

Arrest of Vessels in India: A Comprehensive Analysis

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ABSTRACT

The arrest of vessels in India is a multifaceted legal subject that involves various maritime laws, court precedents, and international conventions. This comprehensive analysis delves into the intricacies of vessel arrest in India, examining the legal frameworks, procedural requirements, and key considerations involved in the process. It explores the jurisdictional aspects, including the applicability of domestic laws such as the Admiralty Act, 2017, and international conventions like the Convention on the Arrest of Ships. Additionally, the abstract discusses notable case law and judicial interpretations shaping the landscape of vessel arrest in India. Special attention is given to exemptions and exclusions under relevant legislation, such as exemptions for government-owned or non-commercial vessels. Through a thorough examination of legal principles, practical challenges, and emerging trends, this analysis provides valuable insights for legal practitioners, maritime stakeholders, and scholars interested in the arrest of vessels within the Indian legal context.

I. INTRODUCTION

Maritime issues existed way before in the timeline, leading to the establishment of various statutes governing the arrest of vessels. These include notable conventions such as the International Convention on Arrest of Ships, 1999, as well as the 1952 Arrest Convention. Additionally, conventions pertaining to maritime liens,¹ such as The 1926 Convention, recognized as the International Convention for the Harmonization of Specific Legal Principles Regarding Maritime Liens and Mortgages; the 1967 Convention, designated as the International Convention for the Standardization of Certain Legal Principles Regarding Maritime Liens and Mortgages; and the

1993 Convention, known as the International Convention on Maritime Liens and Mortgages.²

1. General Understanding of Arrest of vessels

In today's era of globalization, maritime trade between nations is steadily rising. Vessels serve as essential conduits for transporting goods across international borders. As these vessels journey from port to port across the globe, they may encounter various liabilities, such as collisions, loss of life, or damage to cargo, while navigating through foreign jurisdictions. The arrest of a ship or a vessel refers to a legal process whereby a maritime creditor or claimant obtains a court order to detain the vessel in order to secure a maritime claim. This claim could include various issues such as unpaid debts, damage caused by the vessel, unpaid wages to seafarers, or other contractual disputes related to the ship.³ The arrest of a vessel essentially prevents it from leaving port or continuing its voyage until the claim is resolved, either through settlement, adjudication, or the provision of adequate security by the shipowner.⁴ This legal mechanism provides creditors with a means to enforce their claims and ensures that the vessel remains available as security pending the resolution of the dispute. The arrest is authorized by a court order and enforced by local authorities at the port.⁵ The ship is essentially treated as a person responsible for the debt, not the owner directly (this is called an in rem action).

²Arrest of ships, Seafarers Rights International (2018), <https://seafarersright> (last visited Apr 12, 2024).

³Id.

⁴"International Convention Relating to the Arrest of Sea-Going Ships." The American Journal of International Law, vol. 53, no. 2, 1959, pp. 539–45. JSTOR, <https://doi.org>(Accessed on 12 Apr. 2024)

⁵Arrest of Ships, 1989; Volume 7 by Arab Law Quarterly, Vol. 4, No. 3, p. 260

¹Law of the Sea Convention, | "National Oceanic and Atmospheric Administration", <https://www.noaa>. (last visited Apr 12, 2024).

1.2 Action in rem

The focus shifts from holding the shipowner directly liable for the debt to treating the vessel itself as the responsible party. This distinction is crucial as it allows creditors to pursue claims against the vessel independent of the shipowner's personal liability. When a ship is arrested, it is essentially deemed to be a separate legal entity capable of being held accountable for the debts or obligations attached to it. This means that the vessel's value or proceeds from its sale can be used to satisfy the outstanding claims against it, regardless of any changes in ownership or management. The rationale behind this in rem action is to provide creditors with a more effective and reliable means of recourse, especially in situations where the shipowner may be difficult to locate or may lack the financial means to satisfy the debt.⁶ By focusing on the vessel itself as the source of liability, maritime law ensures that creditors have a tangible asset that can be seized or sold to settle their claims. Furthermore, treating the ship as a distinct legal entity facilitates international commerce by providing a standardized and predictable mechanism for resolving disputes involving maritime assets. This approach fosters confidence among creditors and ensures the efficient administration of justice within the maritime industry.

It is a legal process of preventing a vessel from departing a port, typically under the relevant authority of the court or any relevant judicial body. It's crucial to differentiate ship arrest from the detention⁷ of a vessel under the Maritime Labour Convention (MLC) by port state control authorities. The detention of a vessel under the Maritime Labour Convention (MLC) refers to a regulatory action taken by port state control authorities to address non-compliance with the labor standards set forth in the MLC.⁸ The MLC was adopted by the International Labour Organization (ILO) in the year 2006, establishes minimum requirements for seafarers' living and working conditions, as well as their rights to decent employment.

2. Arrest of ships in India

Arrest of vessels in India are primarily governed by the act of Admiralty (Jurisdiction and Settlement of Maritime Claims), 2017. Section 4 of

the Admiralty Act, 2017, outlines the various maritime claims that can be enforced in India. Specifically, Section 4(1)(I) recognizes the supply of bunkers to a vessel as one such maritime claim.⁹

This brings time charter and bunkers into the picture. In a time charter arrangement, the charterer is typically responsible for providing and paying for the fuel (called bunkers) used by the ship.¹⁰ However, sometimes the charterer fails to pay the fuel supplier for the bunkers supplied to the ship. In such cases, the fuel supplier, known as the bunker trader, seeks to recover its dues by arresting the ship that received the bunkers or its sister ship. The shipowner, who leases the ship to the charterer, isn't directly involved in the fuel supply agreement between the charterer and the bunker trader. Therefore, legally, the shipowner isn't liable for the charterer's unpaid fuel bills. However, the bunker trader still tries to enforce its claim against the ship or its sister ship through a legal action called "in rem." This action is based on terms in the fuel supply contract that hold the ship responsible for the bunkers supplied to it.

Moving onto Section 5 of the Admiralty Act, 2017, details the procedure for initiating an action in rem. According to Section 5(1)(a), the vessel, also known as the offending ship, can be arrested if it was ensuring originality: the responsible party's ownership for the claim is recognized both when the maritime claim originated and during the enforcement process. Additionally, Section 5(2) allows for the seizure of any alternative vessel instead of the particular offending one, as long as this alternative vessel was owned by the same individual as the offending ship at the time of the maritime claim's incident.¹¹

The High Court with admiralty jurisdiction has the authority to order the arrest of any vessel within its territorial waters to secure a maritime claim. This authority is granted if the High Court determines that: (i) the vessel's owner at the time the maritime claim arose is responsible for the claim, (ii) the claim pertains to a mortgage or charge on the vessel, (iii) the claim concerns the

⁶M.V. Elisabeth v. Harwan Investment and Trading (P) Ltd., 1993 Supp (2) SCC 433

⁷as the latter is not supervised by a court.

⁸International Convention on arrest of Ships, United Nations, <https://legal.un.org/> (last visited Apr 12, 2024).

⁹The Admiralty (Jurisdiction and settlement of maritime claims, Manupatra (2018), <https://www.manupatrafast.in/New> (last visited Apr 12, 2024).

¹⁰Arrest of ships, Seafarers Rights International (2018), <https://seafarers/> (last visited Apr 12, 2024).

¹¹India - Admiralty (Jurisdiction & Settlement of Maritime claims) act, 2017, <https://www.ukpandi.com/> (last visited Apr 12, 2024).

possession or ownership of the vessel, among other criteria.

2.1 Admiralty Jurisdiction in India

Indian courts have addressed the question of whether it's appropriate to initiate an action in rem against a ship on behalf of an unpaid supplier who provided bunkers at the request of a time charterer. Many of these cases were reviewed during preliminary stages, where courts assessed the matter based on initial evidence. During the ship's arrest process, Indian courts, similar to English courts, adhere to the principle of a "reasonably arguable best case".¹² This means that the ship's arrest will only be lifted if it's unequivocally clear that the claimant's case lacks merit. Even if the claimant's legal case is challenging but still arguable, it's deemed sufficient to justify initiating and continuing against the ship an action in rem. The criterion for a "reasonably arguable best case" is met if, based on the evidence presented to the court by either party, the claimant is deemed to have a case worthy of proceeding to trial.¹³

M.V. Lucky Field v. Universal Oil Limited¹⁴

In this case, a ship was arrested by an unpaid bunker supplier to enforce its maritime claim for supplying bunkers to the vessel, arranged by brokers. The supplier relied on a Bunker Delivery Note signed by the vessel's Master/Chief Engineer, indicating the bunkers were supplied to the vessel's credit. The vessel's owners sought to vacate the arrest, arguing no personal liability existed without a direct contract between them and the supplier. The Gujarat High Court found the issue of the Master/Chief Engineer's authority to be triable and rejected the owners' application to vacate the arrest.

M.V. Sea Renown v. Energy Net Ltd.¹⁵

In this case, a contractual bunker supplier arrested a vessel to enforce its maritime claim for supplying bunkers, arranged by brokers purportedly acting for the shipowners. The supplier claimed a

lien on the bunkers supplied to the vessel, as per a bunker confirmation identifying the vessel's owners. The owners argued the charterer, not them, was responsible for bunker payments. However, the Court observed that the maritime claim/lien had arisen against the vessel due to the bunkers supplied, and privity of contract with the owner was not required for an action in rem. The owners' appeal was rejected as the documents presented by the supplier raised triable issues, warranting determination at trial rather than an interim stage.

Georim Oil Corporation v. MV Flag Mersindi¹⁶

The Bombay High Court handled a case where a bunker supplier arrested MV Flag Mersindi for unpaid bunkers. The Court ruled that an action in rem requires an underlying in personam liability against the owner. The documents signed by the vessel's personnel didn't establish privity. Thus, the Court vacated the vessel's arrest.

Gulf Petrochem Energy (P) Ltd. v. MT Valor¹⁷

In this case, the Bombay High Court addressed vessel arrests by unpaid bunker suppliers, MT Valor and MT Tradewind. The Court emphasized that an in personam liability of the shipowner is necessary for an action in rem. In one case, where the bunker supplier invoiced the charterer, the Court allowed the vacating application. However, in the other case where the bunker requisition was placed by the owners, the Court rejected the application, stating that the claimant had a reasonably arguable case for trial.

Crescent Petroleum Ltd. v. MV Monchegorsk¹⁸

The Bombay High Court handled a case where an unpaid bunker supplier arrested a vessel for its maritime claim arising from supplying bunkers at the direction of the vessel's time charterer. The owners of the vessel sought to dismiss the suit, arguing lack of jurisdiction for an action in rem and absence of a cause of action against them. They claimed the bunkers were supplied under the charterer's responsibility. However, the Court found the application was made under a procedural rule requiring the plaintiff to establish a prima facie case. The Court concluded that based on the evidence presented, the plaintiff had shown that the bunkers were supplied

¹²Videsh Sanchar Nigam Ltd. v. MV Kapitan Kud, (1996) 7 SCC 127

¹³Gulf Petrochem Energy (P) Ltd. v. MT Valor, 2015 SCC OnLine Bom 1367

¹⁴Civil Application No. 364 of 2006 in Admiralty Suit No. 8 of 2006, judgment dated 24th November, 2008.

¹⁵Civil Application No. 257 of 2001 in Admiralty Suit No. 19 of 2001, Judgment dated 15th January, 2003.

¹⁶ 2014 SCC OnLine Bom 479

¹⁷2015 SCC OnLine Bom 1367.

¹⁸1999 SCC OnLine Bom 610 : AIR 2000 Bom 161.

with the vessel's authority, though the owners could contest this claim at trial.

MV Kiveli (IMO 8204731) v. Monjasa DMCC¹⁹

The court dealt with a case where an unpaid bunker supplier arrested a ship to enforce its maritime claim arising from supplying bunkers. Before taking action in Hyderabad, the plaintiff initiated an in rem action in Dubai to recover the outstanding bunker supply amount. The defendant provided security in both jurisdictions and released the vessel. The defendant then applied to vacate the arrest and return the security, arguing that the bunkers were ordered by the time charterer, not the defendant, and the bunker delivery note supported this. Despite this the plaintiff contended that the defendant, acting through the ship's Master, remained accountable. The judge ruled that the claim for interest on the principal amount was not a maritime claim under the Admiralty Act, 2017, An arrest could only be sustained if the owner of the vessel at the time of the claim remained liable and still possessed the vessel at the time of the arrest. As there was no contractual association between the defendant and the plaintiff, and the bunker delivery receipt showed no liability, the judge approved the request to lift the arrest.

The decision was upheld by the appellate court, which noted that the prima facie observations made by the lower court were only relevant to the interim stage and did not bind the parties later. The court emphasized that there must be substantial evidence to justify conclusions at an interim stage, and in this case, the Dubai court's findings absolving the shipowner of liability for bunkers ordered by the time charterer constituted overwhelming evidence. As a result, the appellate court upheld the ruling of the lower court and rejected the appeal.

The aforementioned judgments highlight the lack of consensus among different courts regarding the legal principles governing ship arrests. The Bombay and the Gujarat High Court hold divergent views on the matter. The Bombay High Court requires a contractual relationship between the bunker supplier and the shipowner, assessing it through the lens of a "reasonably arguable best case" at the interim stage. Thus, determining what constitutes "overwhelming evidence" to challenge this best-case scenario for vacating an arrest or returning security becomes crucial.

On a contrary note the Gujarat High Court, predating the Admiralty Act of 2017, holds the belief that ship arrest does not require a direct contract between the bunker supplier and the shipowner.

The Hyderabad High Court follows the Admiralty Act, 2017, emphasizing the shipowner's personal liability as a prerequisite for an action in rem against their vessel to enforce a maritime claim.²⁰

2.2 Arrest of navy vessels

According to the Admiralty Act of 2017 in India, navy ships²¹ are not subject to arrest under this legislation. The Act specifically excludes warships, naval auxiliaries, or any other vessels owned or operated by the Central or State Government and used for non-commercial purposes from its jurisdiction.²²The exclusion is based on the Act's provisions, which do not cover vessels designated for non-commercial purposes by the Central Government. Consequently, navy ships are covered by this exemption and are not liable to be arrested under the Admiralty Act of 2017.

3. Procedure for arresting a ship

Upon determining a claim, the claimant is obliged to submit a substantive suit application, furnishing detailed facts and relevant information. Initially, it is necessary to establish which specific High Court holds jurisdiction over the case. In this admiralty suit, the claimant must provide:

- Identification of the claimant
- Vessel's name and flag
- Details of the vessel's owner
- Statement of the dispute's facts
- Legal grounds
- Relief sought

Once the registry issues an arrest warrant upon payment of fees and expenses, the Marshal or authorized officer is notified. The claimant must also undertake to indemnify for any wrongful arrest. Moreover, the Marshal and other officers may require the claimant to make additional deposits to cover expenses related to the custody of the ship under arrest.²³

²⁰Shiv Iyer "Arrest of Ship for Unpaid Bunkers - A Shipowner's Nightmare"

²¹Proviso of section 1, admiralty act, 2017

²²India - Admiralty (Jurisdiction & Settlement of Maritime claims) act, 2017, <https://www.ukp> (last visited Apr 12, 2024).

²³"Concept of ship arrest in India and jurisdiction limits", Legal Service India - Law, Lawyers and

¹⁹ I.A. Nos 2 & 3 of 2018 in Comm Suit No. 3 of 2017, Order dated 26th July 2018.

Customs and port authorities need to be notified about the vessel's detention. Once an arrest warrant is issued, the vessel's owner must either settle the claim or contest the detention. If the owner neglects to address the claim, the ship could be auctioned, and the proceeds utilized for settlement. In instances where the vessel remains detained due to the owner's bankruptcy or abandonment by the master/crew, the Marshal or designated officer must ensure the vessel and its equipment are safeguarded in accordance with regulations.²⁴

II. CONCLUSION

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 clarifies India's admiralty jurisdiction, extending it to coastal State High Courts. Vessel arrest under the Act serves to secure claims, with the ship acting as security until resolution. The Act's enactment provides much-needed clarity and consistency, streamlining procedures and enhancing legal certainty. Stakeholders should update shipping documents to comply with the new framework. Ship arrest remains a swift, cost-effective remedy for creditors, though wrongful arrests can incur additional costs. Overall, the Act represents a significant step forward in India's maritime legal framework, ensuring efficient resolution of maritime claims.

The preceding discourse indicates a significant evolution in Admiralty law from colonial to post-colonial eras. While originally introduced by British Colonisers via the Colonial Admiralty Act of 1890, India's admiralty jurisdiction and ship detention protocols saw notable transformations with the enactment of the AJSMCA, 2017. This statute offers a streamlined process for ship detention and establishes a modern framework for resolving maritime conflicts.

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²⁴Sapna, Ship arrest by the Admiralty High Courts in india - red law legal services: A law firm Red law Legal Services | A Law Firm (2022), <https://redlaw.in/shi> (last visited Apr 12, 2024).