

Bangladesh Ship Reprocessing Act 2018: A Critical Overview

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Introduction:

Ship recycling or ship reprocessing is an industry based on underdeveloped or developing states. Ship breaking is the process of dismantling an obsolete vessel's structure for scrapping or disposal conducted at a beach, pier, dry dock or dismantling slip¹. It covers a vast volume of activities from removing all gear and equipment to cutting down into small pieces and recycling the ship's structure. This industry not only comprises the cutting down of vessels rather all subsequent processes including transportation, re-fabrication, recycling supplying materials and distribution.

Ship reprocessing industry has started developing from 1960s in Bangladesh. This industry basically capitalized cheap labour, geographical location, suitable weather, lower costs² etc. Though ship recycling industry has devastating effects on ecological atmosphere, Bangladesh has about more than 70,000 workers directly and also 250,000 more people are indirectly involved in auxiliary activities with ship breaking. National supply of steel in Bangladesh is predominantly fulfilled by this industry.³

Legal framework for ship recycling industry was absent for a long period in Bangladesh. The major labour legislation the Labour Act -2006⁴ is only applicable for formal sectors. After continuous dialogue with the government and different stakeholders, the government of Bangladesh has adopted The Ship Breaking and Recycling Rules- 2011. Interestingly, there were no parent legislation to counterpart the 2011 Rule till 2018. At last in 2018, Bangladesh Ship Reprocessing Act has passed in the Parliament which has included some new provisions addressing the workers' rights, occupational safety and health, injury compensation, minimum wages and working hours etc.

Preliminary of the Act:

In Chapter II⁵, the Act has provided provisions regarding zone announcement, yard installation, activities involved in ship recycling and maintaining international standards in ship breaking. Chapter III and IV⁶ discuss about the establishment, composition, powers and functions, meeting, visit and inspection to yards, access to records etc. of the Bangladesh Ship Reprocessing Board. The board has been empowered with vast power to

¹ Hossain, M. Shahadat, Chowdhury, Sayedur R., Jabbar, S. M. Abdul, Saifullah, S.M. and Rahman, M. Aatur, 'Occupational Health Hazards of Ship Scrapping Workers at Chittagong Coastal Zone, Bangladesh', (2008), Chiang Mai J. Sci. 2008; 35(2) : 370-381, Available at: <https://www.google.com/url?sa=t&source=web&rct=j&url=http://www.thaiscience.info/journals/Article/CMJS/10905693.pdf&ved=2ahUKEwiusO3mqHgAhUZfSsKHQCBAEQFjABegQIBBAB&usq=AOvVaw077x4sgePV-joWJvxPWaCE> [Accessed 19 April, 2019].

² John Vidal, 'Modern-day slavery in focus', The Guardian, (London, 2 December, 2017)

³ Sarraf Frank, Maria, Lauridsen Milen, Stuer, Robin, Dyoulgerov, Susan, Bloch, Wingfield, Watkinson, Roy, 'The Ship Breaking and Recycling Industry in Bangladesh and Pakistan', December, 2010, World Bank Group, p. 21

⁴ Act No. 42 of 2006

⁵ Section 4-7

⁶ Sections 8-16

regulate the yards keeping within lawful ambit. In Chapter V⁷, the most claimed demands by different stakeholders have been inserted. It has included the health and safety issues of the workers, compulsory insurance and compensation, environmental protection mechanism. Afterward, Chapter VI⁸ has narrated the regulatory provisions for the Bangladesh Ship Reprocessing Board. It has included provisions regarding annual report, funding, budgets and accounting and auditing of the Board. Chapter VII⁹ assures the punishments for crimes and criminal justice mechanism. It has inserted different range of punishment for the non-compliance of the Act. Lastly, Chapter VIII¹⁰ has come up with one stop service, yearly accountability of years, necessary committee formation, rule-making power etc. miscellaneous provisos.

Unique Features of the Act:

The enunciated Act has incorporated many unique and standard provisions which were not before the Act for the first time in the labour legislation history of Bangladesh for ship recycling workers.

Bangladesh Ship Reprocessing Board (BSRB) - The previously made 2011 Rule provided a Board named Ship Building and Ship Recycling Board which was empowered with so many powers in its jurisdiction. Apparently, the Board was too burden with diversified functions which ultimately created anomalous situation for the Board. It has been replaced by the newly formed Bangladesh Ship Reprocessing Board which has lesser but effective jurisdictional outreach in comparison with the previous one. SBSRB was basically designed without any participant of worker's representative and other stakeholders in the committee but BSRB has assured the representative of every possible stakeholders. The Board shall consist of the following members, namely- (a) a representative of the Ministry who is nominated by the Ministry of Industries, not less than the Additional Secretary, who shall also be its Chairman; (B) a representative of the Ministry of the Ministry of the Ministry of Industry; (C) a representative of the Ministry of Environment and Forest, nominated by the Ministry of the Ministry of Forest; (D) One representative of the Ministry of Labour and Employment, nominated by the ministry of the Ministry of Labour; (E) A representative of the Department of Energy and Mineral Resources, nominated by the Department of the Joint Secretary or Associate; (F) a representative of the Board of Directors of the Board nominated by the National Board of Revenue; (G) One representative of the Ministry of the Ministry of Shipping, a Joint Secretary or a representative of the ministry; (H) Divisional Commissioner, Chittagong; (I) Deputy Inspector General, Chittagong Range, Bangladesh Police; (J) A suitable representative of the force nominated by the Bangladesh Navy; (K) President of the Association of Ship Reproduction Industry; (L) Two representatives of the owner of the recycling ship selected by the government; And (d) the Director General of the Board, who shall also be its member-secretary.

Government representatives, yard owner representatives and worker's representatives can speak for their own stake as well as respect others' interests. The later formed Board has maintained much standard than previous one.

⁷ Sections 17-20

⁸ Sections 21-24

⁹ Sections 25-37

¹⁰ Sections 38-46

Environmental Protection and Ecological Conservation - Ship reprocessing is such an industry which produces tons of hazardous wastes, toxics and chemicals, nuclear wastages, oils etc. causing a heavy pollution of the host countries. In Bangladesh, Shipbreaking activities in Bangladesh is concentrated in Sitakund (Bhatary to Barwalia)¹¹, just north of Chittagong city on the Bay of Bengal which has been seriously affected for years previously but no effective legal framework was there. The Act as well as the 2011 Rule provided that government may issue any guideline or instructions in light of existing laws and regulations regarding the collection, preservation and management of all types of waste produced from ship reprocessing activities. The Government shall make the mandatory Treatment Storage and Disposal Facility (TSDF) within 2021 for the waste management of the ship's reprocessing program.

Workers Safety and Security - Ship reprocessing is one of most vulnerable and hazardous industries in the world. In Bangladesh, a 2007 report said that over the last twenty years more than 400 workers have been killed and 6000 seriously injured according to the Bangladeshi media¹².

A recent reported that at least 165 workers were killed and more than 10,000 were injured in accidents in such yards between 2005 and 2016¹³. Number of injuries and deaths have been increased times in recent years. Many of the incidents were unreported in media or any other sources. As heavy metal industry, ship recycling has the highest magnitude of risk than any other industries. Permanent or temporary disabling workers are frequent in yards.

The enunciated Act has addressed the occupational safety and health issue from sections 18-20. Section 19 has stated that workers shall be trained arranged by the Board. Again, in order to improve the efficiency of workers and employees, the government will establish a training institute (Training Institute) within 2023 which will enable workers to get theoretical as well as vocational training thereby. Previously, there were no arrangement of training but appointed random workers which led to serious incidents of accidents and hazards.

Mandatory Life Insurance for Workers¹⁴ - The Act has adopted mandatory insurance provision provided that the yard owners will make life insurance in the name of all the workers and employees in the yard. As a heavy industry, hazards are frequent in ship breaking. Mandatory life insurance will secure their and their family life if any worker dies or permanently disabled in yards. Life insurance premium is payable by the owners.

Limitations of the Act:

The 2018 Act is undoubtedly a landmark legislation for ship reprocessing workers. But still the Act contains some vital loopholes and limitations therein.

¹¹ Supra 3 p. 17

¹² Young Power in Social Action (YPSA), 'Worker Rights Violation', (2007) <Available at: <https://www.shipbreakingbd.info/Worker%20Rights%20Violation.html> [Accessed 13 May, 2019]

¹³ Staff Correspondent, 'Shipbreaking Yards: No let-up in deaths', The Daily Star, (Dhaka, January 30, 2018)

Available at: < <https://www.google.com/amp/s/www.thedailystar.net/frontpage/shipbreaking-yards-no-let-deaths-1526998%3famp> > [Accessed 16 May, 2019].

¹⁴ Section 20

Absence of proper Rule:

Interestingly, the parent legislation the Bangladesh Ship Reprocessing Act, 2018 has been adopted after about 6 years of the Ship Breaking and Recycling Rules- 2011. So, both Act and Rule face some sort of inconsistencies. The 2011 Rule is still applicable for 2018 Act as per section 44 of the Act.

As per the Rule, there shall be a board named Ship Building and Ship Recycling Board (SBSRB) as the core body to implement the law. But later on, the Act has provided Bangladesh Ship Reprocessing Board (BSRB) which is ultimately core implementing body under the Act. SBSRB is still in existence now. Inconsistency arises here as the Rule is still applicable following the Act, the SBSRB has legal existence simultaneously with BSRB which creates a clear imbalance between two boards.

Again, the SBSRB was not composed of multi-stakeholders' representatives rather was selective body by the government. But the Act provides a multi-stakeholder Board composed of representatives from the ministry of environment, energy, Shipping, Forest etc. along with workers representatives as well as owners' representatives. Both bodies have differences of jurisdiction and powers and functions as well.

Ecological Degradation has not been Fully Addressed - The 2018 Act has inserted provisions addressing environmental protection and ecological conservative. But the provisions are really abortive not covering all the concern field. Pollution of marine life and environment is devastatingly caused by ship recycling industry¹⁵. It affects different species of microorganisms and plants hampering the whole ecosystem of marine life. Crude wastes, rusts, unrefined colours, fumes etc. change the colour and quality of seawater and degrade the ecosystem therein. But the Act has no specific provisions regarding marine pollutions caused because of ship recycling process.

Not only the marine pollutions but also ground pollutions have not been properly addressed in the Act. Recent reports show that asbestos produced from ship breaking has become slow poison for workers. Different chemicals, explosives, rusts, crude oil etc. recklessly fall in the shore and heavily affect the coastline area. But these issues are not clearly stated in the Act. As a result, there is no compensation for workers when they are gradually affected in occupational diseases. No additional compensation is given for these fatal consequences. The conditions of death and serious injuries to get an amount of compensation are really tough for workers to prove in the court as well.

Not Meeting International Standards - The 2018 Act has some severe lack of in terms of international standards. International Labour Organisation (ILO) set different criteria for ship recycling industry¹⁶. Occupational health and safety should be dealt in-depth and separately from one another. A 2001 ILO report shows that quantity of PCB, Polychlorinated biphenyl, PVC (Polyvinyl chloride), PAHs (Polycyclic aromatic hydrocarbons), TBT (Tributyltin), Hydrocarbons, Asbestos, Heavy metal etc. in workplace as well as surrounding atmosphere should have a minimum set limit. But the

¹⁵ Hossain, Dr. Md. M. Maruf, Mahmudul Islam, Mohammad, 'Ship Breaking Activities and its Impact on the Coastal Zone of Chittagong, Bangladesh: Towards Sustainable Management', Young Power in Social Action (YPSA), July 2006, pp. 30-32

¹⁶ Andersen, Aage Bjørn, 'Worker safety in the ship-breaking industries', International Labour Office, Geneva, January 2001, pp. 45-60

Act has no such provision dealing the substances clearly. It is worldwide set rule to provide Personal Protection Equipment (PPE) to the workers in ship breaking industries. But the Act is silent in this regard. Instant sickness of workers may be turned into fatal one for the absence of first aid service in yards or nearby areas. There is no special provision for female workers in the Act. Wage board, social welfare measures, provident funds, child labour etc. are totally untouched in the Act. Very alarmingly, right to form and participate in trade union in ship breaking industries has been ignored in this mother legislation adopted for ship recycling industries.

International Labour Organization (ILO), International Maritime Organization (IMO)¹⁷ and some other regional and national organizations work to set, supervise and monitor the situation in periodic basis. They actively work in Bangladesh also as a member state of the organisations. But unfortunately, the 2018 Act has no provision how to deal such organizations as well as fixing their role, functions and activities in the Act. So the Act actually lacks international standards coordinating with INGOs and NGOs in terms of workers health and safety and environmental hazards.

No access to Labour Court - The Act has provided in section 37 that no court shall take into consideration any suit under this Act except in the written complaint of a Board or any officer empowered by him. So, basically the Board is the all in all regarding prayer of any remedy by the aggrieved workers. The Board is empowered to try all the criminal and industrial issues arise from yards. It has curtailed the special remedy forum formed by the government under the Labour Act 2006.

Conclusion:

Ship reprocessing industry is one of the emerging industries for Bangladesh. Adoption of a separate law for ship breaking sector is really praiseworthy initiative from the government's part. It will certainly assure the rights of the workers as well as protection of ecological situation. But the Act has some major flaws like having no latest Rule for the Act, non-compliance of international standards, trivial importance to environmental issues etc. Has downed the standard of the Act. If the government further amend the required provisions and add some more dynamic and modern provisions, it will again increase the security of the workers there and effectively work for the complete conservation of ecology.

¹⁷ Supra 16 p. 45-46