



REVIEWING *the views*

Important laws for shipping industry

SAMIUL HASHIM

THE most important sector for law of shipping industry is the Marine Insurance Law. International Safety Management (ISM) Code is the dominating part of it. In this article I'll try to outline the basics of ISM Code in three parts.

The International Safety Management Code started acting as law on 1st July of 1998 as this was first incorporated as part of the International Convention for the Safety of Life at Sea (SOLAS Convention) 1974. It was incorporated in SOLAS Convention 1974 as Chapter IX. This Code has impact on various sectors of the shipping law, but mainly it is marine insurance law whereon it has the most substantial impact. In this area it provides two sets of principles, which are as follows:

- It established a set of standards for the operation of ships and for their safe management.
- It also ensures that a designated person (DP) is appointed by the company, as it is stated in clause 4 of the ISM Code.

Clause 1.2.2 states:

1. provide for safe practices in ship operation and a safe working environment;
2. establish safeguards against all identified risks; and
3. continuously improve safety management skills of personnel ashore and aboard ships, including preparing for emergencies related both to safety and environmental protection."

However, all the requirements of the Code are written in the form of general principles and guidelines.

Ship management

The ISM Code affects the ship-owner in two



different ways. One of them relates to the safety management system (SMS) as this requires the ship-owner to make sure that they follow a minimum standard for operating the ship and for its management. Moreover, adoption of the Code on the safe management and its operation must be reviewed by the ship-owners themselves. This is required by clause 1.4 of the ISM Code which deals with the functional requirements for a safety management system.

There are two kinds of policy available under the marine insurance. One of them is 'time policy' and other one is 'voyage policy'. Under

the voyage policy, the insurer only needs to show that the ship was unseaworthy at the commencement of the voyage. On the other hand in time policy the insurer has to show three different things.

SMC (Safe Management Certificate) and the DOC (Document of Compliance)

However it is just not enough to have a safety management system or SMS, it also has to be certified. This can be done by the flag state or any authority with the power to certify this kind of management system. This certification authority can be termed as a society to consider

and reconsider the present safety management system and develop it where possible. When the audit is ok or successful then the ship-owner company will be issued a certificate which is known as DOC or Document of Compliance. This certificate remains valid for 5 years unless any other audit or inspection reveals some kind of substantial nonconformity. So this is a very chronological approach or system as the ship-owner company will be issued a 'Safety Management Certificate (SMC)' for successful and satisfactory completion of safety management audit.

The designated person (DP)

The 'designated person' means anyone who can establish a link between the top management ashore and the company.

It is very necessary to appoint a person as a designated person under Article 4 of the ISM Code to ensure smooth operation of the ship and for its safety management, as Article 4 of the ISM Code describes:

"The responsibility and authority of the designated person or persons should include monitoring the safety and pollution-prevention aspects of the operation of each ship and ensuring that adequate resources and shore-based support are applied, as required"

Concluding remarks

This is an area of law which needs to be more explored and revisited by the academics and practitioners of this country. As the shipping industry is booming in our country, this can be the stepping stone to a more modern Legal System.

The writer is a Barrister at Law (Lincoln's Inn), LL.M in International Commercial Law (Northumbria University, UK) and a Trainee at A Hossain and Associates.

LAW *watch*

Justice to die for

Saudi Arabia needs to review more than just individual death sentences; its justice system has no penal code

ABDULLAH al-Shammari was scheduled to be executed shortly after this month's Eid al-Adha, the Muslim Holiday of the Sacrifice, but King Abdullah of Saudi Arabia decided to grant him a reprieve and study his case. This is welcome, but King Abdullah should not only halt al-Shammari's execution. He should abolish the death penalty in his kingdom.

Many nations have abolished capital punishment, recognising its inherent cruelty and finality. Some nations that still have such sentences have strict legal rules and precedents for their use. But in Saudi Arabia, trials are often unfair, and sentences are based on judges' personal interpretations of religious teachings rather than on law.

The nation has no penal code, no formal definitions of what constitutes a crime, and no tradition of following established legal precedent. It is also one of the very few countries that continue to execute juveniles.

On the issue of equal justice and legal standards, al-Shammari's conviction is a case in point. The courts found that he killed another man in a fight in Ha'il in 1983, hitting the man on his head with a metal object. A decade later, he was found guilty of "quasi-intentional murder" and ordered to pay blood money. He paid, was freed, married, and fathered children. However, a review court objected and a new set of judges then ruled the murder "intentional," confirming head injuries as the cause, and condemned him to death.

In another case in Saudi Arabia the religious police beat and kicked a man until he died. A coroner found the cause of death to be a blow to the head. But in late December 2007, a court found the policemen not guilty saying that under the Hanbali tradition of Islamic law a person could not suffer a fatal injury to the head.

In a third case based on interpretations of religious mandates, judges in Qurayyat convicted Fawza Fahih of witchcraft in April 2006 based on evidence such as substances found in her jars and the claims of a man who said he became impotent from her spell. The judges, who sentenced her to death, reached their conclusion not on Quranic verses or even examples of the Prophet Muhammad, but quoted unspecified

LAW *campaign*

SAFETY DURING CONSTRUCTION

A reality check on National Building Code

BIKASH KUMAR BASAK

AT present, construction sites in Bangladesh are booming at a great scale due to incessant demand of the city dwellers. Thousands of workers are involved in this construction sector and they are working in different construction sites throughout the country. The Bangladesh National Building Code, 2006 is, to a large extent, applicable to construction sites and more specifically to the safety of the building. But even in the Code there are few provisions which deal with the safety of the workmen during construction.

In Bangladesh, the general practice is that the developer company employs a contractor to carry out the construction work and the contractor employs workers to complete the construction of the building.

ping electrocution or safe use of trenches etc. However, most of the provisions of the Bangladesh Labour Act, 2006 relating to worker health and safety issues (chapter 5, 6 and 7) have been copied from the Factories Act, 1965 and are not relevant to the key issues of safety on construction sites.

Part-7, Chapter -1 of the Code clearly sets out the constructional responsibilities according to which the relevant authority of a particular construction site shall adopt some precautionary measures to ensure the safety of the workmen. According to section 1.2.1 of chapter 1 of part 7, "In a construction or demolition work, the terms of contract between the owner and the contractor and between a consultant and the owner shall be clearly defined and put in writing. These however will not

introduction of the Bangladesh Labour Act, 2006, these Acts have been repealed). So, the point is that the employer can never escape himself from being responsible in case of any violation of the safety provisions.

Section 1.4.1 of chapter-1, part-7 of the Code, states the general duties of the employer to the public as well as workers. According to this section, "All equipments and safeguards required for the construction work such as temporary stair, ladder, ramp, scaffold, hoist, run way, barricade, chute, lift etc shall be substantially constructed and erected so as not to create any unsafe situation for the workmen using them or the workmen and general public passing under, on or near them". So, the safety issue of the construction workers during construction is a precondition for the site authority. The site authority or the relevant employer of the workers must provide the construction workers with the safety tools prior to the introduction of the construction or demolition or even in case of handling of materials.

Part-7, Chapter-3 of the Code has clarified the issue of safety of workmen during construction and with relation to this, set out the details about the different safety tools (PPE) of specified standard like goggles, gloves, safety boots, apron and hand shield having filter glass of accepted standard and suitable to the eyes of a particular worker. In relation with the health hazards of the workers during construction, this chapter describes the nature of the different health hazards that normally occur in the site during construction and at the same time specifies the specific measures to be taken to prevent such health hazards. According to this chapter, exhaust ventilation, use of protective devices, medical check up etc. are the measures to be taken by the particular employer to ensure a healthy workplace for the workers.

A recent survey report of the Bangladesh Worker Safety Programme (BWSP) reveals that construction workers make up 50% of workplace victims. The survey also discloses that among 222 workplace deaths, 103 were in the construction sector and the most common causes of all deaths were 'electrocution' (54) and 'fall from height' (38) (The Daily Star, November 20, 2008). With rela-

tion to the safety measures against these two most common causes of workplace fatality, the Code in its section 3.1.3 of chapter 3 of Part 7 has specified that warning signs shall be displayed where necessary to indicate hazardous areas like hi-voltage zone. In addition, according to section 3.9.2 of chapter 3 of part 7, "all cables and signal cords are required to be guarded wherever such cables and cords pass through or cross working spaces."

Again, to prevent workers falling from heights, the Code in section 3.7.1 to 3.7.6 of chapter 3 of part 7 sets out the detailed requirements on the formation and use of scaffolding. According to section 3.9.2 of the same chapter, "every temporary floor openings shall either have railing of at least 900 mm height or shall be constantly attended. Every floor hole shall be guarded by either a railing with toe board or a hinged cover. Alternatively, the hole may be constantly attended or protected by a removable railing. Every stairway floor opening shall be guarded by railing at least 900 mm high on the exposed sides except at entrance to stairway. Every ladder way floor opening or platform shall be guarded by a guard railing with toe board except at entrance to opening. Every open sided floor or platform 1.2 meters or more above adjacent ground level shall be guarded by a railing on all open sides except where there is entrance to ramp, stairway or fixed ladder.... the above precautions shall also be taken near the open edges of floors and roofs".

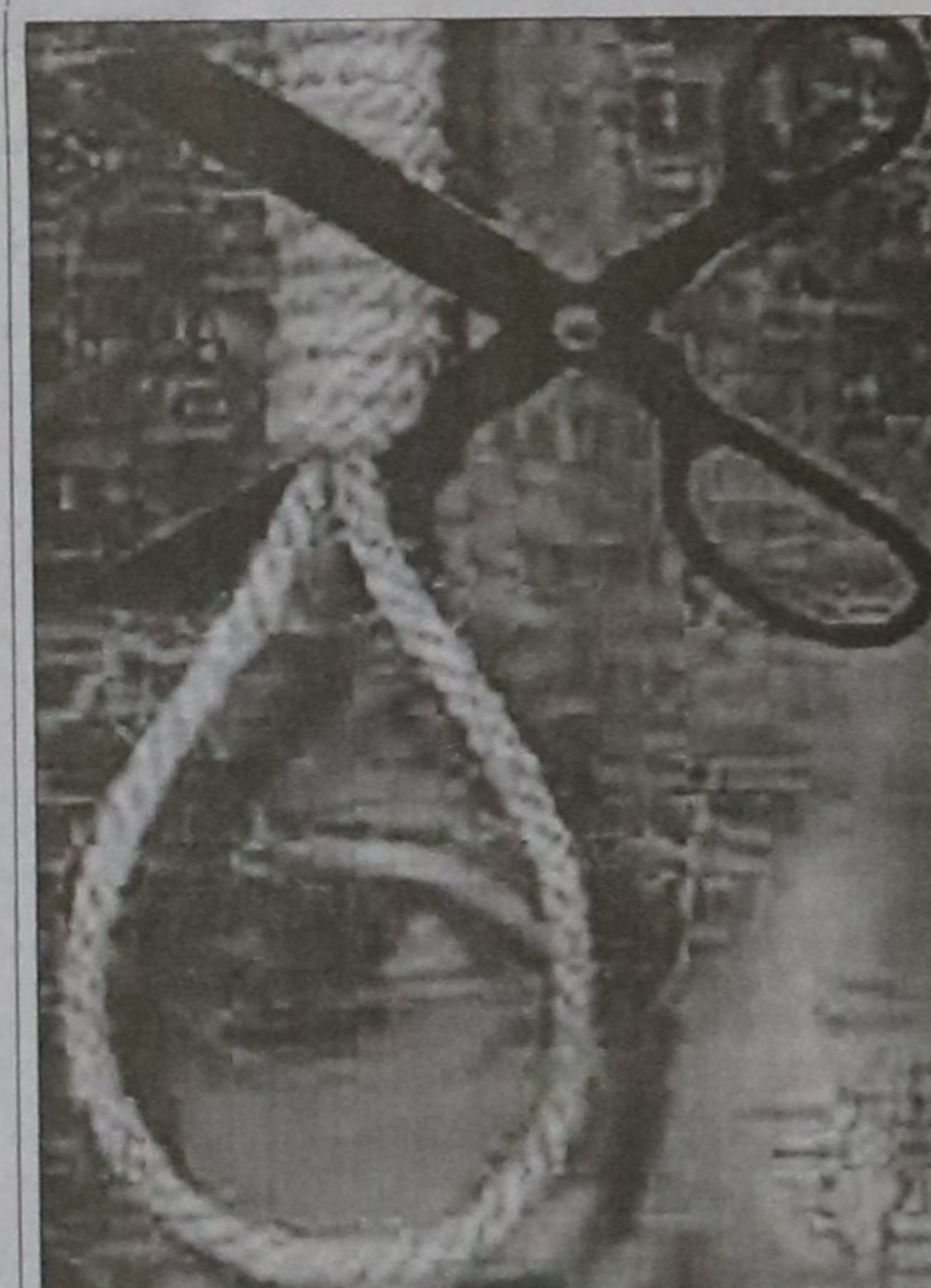
So, the above discussion clearly proves that the Bangladesh National Building Code, 2006 is legally more action-oriented regarding the safety of the workmen during construction. But it does not mean that this Code will get precedence over any other rules, regulations, Act/Ordinance etc. in ensuring the better safety of the workers during construction. As per the second paragraph of section 1.1.2 of chapter 1 of part 7, "Nothing herein contained shall be construed to nullify any rules, regulations or statutes governing the protection of the public or workers from any hazard involved in manufacturing, mining and other processes and operations which generate toxic

gases, dust or other elements dangerous to the respiratory system, eye sight or health."

Now, the major challenge is the proper implementation of the Code as section 2.1 of chapter 2 of part 1 duly states that, "The Government shall establish a new or designate an existing agency responsible for the enforcement of this Code with a given area of jurisdiction. For the purpose of administering and enforcing the provisions of the Code, the enforcing agency shall have the authority of the Government and shall herein be referred to as the Authority." With relation to the provision of setting up a Code Enforcement Authority, the Bangladesh Legal Aid and Services Trust (BLAST) and the Bangladesh Occupational Safety, Health and Environment Foundation (OSHE) jointly filed a writ petition in the High Court Division on January 27, 2008 to redress the failure of the government to establish an agency to enforce the Code in particular the provisions relating to worker safety issues. It is argued in the petition that most of the workplace deaths of the construction worker would be prevented if the obligations under the Code are enforced, more specifically those relating to stopping fall from height and electrocution.

At the initial hearing on the petition on February 7, 2008, the Honourable Court passed a rule asking the respondents to show cause as to why the government should not establish a Code Enforcement Agency as duly required by the Bangladesh National Building Code, 2006 and also why it should not be directed to secure compliance with the safety and security provisions of the Bangladesh National Building Code, 2006 at every level of construction and demolition of any building. The Court also required the government to produce a report on what steps it has so far taken to secure compliance with the Code in Dhaka and Chittagong. The Court allowed the respondents four weeks to respond but it is now over 9 months since this rule was passed and the respondents are yet to come up with any answer.

The writer is Programme Officer, Bangladesh OSHE Foundation.



actions of unspecified companions of the Prophet.

Saudi trials often violate the most fundamental standards of fairness. Two young men, Muhammad Kuhail, a Canadian, and Muhanna Sa'd, a Jordanian, were sentenced to death in Jeddah for "intentionally killing" another youth in a schoolyard brawl in 2007. A blow to the stomach had caused internal bleeding, leading to death from a pre-existing heart condition.

The trial judges barred the lawyer for one of the men from attending court sessions and from presenting several defence witnesses and cross-examining prosecution witnesses. But a review court still affirmed the verdict.

The review court judges conceded that the youth who died and his companions started the fight and that witnesses contradicted one another. Nevertheless, the judges vaguely invoked the writings of a 13th-century Islamic scholar to sentence the men to death for "intentional killing," saying that "ignorance of an illness" is no excuse.

Sultan Kuhail, Muhammad's Canadian brother, who was 16 years old at the time of the fight, now faces a possible death penalty in the case because the review court ordered him retried in an adult court after a juvenile court had sentenced him to one year in prison and 200 lashes for his role in the brawl.

Saudi Arabia is among only five countries that retain the death penalty for juveniles in contravention of the Convention of the Rights of the Child, to which the kingdom is a party.

In July 2007, a 16-year old was executed for a crime he allegedly committed when he was 13. In June 2007, a court sentenced 17-year old Sri Lankan domestic worker to death after a four-month old infant in her care choked to death. Saudi Arabia's Shura Council, an appointed parliament, recently passed a law to raise the age of majority from puberty to 18. But even if it is ratified, the consequences for the criminal justice system remain unclear.

Saudi Arabia has executed at least 92 persons so far in 2008, most by public beheadings without warning to them or their families. Two recent beheadings were for dealing amphetamines, which is not among the severe crimes for which international law still permits the death penalty.

The government would do well to take a hard look at whether the death penalty is just and whether it actually reduces crime or serves justice for victims of crime.

Source: Human Rights Watch.



Moreover, in some cases, the house owner directly employs construction workers for the purpose of construction, repairing or painting etc. A sad facet of this story is that most of the construction workers work on daily basis for which, according to eminent lawyers and practitioners, these workers are deprived of some benefits available under the Bangladesh Labour Act, 2006. Again, there are no provisions in the Bangladesh Labour Act, for example, requiring employers to stop fall from height or stop-

absolve the owner from any of his responsibilities under the various provisions of this Code and other applicable regulations and bye-laws. The terms of contract between the owner and the contractor will determine the responsibilities and liabilities of either party in the concerned matters, within the provisions of the relevant Acts and Codes (e.g.) the Employers' Liability Act, 1938, the Factories Act 1965, the Fatal Accident Act, 1955 and Workmen's Compensation Act 1923". (After the