excluding the cost of visas, which must be borne by the ship-owner. The seafarer has the right of free access to the information of employment and right to appear for any job without any barrier for which he is qualified. The
seafarer has the right to complain any unfairness or wrongful acts against RPS and solution of those issues.

The provision of MLC does not impose obligation on member state to have private RPS, through providing phrase where and if while regulating the private RPS (Moira L. McConnell et al, 2011). It is also equally clear that regulation 1.4 does not require that ship-owners to use such service but rather that, if the service used that must be certified, licensed or regulated in accordance with the convention. The provisions are directed at discouraging ship-owners from using private RPS that are not regulated, especially for the case where seafarers are from the country that do not ratify the MLC,2006.

The responsibility to implement the provisions are mainly on labour supplying state, which is unique in MLC,2006, in comparison with any other maritime convention. A key strategic point is that, the flag state and labour state responsibilities at the shipboard level is not explicitly set out in regulation 1.4. The guidelines of ILO provides suggestion, to check the national websites of the competent authority regarding the licensing or regulating of RPS (ILO, 2012). The use of certified, licensed or regulated private RPS by Ship-owners is also included in the list set out in Appendices A-5-I and A-5-III of the MLC,2006, which is subject to verification during flag state and port state inspection. The guidelines suggested checking through interviewing the crew in private that they have not paid a fee or have been informed of their rights or the RPS does not operate a blacklist.

3. IMPLEMENTATION OF REGULATION 1.4 IN BANGLADESH:

Bangladesh is a maritime State and Bangladeshi seafarers’ have a long-standing role in the world’s seafaring workforce. There are about 4000 ratings and 8000 officers enlisted in Government shipping office and out of which at present, about 2000 rating and 4000 officers are engaged in national and foreign flagships. The two government operated institutions and seven private maritime training institutes for training and education of officers, crew are the entry point and home ground for producing seafarers for international market. According to the Department of Shipping (DoS) record, there are sixty licensed private manning agents in Bangladesh, working to arrange employment of seafarers for national and foreign flag vessels. The Shipping Office of Chittagong is responsible for monitoring and control the employment,
engagement and discharge of seafarer in accordance with national and international laws under the supervision of DoS, Dhaka.

Bangladesh as a labour supplying state provides mandatory provision to have approved license issued by Department of shipping through specific procedure to engage any seamen. The Seamen Recruiting Agents License Rules 2005 (SRAL Rules), widened the scope of work of RPS, providing that, the licensee will perform the duties to engage seamen in both Bangladeshi and foreign ships, which was earlier applicable for foreign vessel only. The law imposes imprisonment for maximum six months period or fine not exceeding ten thousand taka or both for violation of that provision. The Bangladesh legislation prohibits the receiving of any money or security from seafarer without the prior approval of the Government. The law also provides obligation to the RPS to submit the return of any amount of money received from the seafarer, which has been approved by the DoS during renewal of license.

Bangladesh has a unique legal framework to protect the seafarers from stranding. The private RPS must deposit security of 5,00,000/ Taka to the competent authority, which will be handled according to the law. The Government may forfeit the security money if the RPS acts fraudulently or provide false document. The forfeited money may be utilized to compensate the seafarer for his unpaid wages or repatriation or for any welfare of the seafarer. Bangladesh legislation provides responsibility to the licensee to arrange repatriation if any seafarer stranded in foreign port. The private RPS in Bangladesh is responsible to confirm the payment of wages in current month to the seafarer or to his nominated person. If any seafarer become sick or injured or died the RPS shall arrange for repatriation, payment or treatment as applicable. The private RPS shall try to resolve any dispute or problem regarding wages or condition of employment in consultation with Shipping Master. However, the Bangladesh legislation does not explicitly address the responsibility of competent authority to closely supervise and control the RPS, but the requirement of renewal of the license after every 2 years and mandatory audit by competent authority provides the mechanism to monitor and control the activities of private RPS. The complaint handling procedure and punishment for any wrongful act is also unique in Bangladesh. According to law, the competent authority may suspend license for three months upon receipt any complain considering the nature of complain. The competent authority may withdraw the license if the private RPS found guilty of following acts:
a. If violate any law, rules or condition of license
b. Found negligent or incapable to perform the duties
c. If failed to preserve all business document for last three years
d. If refused to submit the business document to the authority
e. If provide any false document in favor of any person

4. EFFECTIVENESS OF IMPLEMENTATION OF REGULATION 1.4:

Despite the regulation 1.4 and enforcement criteria, the cost free recruitment service is not realistic in the current maritime labour market of many countries (Dragomir Cristina, Utureanu Simona). One of the study of Romanian manning agency revealed that, “there are crewing agencies in Romania that unjustifiably demands return airfare, seafarer’s book or administrative fees, at least at the moment of initial registration of seafarer in the agency’s database. (Dragomir Cristina, Utureanu Simona)” The situation of Bangladesh is similar to China as both countries national legislation permits all kind of charges subject to approval and as long as they are publicized, which is below than international standard (Zhang, 2016).

A quantitative survey was conducted to find current problems among 105 participants through Google form. All the respondents were seafarers and most of them were junior engineers, junior officers and trainees working in different shipping companies in operation level. From the study, it has been revealed that, about 58 percent participant paid money to get the employment prior joining the ship, among which less than 1000 USD is 11% and more than 3000 USD is 15%.

Figure 1: Charges/Fees incurred by seafarer for employment
From the survey, we have found that, despite the violation of MLC by private RPS by taking fees or money for providing employment on board, the cadets, and junior officers are not willing to report the incident to the competent authority. The major two reasons of non-disclosure of the facts of paying money are threat from the manning agent and avoidance of complicacy, which is about 31 and 22 percent respectively.

![Figure 2: Reasons of non-disclosure regarding violation of MLC by private RPS](image)

From the qualitative survey, we have found that, the shipping office or Department of Shipping or even the seafarers’ union are unwilling to take any action against manning agent without written complain, though there are plenty records and incidents of charging the seafarer for employment. It has been found that, some investigation has been done against few manning agents for forgery or violation of national law, yet the license has not been suspended. According to the paragraph 6 of regulation 1.4 the RPS should be closely supervised and controlled by competent authority, but no legal provision is available in this regard, except renewal of license in every two years. The convention provides the obligation on competent authority more than only issuing license or certificate to the RPS. The member state has the flexibility to adopt laws and mechanism for close monitoring of the process. The member state should ensure that the RPS established within its territory is conducting the business through verifiable operational practices. Transparency and clearly publicizing the cost may reduce the
exploitation of seafarer by RPS. The national law may provide mechanism to publish the demand or requirement of seafarer’s job in conspicuous places like DoS’s or shipping Master’s office or in on line media, so that the activities of the RPS and employment of seafarers may be monitored in transparent and progressive way.

The emphasis is given on adequate machinery and procedures for the investigation of complaints concerning the activities of seafarer recruitment and placement services in accordance with paragraph 7 of regulation 1.4. The convention preferred the committee for investigation, incorporating ship-owners and seafarer’s representatives. In Bangladesh, the Government normally form committee consisting of officers from various department, without any specific obligation to keep ship-owner and seafarer’s representative. There are no specific guidelines in convention on smooth procedure to lodge a complaint, so that the seafarer is fear free and will not be blacklisted by the manning agents. The competent authority may take into cognizance of any secret reporting without exposing the name of person concern and investigate the issue.

The guidelines though not mandatory but very important to achieve the purpose of the convention. The arrangement for the collection and analysis of all relevant information on the maritime labour market, including the current and prospective supply of seafarer will assist to determine the production of appropriate number of seafarer, which will protect the ship-owner and seafarer both from over supply and over demand.

5. RECOMMENDATIONS:

1. The existing national law for controlling recruiting and placement services, SRAL rules to be updated in compliance with the provision of MLC 2006. Especially the provision of approval and declaration of money received by RPS is contradictory to the MLC, which should be explicitly mentioned that, no fees or charges should be incurred on seafarers for the employment. The law should provide financial and penal punishment for the violation of such rules, including suspension and withdrawal of license.

2. There should be a complaint box in DoS’s office, Shipping Master’s office and all other offices of Maritime Administration including seafarers’ union, which should be opened and handled by a committee comprising members from competent authority, ship-
owners and seafarers’ representative. The online and social media platform also may be utilized to receive the complaints from seafarer. The confidentiality should be strictly maintained by the committee, which should be mentioned in the national law. A complaint register should be maintained, with follow up of each complain. The committee should take into cognizance of the unnamed complain and make investigation.

3. The effective implementation of closely supervision and controlling by competent authority should be developed. The various reporting mechanism such as the list of principals, monthly reporting of seafarers employed by manning agents, submission of standard SEA, etc. should be introduced. At present, the RPS license is valid for two years in Bangladesh, which may be reduced to one year for better close supervision.

4. The grading system may be introduced to categorise the performance of RPS, following some standard procedure, which will be helpful for ship-owners and seafarers to receive the service. If any investigation is under process against any RPS that may be reflected in DoS’s web site including suspension of any manning agent.

5. The competent authority of labour supplying state may develop the communication with flag state to ensure that the ship-owners or representative of ship-owners from that flag state is not making any undue pressure on manning agents of labour supplying state to impose fees or charge directly or indirectly on seafarer. The mutual agreement among both countries may mitigate the problem.

6. The port state control has less opportunity to involve in checking the implementation of the regulation 1.4. The seafarer may be instructed to submit the copy of license and other documents of RPS to prove the compliance of the regulation, which may be verified by the port state control.

7. The labour supplying state should enhance the investigation capacity as required by the paragraph 7 of the regulation 1.4 through implementing adequate machinery and procedures to handle the complaints against RPS, involving the representative of ship-owners and seafarers.
6. CONCLUSION:

The Maritime Labour Convention 2006 is undoubtedly a milestone to establish the seafarer’s right on board and ashore and unique to support the seafarers even prior employment. Regulation 1.4 provides the measures to ensure the seafarer an efficient and well-regulated recruitment and placement system. From the above study, it has been revealed that, without the integration and broader involvement of competent authority, ship-owner, seafarer, unions and RPS provider the elimination of harassment and financial burden of seafarer prior joining ship is not possible. The effective implementation of regulation 1.4 of MLC, 2006, especially the close supervision, monitoring, and control of RPS and investigating the complaint is mandatory to provide efficient, adequate and accountable employment system to seafarer.

REFERENCES


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Captain Sabbir Mahmood served at sea for 15 years in various ocean-going ships in which 05 years was Master in command. After finishing his sea carrier, he started working as P&I club surveyor. He has been working in Bangladesh Marine Academy as Senior Lecturer and Head of Nautical Department since 2010. He has been performing addition duty as Nautical Surveyor under Mercantile Marine Office. He is adjunct faculty of Chittagong University and BGC Trust University. He has represented Bangladesh delegation in various IMO meetings. His professional and research article published in various international journals.

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