



# Sagar Sandesh

Guiding Spirit to Shipping Industry

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## “Unfold Story –MV EVER GIVEN, SUEZ CANAL” ( Part 3 )

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Recently, **MV Ever Given** (hereinafter “the vessel”), a 200,000 MT container ship ran aground and was stuck in the southern part of the Suez Canal. As a result, the vessel blocked Suez Canal for number of days; in fact, it means that the grounded vessel has blocked 10-12% of the global trade.

The **third and the last article** in this series, I will discuss the incident, role of various stakeholders and their effects on seafarers that have already been suffering due to COVID-19 until the time of the accident along with the potential civil and criminal liabilities of the seafarers that were on-board the vessel. In the first article, I had discussed the legal issues arising out of the grounding of the vessel, and one of the highlighted issues was possibility of a large claim, possibly an inflated claim, from SCA. I had also highlighted in the first article that the grounding of this vessel was not an isolated incident in Suez Canal. There have been further 75 reported incidents of different magnitude in Suez Canal between 2010 and 2019. In the second article, I had discussed the potential culpability of Suez Canal Authority.

I had predicted in the first article that the Master and crew, already affected by COVID-19 rules would be detained along with the vessel for purpose of putting up a security for inflated claims from the Suez Canal Authority. I have read news and it seems my prediction was correct. **It is important to note that seafarers on board the Japanese vessel are Indian seafarers. Foremost, irrespective of any civil and criminal liability imputed on the seafarers, these seafarers need support of all stakeholders.**

It is a fact that a few seafarers with particular nationalities are more vulnerable as the envelope can be pushed in relation to them by any Authority from any part

of the world because the probability of consequences for such organisations for acting against such seafarers is virtually zero. Can seafarers from Western Europe or Northern America or North Asia be so easily used as a pawn in geo-political battles affecting maritime trade or in the aftermath of any maritime incidents such as this incident? This is the area of foreign policy of any country to ensure that seafarers that provide valuable foreign exchange to a developing country are not vulnerable to coercive tactics in other countries. How a nation's foreign policy along with its armed forces can install a **‘fear of God’** in other authorities & other countries for mistreating seafarers from their country is beyond the scope of the article and beyond the expertise of the author. It is important to highlight that any institution is valuable only when it comes to assistance of the distressed seafarers/people in need. The images of distressed seafarers flashing around the world regularly are also not good for an image of any country.

I have personally called on many casualties as a maritime lawyer and **I can vouch that seafarers due to lack of support from their professional bodies in their own country or support from even their own ship management companies at their time are so vulnerable, these experiences are heartrending as an ex-seafarer, especially when observing the mental state of such seafarers put under huge stress.** I realised a few countries' seafarers have to bear excessive burden of apathy from stakeholders in their country and these seafarers unfortunately have no choice as they need these jobs to earn their bread and butter.

Unfortunately, lip service in numerous conferences or idealistic talks by stewards of maritime industry will not cut the ice

as far as actual assistance required by seafarers in the aftermath of any maritime incident or affected by piracy is concerned. Any seafarer whether it is a Master or just an ordinary seaman needs to be protected by the whole eco-system. Anything less than is complete waste of time for anyone attending those conferences by paying a huge sum of conference fees. In addition, when any seafarer is suffering, the time for niceties and extreme focus on diplomacy should be overridden by a need to assist the seafarer by utilising the unified voice of stakeholders such as foreign policy experts, foreign ministry, shipping ministry, professional bodies, maritime unions, ship management companies that recruit seafarers in that country, possible help from international bodies (mostly located in developed countries) and so forth. All stakeholders should keep in mind that their role is that of protecting the interests of seafarers, and these seafarers are innocent until proven guilty in any justice system. Any stakeholder(s) adopting holier than thou attitude in order to show case their investigative skills from desktop is counterproductive for the welfare of seafarers from their country and accordingly such stewards of maritime industry must resist these temptations. Like Arjun's eyes, the only focus of such stewards should and must remain on the welfare of seafarers affected by such maritime accidents.

Any criminal liability of the seafarers can result these days from ‘error in navigation’ and ‘management of the vessel’. In the first and second article of the series, I had discussed relevant legal issues. **I am pretty sure the prosecutors in Egypt will not lose a chance to prosecute the seafarers, if that could mean increasing their bargaining power with the Japanese owners and other insurance companies to negotiate a better deal for**



Dr. ( Capt. ) Vivek Jain

**compensation. To be fair to Egyptian prosecutors, it is the same process in virtually all the countries.** Seafarers would just be pawn in such tactical games and as mentioned above, without any genuine welfare policies and protection they would be vulnerable to coercive tactics. Seafarers should keep in mind that their own well-wishers can do the deal(s) behind their backs as huge sum of money are involved. Additionally, there could be issue of local politics in any nation, where the incident has happened, and could be a decisive factor in the criminal and civil investigations.

After any criminal investigation, there are fines and penalties on seafarers. The investigation will move up the chain to include Designated Persons, Ship Management companies and their bosses, technical superintendents, role of operators & owners and even insurance companies and so forth. Any attempt to hide or obfuscate may go against the stakeholders that are investigated. The fines and penalties increases as the investigation moves up the food chain. I had already discussed the civil liability and penalties in my earlier articles in the series, where master and crew along the Owners and ship management companies may be held liable for this incident.