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SHIP ARREST UNDER THE ADMIRALTY ACT, 2017: PRACTICAL ISSUES AND RECENT JUDICIAL DEVELOPMENTS

~ *Damini Mahanand*

INTRODUCTION

The maritime sector plays a pivotal role in international trade and commerce¹. The current modern world with the increase in globalisation requires laws and frameworks to govern the economy in maritime sector with equal protection towards the marine environment². Admiralty jurisdiction refers to the specialised jurisdiction exercised by designated courts to govern maritime or shipping related disputes.³ In India the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017⁴ deals with the provisions related to maritime governance, maritime claims, maritime liens, ship arrests and other allied admiralty matters.

Before the enactment of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, the Indian Maritime Law was governed by fragmented colonial frameworks comprising of the Admiralty Court Act, 1861 (United Kingdom)⁵, the Colonial Courts of Admiralty Act, 1890⁶, the Colonial Courts of Admiralty (India) Act, 1891⁷ and judicial precedent. The Supreme Court in the landmark case of *M.V. Elisabeth v. Harwan Investment & Trading Pvt. Ltd.*⁸ expanded the scope of admiralty jurisdiction, the absence of a statutory framework raised uncertainties⁹. The need for the Admiralty Act of 2017 arose¹⁰ because the Colonial Statutes

¹ Dr. Shrikant Hathi & Binita Hathi, *Ship Arrest in India and Admiralty Laws of India* 16–18 (15th ed. 2024).

² Hathi & Hathi, *supra* note 1, at 17–18, 301–326

³ Hathi & Hathi, *supra* note 1, at 38–41

⁴ Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, No. 22 of 2017, Acts of Parliament, 2017 (India)

⁵ Admiralty Court Act, 1861, 24 & 25 Vict. c. 10 (U.K.)

⁶ Colonial Courts of Admiralty Act, 1890, 53 & 54 Vict. c. 27 (U.K.)

⁷ Colonial Courts of Admiralty (India) Act, 1891, Act No. XVI of 1891 (India)

⁸ *M.V. Elisabeth v. Harwan Inv. & Trading Pvt. Ltd.*, 1993 Supp. (2) S.C.C. 433 (India)

⁹ Hathi & Hathi, *supra* note 1, at 34–36

¹⁰ Hathi & Hathi, *supra* note 1, at 34–36

did not provide for a comprehensive legal framework to meet the demands and regulations of the modern marine commerce including maritime claims, ship arrest and admiralty jurisdiction. The Admiralty Act, 2017¹¹, provides a consolidated admiralty jurisdiction, codified principles for maritime claims and ship arrests, and further aligns the Indian Law with the International Convention on Arrest of Ships, 1999¹², which is a globally accepted admiralty framework.

LEGAL FRAMEWORK

JURISDICTION

The Admiralty Act's jurisdiction under Section 03¹³ lies with the designated High Courts to adjudicate maritime claims within their territorial jurisdictions. Section 03 confers admiralty jurisdiction upon the High Courts of Bombay, Calcutta, Gujarat, Karnataka, Kerala, Odisha, Telangana and Andhra Pradesh and any other High Court notified by the Central Government with the power to perform the Admiralty Jurisdiction¹⁴. Section 04 of the Act provides a vast scope for the admiralty jurisdiction vested in the High Courts to entertain and decide matters of maritime claim, arrest, detain, release or judicial sale of ships or vessels, priority in maritime claim or lien, adjudicate matters both in rem and in personam¹⁵.

SHIP ARREST

Section 05 and Section 06¹⁶ of the Admiralty Act, 2017 constitutes the core enforcement mechanism for ship arrest. Section 05 of the Act primarily governs the arrest of a vessel in rem¹⁷ whereas Section 06 recognises the institution of proceedings in personam¹⁸ against a person liable for maritime claim.¹⁹

Ship arrest refers to the judicial arrest, detainment, or custody of a ship in case of a maritime claim.²⁰ A ship arrest is an action in rem, a preventive remedy rather than punitive, to secure the claims of the claimants in the matters of maritime claims²¹. An action in rem is not affected

¹¹ Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, No. 22 of 2017, §§ 3-12 (India)

¹² International Convention on Arrest of Ships, Mar. 12, 1999, 2797 U.N.T.S. 3

¹³ Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, No. 22 of 2017, § 3 (India)

¹⁴ Hathi & Hathi, *supra* note 1, at 38–53

¹⁵ Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, No. 22 of 2017, § 4 (India)

¹⁶ Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, No. 22 of 2017, §§ 5–6 (India)

¹⁷ *M.V. Elisabeth v. Harwan Inv. & Trading Pvt. Ltd.*, 1993 Supp. (2) S.C.C. 433 (India)

¹⁸ *Id.*

¹⁹ Hathi & Hathi, *supra* note 1, at 386–401

²⁰ Hathi & Hathi, *supra* note 1, at 386–389.

²¹ Hathi & Hathi, *supra* note 1, at 388–392

by the change in ownership or possession of the vessel until the maritime claim is legally resolved. Section 05 authorises the power to arrest both the offending ship and the sister ship to safeguard the interests of the maritime claimants²².

Section 06²³, complements Section 05 by providing the framework for the proceedings of action in personam. Proceedings in personam are against an individual and it commences like any other civil suit²⁴. While an action in rem is commenced against the vessel, the said action can take the character of the action in personam, once the owner, charterer or any other individual entity having an interest in the offending vessel presents his appearance and submits to the court²⁵. Section 06 further authorises the High Courts with the power to order the Judicial Sale of arrested vessel in circumstances of the failure of furnishing security, continued detention of a vessel which seems impractical and uneconomical and in the interests of justice.²⁶

PRACTICAL ISSUES

1. Determination of Beneficial Ownership

In the shipping industry, Single-Purpose Companies often own the vessels which makes it difficult to identify who is the beneficial owner of the vessel²⁷. This issue assumes greater significance in the cases involving arrest of a sister ship, as the courts must ascertain the statutory requirements for ownership to justify the arrest of another vessel other than the offending vessel.²⁸

The Supreme Court, in *Liverpool & London S.P. & I. Ass'n Ltd. v. M.V. Sea Success I*²⁹, held that the question related to the determination of a beneficial ownership is a mix of fact and law and therefore such questions should be examined during the proceedings with valid evidence rather than conclusively determining at the early stage of the proceedings.

2. Ex-Parte Proceedings

²² Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, No. 22 of 2017, § 5 (India)

²³ Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, No. 22 of 2017, § 6 (India)

²⁴ *Hathi & Hathi*, *supra* note 1, at 398–400

²⁵ *Hathi & Hathi*, *supra* note 1, at 398–401.

²⁶ Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, No. 22 of 2017, § 6 (India)

²⁷ *Hathi & Hathi*, *supra* note 1, at 394–401

²⁸ Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, No. 22 of 2017, § 5 (India)

²⁹ *Liverpool & London S.P. & I. Ass'n Ltd. v. M.V. Sea Success I*, (2004) 9 S.C.C. 512 (India)

Given the transitory nature of the ships or the vessels, maritime proceedings are often concluded ex-parte to prevent a vessel from escaping the territorial jurisdiction³⁰. Such proceedings safeguard the maritime claims however often result in unfairness and the risk of wrongful arrest towards the ship owners, which ultimately hinders the balance between the claimants and the ship owner's rights and interests³¹.

3. Wrongful arrest and Damages

Ship arrest is preventive in nature, and not punitive³², a wrongful arrest causes severe hardship against the owner or any similar party. A wrongful arrest is caused where there exist no reasonable grounds, mala fide intention, or gross negligence³³. William Tetley explains, "Damages for wrongful arrest are generally recoverable only where the arresting party acted in bad faith, with malice, or through gross negligence."³⁴

4. Interface with Insolvency Proceedings

Where an individual is declared insolvent by the Court of Law, the courts need to create an interplay between the admiralty proceedings and the insolvency proceedings³⁵, further setting the priority in maritime claims and other creditors. In the case of *Raj Shipping Agencies v. M.V. Malaviya Thirty*³⁶, the Bombay High Court interpreted a harmonious regime between the Admiralty Act and the insolvency proceedings.

CONCLUSION

India's maritime legal system has been significantly updated by the Admiralty Act, 2017³⁷, which streamlines ship arrest and maritime claim enforcement. However, to guarantee a fair, effective, and globally competitive admiralty regime, issues with beneficial ownership, ex parte arrests, wrongful arrest, and insolvency necessitate ongoing judicial improvement.³⁸

³⁰ *M.V. Elisabeth v. Harwan Inv. & Trading Pvt. Ltd.*, 1993 Supp. (2) S.C.C. 433 (India)

³¹ Hathi & Hathi, *supra* note 1, at 396–400

³² Hathi & Hathi, *supra* note 1, at 388–392

³³ Hathi & Hathi, *supra* note 1, at 396–401

³⁴ William Tetley, *Maritime Liens and Claims* 1119–20 (2d ed. 1998)

³⁵ *Insolvency and Bankruptcy Code*, No. 31 of 2016 (India)

³⁶ *Raj Shipping Agencies v. M.V. Malaviya Thirty*, 2020 SCC OnLine Bom 651 (India)

³⁷ *Admiralty (Jurisdiction and Settlement of Maritime Claims) Act*, No. 22 of 2017 (India)

³⁸ Hathi & Hathi, *supra* note 35, at 394–401, 560–585