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ANALYSING THE PROCEDURE AND THE LAWS GOVERNING SHIP ARREST IN INDIA

~ *Mimansa Joshi*¹

INTRODUCTION

What is the literal meaning of a ship arrest ? Ship arrest is a process through which a ship is prevented from trading or moving until the matter in question is decided. It is an exclusive jurisdiction that is granted to an admiralty court to detain a vessel to secure a maritime claim.² The main purpose for the arrest of the ship is to obtain the security for satisfaction of judgment in the action in rem therefore it is necessary to arrest the ship so as to establish the jurisdiction.³ A ship can be arrested for disputes and claims, including bunker dues, repairs, casualties, collision, limitation of liability, cargo, charterparty, jurisdiction, conflict of laws, bill of lading, carriage of goods, contract conditions, fire, liens, general average, containers, recoveries, subrogation, casualties, freight forwarders liabilities, multimodal and unimodal, insurance and reinsurance, commercial disputes, recovery of unpaid dues, towage, salvage, pilotage, grounding, commodity disputes, damage done or received by any ship, freight, hire, demurrage, laytime, masters and crew claims, necessities, supplies, ownership, possession etc .⁴

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² Firm, S.L. (2019) *Ship arrests and Indian maritime law, India - Marine/ Shipping*. Available at: <https://www.mondaq.com/india/marine-shipping/817974/ship-arrests-and-indian-maritime-law> (Accessed: 31 May 2024).

³ *Concept of ship arrest in India and jurisdiction limits* (no date) *Legal Service India - Law, Lawyers and Legal Resources*. Available at: <https://www.legalserviceindia.com/legal/article-7033-concept-of-ship-arrest-in-india-and-jurisdiction-limits.html> (Accessed: 31 May 2024).

⁴ Chambers, B. (no date) *Brus Chambers, Advocates & Solicitors :: Super-specialised Law Firm, Mumbai, India, shipping admiralty maritime ship arrest shipping lawyer law firm Mumbai India, projects, infrastructure, oil, gas, energy, mining, marine insurance, P Andi Clubs, litigation, Brus Chambers, Advocates & Solicitors, Super-specialised top-tier law firm in India*. Available at:

ANALYSING THE LAWS GOVERNING THE PROCEDURE OF SHIP ARREST IN INDIA

Maritime law, also known as admiralty law, is a body of laws, conventions, and treaties that govern private maritime business and other nautical matters, such as shipping or offenses occurring on open water.⁵ It constitutes a comprehensive body of legal principles governing matters related to shipping, cargo transportation, customs, port regulations, and disputes within the maritime realm. It encompasses a wide spectrum of issues, including cargo damage, delayed deliveries, lost packages, ship damages, collision, and more.⁶ The Maritime law currently prevailing in India is The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 which came into force on 1st April 2018 replacing the colonial British era maritime laws governing India. A ship can be arrested under admiralty jurisdiction for any outstanding dues under Section 4 (1) (m) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 which deals with construction, reconstruction, repair, converting or equipping of the vessel⁷ Article 2 of the 1999 Arrest Convention clarifies that a ship may be arrested for the purpose of obtaining security even when a jurisdiction or arbitration clause in the applicable contract relates to a different state to the one in a vessel is arrested. The new convention also makes it clear that arrest can be executed so as to satisfy a judgment or arbitration award.⁸India

<https://www.bruschambers.com/areas/shipping/shiparrestrelease.htm#:~:text=A%20ship%20can%20be%20arrested,%2C%20recoveries%2C%20subrogation%2C%20casualties%2C> (Accessed: 31 May 2024).

⁵ Kagan, J. (no date) *What is maritime (aka admiralty) law, and why is it important?*, Investopedia. Available at: <https://www.investopedia.com/terms/m/maritime-law.asp> (Accessed: 31 May 2024).

⁶ *Anchoring legal clarity: India's maritime laws explored* (no date) *J.M. Baxi Newsletter*. Available at: <https://www.jmbaxi.com/newsletter/issue-xlii/anchoring-legal-clarity-indias-maritime-laws-explored.html#:~:text=Maritime%20Law%20in%20India%20%3A%20An,disputes%20within%20the%20maritime%20realm.> (Accessed: 31 May 2024).

⁷ *Ship arrest in India and admiralty laws of India authored by dr. Shrikant Hathi and ms. Binita Hathi* (no date) *SHIP ARREST IN INDIA AND ADMIRALTY LAWS OF INDIA by Dr. Shrikant Hathi and Ms. Binita Hathi, Shipping Advocates and Solicitors*. Available at: <https://www.admiraltypractice.com/#:~:text=A%20ship%20can%20be%20arrested,or%20equipping%20of%20the%20vessel.> (Accessed: 31 May 2024).

⁸ Steamship Mutual Published: November 16 and Mutual, S. (no date) *The International Convention on the arrest of ships 1999*. Available at: <https://www.steamshipmutual.com/publications/articles/99arrestconvention0911> (Accessed: 31 May 2024).

is not a signatory to either the Arrest Convention 1952 or the Arrest Convention 1999. However, the Supreme Court of India has held that India can arrest vessels relying on the Arrest Conventions 1952 and 1999 as the principles set out in these Conventions reflect the principles internationally and followed by maritime jurisdictions worldwide, provided that the principles are not in conflict with municipal Indian laws. India has thus widened the scope of the Court's jurisdiction to include claims beyond those which are recognized under English law by allowing arrest for claims listed in the Arrest Convention, 1999. India also allows arrest of vessels for security pending foreign arbitration and recognizes the concept of sister-ship arrest, beneficial ownership / associated ship arrest.⁹

Procedure of ship arrests - A claimant executes the facility of Attorney to the one that can act on behalf of the claimant. Such Power of Attorney should be properly executed, notarized and legalized which is required to be stamped under the laws of India and has got to be shown before the court for the filing of the plaint. Notice is required to tend to the Consul General as per the principles of the High Court. Claimant shall file the plaint alongside the undertaking, draft the warrant of the arrest and therefore the affidavit before the court having the admiralty jurisdiction. All the opposite attachments and therefore the documents shall be filed at the time making the appliance for the arrest. Such application shall be moved before the Admiralty judge and therefore the order is passed or he can dictate the separate order for the arrest of a vessel.¹⁰

The warrant of arrest is issued from the registry and the fee and the other expenses are deposited, the intimation is given to the Marshall or the authorized officer. The officer has the authority to arrange the substitute in place of the arrested ship and the plaintiff or his advocate shall provide a conveyance to the ship for the service. The Marshall and the other officers are required to have the undertaking from the plaintiff to make further deposits towards the

⁹ Interlegal (2013) *Ship arrests in India – a look at the procedure: ब्लौट interlegal, ब्लौट Interlegal Ship arrests in India – A look at the procedure | ब्लौट Interlegal*. Available at: <https://blog.interlegal.com.ua/ship-arrests-in-india-a-look-at-the-procedure/> (Accessed: 31 May 2024).

¹⁰ *Arrest of the ship and process to release - bhatt & joshi associates*. Available at: <https://bhattandjoshiassociates.com/arrest-of-the-ship-and-process-to-release/> (Accessed: 31 May 2024).

expenses as incurred by him in connection with the custody of the ship under the arrest. They are required to intimate the custom and harbor authorities of the arrest.¹¹

Jurisdiction of courts undertaking ship arrests – The specific authority over admiralty cases in India extends to the territorial coast line and is vested in the courts at Bombay , Calcutta and Madras . Additionally, the courts having jurisdiction are the courts of Gujrat , Andhra Pradesh , Orissa , Bombay, Madras, Calcutta .Arrest warrants are obtained from the High Court of Bombay as it can be easily executed anywhere in the territorial waters of India .¹²

CONCLUSION

Therefore, in this blog we were able to understand the complex intricacies of ship arrest in India which is carried out through the maritime laws governing India . The supreme court of India has allowed courts to arrest vessels relying on Arrest Conventions 1952 and 1999 on a condition that they should not contradict the local Indian laws.

¹¹ *Concept of ship arrest in India and jurisdiction limits Legal Service India - Law, Lawyers and Legal Resources*. Available at: <https://www.legalserviceindia.com/legal/article-7033-concept-of-ship-arrest-in-india-and-jurisdiction-limits.html> (Accessed: 31 May 2024).

¹² *Arrest of the ship and process to release - bhatt & joshi associates*. Available at: <https://bhattandjoshiassociates.com/arrest-of-the-ship-and-process-to-release/> (Accessed: 31 May 2024).