

ADMIRALTY LAW IN INDIA-A HISTORICAL PERSPECTIVE

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Abstract

As a Sea faring nation bound by around 7500 kms of coastlines and huge area of interests in the Indian Ocean, India is directly responsible for dispensing justice in the waters that it exercises control over. India's naval doctrine propounds its area of interests as being from the Gulf of Aden right to the Malacca straits. To maintain sovereignty over such swathes of territory there is a direct need for strict admiralty laws to be put in place to deter even the harshest of the troublemakers.

Admiralty law is a code of both domestic laws governing maritime activities, and private international law governing relationships between private entities which operate ships on the oceans. It also brings within its ambit the transportation of passengers and goods by sea, shipping maritime commerce, navigation, other commercial activities etc. The pre-colonial legislation's that still govern admiralty jurisdiction of Indian Courts needs to be suitably amended to correct the anomalies being created due to a confused legal sector.

Neither the Indian Parliament nor the Indian Supreme Court has so far defined the scope and nature of admiralty jurisdiction of our high courts. There persists a direct need to circumvent the old ways and adopt new methods to counter the ever evolving scenarios of our Admiralty sector.

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Introduction

Water covers almost three-quarters of the globe and is home to roughly 50,000 large ships, which carry 90 per cent of the world's traded cargo. This trade is conducted via sea either through container ships, barges, or oil tankers. Almost 50 per cent of the world's container ships pass around Horn of Africa into the Arabian Sea and beyond.² The sea has always been an anarchic domain. Unlike land and air, it is too vast to be policed, even today. Commerce, right from the ancient ages prospered as and when the generous seas have carried it across. It is in conquest of this perennial flow of immense riches that has had men and women look to the oceans. Piracy gained many a followers and the notoriety in the likes of Captain Blackbeard, Captain Kidd etc. became the primary stalwarts of piracy for many people. Piracy a “*crime against humanity*” is possible only when control over its seas is lost by the sovereign, which allows fringe elements to usurp control and exercise lawlessness. Strong maritime laws advocated by sea-faring nations deter even the fiercest of men and women after all.

The importance of the sea and the exercise of control over it is best mentioned in a Sanskrit verse, “*Jalamev Yasya, Balamev Tasya*”, which means that, He who controls the sea is all powerful. Looking at it in today's scenario, having control of its seas becomes the paramount duty of the modern nation states. A nation today exerts its maritime powers to seize or act against any ship which is in contravention to its laws, while it ply's in its territorial waters, is an absolute and unhindered display of sovereignty that is bestowed upon it by its sovereign who ultimately propounds the will of its people. Maritime law considering its special nature is a sphere wherein domestic laws regularly come in conflict with various International legal principles.

Indian Maritime Sector

India with a coastline of about 7,517 km's is a sea faring nation .The growth of the maritime sector in India over the past decade has been phenomenal and India's 12 major and 187 non-major ports continue to grow by leaps and bounds. According to the Ministry of Shipping, around 95 per-cent of India's trading by volume and 70 per-cent by value is done through

²Malcolm Shaw, International law; sixth edition

maritime transport.³ Indian ports and shipping industry plays a vital role in sustaining growth in the country's trade and commerce. The Indian Government too plays a proactive role in supporting the ports sector, but efforts to codify the laws in this sector to better refine it have fallen on deaf ears. This fast-growing sector is in certain need of a unified sphere of law to simplify procedures and give proper guidance to millions of people currently employed and to the millions more to come in the sector.

With huge investments pouring in the maritime sector, the legal system in India needs to equip itself to the growing challenges and curb procedural delays which hampers the growth of the Indian Maritime sector. The courts which are bogged down with lack of certainty in admiralty matters should have the power to protect the ship-owners from unlawful claims against them and their ships and even in case of an arrest or seizure of the ship, the proceedings need to be quick and decisive, as huge sums of money is usually involved and even a slight delay can cause losses amounting to millions either to the ship owners or the charterers.

Despite attaining independence from the British 67 years ago, the , the Indian Parliament has still not exercised its powers to make laws exclusively with respect to Admiralty and thus the three Indian High Courts exercise maritime jurisdictions on traditional British statutes which continues to remain in force by virtue of the Indian constitution.⁴

It was held by virtue of judicial reasoning that Admiralty laws would apply in Indian High Courts as it was applied by the English Court of Admiralty as defined in sec 6 of the English Admiralty Court Act, 1861, and in sec.2 (2) the Colonial Courts of Admiralty (India) Act.⁵

Historical Provisions

The Jurisdiction of the High Court of Admiralty in England had grown in the 19th Century due to the growth of British maritime commerce through the Act of 1840 and the Act of 1861 and this extension of the jurisdiction of the High Court of Admiralty in England was made applicable to the Courts in British India after 1862. In order to bring about a uniformity between the jurisdiction of the High Court of Admiralty in England and the jurisdiction of the

³Statistics from the Annual Reports 2014-15, *Ministry of Shipping, Government Of India*,

⁴ Article 372, *Constitution of India*

⁵*M.V. Elisabeth And Ors. vs Harwan Investment And Trading*, 26 April, 1985; AIR 1986 AP. 184 (187): (1986) 1 Andh W R 474 (DB).

High Courts of Admiralty in India as well as in other British possessions, the British Parliament enacted the Colonial Courts of Admiralty Act of 1890 thereby providing that the Legislature of British India may declare certain Courts to be Colonial Courts of Admiralty and the Courts so declared shall have the Admiralty jurisdiction as was exercised by the High Court of Admiralty in England under any statute or otherwise.

In the year 1890, Colonial Courts of Admiralty Act, 1890⁶ was enacted in the British Parliament. It was provided by the Colonial Courts of Admiralty Act, 1890 that the *“Legislature of a British dominion may by any colonial law declare any Court of unlimited civil jurisdiction in that possession to be a Colonial Court of Admiralty, And wherever necessary, in pursuance of that provision, to declare certain Courts in British India to be Colonial Courts of Admiralty.”* In exercise of the powers conferred by this Act, the Indian Legislature under British dominion passed Act 16 of 1891, bringing into force The Colonial Courts of Admiralty (India) Act, 1891. This Act had the power to declare certain Courts in India to be Colonial Courts of Admiralty. Owing to this, The High Court of Bombay along with the High Court of judicature at Fort William in Bengal and at Madras and some other Courts to be Colonial Courts of the Admiralty and these Courts were invested with such Admiralty Jurisdiction as was exercised by the High Court of Admiralty in England under any statute or otherwise.

Admiralty jurisdiction was for the sake understanding referred to as explained in a previous act i.e., Section 35 of the Admiralty Courts Act, 1861, reads that *“The jurisdiction conferred by this Act on the High Court of Admiralty may be exercised either by proceedings in rem or by proceedings in personam”*.⁷

The High Court of Admiralty in England as constituted under the Judicature Act of 1873 had the exclusive jurisdiction in regard to certain matters under the Act of 1861. Consequently, the Colonial Court at Bombay, that is to say, the High Court of Bombay had a similar jurisdiction from and after 1891. It has already been observed that this Legislation has been continued under Article 372 of the Constitution of India. It would appear; therefore, that if the High Court of Justice in its Admiralty Division in England had an exclusive jurisdiction in regard to certain matters, the High Court at Bombay even now has the same jurisdiction.

⁶1890 *Colonial Courts of Admiralty Act*, (53, 54 Victoria Chapter 27)

⁷Section 35 of the *Admiralty Courts Act*, 1861, 24 Vict. C.10

As stated above, under the Act of 1861, the High Court of Admiralty was given an exclusive jurisdiction in respect of causes based on damage done by a ship. The High Court at Bombay, accordingly, on its Admiralty Side also has a similar exclusive jurisdiction.

Administration of Admiralty jurisdiction is today still governed by these British statutes by virtue of Article 372 of the Indian Constitution. The current law in India is not comprehensively developed for today's changing parameters so as to accommodate the changes that take place in International and national doctrines of common law overtime as adopted in the current British statutes and general practices of Maritime law around the world. Despite this, admiralty laws and its precedents propounded by the courts are based on well-established principles of customs, and judicial reasoning giving these admiralty laws a unique blend in them.

In the landmark case of *Elizabeth*,⁸ Thommen J, in *Para 97* has reiterated the well accepted legal proposition in the English Legal system that customs still govern Admiralty law, thus providing wide jurisdiction. It said that *"Although statutes now control the field, much of the admiralty law is rooted in judicial decisions and influenced by the impact of civil law, common law and equity. The ancient maritime codes like the Rhodian Sea Law, the Basilika, the Assizes of Jerusalem, the Rolls of Oleron, the Laws of Visby, the Hanseatic Code, the Black Book of the British Admiralty, Consolato del Mare, and others are, apart from statute, some of the sources from which the law developed in England. Any attempt to confine admiralty or maritime law within the bounds of statutes is not only unrealistic but incorrect. Although this branch of the law in England is now governed generally by statutes, the law in all its aspects can be understood only by viewing it in the context of decisions of courts and the general principles which are common to common law and equity."*

The admiralty jurisdiction of the High Court was further consolidated by the Supreme Court of Judicature (Consolidation) Act, 1925 so as to include various matters such as any claim "for damage done by a ship", and claim 'arising out of an agreement relating to the use or hire of a ship'; or 'relating to the carriage of goods in a ship'; or "in tort in respect of goods carried in a ship

⁸M.V. Elisabeth And Ors vs Harwan Investment And Trading, Equivalent citations: 1993 AIR 1014, 1992 SCR (1)1003: Ibid

Admiralty Courts

As observed above, High Courts of Admiralty have exclusive jurisdiction in respect of torts committed on the high seas, International law states that, "Admiralty Courts have jurisdiction and power to try and determine all maritime causes; or such injuries, which though they are in their nature of common law cognizance, yet being committed upon the high seas, out of the reach of our ordinary Courts of Justice, are therefore to be remedied in a peculiar Court of their own."⁹

The scope and nature of the Admiralty jurisdiction exercised by the High Courts in India have been examined and ascertained in *Kamlakar v. The Scindia Steam Navigation Co. Ltd*¹⁰, *National Co. Ltd. v. M. S. Asia Mariner*¹¹, *m.v Elisabeth-v- Harwan Investment & Trading Pvt Ltd*.¹² , amongst other decided judgments. Owing to these cases, it is a well-established the High Courts of Bombay, Madras, and Kolkata have exclusive jurisdiction over torts committed on the high seas, particularly in respect of damage caused by a ship to any person or property. These courts can also institute proceedings in rem or in personam to recover compensation in respect of the damage Caused by torts. The High Courts also have an exclusive jurisdiction to entertain an action in personam where proceedings in rem could have been taken.

Judicial Reasoning

Indian courts despite the absence of India centric maritime laws continued to adjudicate on the disputes based on detailed analysis of the internationally accepted principles on the subject.¹³ Principles common law and laws agreed upon in conventions continues to play an important role in judicial precedents despite the fact that India has merely signed and not ratified or promulgated either the International Convention Relating to the Arrest of Seagoing Ships, signed at Brussels in 1952¹⁴and at Geneva in 1999. Both these conventions are

⁹3rd volume of *Blackstone's Commentaries* (106)

¹⁰*KamalakarMahadevBhagatvsScindia Steam Navigation Co. Ltd.* on 5 August, 1960,AIR 1961 Bom 186, (1960) 62 BOMLR 995

¹¹*National Co. Ltd. v. M. S. Asia Mariner*, LAWS(CAL)-1967-4-4

¹² *Ibid* 7

¹³*Interaccess Marine Bunkering Ltd v. K.M. Alluddin, V. Ramasubramanian* J of the Madras High Court

¹⁴International Convention Relating to the Arrest of Seagoing Ships, signed at Brussels on 10 May, 1952; Brussels convention,1952

comprehensive guides and imbibe the principles developed through international judicial decisions and other International conventions.

Although the Brussels convention has not been adopted by legislation, the principles incorporated are part of the common law of India and applicable for the enforcement of maritime claims against foreign ships as is held in *m.v Elisabeth-v- Harwan Investment & Trading Pvt Ltd*.¹⁵The Supreme Court of India in the matter of *m.v. Sea Success*¹⁶ has also held that the principles underlying the 1999 Geneva Arrest Convention were applicable for ship arrest in India.

Indian courts are not bound to follow these conventions as the sovereign and its intermediaries have no obligation to follow them being merely signatories, but lack of indigenous legislative prowess in the field of maritime law has forced the judiciary to rely on such conventions.¹⁷ Despite this international principles guided by law, there is an urgent need for regular revision of the current laws taking into account the global changes and the local maritime conditions but legislative apathy hasn't yielded any positive outcomes. Various judgments given by the Indian Judiciary are a clear indication that the gaps created by age-old British legislations have been filled only through the proactive efforts of the judiciary.

Codification- A Necessity

*"The law of admiralty or maritime law is the corpus of rules, concepts, and legal practices governing the business of carrying goods and passengers by water"*¹⁸Admiralty law in the Indian context has seen renewed vigor for a strict amalgamation from all sectors of the society at large, except the parliamentarians. In *M.V. Elisabeth and Others case*, it also took note of the various enactments which deal with various aspects of the law of admiralty in India. The Supreme Court has held that *"Indian legislation has not progressed in tune with the various international conventions, but declared that these conventions though not incorporated into Indian law, embodied the felt necessities of international trade and are as*

¹⁵ Ibid

¹⁶ *Liverpool & London S.P. & I Asson. vs M.V. Sea Success I & Anr* on 20 November, 2003, Appeal (civil) 5665 of 2002

¹⁷ The Law Commission of India. 151st Report on Admiralty Jurisdiction

¹⁸ *Gilmore and Black*, The Law of Admiralty, page 1; W.A.No.1994/2010

*such part of the common law of India". It also held that "the judicial power of this country, which is an aspect of national sovereignty, is vested in the people and is articulated in the provisions of the Constitution and its laws and is exercised by Courts empowered to exercise it. It is absurd to confine that power to the provisions of imperial statutes of a bygone age. Access to court which is an important right vested in every citizen implies the existence of the power of the court to render justice according to law. Where statute is silent and judicial intervention is required, Courts strive to redress grievances according to what is perceived to be principles of justice, equity and good conscience."*¹⁹

As per principles customary practices of International Maritime Law, the power to arrest a foreign ship is a manifestation of the territorial sovereignty of coastal nations. Once a foreign ship is arrested in Indian waters by an order of the High Court, wherever the cause of action may have arisen, and whether or not the ship is subsequently released by the owner furnishing security, proceedings must continue against the owner as in any other suit. The arrest of the vessel while in Indian waters by an order of the High Court concerned, as defined under the Merchant Shipping Act, 1958²⁰ attracts the jurisdiction of the competent court to proceed with the trial, as in the case of any other suit, as an action against the owner, and any decree obtained by the plaintiff is executable against any property of the owner available within jurisdiction, including the security furnished by him for release of the vessel.

Today, Admiralty law is a body of both domestic law governing maritime activities, and private international law governing relationships between private entities which operate ships on the oceans. It is no longer merely the domain of the State and is open to everybody out there who has a right to do so. With huge investments pouring in the maritime sector, the legal system in India finds itself ill-equipped to deal with the prowess displayed by the other sea-faring nations and their courts. The courts should be able to protect ship owners from unlawful claims and even in case of an arrest, the proceedings need to be wound up as soon as possible. The Law Commission of India in its 151st report in 1994 had suggested a uniform admiralty law in India. However, nothing has been done so far, except for few amendments in existing laws.²¹

¹⁹ Ibid 7

²⁰ Merchant Shipping Act, 1958 (Section 3 (15))

²¹ The Law Commission of India. 151st Report on Admiralty Jurisdiction

The *Enrica Lexie* Incident for example not only caused confusion to the courts in India but also resulted in a diplomatic spat between the governments of India and Italy. The sabre rattling between the two governments eventually resulted in the matter of jurisdiction getting further diluting and confusing with the formation of a special court to try the matter. The matter is also placed before the ITLOS²². It was visible that the domestic legal system was unprepared for such an event such as the *enrica lexie*. Though this incident is first of its kind in India, but having a closer look at the existing laws concerning admiralty law in India, and its archaic colonial statutes, stresses the need for codifying and reforming maritime laws in India. Some of the out-dated admiralty laws, still existent in India are the Admiralty Jurisdiction (India) Act, 1860, The Admiralty Court Act, 1861, Colonial Courts of Admiralty Act, 1890, Colonial Courts of Admiralty (India) Act, 1891. These laws derive their legitimacy from Art.372, Constitution of India, which states that “*all the laws in force in the territory of India immediately before the commencement of the Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.*”²³

Increasing investments and cargo traffic point towards a positive outlook for the Indian Maritime Industry, particularly those involving port constructions and lading services Non-major ports are expected to generate over 50 per cent of this capacity.²⁴

A Country in itself has a unique universal feature depending on its admiralty laws, and such features have to be given serious deliberations by admiralty courts throughout the world while considering any matter. Admiralty jurisdiction as a concept has been difficult to incorporate on a varying international basis, but is just as important too. The need of the hour is a proper dedicated piece of legislation that caters to the needs of the public

²² International Tribunal for the Law of the Sea (ITLOS)

²³ Article 372, Constitution of India

²⁴ Statistics of Indian Ports Association, Ministry of Shipping.

Conclusion

An Admiralty Bill was introduced in 2005 in the Parliament which was seen as a way of reunification of all solutions to the India's Maritime Law Dilemma, but it lapsed subsequently, and hasn't been re-introduced as of yet. The proposed bill aimed to consolidate and amend the laws relating to admiralty jurisdiction of courts, vesting of civil jurisdiction in respect of various maritime claims in high courts, power of the supreme court to transfer any proceedings from one high court to another, power of the high court to confer admiralty jurisdiction in consultation with the Chief Justice of India on any civil court of the state, legal proceedings in connection with ships, their arrest, detention, sale and other related matters. But, this faced a lot of opposition from various sectors of the society, terming it a regressive piece of legislation. Shipping Industries feared that the proposed Admiralty Bill, 2005 would open up a plethora frivolous of litigations. There were repeated calls especially by those involved in ship breaking too amend various clauses, will be adversely affected by this new legislation if passed in the present form.

A consensus is needed to see that the enormous potential of the country's shipping industry and the safety and control of its maritime seas and lanes are taken care of. Indian economy is booming with the shipping industry touted to adding 4/5 per cent to the nation's overall GDP. The admiralty bill, 2005 if re-introduced in a better and amicable manner has potential to become a good legislation provided all the legitimate concerns of its stakeholders are satisfied. It is a positive step towards codifying the otherwise ambiguous and hidden industry and brings it to light.