



## RECENT DEVELOPMENTS OF ADMIRALTY LAW IN INDIA

By *Jennifer Maria Dsilva*  
From *School of Law, Christ (Deemed to be University), Bengaluru*

### Abstract:

In India admiralty law has been undeveloped for years, following the legislations enacted during British rule, the current developments in technology and globalisation, exposing India to more sea trade caused law makers to enact a recent legislation with regard to admiralty issues. While analysing the previous legislations, the drawbacks and the provisions which lacked clarity, the grounds which needed to be addressed are seen answered by this legislation. Though some of the major problem are given direction to there are still some provisions in the new legislation which give scope to judicial interpretation and some questions regarding the same do arise. Here we will understand the previous and current legislation while analysing some of the possible questions and problems that could arise with regard to the same.

### Keywords:

Admiralty, Legislations, Maritime lien, Maritime claim

### Introduction:

It is seen that in today's world that trade and commerce has developed, there are different ways of trade from air route or even sea route. For a long time the seas have been not just a way of travel but also a way of business for many. It was noticed that

through time several sea routes have become an attraction to traders as their demand and business have grown in places outside their place of domicile. Though there was an increase of business and profit as a result of this, there was also a risk that had to be taken. The possible problems that could occur on international waters and civil wrongs that could be committed on international waters were of a concern to international businessmen. And hence laws concerning sea trade were to be enacted in order to protect the traders and their goods. It is seen that different countries there were different laws regarding the sea and so there were certain international conventions that are guiding principles which are used by domestic law making bodies in making legislation with regard to the same.

It was then admiralty law or maritime law which is the law that is used to govern matters of vessels on the high seas. This law finds its way to any country which has a coastline, seeing that a lot of countries use sea trade as a way of economic gain and development for the country. Eventually with the development of admiralty law it was considered specifically as to what type of matters a particular could consider with relation to wrongs committed on the high seas. Though there is separate jurisdiction for civil and criminal matters what types of wrongs would be considered and till what extent can a particular court derive its jurisdiction. It was seen in India that these questions did arise as well, though there was no proper legislation addressing such issues for years the courts had used its preceding judgements, legislations which were enacted before independence and international conventions to guide their decisions. Yet



now there is a particular legislation with regard to admiralty law which clears most of the problems and questions which had previously risen. Also there are certain new guidelines as to how certain matters are to be taken care of and also the jurisdiction of the high courts with regard to admiralty matters.

#### **Understanding Admiralty law:**

Before looking into the history and development of admiralty law it is important to understand the reason as to why admiralty law has to have a different interpretation. To begin the admiralty law is a connection between domestic law and international law, mainly seen as the way domestic laws are binding on international vessels. The treatment of international vessels and the treatment of such goods on international waters are very important for both the businessmen and the country in which the said goods are going to. Though the domestic countries can make their own laws and the vessels entering the said country is binding of such, many times the internationally accepted principles that shape these domestic laws. The international law concerned here is private international law, the relationship between international private parties. It is seen that a lot of things are taken into consideration when enacting legislation with regard to maritime matters, mainly that of jurisdictions. Jurisdiction is mainly considered, sometimes difficult to determine because there are no proper territorial borders on the sea and so most of the time it is considered that the territory is within certain nautical into the ocean floor or when the said vessel is docked in a particular port. With regard to India, the development of its legislations are important

in understanding admiralty jurisdictions and the reasons for such changes made.

#### **Historical Development of Admiralty law:**

In India, a country which has a huge coastline gives opportunity for traders and businessmen to export and import good through such international water bodies. It is also observed that through such business practices that certain disputes do arise regarding the same. In the due course of business it is seen that events such as breach of contract, negligence and so on, do occur. And when such incidents arise on international waters it is considered that in order to solve such matters countries can take jurisdiction over the same. Also in cases where the particular vessel has been docked in the territory where the cause of action arises, and the owner of the vessel has no place of domicile in the country or if the vessel is not registered under the domestic legislation.

Admiralty law is the domestic law which governs foreign vessels in domestic territory and private international law, which governs the relationship between private international parties. Admiralty law gives the domestic counties the right to decide certain disputes that has taken place within a particular area from the coastline of the country. It governs aspects of commercial aspects, navigation and so on. It is seen that there are some international guidelines with regard to admiralty law to govern the counties which have coastlines. Though these conventions and not binding they are guiding principles for domestic states to make domestic laws while taking into consideration international standards. Such matter are to be looked into and dealt with



properly, seeing its relationship between domestic and international law.

The history of admiralty law can be traced to the Rhodes Island where the Rhodes sea law was seen, this was considered to be the first proper law with regard to sea matters which was found in 900 BC. It was this law which set out the basic treatment of traders and ship on the high seas, back then laws like goods must be thrown overboard as a safety measures and protection of another's property, compensation and so on. It was then seen in the Mediterranean countries that such law were accepted as a result of the growth of sea trade<sup>1</sup>. With the development of international sea routes, countries were forced to change their laws and enact certain legislations with regard to sea laws as a result of increase in trade and commerce. These laws were hence to protect the trader and the vessel and to ensure proper treatment of the same.

#### **Historical development of Admiralty law in India:**

The Indian admiralty law was influenced by England finding its history, first seen by Edward III that looked into laws regarding the sea, mainly with regard to piracy and civil matters were settled. It was through time that the growth of commercial activities on the sea and the expansion of the British Empire acquiring several coastland regions, the need for proper legislations was seen. Though there were important legislations

enacted in England it was only after the year 1862 that such legislations were considered when dealing with maritime matters in India, these were the Admiralty Court Act, 1840 and Admiralty Court Act, 1861. Yet it was seen that India needed a separate legislation when dealing its own admiralty matters and hence the Colonial Courts of Admiralty Act, 1890 and the Colonial Courts of Admiralty Act (India), 1891 was enacted by the British government in India to regulate the maritime affairs of the country.<sup>2</sup>

It was under this legislation that gave the admiralty jurisdiction to three of the courts in India. It was the Bombay, Madras and Calcutta high courts that had been given unlimited civil jurisdiction under Section 2 of this legislation. Also the previous legislation of 1860 was considered when interpreting the court's jurisdiction i.e. Section 35 which gives the court the jurisdiction to try matters by proceeding in rem or in personam. Also under the Letter Patent Act, which provided certain provisions with regard to admiralty jurisdiction of the three High Courts i.e. Bombay, Calcutta and Madras. It was seen under this legislation that there was no proper guidelines with regard to several matters in maritime law, it was through time and courts interpretation of maritime matters that there was clarity with regard to certain matters in maritime law. It was seen by the courts that several international conventions should be taken into consideration when dealing with maritime matters.

<sup>1</sup>Historical Development of Maritime Law, Written by HAILEGABRIEL GEDECHO, published on 20 July 2013  
<https://www.abyssinialaw.com/study-online/item/1072-historical-development-of-maritime-law>

<sup>2</sup>Historical survey of maritime laws in India and Iraq  
[http://shodhganga.inflibnet.ac.in/bitstream/10603/73384/14/14\\_chapter%206.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/73384/14/14_chapter%206.pdf)



Before looking at the international statutes it is seen under several India statutes and several judgments, how Indian maritime law is seen and interpreted. The previous legislations are still in force after the enactment of the constitution according to Article 372<sup>3</sup>, which says that British statutes would still be in force even after the enactment of the Constitution. It was also seen that there were certain terms such as vessel that was not defined anywhere and hence it was later defined under the Merchant shipping Act, 1958. Also with the division of India into different states after independence, several other high courts which had a coastline had now have jurisdiction over admiralty matters according to the State Recognition Act. It was also seen that criminal jurisdiction on the high seas was considered to be 20 nautical into the ocean from the coastline under the Indian Penal Code (IPC), 1860.<sup>4</sup> There were several cases where the Indian courts have interpreted the nature and scope of admiralty jurisdiction in India. It is seen under the case of *Interaccess Marine Bunkering Ltd v. K.M. Alluddin, v. Ramasubramanian J*<sup>5</sup> of the Madras High Court that international principles are to be considered when dealing with maritime matters. It was seen in *Liverpool & London S.P. & I Asson. v M.V. Sea Success I & Anr*<sup>6</sup> that the Geneva Convention on Arrest of Ships, 1999 was applicable to India. This is one such case where international

conventions were considered as guiding principles to Indian admiralty law. Some of the other conventions were the United Nations 1982, Convention on High Seas, 1958 and so on. Then there was a landmark judgement *Elisabeth v Harwan Investment & Trading Pvt Ltd*<sup>7</sup> which talked about the admiralty jurisdiction. It was found in this case that the High court did not have a separate admiralty jurisdiction but in ordinary jurisdiction it included admiralty jurisdiction and so the jurisdiction could also be seen under the Indian Constitution under Article 225. The above mentioned cases are some of the few cases which guided the courts in making decisions with regard to admiralty law and its jurisdiction.

It was only in the year 1994, the 151th Law Commission Report, it was recommended that all High Courts be given admiralty jurisdiction as an extension of principle of jurisdiction from the civil courts. It was seen that the old laws with regard to maritime matters were outdated and there were some matters which required clarity. And so it was the Ministry of Shipping that drafted a bill based on the recommendations of the law commission report and had included matters which had seemed relevant to maritime matters. This also included clarifying the proper jurisdictions of the Indian courts on maritime matters.

#### **Recent developments in admiralty law:**

The current legislation which was enacted in 2017, 24 years after the Law Commission Report has a huge scope is defining the jurisdiction and rights of the courts in

<sup>3</sup> The Indian Constitution, 1950, Article 372

<sup>4</sup> Indian Penal Code, 1860, §4

<sup>5</sup> *Interaccess Marine Bunkering Ltd v. K.M. Alluddin, V. Ramasubramanian J*, AIR 1953 SC 98

<sup>6</sup> *Liverpool & London S.P. & I Asson. v M.V. Sea Success I & Anr*, 20 November, 2003, Appeal (Civil) 5665

of 2002

<sup>7</sup> *M.V. Elisabeth And Orsv Harwan Investment And Trading* 1993 AIR 1014



maritime matters. The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017<sup>8</sup> (henceforth referred to as the Act) was enacted in order to bring clarity to maritime matters and also to bring maritime matters under a single legislation. The legislations looks into several matters and also gives proper powers to several high courts, proper procedure for appeals, arrest of ships and so on. It is seen that under Section 17 of the Act that this legislation repeals all the previous legislations including the Admiralty Court Act, 1840, the Admiralty Court Act, 1861, the Colonial Courts Admiralty Act, 1890, the Colonial Courts Admiralty (India) Act, 1891 and several provisions of the Letters Patent Act, 1865. It is seen here that with the repealing of these legislations that the Act would now be covering matters with regard to all the previous legislations. It is also seen here that the term vessel is defined under this legislation giving proper scope and meaning to the types of ships that can come under this particular Act.

Firstly the matter of jurisdiction is addressed under this legislation, it states that admiralty jurisdiction can only be exercised by the High Courts and the same can be exercised by the any High court by notification of the Central Government. This includes the territorial jurisdictions of the high courts, any vessel that has docked within its territory and so on. It is seen that there are no particular High Courts that deal with such matters unlike the previous legislations, the High Courts that are notified by the

central government to deal with the admiralty matters. The reasons for only the High Courts are given such matter is because such matters are considered to resolved only by experts and so the same is not given to the district court. The procedure of the Civil Procedure Code, 1908 shall be followed when dealing with matters which are in so far inconsistent or contrary to the provisions in this legislation according to section 12 , also there would be certain experts on these matters who would be appointed by the central government to deal with such matters. The appeal which is specifically given under this legislation is from a single bench in the high court shall be referred to a divisional bench of the high court. Also on application to the Supreme Court under Section 15 of the Act by either of the party, a matter can be transferred from one High Court to another for the said matter to be heard.

The legislation also gives in detail the matters which would come under admiralty jurisdiction and the courts. It is seen when it comes to the arrest of a vessel, it is now possible under this Act regardless of the owner's place of residence and domicile. It is seen that maritime matters regarding the dispute of ownership of a vessel, mortgage of a vessel, damages arising with regard to the vessel, the cargo it carries, loss with regard to personal life, claims made either against the vessel or the owner with relation to insurance of either the goods or the crew, damages the vessel could cause or has caused to the environment and so on. These are some of the main maritime matters that come under the jurisdiction of the high court. Also any other matter which is found like outstanding accounts with regard to a

<sup>8</sup>Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017  
<http://bombayhighcourt.nic.in/libweb/actc/yearwise/2017/2017.22.pdf>



particular case, the same can be settled by the High Court. It was seen that before this legislation that any tort or civil wrong would come under admiralty matters and now the same is specifically given under Section 4 of the Act, it is also seen that some of these matters provided under Section 4 and several of its subsections, these proceedings are taken in personam while a few others in rem.

When it comes to the matter of arresting of ships it was seen that India had followed the principles of the Geneva Convention on Arrest of Ships<sup>9</sup> for years. According to this ships could have only been arrested in cases of any maritime claim. It is seen under Section 5 of this Act, it lays down the grounds for arrest of vessels within its territory as a security to maritime claims. The vessels that are under constructions and which are inland vessels could not be arrested unless there is a notification regarding the same by the central government. It is hence seen that the grounds for arrest of a particular vessel has changed giving both under what claims can the vessel be arrested and even the associate ships and vessels can be arrested as well. Also this legislation does not include warships and any vessel that is used for non-commercial purposes.

There are proceedings in rem (seen under Section 5 of the Act) and in personam (seen under section 6 of the Act) that can be initiated under the Act, it is seen that the proceedings in rem are mainly against a

particular vessel and the Act provides for several conditions with regard to the arrest of the same. The in personam proceedings that are seen have a lot more conditions that the proceedings in rem, mainly because when concerning people and at time foreign citizens, it is dependent on them as to which court to approach for justice. It is seen that only two conditions where the Indian High Courts can consider such cases, where the cause of action arose wholly or partly in India and if the person carries on business or works for gain in India. It is observed that only if the claimant has brought the said claim before another court of another country, the same would not be entertained, hence according to the provisions of the Act, any claim which is brought by the plaintiff against the defendant can be entertained before the Indian Courts on certain terms.

It is observed that according to this new legislation that maritime lien and maritime claims would be looked into based on certain priorities. The maritime lien is said to be the procession or arrest of a vessel and possible sale of the same in case of unpaid debts. It is seen that these liens continue even after as change in ownership and after a certain time the same can be seized and arrested (seen under Section 9 of the Act). Also it is seen that if any maritime lien arises out of leakage of hazardous substance into waters and so on, the vessels cannot be arrest as a result for claim regarding the same. These are the major changes that are seen in the Act and also the proper guideline with regard to maritime claims, the admiralty jurisdiction and the proper claims that can be addressed under this legislation. It is also seen that several questions with regard to what all can constituted a civil

<sup>9</sup>Geneava Convention on Arrest of Ships, held by the United Nations/International Maritime Organization, 1999  
[http://unctad.org/en/PublicationsLibrary/aconf188d6\\_en.pdf](http://unctad.org/en/PublicationsLibrary/aconf188d6_en.pdf)



wrong (in the previous legislations), the different types of maritime claims and the power of the High Courts with regard to different matters and their priorities on different matters that approach the courts.

**Analysis of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017:**

It was seen that after a long time India has finally made a legislation with regard to admiralty law and answered several questions that the courts were burdened with for years. We that see that according to this detailed legislation that several things from the different types of maritime claims to the arrest of vessels are explained. This legislation almost gives the proper guidelines as to how the court has to act in different circumstances. Though we can see a drastic improvement in admiralty laws through this Act there are still some questions that do arise and might require the court's interpretation. Above the main features of the Act is given and with the explanation of certain sections, it is seen that a great variety of claims and maritime matters are not just dealt with but also officially recognised under this legislation.

To begin its best to look at the jurisdiction, though the problem of jurisdiction is now clear with regard to the previous legislation, there is still some questions with regard to the jurisdiction of the Supreme Court. Though the High Courts of particular states are given the jurisdiction by notification of the central government, the appeal of such matters do not lie in the supreme court but from a single division bench in the High Court the matters goes to appeal to a divisional bench in the High Court. Here the transfer of cases is seen to lie with the

Supreme Court, but from one High Court to another on the condition that the same matter, both the parties were given a chance of being heard. It is seen that the Supreme Court does not act as a court of appeal under this legislation, but instead the Supreme Court directs the matters from one court to another. Though the Supreme Court does not look into these matters directly, it is clearly seen that they too have an important part when determining maritime matters and so the desertion as to which court should deal with a particular matter, in case of transfer lies with them. Also stating that there need to be several experts in the respective High Court when dealing with such matters in order to provide proper judgements regarding the same. As it was previously discussed that maritime matters are not to be dealt with by just anyone as it deals with more than just domestic law. Hence it is seen that these sections do provide for such thinkers when it comes to dealing with admiralty matters, and the possible reasons for the Supreme Court to ensure the matters are resolved by the High Court's itself.

The next point would be in relation to the arrest of vessels by the High Courts, it was seen that the Geneva Convention on Arrest of Ships, 1999 has shaped most of the grounds of ships. It is seen that mainly for reasons of maritime claim and maritime lien that the arrest is permitted with certain exceptions. Yet the main question here would arise with regard to Section 5(2) of this Act. Here the provisions states that even the other vessels can also be arrested in certain cases, mainly with regard to maritime claim. It is understood here that arrest of ships or vessels are done in order to



provide security for certain claims, but here this provision states that not only that one particular vessel can be arrested but any associate vessels can also be arrested and sometime these associate vessels can be arrested instead of the other vessel. Though some reasons for the same can be seen like the sale of a particular ship or schedules voyage of the same, in such cases the arrest of a associate vessel can be done or even in cases where the vessel would not provide adequate security for a particular claim. In this legislation these particular reasons for arrest of associate vessels are not provided nor are the grounds for the same provided. And so the grounds for which an associate vessel can be arrested either with or in-place of a particular vessel is to be interpreted by the Courts in upcoming cases. This is one of the provisions that require a certain amount of interpretation leaving a wide scope and use of the same.

The next provision that will be looked into is the list of priorities that are seen under Section 9 and 10 of the Act. Section 9 talks about the priorities with regard to maritime lien, here it is seen that the first priority is given to claim of wages and other sums that are due followed by the claim of loss of life or personal injury with a direct connection to a particular vessel. It is seen that the claims over wages are to be given inter se priority over the claims of loss of life and personal injury. It is seen that the claims which are a result of accidents which result in the particular employee in need to treatment, where compensation can pay for the same. It is of the opinion that such cases be dealt with first and as fast as possible in order to repay the said outstanding medical payment due. Though it is understood that

outstanding wages and amounts are the rights of the workers and the same has to be paid on time in accordance with certain legislations, the importance of dealing with the loss of life or personal injury, putting an employee in a procession where there is difficulty for him to earn, such cases should be dealt with quickly and effectively. It is seen that the priorities with regard to maritime claims start with maritime lien, mortgages and then all the other claims. The principles used here would be equal priority given for claims falling under a certain category and the claims in case of salvaging would be dealt with in order in which the time the claims were made. These are how the priorities of maritime claim and maritime lien is ranked according to this legislation.

#### **Conclusion:**

It is seen that with the development of maritime law in India a bill which was drafted and now passed has a lot of answers to answers questions seen in previous legislations. Not just answering previous legislation questions but also giving clarity as to what all can constitute maritime matter. We also see the proper jurisdiction, powers of the High Court in certain cases and the power of the Central Government when it comes to making new rules extending the jurisdiction of a particular High Court and so on. It is also seen that with the addition of certain provisions that certain new questions arise which the court would be given a scope of interpreting the same. This legislation has taken the admiralty law in India to a new step repealing all the previous legislation which came into force before independence. Though the courts have found ways of interpreting maritime law, international



conventions that acted as guiding principles for the same. These cases and also international conventions did have its place in sharpening the current legislation and though there are still some unanswered questions and scope for interpretation in the same, this legislation has made a lot of maritime law clear, specifying its scope, jurisdiction and so on.

\*\*\*\*\*

