

***Difference Between the Theory and Practice: Bangladesh and India's Implementation
Challenges of the ILO Safety and Health Shipbreaking Guidelines***

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Abstract

Shipbreaking is a multi-million-dollar business in Bangladesh and India reusing the steel and other materials available in old ships.¹ Arguably, as a potential business for these developing countries, shipbreaking should have been the rising tide that could lift all the other businesses. But what is happening in Indian and Bangladeshi shipbreaking industries is legally embarrassing. It is true that shipbreaking is an inherently dangerous activity. However, regardless of the dangers involved in breaking ships, the shipbreaking companies rarely maintain technical standard and modern safety management in the shipbreaking plants. The poor and unskilled workers are thereby forced to work with minimum protection of their labour rights. Although accurate information is not officially available, it is estimated that at least one shipbreaking worker dies and dozens receive severe injuries every week in the Bangladesh shipbreaking industry. India experiences less accidents than Bangladesh, but injuries and deaths in Indian shipbreaking industry are also not uncommon. The problem is complex. Although both jurisdictions have passed a plethora of special laws in conformity with the **ILO Safety and Health in Shipbreaking: Guidelines for Asian Countries and Turkey (*the ILO Guidelines*)**, this is only done as a compromise to show their compliance for paying high purchase price to international shipping companies. Against this backdrop, the paper identifies four key issues that affect the compliance of Bangladesh and Indian shipbreaking and labour laws with *the ILO guidelines*.

The author examines the extent of application of *the ILO Guidelines* through its shipbreaking and labour laws by analysing the secondary injury data derived from a

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¹ Shipbreaking- It is the term used to define the process of breaking up old ships. It involves the activity of removing reusable materials, such as steel scraps, furniture, electronic materials etc. found in a used ship. It is often recognised as ship recycling, because most of the materials found in an old ship can be reused and reprocessed as provided in *the International Convention for the Safe and Environmentally Sound Disposal of Ships*, opened for signature 1 September 2009, IMO Doc. SR/CONF/45 (19 May 2009) (not yet in force) (*The Hong Kong Convention*) art. 2.10

number of academic papers, media, Non-Government Organisation, and Government reports. It is argued that in principle, the laws have enacted the *ILO Guidelines*, but in practice, these guidelines are not followed. The author concludes that ineffective compliance with the *ILO Guidelines* within the domestic jurisdiction of Bangladesh and India causes the high number of deaths and injuries to workers.

I INTRODUCTION

On May 31, 2000, the explosion of the Iranian tanker TT Dena on the coastal beach of Chittagong, Bangladesh killed dozens of people.² However, the shipyard owner disputed with the number. He claimed the number was 14 only. A trade union leader of Bangladesh disagreed with him. According to the leader, the number was 60. Like other foreign ships, the ship reached the yard without pre-cleaning the inbuilt oil, gas, and toxic substances from the country of export and the workers started cutting the ship with oxy torch without degassing the ship's chamber. Safety and recovery of the injured and dead body was not easy since the ship was broken on the beach.

The accidents and deaths have not stopped yet. A cutter man died on the spot falling from a great height while cutting a Taiwanese ship EVER UNION (IMO No. 9116618) on July 23, 2019.³ Just seven days after the incident, three more workers lost their life in an instant due to a toxic gas leak on board of an oil tanker MEDELIN ATLAS in another yard. On 31 August, 2019, due to collapse of a heavy cable while cutting a Greek ship CSL VIRGINIA (IMO 9289568), two more workers lost their valuable lives. These incidents have had profound ramifications on Bangladesh shipbreaking processes.

The Indian shipbreaking industry also have same issues. Accidents are caused regularly due to weak implementation of environmental and labour laws and also for not providing adequate safety gear..⁴ One study suggests that the weak implementation of the laws has

² " Where do the "floating dustbins" end up ? FIDH / P AGE 29

³ NGO Shipbreaking Platform, Platform Publishes South Asia Quarterly # 20 (October 15, 2019) <https://www.shipbreakingplatform.org/platform-publishes-south-asia-quarterly-update-20/>

⁴ Paridhi Poddar and Sarthak Sood, 'Revesting the Shipbreaking Industry in India: Axing Out Environmental Damage, Labour Rights' Violation and Economic Myopia' (2015) 8 *National University of Juridical Science Law Review* 245, 247.

resulted in 470 casualties in the last three decades, however, none of the shipbreaking yard owners had to face any legal consequence for the accidents.⁵

The International community has been aware of the problems, and in 2004, the International Labour Organisation (the ILO) adopted the **Safety and Health in Shipbreaking: Guidelines for Asian Countries and Turkey**,⁶ to specially address the problems in the industry with better waste and safety management. Researcher and academics have long been arguing for a comprehensive law on shipbreaking sector in Bangladesh to implement the *ILO guidelines*.⁷ Although Bangladesh has passed a number of special shipbreaking laws, including the Labour Act 2006 and the Shipbreaking Act 2018, the paper explores that there is limited success in application of the *ILO guidelines* and hence labour rights violations continue. The high number regular deaths and injuries forces the question of adequacy of the existing domestic legal mechanisms on ship recycling in relation to the objectives of the *ILO guidelines*. It also argues that employers can escape the compliance liability because of technical difficulty of the shipbreaking laws.

The shipbreaking industry is important for the economy of both Bangladesh and India. In the 1980s, developed countries used to maintain a highly mechanised task for breaking their old ships using dry docks,⁸ along with providing sophisticated safety equipment to their shipbreaking workers.⁹ However, undertaking the task of shipbreaking within the developed countries was expensive, since the industry was required to comply with high standards for health, environment, and safety regulations. Therefore, by the end of the 20th century the shipbreaking activity was shifted to developing countries, such as Bangladesh.¹⁰

Bangladeshi traders found the industry profitable and grabbed the opportunity with minimum legal restriction from the beginning. Since its introduction, Bangladesh has been breaking ships on open beaches using no technical and safe ship dismantling method to save cost and earn profit. Eventually, shipbreaking has become a multi-million-dollar business for

⁵ Ibid.

⁶ ILO, 'Safety and Health in Shipbreaking: Guidelines for Asian Countries and Turkey' (hereinafter referred to as 'ILO Guidelines') MESH/2003/1, Bangkok 7-14 October 2003.
<http://www.ilo.org/public/english/standards/relm/gb/docs/gb289/pdf/meshs-1.pdf>

⁷ Saiful Karim, Violation of Labour Rights,

⁸ Dry docks is a built structure used for breaking ships so that hazardous substances can be managed in a sound way that stops such materials from mixing with sea water.

⁹ Saiful Karim, *Shipbreaking in Developing Countries: A Requiem for Environmental Justice from the Perspectives of Bangladesh* (Taylor and Francis Group, 2018) 104

¹⁰ Juan Ignacio Alcadia, Francisco Piniella and Emilio Rodriguez-Diaz, "'The Mirror Flags': Ship Registration in Globalised Ship Breaking Industry' (2016) 48 *Transportation Research Part D*, 378.

Bangladesh, not only as a source of steel materials to support their growing steel demand and production, but it also creates jobs for their unskilled workers.¹¹

It is estimated that the average yearly profit from breaking one ship is US\$921400 in Bangladesh.¹² It is also a good source of tax revenue and employment of unskilled workers. The Bangladesh government earns about US\$ 86 million per year as tax revenue from the shipbreaking industry.¹³ The Bangladesh government is likely to generate \$1.5 billion revenue in the following years from the business.¹⁴ The revenue is generated by imposing duties (7.5%), a yard tax (2.5%) and so on.¹⁵ Since 2009, the number of ship import for breaking grew by thirty-six percent.¹⁶

A significant number of workers are employed in the shipbreaking industry. More than 30,000 workers were directly employed in the Bangladesh shipbreaking industry in 2017.¹⁷ Some sources claimed that the number may be around 50,000.¹⁸ In addition, more than one million people are employed in retail shops and re-rolling mills that are dependent on the shipbreaking industry. From the above economic benefit, shipbreaking is one of the most important industries of Bangladesh and closely attached to its socio-economic development.

India is the largest shipbreaking country in the world. It has more than 180 yards operating in a 12 km area of the Gujarat coast that break around 50% of end-of-life ships.¹⁹ A recent estimate has found that the shipbreaking industry produces 4.5 million tons of steel annually by breaking 400 ships, which is equal to the production of a major Indian steel plant.²⁰ The

¹¹ Shawkat Alam and Abdulla Faruque, 'Legal Regulation of the Shipbreaking Industry in Bangladesh: The International Regulatory Framework and Domestic Implementation Challenges' (2014) 47 *Marine Policy*, 46.

¹² Maria Sarraf et al, 'Ship Breaking and Recycling Industry in Bangladesh and Pakistan,' (Report No. 58275-SAS, World Bank, 2010) 1 (World Bank Report 2010).

¹³ Hossain et al, above n 14

¹⁴ Jan Moller Hansen, *Shipbreaking in Bangladesh*, Lensculture <https://www.lensculture.com/articles/jan-moller-hansen-ship-breaking-in-bangladesh>

¹⁵ Hossain MMM and Rahman MA, 2010 Shipbreaking Activities: threat to Coastal environment and fish biodiversity , 23-42 in Hoq M.E Yousuf Haroon, A. K Hussain, MG (Eds 2011. Eco-system Health and Management of Pollution in the Bay of Bengal.

¹⁶ Md. Shakhaowat Hossain, 85.

¹⁷ Hossain et al, above n 14.

¹⁸ DNV 16.

¹⁹ Federico Demaria, 'Shipbreaking at Alang-Sosiya (India): An Ecological Distribution Conflict' (2010) 70(2) *Ecological Economics* 250, 252.

²⁰ Government of India Ministry of Labour and Employment. The Second National Commission on Labour Report (New Delhi: Ministry of Labour and Employment, 2002) 630; Anand M. Hiremath, Sachin Kumar Panday, and Shyam Raj Asolekar, 'Development of Ship-specific Plan to Improve Health Safety and Environment in Ship Recycling Yards' (2016) 116 *Journal of Cleaner Production* 279, 281.

industry has been well established in India for many years. Until 2013, the Indian shipbreaking industry broke more than 6000 ships.²¹

The shipbreaking industry contributes 10-15% of India's total yearly steel demand,²² and employs more than 60,000 workers directly. More than half a million more are working in companies that are directly or indirectly dependent on the shipbreaking process.²³ These include downstream industries and businesses such as re-rolling mills, foundries, oxygen plants, transportation companies, local scrap goods shops, furniture shops, and local electronic equipment shops.²⁴ A recent report shows that the annual turnover of the Indian shipbreaking industry is around USD 814.51 million.²⁵

Given its economic importance, the Bangladesh and Indian governments declared it a formal industry as a call for promoting labour standards and sound management of waste by passing new laws.²⁶ But the two industries' economic importance challenges its environmental and human rights standards. The next section investigates the problems in running the industry.

This paper is divided into seven parts. The next part examines the problems within the shipbreaking industry in Bangladesh and India and the requirements of the ILO guidelines. Part III examines the shipbreaking legal structures in Bangladesh and India, and explains the extent of compliance of the ILO guidelines in Bangladesh in Part IV and India in Part V. Part VI clarifies the reason for non-compliance of the ILO guidelines. Part VII concludes that although Bangladesh and India consider the labour standards as anti-business, human lives should take precedence over economic interests and therefore the international community should ensure that these countries comply with the ILO guidelines within the shipbreaking industry.

²¹ Paritosh C. Deshpande et al, 'A Novel Approach to Estimating Resources Consumption Rates and Emission Factors for Ship Recycling Yards in Alang, India, (2013) 59(15) *Journal of Cleaner Production* 251, 251.

²² Amit B. Mahindrakar et al, 'Shipbreaking industry in India: Assessment of Opportunity and Challenges' (January 2008) *eLaw Journal: Journal of Air and Waste Management Association*, 1
https://www.researchgate.net/publication/262687134_Ship_Breaking_Industry_in_India_Assessment_of_Opportunities_and_Challenges

²³ Deshpande et al (n 60).

²⁴ International Federation for Human Rights, 'Where Do the "Floating Dustbins" End Up? Labour Rights in Shipbreaking Yards in South Asia – The Cases of Chittagong (Bangladesh) and Alang (India)' (Investigative Mission Report No 348/2, International Federation for Human Rights, December 2002). (*International Federation for Human Rights*).

²⁵ Sara Costa and Geetanjoy Sahu, 'The Ship Recycling Industry Must Move Towards a Sustainable Future' *The Wire* (online at 03 August 2020) <https://thewire.in/environment/shipbreaking-ship-recycling-industry-sustainable-future-environment>

²⁶ Ibid

II THE PROBLEMS WITHIN THE INDUSTRY AND THE REQUIREMENTS OF THE GUIDELINES

The shipbreaking industry raises several controversies. It is one of the main causes of environment pollution and violation of human and labour rights for two main reasons. Firstly, shipping companies sell ships to developing South Asian countries without pre-cleaning the toxic materials from the ships.²⁷ Therefore, their vessels remain contaminated with toxic substances, such as Polychlorinated Biphenyls, asbestos, lead paints, mercury, fuel deposits, and other harmful substances. Secondly, the shipbreaking industry uses the dangerous beaching method, and releases all toxic substances into the seawater,²⁸ resulting in air pollution, soil erosion, soil contamination and water pollution, contamination of coastal regions and loss of biodiversity.²⁹ The release of toxic waste has an impact on mangrove forests and threatens its habitat.³⁰ This dangerous practice not only affects shipbreaking workers' occupational health in the long run,³¹ but it also damages the local environment, fishery, agriculture, flora and fauna. The yards have poor sound waste management reservoirs to contain the wastes.³² Recent reports also confirm that the workers and the surrounding people are exposed to high level of noise and air pollution.³³ Regardless of the damaging character of the industry to the environment, the paper will not focus on this issue. The objective of this paper is to investigate the workers health, safety, and labour rights within the shipbreaking industry.

Health and Safety Rights Problems

²⁷ Pre-cleaning means the process of discharging all contaminated items of a ship by the shipping companies or the owners before sending them for dismantling.

²⁸ Beaching means anchoring ships on sandy beaches for dismantling. It is a traditional method of bringing ships as close as possible to the intertidal zones of coastal areas. This helps them to cut ships without using built structures, except the hull of a ship; Gopal Krishna, 'High on Hazard, Alang Poses Big Threat to Environment and Health of Local Communities, Migrant Workers', *Financial Chronicle* (online), 21 December 2012, <http://www.mydigitalfc.com/industry/high-hazard-463>.

²⁹ Mohammad Maruf Hussain and Mohamamad Mahmudul Islam, *Ship Breaking Activities and Its Impact on the Coastal Zone of Chittagong, Bangladesh: Towards Sustainable Development*, (Research Report, Young Power in Social Action, Chittagong, Bangladesh, 2006); Federico Demaria, 'Shipbreaking at Alang-Sosiya (India): An Ecological Distribution Conflict' (2010) 70 *Ecological Economics*, 250-260.

³⁰ Mohammad Maruf Hussain and Mohamamad Mahmudul Islam, *Ship Breaking Activities and Its Impact on the Coastal Zone of Chittagong, Bangladesh: Towards Sustainable Development*, (Research Report, Young Power in Social Action, Chittagong, Bangladesh, 2006); Federico Demaria, 'Shipbreaking at Alang-Sosiya (India): An Ecological Distribution Conflict' (2010) 70 *Ecological Economics*, 250-260.

³¹ ILO, Ship-breaking: a hazardous work, http://www.ilo.org/safework/areasofwork/hazardous-work/WCMS_110335/lang--en/index.htm; ILO guidelines 2.3.1

³² Ibid.

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The World Bank has identified that the bare hand ship cutting method is one of the main problems of the industry.³⁴ Ships are broken by using dangerous manual methods such as cutting ships with a fire torch and workers carrying steel plates on their shoulder. They are provided with no safety equipment, including masks. The use of personal protective equipment (PPE) is also not common within this industry. Such practices eventually cause frequent accidents leading to death and injuries to the workers. Statistics show the following reasons as causes of accidents: fire explosions due to unseen gas in the ship chamber (49%); the fall of plates and parts of ships in the process of scrapping (25%); inhalation of toxic gas (16%) and workers falling from ships (8%).³⁵ According to the International Labour Organisation, shipbreaking is the most dangerous work for workers.³⁶ Although there is no specific data on the number of deaths and injuries, a report shows that more than 1000 workers have been killed in the last three decades.³⁷

The causes of death in the above table shows that the safety and hazard in the industry reflects on the workplace safety and health management practices. Fall from height, smashed by iron plates, falling of heavy cable reflect problems of technical incapacity of the yards. On the other hand, fire explosion, gas leak and cylinder blast are related to inadequate level of degassing of the uncleaned ships and their poor inspection system. More so, since the shipbreaking workers are unskilled and unaware of the dangers involved in breaking the ships and their labour rights, their power is limited to change the practice. In addition to workplace safety and health, the violation of labour rights in the industry has also raised serious legal debate.

Labour rights-Decent work is out of the scope

The lack of decent work is prevalent in the shipbreaking sector.³⁸ The workers suffer from poor wages, long working hours, non-issuance of any appointment letters, and identity cards, no access to social security benefit, *de facto* censorship on unionism and collective bargaining and lack of access to legal institution.³⁹ Their recruitment and dismissal are not

³⁴ World Bank Report 2010, above n 16.

³⁵ N. M. Golam Zakaria, Mir Tareque Ali and Khandakar Akhter Hossain, 'Underlying Problems of Ship Recycling Industries in Bangladesh and Way Forward' (2012) 9 (2) *Journal of Naval Architecture and Marine Engineering*, 98.

³⁶ International Labour Organisation

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³⁸ Decent work is defined in shipbreaking as means of receiving fair income, enjoying job security in the workplace and social protection for workers' families and freedom of expression to raise their concerns in work, and inadequate mechanism to access to judicial enforcement.

³⁹ Muhammod Shaheen Chowdhury, Compliance with Core International Labour standards in National Jurisdiction: Evidence from Bangladesh (2017) *Labour Law Journal*, 80; Jakir Hossain, Mostafiz Ahmed and

beyond controversy. They are hired casually from outsourcing firms and fired by employers at any time like a commodity.

International Legal Frameworks on Shipbreaking

Because of the abuse of environmental and labour rights, shipbreaking has been under discussion within the international community for two decades, but there is to date no specific international legal framework. On 15 May 2009, the IMO parties adopted the *Hong Kong convention for safe and sound disposal of ship*, which is yet to enter into force.⁴⁰ Before the Hong Kong convention the IMO Assembly adopted the voluntary *IMO guidelines on Ship Recycling* in 2003.⁴¹ In absence of a mandatory shipbreaking inter-state law, the *Basel Convention on the control of Transboundary Movement of Wastes and their Disposal* (hereinafter referred to as ‘Basel Convention’) that regulates the transboundary movement of waste, in general has been used to regulate the shipbreaking business. Despite the relationship between ship breaking and waste trade and their disposal, the enforcement of the *Basel Convention* standard has been too weak.⁴²

Both shipping companies and developing countries need the shipbreaking industry for profit-making. Shipping companies do not want to bear the high cost of safe and proper disposal. Developing countries lack the resources required to upgrade their standard of shipbreaking. Thus, unless the problems are adequately regulated by both international and national regulatory regimes, the problems identified will continue.

Salient Features of the ILO Guidelines

Because of regulatory gap and the industry’s concern on labour rights, in 2004, the International Labour Organisation adopted the *Safety and Health in Shipbreaking: Guidelines for Asian Countries and Turkey (ILO guidelines)* with the objective of establishing an exclusive framework for the safety and wellbeing of shipbreaking workers. Before adopting

Afroza et al (2010) Bangladesh Labour Law: Reform Directions, Bangladesh Institute of Labour Studies, Dhaka, November 2010, 10

⁴⁰ Hong Kong

⁴¹ IMO guidelines

⁴² The paper does not discuss the Basel, Hong Kong conventions and the IMO guidelines in depth. For a further discussion, see – quote our earlier paper where this was discussed.

the *ILO guidelines*, a number of ILO instruments were directly applicable to the issues of shipbreaking.⁴³ However, international community felt that the lack of understanding of the safety and health of the workers in the ship breaking yards challenged the environmental sustainability of the shipbreaking industry.⁴⁴ Therefore besides labour governances, what was required to regulate the process of shipbreaking is good leadership and raising concern on safe shipbreaking, strong organizational competence, clarification of the existing legal instruments, and proper infrastructure.⁴⁵ These concerns led the ILO to adopt the separate *ILO guidelines*.⁴⁶ The *ILO guidelines* ask the shipbreaking states to adopt the guidelines as technical standards, codes of practice or as authoritative guidance in national legislation for workers.⁴⁷ In making the *ILO guidelines* effective for workers, the following special features were added, recognising that:

1. The work of a ship breaker is one of the most hazardous jobs⁴⁸
2. Waste management in the yards is hazardous⁴⁹
3. Social protection and labour law are rarely applied to the workers⁵⁰
4. Difficulties arise in enforcing laws and regulation to the yards because of their location.⁵¹

⁴³ The following ILO Conventions and recommendations on occupational safety and health may have relevance to shipbreaking: Guarding of Machinery Convention, 1963 (No. 119) and Guarding of Machinery Recommendation, 1963 (No. 118), Maximum Weight Convention, 1967 (No. 127) and Maximum Weight Recommendation, 1967(no 128); Occupational Cancer Convention, 1974 (No. 139); Occupational Cancer Recommendation, 1974 (No. 147); Working Environment (Air pollution, Noise and vibration) Convention, 1977 (No. 148) and Working Environment (Air pollution, Noise and vibration) Recommendation, 1977 (No. 156); Occupational Health and Safety Convention, 1981 (No. 155) and Occupational Health and Safety Recommendations, 1981 (No. 164); Occupational Health Services Convention, 1985 (No. 161) and Occupational Health Services Recommendations, 1985 (No. 171); Asbestos Convention, 1986 (No. 162), and Asbestos Recommendations, 1986 (No. 172); Chemicals Convention, 1990 (No. 170) and Chemical Recommendation, 1990 (No. 177). Some other related instruments include some ILO Codes of Practices. They are; Ambient Factors in the Workplace, 2001; Guidelines on Occupational Safety and Health Management Systems, 2001; Recording and Notification of Occupational Accidents and Diseases, 1995; Safety in the Use of Chemicals at work, 1993; Technical and Ethical Guidelines for Workers' Health Surveillance, 1998; Safety in the Use of Asbestos, 1984; Occupational Safety and Health in the Iron and Steel Industry, 1983; Occupational Exposure to Airborne Substances Harmful to Health, 1980; Protection of Workers against Noise and Vibration in the Working Environment, 1977; and Safety and Health in Shipbuilding and Ship Repairing, 1974. See also Safe Work Codes of Practice, online: International Labour Organisation <http://www.ilo.org/public/english/protection/safework/cops/english/index.htm>

⁴⁴ Ibid

⁴⁵ Research Thesis UNSW 2013

⁴⁶ See generally Recycling of Ships: Safety and Health in Shipbreaking: Guidelines for Asian Countries and Turkey.

⁴⁷ Ibid art 3(2)(2).

⁴⁸ Ibid art 2(3)(1).

⁴⁹ Ibid art 2(3)(2).

⁵⁰ Ibid art 2(3)(3).

Besides recognising the dangers of the work, the ILO guidelines promote the idea of a green ship breaking.⁵² Importantly, the ILO Guidelines urge for the development of competent structures of better management of hazardous substances,⁵³ job safety and health.⁵⁴ Amongst others, the guidelines innovatively canvassed the “safety first” theory for shipbreaking.⁵⁵ Moreover the guidelines extend operational planning,⁵⁶ preventative and protective measures,⁵⁷ measures against physical, biological and psychosocial hazards,⁵⁸ safety requirements regarding tools, machines and equipment,⁵⁹ individual instrument and clothes for protection,⁶⁰ distinctive protection,⁶¹ competence and training emergency preparedness⁶² and welfare measures.⁶³ The guidelines also include the idea of a reporting system,⁶⁴ the rights and responsibilities of workers⁶⁵ and contractors.⁶⁶ Overall, governing an effective national policy framework is the objective of the guidelines. Following the guidelines, states are required to include adequate and appropriate type of shipbreaking facilities and worker’s status in employment in their national legal framework.⁶⁷

With the introduction of the standards, the *ILO guidelines* clarify that the overall responsibility of improving the standards lies with the employer of a ship breaking facility. In ensuring the occupational safety and health, the employer’s duty is to follow the national OSH standard and other laws related to workplace, protect the safety and health of workers, and ensure that the workers are consulted in OSH related matters to improve the work system

⁵¹ Ibid art 2(3)(4).

⁵² Ibid art 6-22.

⁵³ Ibid art 9.

⁵⁴ Responsibilities and duties of competent authorities, Ibid 3(1); duties of labour inspectorates 3(3).

⁵⁵ Ibid art 3(8).

⁵⁶ Ibid art 23.

⁵⁷ Ibid art 7(1)(1).

⁵⁸ Ibid arts 10-12.

⁵⁹ Ibid art 13.

⁶⁰ Ibid art 15.

⁶¹ Ibid art 17.

⁶² Ibid arts 14 & 16.

⁶³ Ibid art 18.

⁶⁴ Ibid 4.

⁶⁵ Ibid 3(4).

⁶⁶ Ibid arts 3(6) & 3(5).

⁶⁷ ILO guidelines 3.2.2.

for better safety and less risks.⁶⁸ These guidelines are therefore argued to be one of the most remarkable legal steps of ILO,⁶⁹ providing a set of guidelines on the parties having liability to promote occupational safety and health in the shipbreaking yards.⁷⁰

The *ILO guidelines* mainly focus on four key areas- (i) rights of workers, (ii) better safety and welfare measures following the work-related OSH standards; (iii) consultation with workers; and (iv) reporting. Success of the guidelines hinges on how the national laws of a country have addressed them. The next section discusses how these issues are legally defined in the shipbreaking legal structure in Bangladesh.

III SHIPBREAKING LEGAL STRUCTURE IN BANGLADESH AND INDIA

In 2012, Shipbreaking was declared an industry in Bangladesh.⁷¹ Several specific laws are also in place to regulate the industry. In 1995, the Parliament of Bangladesh passed the Environmental Conservation Act (ECA) to regulate all matters relating to the environment. It includes old ships in its definition of hazardous substances.⁷² The definition of pollution also incorporates all the pollutants discharged during shipbreaking.⁷³ The ECA has established a Department of Environment (DoE) headed by a Director-General to take necessary action against a non-compliant industry. It is a mandatory requirement for every shipbreaking industry to obtain an environmental clearance certificate before starting its operation.⁷⁴

⁶⁸ Ibid

⁶⁹ Midshipman (MIDN), 'End of Life Ships' (Report, Inter-Departmental Committee on the Dismantling of Civilian and Military End of life Ships, March 2007) 19

http://www.shipbreakingplatform.org/shipbrea_wp2011/wp-content/uploads/2011/12/2007-06-18_-_Rapport_MIDN_english_version.pdf.

⁷⁰ Puthucherril 120.

⁷¹ Section 2.16 of the Labour Act, 2006. 'Declare Shipbreaking an Industry: Speakers Urge Government,' *the Daily Star* (online), 17 July 2007 <http://archive.thedailystar.net/2007/07/17/d70717060176.htm>;

⁷² Secretariat of the Basel Convention, *National Definition of Hazardous Wastes*

<http://www.basel.int/Countries/NationalDefinitions/tabid/1480/Default.aspx>

⁷³ The Environmental Conservation Act provides the definition of Pollution as the Contamination or alteration of the Physical, chemical or biological properties of air, water or soil, including change in their temperature, taste, odor, density, or any other characteristics, or such other activity which, by way of discharging any liquid, gaseous, solid, radioactive or other substances into air, water or soil or any component of the environment, destroys or causes injury or harm to public health or to domestic, commercial, industrial, agricultural, recreational or other useful activity, or animal, bird, fish, plant or other forms of life. Section 2. The ECA.

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However, the majority of industry owners do not follow this mandatory requirement, and the requirement to obtain clearance has rarely been enforced by the DoE.⁷⁵

Lack of enforcement from the beginning has created the regulatory problem. However, in response to a number of directions from the Supreme Court of Bangladesh, the industry has experienced comprehensive legal developments, including three specific legal instruments.⁷⁶ The specific rules and laws are; *the Shipbreaking and Recycling Rules-2011* and the *Hazardous Waste and Shipbreaking Management Rules, 2011* were formulated under the ECA 1995,⁷⁷ and the *Ship Recycling Act, 2018* (the Act).

Alongside these comprehensive legislations on shipbreaking, the problems identified in section II, with labour rights are well within the purview of the *Bangladesh Labour Act 2006* (*the Labour Act*) and *Bangladesh Labour Rules 2015* (*the Labour Rules*).⁷⁸ The *Labour Act* and *Labour Rules* are comprehensive in nature that include all basic rights of workers similar to the guidelines in relation to workplace safety and health. Besides, employment conditions, working hours and leave, trade union activities, minimum wages, compensation for occupational injuries and death, social security, and other related issues are included in the Labour Act and Rules. Importantly, the Labour Act 2006, provides a complete guidance to the employer business entity to follow the *ILO guidelines*.⁷⁹

The legal development of the Indian shipbreaking laws has two different phases. Prior to 2012, India had a worker and environment friendly policy for the import of ships. India's significant progress in developing legal standards evolved in response to several landmark decisions of the Indian Supreme Court based on the regulatory principles of the *Basel Convention* that not only banned transboundary movement of wastes but also required prior informed consent from the government of the importing country for the transfer of wastes. From 2012 onwards, changes to the law have followed the *Hong Kong Convention* principles and a pro-business approach, which is to put no restriction on importing ships with in-built

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⁷⁶ ME&F and SB&SR and the Ship recycling Act 2018.

⁷⁷ It is stated in the preamble of the Shipbreaking and Ship Recycling Rules that Rules have been formulated in pursuance of the High Court Division of Supreme Court decision in Writ Petition no. 7260 of 2008 dated May 24 2011.

⁷⁸ The Labour Act 2006.

⁷⁹ Ameena Chowdhury and Hanna Denecke, "A Comparative Analysis between Bangladesh Labour Law 2006 and 7 General Codes of Conduct," Working Paper N0-6, German Development Corporation (GTZ), Bangladesh, 1-3.

wastes from other nations considering the business prospect of recycling them.⁸⁰ In its primary decision in *Research Foundation*,⁸¹ the Supreme Court imposed a ban on importing an old ship considering it as wastes and directed proper regulatory recommendations to the Indian government. The approach was changed in *Exxon Valdez*. In 2012, the *Exxon Valdez* exposed the pro-business approach of the Indian Supreme Court.⁸²

An environmental group, Toxic Watch Alliance, exposed this hidden identity of the *Exxon Valdez* and filed petition before the Supreme Court to stop the breaking of the ship. Since the ship was already in the territorial water of India, however, the Court allowed its breaking. In its decision, the Court referred to its previous decisions, but recommended passing a national comprehensive code for shifting the liability of regulating the industry to central government from state government.⁸³

Importing the ship into India without pre-cleaning was the central issue in *Exxon Valdez*. In a positive sense, the Court's directions paved the way for the Indian government to pass a consolidated law for shipbreaking that is applicable to all parts of India. On the other hand, since 2012, the decision of the Indian Supreme Court in *Exxon Valdez*,⁸⁴ has provided leeway for the Indian Government to shift from its earlier decisions in *Research Foundation* and to allow importing ships even if they contained in-built hazardous materials. Following these decisions, the Indian Parliament has passed specific national laws that are applicable to the shipbreaking industry, being the *Ship Recycling Code, 2013* and *Ship Recycling Act 2019*.

⁸⁰ *Research Foundation for Science Technology and Natural Resource Policy v Union of India and Others*, Supreme Court of India, [Civil Original Jurisdiction Writ Petition No 657 of 1995] (November 2007) (*Blue Lady*); *Research Foundation for Science Technology and Natural Resource Policy v Union of India and Others*, Supreme Court of India, [Civil Original Jurisdiction Writ Petition No 657 of 1995 interim application no. 61 and 62] (12 October 2012). (*Exxon Valdez*)

⁸¹ *Research Foundation for Science Technology and Natural Resource Policy v Union of India and Others*, Supreme Court of India, [Civil Original Jurisdiction Writ Petition no. 657 of 1995] 4 SCC 647. (*Research Foundation*)

⁸² *Exxon Valdez* (n 9); Michael Galley, *Shipbreaking: Hazards and Liabilities* (Springer International Publishing, 2014) 155.

⁸³ *Exxon Valdez* (n 9). *Research Foundation* was the original ruling and in 2003, 2007, and 2012, the Indian Supreme Court delivered further decisions disposing more petitions.

⁸⁴ *Research Foundation for Science Technology and Natural Resource Policy v Union of India and Others*, Supreme Court of India, [Civil Original Jurisdiction Writ Petition No 657 of 1995] (November 2007) (*Blue Lady*); *Research Foundation for Science Technology and Natural Resource Policy v Union of India and Others*, Supreme Court of India, [Civil Original Jurisdiction Writ Petition No 657 of 1995 interim application no. 61 and 62] (12 October 2012). (*Exxon Valdez*)

India has a comprehensive set of laws that only apply to permanent and registered workers employed in a factory.⁸⁵ These include *Shipbreaking Code 2013* (India) that has high reliance on the application of the *Factories Act 1948* (India). The *Factories Act 1948* (India) has recently been replaced by *Occupational Health, Safety, and Working Conditions Code 2020* (India). Other relevant laws include the *Employees Insurance Act 1948* (India) and the *Inter-State Migrant Workmen Act 1979* (India).

IV EXTENT OF COMPLIANCE TO FOLLOW THE *ILO GUIDELINES* IN BANGLADESH

As discussed before, the aim of *the ILO guidelines* shipbreaking and labour jurisprudence is to minimise the risk involved in shipbreaking and protect the rights of workers. Despite passing specific laws, the data on accidental deaths and injuries suggest the improvement is marginal. Reports of deaths and injuries are more regular than before because of widespread violation of rights. However, in relation to labour rights, because of a defective mechanism, accountability of employers is hardly imposed.⁸⁶ Questionable labour law system and weak enforcement of labour laws have also continued to ignore the rights of shipbreaking workers.⁸⁷ The following sections investigate the influence of these problems in the shipbreaking and labour laws.

General Rights of Workers and their Status in Employment

The deprivation of the labour rights of shipbreaking workers starts as soon as they are hired for their job. They are neither given any letter of appointment nor any identification (ID) card.⁸⁸ They are also not properly enrolled as worker and their particulars are not maintained in a record book.⁸⁹ They are appointed by contractors, who work as the agents of the shipbreaking yard owners. The hiring of labour without an appointment contract and ID is against the law of the country and the *ILO guidelines*. As per section 5 the *Labour Act*, a worker must be provided an employment contract and an ID. The requirement to provide appointment letter and ID card is further elaborated under rules 19 of the *Labour Rules*. Under the *Labour Rules*, it is mandatory to issue an appointment letter and an Identity card with detail identity of a worker. It is explicitly provided in the *Labour Rules* and the *Labour*

⁸⁵ A permanent worker means a worker who has been appointed following a permanent recruitment process. He has an identifiable employer, a job contract, and registration or passbooks with details.

⁸⁶ Shaheen 80.

⁸⁷ *ibid*

⁸⁸ Saiful Karim, 385, 386.

⁸⁹ Saiful, 386.

Act that appointment of workers without a letter of appointment is forbidden.⁹⁰ It is also mandatory to maintain a service rule and service book for all workers.⁹¹ These legislative requirements comply with the ILO guidelines of employment requirements.⁹² However, the question to ask is why the laws are not enforced.

The primary reason for non-enforcement of the laws is that there is no provision in the *Labour Act* and *Labour Rules* that spells out the legal consequence of employing workers without issuing an employment contract or ID. The *Labour Act* and *Labour Rules* do not impose a fine or penalty for not following the provision. Without any provision of legal consequences, it is hard to enforce the law against the non-compliant shipbreaking companies.

There are also a number of benefits for shipbreaking yard owners or employers to not provide an appointment letter or ID. They can escape the liability of granting compensation to the workers or paying for insurance or provident fund for the workers. Under the *ILO guidelines*, the employers are required to ensure that the workers are covered by a workers' compensation and social protection scheme in the form of an insurance. The *Labour Rules* also have the provision to open a group insurance policy for workers,⁹³ providing compensation,⁹⁴ and provident fund to the workers in case of injury or death.⁹⁵ A worker may find it impossible to claim all these benefits in absence of any proof of employment.

The employers also often dismiss the workers by following summary dismissal process. Ironically, *the Labour Act* and *Labour Rules* are silent on the issue of restricting summary dismissal. It does not include a *due process* within the legal rules.⁹⁶ *Due process* is a concept of law that ensures proper notice of a charge and an opportunity to hear the person charged. The *Labour Act* and *Labour Rules* contain no provision of prior notification before dismissal. This gap leads to a lack of opportunity to a worker to defend his or her position.⁹⁷ Because of these weaknesses, the employment of the workers in shipbreaking yards can be classified as exploitative in nature. These weaknesses also affects the workers claiming any financial benefit or compensation. In any case, a terminated worker can only receive any benefits if he

⁹⁰ Rules 19. 1. Labour act 5.

⁹¹ Labour Act ss 5-9.

⁹² Guidelines 17.1.

⁹³ Rules 98 for Group insurance of the workers.

⁹⁴ and chapter XII on the payment of compensation (section 150-174) of the Labour Act 2006.

⁹⁵ Shaheen Section 264 of the Labour Act,)

⁹⁶ Due process is a concept of Administrative law that ensures proper notice of a charge and an opportunity to hear the person charged.

⁹⁷ Labour Act 2(36).

or she has worked for one-year in a yard. Working any period less than the one year period will eventually deprive him or her from a valid compensation claim.⁹⁸

Paradoxically, workers, who survive from summary dismissal are also not ensured normal labour rights pertaining to work hours and rest day. With a continuous fear of losing job, they work more than sixteen years, sometimes even for 24-hours a day. In rare cases, they are allowed to have a weekly rest day. Worst still, working during weekly rest days does not confirm them any extra overtime payment,⁹⁹ Although under the *Labour Act* 2006, this practice is totally illegal. The maximum daily limit under the *labour Act* is 8 hours daily or in some exceptional cases is 10 hours with two hours of overtime payment. In a calendar year, the weekly maximum limit is from 48 to 56 hours depending on exceptional cases. Every worker is entitled to have a rest day per week. The requirements of the *Labour Act*, 2006 are in conformity with the ILO guidelines. Guidelines 17.2 and 17.3 have the same requirements in relation to working hours, and rest days.

The shipbreaking yard owners rarely comply with these laws since they want a quick return of their investment. They buy the ships from foreign owners or cash buyers by opening a letter of credit (L/C). A L/C is a short-term loan-for six months with high interest rate. Therefore, the ship breaking company owners want to break the ships in the least possible time. To save time and payment of high interest, the yard owners also do not follow lengthy worker recruitment process. They outsource the appointment of workers to contractors. Under the *ILO guidelines*, the contractor includes subcontractor and labour supply agents.¹⁰⁰ The contractors supply the workers from the Monga,¹⁰¹ or famine-affected northern part of the country.¹⁰²

Under the *ILO Guidelines*, the contractors also have the same responsibility as employers.¹⁰³ Contractors have the duty to comply with the relevant workplace safety and health hazard awareness. The employers have the duty to train the contractors and regularly monitor their occupational safety and health standards, and in case of non-compliance not to renew future contracts.¹⁰⁴ The *Labour Act* has incorporated stricter provisions to monitor the contractors'

⁹⁸ Muhammod Shaheen, 86.

⁹⁹ Saiful, 386

¹⁰⁰ ILO guidelines X, Glossary.

¹⁰¹ Monga means a period of severe crisis of food, when the farmers have no income from agriculture. Saiful 386.

¹⁰² Saiful.

¹⁰³ ILO Guidelines, 3.8.2.

¹⁰⁴ 3.8.1-3.8.2.

activities. Under the *Labour Rules* 113, a contractor has to pay compensation to workers. A contractor is also not permitted to pay to any worker wages less than the minimum wage rate declared by law.¹⁰⁵

Regardless of these legal restrictions, shipbreaking yard owners use contractors to escape paying regular wages. The contractors hire workers on “no work, no pay basis”, meaning their payment is dependent on their daily work. A worker is only paid for the number of day or days he or she works. They do not get wages for remaining absent or when there is no work in the yards. Their wages depend on whether the owners have managed to purchase ships for breaking, in which case the owner. appoints workers on daily basis through a contractor. The contractor eventually breaks the link between workers and the employer. The contractor is intentionally used by the employer- shipyard owner so that the workers cannot claim their rights directly from them.

The sub-contracting system also affects wage amount and compensation claim of workers. A worker is paid wages (USD 1 for 8 hours of work) lower than the minimum wage limit of the country.¹⁰⁶ Compensation is paid in rare cases, especially if there is any media and public pressure.

There is also a large difference in the amount of compensation between workers from local and remote areas. Only 10 to 15 thousand taka (around 130 to 180 USD) is paid to a migrant worker, if the accident is serious in nature and the incident is such that it cannot be hidden. In the case of death of a migrant worker, the contractors normally pay the cost of transportation and the cost of funeral. However, in case of death of a local worker, the amount of compensation jumps to 620 USD.¹⁰⁷

Because of their intermittent job nature and high dependency on contractor staff, the workers are not treated like other formal employment sector of the country.¹⁰⁸ The temporary job nature hinders workers from claiming adequate wages and compensation from the contractors. More so, the employers and contractors deny their rights because of their poverty and limited employment opportunity.¹⁰⁹ The employers take the opportunity of the socio-

¹⁰⁵ Rules 133.

¹⁰⁶ A Rahman and A.Z.M.T Ullah, ‘Shipbreaking: A Background Paper’, Cited in Saiful Karim,

¹⁰⁷ MD Imrul Jobaid, Md. Moniruzzaman Khan, A.K.M Kamrul Haque, Ishtiaque Ahmed Shawon, Ship Recycling and Its Environmental Impact: A Brief Overview of Bangladesh, *Journal of Business and Management* 2014), 16 (10) (1), 31-37, 35.

¹⁰⁸ ILO (2002) Decent work and the Informal Economy, Report of the Committee of Experts on the Application of Convention and Recommendations, ILO office, Geneva, 3

¹⁰⁹ Mohammad Shaheen, 82.

economic condition of the workers since they are readily available. It is well-known to the employers that if one goes out, hundreds are ready to fill the vacancy. They are treated more like a commodity than a human being.¹¹⁰ The situation is mostly common in all the other private sectors. This is an added advantage to the shipbreaking companies that makes the enforcement of labour law weaker in Bangladesh. Nevertheless, for ensuring better enforcement, there is a growing demand in the labour sector to introduce consultation system. Within the system, the employers have a duty to face the workers and discuss their safety and health issues. The importance of the system lies with the fact that it brings about democratic practice in an industry's occupational health and safety policy.

Consultation with Workers

The word consultation is used 15 times in the ILO guidelines. The guidelines propose for consultation with workers and their representative during the initial review to identify the necessary work procedure and associated hazards, assess the risks to safety and health and identify current applicable national laws and regulations and determine whether planned or existing.¹¹¹ The employers are also required to set up arrangements for reporting any situation which they think may lead to imminent and serious danger to life or health in consultation with workers and their representatives.¹¹² The *Labour Rules* have introduced participation and safety committee recognising the importance of consultation in case of workplace safety and health. The workers and employers both can have equal participation in the committee. Workers are nominated mainly by trade unions,¹¹³ and collective bargaining agent.¹¹⁴ However an establishment without any such unions can select members for the committee via a secret ballot.¹¹⁵ Such committee set up is one step forward in principle but two steps back in terms of enforcement.

Unreasonable control and punishment for joining trade unions are couple of main obstacles contributing to this low ratio of trade unions.¹¹⁶ Some other reasons are: unwillingness from

¹¹⁰ Puthrcheril.

¹¹¹ 4.3.1; 7.3.4 ILO guidelines

¹¹² 5.2.1

¹¹³ Trade union means trade union of workers or employers formed and registered under chapter XIII of the Labour Act, 2006 and shall include federation of trade unions, Subsection 2 (XV) of the Labour Act, 2006

¹¹⁴ Collective Bargaining Agent, in relation to an establishment or group of establishments in the matter of collective bargaining, Subsection 2 (Lii) of the Labour Act, 2006

¹¹⁵ Rule 187 Bangladesh Labour Rules, 2015.

¹¹⁶ International Trade Union Confederation, Bangladesh Labour Law changes inadequate <https://www.ituc-csi.org/bangladesh-labour-law-changes>

employers and workers, political pressure, shortage of good leaders, and shadow trade union of employers.¹¹⁷

Safety and Welfare Measures-Challenges

The *ILO guidelines* promote the “safety first” theory and reassure workers by providing health services, workers health surveillance and of the working environment and other welfare.¹¹⁸ The *ILO guidelines* also provide that all workers receive relevant PPE and protective clothing, when occasions demand.¹¹⁹ Besides, introduction of fire safety and emergency procedure should be on the spot.¹²⁰ The ILO guidelines 8 to 18 also provide detail requirements of “management of hazardous substances”, “measures against physical hazards”, “safety requirement for tools,” “machines and equipment,” “Personal Protective Equipment (PPE)”, “special training,” “protection and welfare measures”.¹²¹

The *Ship Breaking and Recycling Rules, 2011* also provides provisions for workers' welfare. Chapter II of the Rules contains provisions for pure drinking water, sanitation, cleaning and restrooms, firefighting and first aid facilities. Besides, there are provisions of compensation for injured workers, and obligation for the yard owners to re-employ them. Chapter III contains provisions for safety measure, including the appointment of qualified safety officers and emergency provisions. Alongside, Chapter V of the *Ship Recycling Act, 2018* contains provisions for classification, training, the establishment of a training institute, maintaining a database of workers to facilitate their appointment. Importantly, the insurance of workers is mandatory. Every yard owner must maintain insurance of each worker. The Labour Act also includes the safety and welfare provisions.¹²² General procedure for dealing with explosive or inflammable dust, gas and other materials is also included in the Labour Act.¹²³ Where a manufacturing process produces dust, gas fumes, or vapour of such character and such extent as to be likely to explode on ignite, all practicable measures to ensure exclusion by:

- An effective enclosure of the plant or machinery used in the process;
- Removal or prevention of the accumulation of such dust, gas fumes, or vapour;

¹¹⁷ Shadow trade union of employers is on the rise in Bangladesh. One example is the Transport sector of the country which is controlled by company nominated labour leaders.

¹¹⁸ 7.1.5 ILO guidelines

¹¹⁹ 7.1.6 ILO guidelines

¹²⁰ 7.1.7 ILO guidelines

¹²¹ ILO guidelines 8-18.

¹²² *The Labor Act 2006* (Bangladesh) (*the LA*)

¹²³ *The LA*, s 53.

- An effective enclosure of all possible sources of ignition.¹²⁴

Moreover, the *Labour Act* also defines a particular procedure for the safety of building and machinery, precautions in case of fire, fencing of dangerous machinery, and protection of eyes.¹²⁵ The *Labour Act* also outlaws the employment of persons to lift, carry or move any load so heavy as to be likely to cause him/her any injury.¹²⁶ Subsequent yearly reports show that these legal standards have failed to stop deaths and injuries of shipbreaking workers in Bangladesh.¹²⁷ The workers continue to consume the inbuilt toxic substances on the beaches. There is no information from the owners how many of them followed compulsory insurance for their workers. In addition, there is no formal data on injuries and deaths of workers.

The lack of integration and involvement of various institutions for monitoring the certification under regulations along with weak enforcement of the *Labour Act* are its major drawbacks. It creates a significantly disjointed institutional system for regulating the shipbreaking industry.¹²⁸ The Act and Rules exist, but the regulatory bodies do not exist. At present, the Ministry of Industry is formally responsible for the regulation of shipbreaking,¹²⁹ while, the Ministry of Environment and Forest is assigned to implement the *Environment Conservation Act*, 1995 and relevant International conventions, including the Basel Convention.¹³⁰ Besides, controls over beaching of ships for scrapping, providing a no-objection certificate (NOC) to import ships rests with the Ministry of Industry and the Ministry of Shipping implements the IMO conventions in Bangladesh.¹³¹ At the same time, the Ministry of Commerce has the responsibility of controlling Fire Service and Civil

¹²⁴ Ibid s 78.

¹²⁵ Ibid ss 61-63 and 75.

¹²⁶ Ibid s 74.

¹²⁷ Anderson, above n 6, 39-40.

¹²⁸ Human Rights Watch, 'Safe Working Condition', *The Daily Star* (online), 27 April 2013

<<http://www.thedailystar.net/beta2/news/hrw-for-safe-working-conditions>>.

¹²⁹ Ministry of Industries, *Allocation of Business*, Government of the People's Republic of Bangladesh

<http://www.moin.gov.bd/html/allocationofbusiness.htm> .

¹³⁰ Ministry of Environment and Forests, *About Ministry of Ministry of Environment and Forest*, Government of the People's Republic of Bangladesh http://www.moef.gov.bd/html/about/about_us.html .

¹³¹ Ministry of Shipping, *About*, Government of the People's Republic of Bangladesh

<http://www.mos.gov.bd/about_eng.htm>; Ministry of Shipping, *Department of Shipping*, Government of the People's Republic of Bangladesh <http://www.mos.gov.bd/dos.htm>

Defence, the Bangladesh Coast Guard, Chief Inspector of the Explosives Department, Chittagong Custom House, Chittagong Port Authority and Mercantile Marine Department, each of whom have specific responsibilities for ensuring occupational health and safety for the ship-breakers.¹³² The new Rules and Act have handed over the responsibility on the *Ship Breaking and Recycling Rules*, National Technical Committee for the *Hazardous Waste and Shipbreaking Management Rules*, and the Board (the Act) without forming them formally.

In their absence, the complex web of pre-existing institutions has achieved little success in ship recycling fields. Some of the main reasons for this failure include:

- Overlapping responsibility of Ministry of Industries and Department of Environment in enforcing the Basel Convention.¹³³
- Absence of legislation regarding the application of the Basel Convention to help the state of export to send a notification for Prior Informed Consent; and
- Shifting of liability to another institution when questions of accountability arise.¹³⁴
- Ministry of Industries has a focus to increase profit; whereas the HW&SM duty is to protect and conserve the environment. The Ministry of Industry has no power of executing the legal obligation on non-compliant industries.¹³⁵ However, the regulatory power of the industry is wrongly placed under the Ministry of Industry.

V PROBLEMS IN APPLYING INDIAN LABOUR LAWS

Some of the important rights provided under the special *Shipbreaking Code 2013* (India) include insurance, but for enforcing the rights, the *Shipbreaking Code 2013* (India) has high reliance on the application of the *Factories Act 1948* (India) which is itself problematic to apply in case of shipbreaking.

For proper application of the *Factories Act 1948* (India), a shipbreaking yard must fall within the definition of a 'Factory'. 'Factory' is a premise where ten or more workers work, and if

¹³² Ministry of Commerce, *About Ministry of Commerce*, Government of the People's Republic of Bangladesh <http://www.mincom.gov.bd/about.php> ; Bangladesh Coast guard, *Role of Coast Guard*, Government of the People's Republic of Bangladesh, <http://www.coastguard.gov.bd/role_mission.htm>; Bangladesh Navy, *Mission*, Government of the People's Republic of Bangladesh, <http://www.bangladeshnavy.org/mission.html>

¹³³ Karim, 'Environmental Pollution from Shipbreaking', above n 11, 229.

¹³⁴ Karim, 'Environmental Pollution from Shipbreaking', above n 11, 231.

¹³⁵ Mostofa Yousuf, Toxic gas Kills Three Shipbreaking Workers in Ctg, The Daily Star (online) 1 August 2019, <https://www.thedailystar.net/backpage/news/toxic-gas-kills-3-shipbreaking-workers-ctg-1779952>

the manufacturing process is carried out without the aid of power, ‘Factory’ is a premise where twenty or more workers work.¹³⁶ Under this definition, workers mean permanent and registered workers. Casual or seasonal workers are beyond the ambit of the definition and because of this limitation, it is problematic for the shipbreaking workers to enforce the *Factories Act 1948* (India).

The *Shipbreaking Code 2013* (India) also provides that the workers engaged in shipbreaking are required to be registered under either the *Employees State Insurance Corporation Act* or *Workmen Compensation Act*.¹³⁷ In order to protect injured workers from losing income, the *Shipbreaking Code 2013* (India) mandates the shipbreaking yard owner to re-employ them in safer areas of the shipbreaking process,¹³⁸ but for the principles to apply, a shipbreaking worker has to prove his legal status as a worker.

As in Bangladesh, shipbreaking yards in India often employ hundreds of workers through contractors. Shipbreaking workers in Alang, India are mainly migrant workers. The contractors hire the workers on a casual basis, subject to ships being available for breaking,¹³⁹ and can suspend a worker at any time. The workers shift from one yard owned by one company to another yard owned by a different company. Thus, the absence of a job contract and permanent recruitment process by an identifiable employer makes it very complicated to enforce workers’ rights.¹⁴⁰ India could address the problem by introducing a mandatory requirement of registration, or by issuing passbooks with details of employment and wage rates, as provided in the *Inter-State Migrant Workmen Act (Regulation of Employment and Conditions of Service) Act 1979* (India).¹⁴¹ Again, as the *Shipbreaking Code 2013* (India) does not explicitly mention the *Inter-State Migrant Workmen Act (Regulation of Employment and Conditions of Service) Act 1979* (India), shipbreaking workers cannot enforce these laws.¹⁴²

VI THE “WHY” FACTOR

¹³⁶ Ibid s 2(m).

¹³⁷ The *Ship Recycling Code 2013* (India) sub-s 6(2) (1) (i).

¹³⁸ Ibid, sub-ss 6(12) (2).

¹³⁹ International Metal Workers’ Federation, ‘Status of shipbreaking workers in India’ (Research Report, 6 March 2006) 7.

¹⁴⁰ Paridhi Poddar, and Sarthak Sood, ‘Revisiting the Shipbreaking Industry in India: Axing Out Environmental Damage, Labour Rights’ Violation and Economic Myopia’ (2015) 8 *National University of Juridical Science Law Review* 245, 259.

¹⁴¹ *Inter-State Migrant Workmen Act (Regulation of Employment and Conditions of Service) Act 1979* (India).

¹⁴² Poddar and Sood (n 127) 258.

To understand why the workers are abused within the shipbreaking industry in Bangladesh and India, it is important to understand the background of this industry. Bangladesh and India have an abundant supply of low cost of labour and they use beaching method for breaking ships, because of its reduced cost. The workers cut the ships with bare hands. These methods save the cost of building large shipbreaking structures and complying with safety and environmental regulations. Thirty percent of labour cost and fifty percent of the environmental and safety regulatory cost make a marked difference in retaining the industry in Bangladesh.¹⁴³ As a result, Bangladesh profits 62 USD per ton of a ship and offers a higher price than other countries such as China and Turkey, who use standard shipbreaking methods, i.e. dry dock and machine operated method of breaking ships. Bangladesh spends 82% of its total shipbreaking cost to purchase a ship and earns 16% profit by only spending 2% for labour and other cost. In terms of business and profit to international ship owners, Bangladesh has been in a better position than other ship breaking countries and is therefore very popular to ship owners.

Ship owners also earn enormous profit by selling ships to Bangladesh. A large container ship that weighs around 25 000 LDTs can earn a shipping company about US\$ 11.80 million from a ship purchased by Bangladesh, but only US\$ 7 million from Turkey and US\$ 5.25 million from China.¹⁴⁴ One estimate shows that a ship owner earns 3 to 9 million more USD by sending a ship to Bangladesh than sending elsewhere.¹⁴⁵ However, this price is just a presumption and it may rise at any time in the developing countries depending on the steel demand.

Offering high profit and less safety to workers, Bangladesh continues the industry for its economic growth. In 2018, 222 ships were imported, the highest record of import of

¹⁴³ Jun-Ki Choi, 87

¹⁴⁴ Ibid.

¹⁴⁵ Chris White, 'Two Years Since Pakistan's Gadani Shipbreaking Disaster, Why are workers still dying?' *This Week in Asia*, (28 October 2018) (<https://www.scmp.com/week-asia/health-environment/article/2170256/two-years-pakistans-gadani-ship-breaking-disaster-why>)

decommissioned ships in Bangladesh's history.¹⁴⁶ In 2016, about 15 percent of the total tax revenue of Bangladesh came from the shipbreaking industry.¹⁴⁷

The shipbreaking industry of Bangladesh is therefore not willing to introduce the dry dock method. They believe that shifting to the standard practice may affect their business. For them, the establishment of a dry dock method is too expensive and still not out of risk. One estimate suggests that roughly an investment of .97 million USD to 1.7 million USD per ship is required to shift from beaching to dry dock.¹⁴⁸

Bangladesh and Indian shipbreaking companies have learnt to thrive and are reluctant to make any changes that may affect the high prices offered to shipping companies for fear that shipowners may send a reduced number of ships to Bangladesh and India. It is therefore a tough choice for Bangladesh and India, as they are required to balance between the profit interest of shipping nations and the safety of workers.

VII CONCLUSION

Generally, the developing countries consider the labour standards as anti-business.¹⁴⁹ Foreign investors generally shift the business to countries with poor record of compliance of regulatory standards. Shipbreaking is not a difference to that, and it is a glaring example of the cost and responsibility shifting from developed to developing countries, like Bangladesh. Social and economic development substantially depend on the proper implementation of the core labour law standards. Therefore, to achieve sustainable standards, the paper concludes with a finding that Bangladesh and Indian shipbreaking industries must follow the ILO guidelines.

¹⁴⁶ Munima Sultana, 'Bangladesh Ship Breakers Left Out to Sea', *Equal Times* (online), 11 January 2013

http://www.equaltimes.org/wp-content/uploads/2013/01/Shipbreaking_021-WP.jpg .

¹⁴⁷ Hasan Ruhan Rabbi and Avelina Rahman, 'Shipbreaking and Recycling Industries in Bangladesh; Issues and Challenges' 194 (2017) *Procedia Engineering*, 254-259.

¹⁴⁸ Ibid, 128

¹⁴⁹ ADB (2006) "Core Labour Standards Handbook". Manila, Philippines, 9.

