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Jurisdictional Challenges in the Arrest of Vessels: An Overview of International and National Legal Frameworks

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Abstract

Arresting ships is a common practise in international maritime law, but it raises a number of jurisdictional issues that can complicate the process. This article provides an overview of the international and national legal frameworks that govern vessel arrest, emphasising the difficulties that arise when multiple jurisdictions are involved. The article investigates the jurisdictional issues surrounding vessel arrests in both civil and criminal cases, including issues of sovereignty, territoriality, and jurisdictional conflicts between national courts and international tribunals. India is a maritime nation with a long coastline and a thriving shipping industry, making it an important player in the global shipping market. The paper investigates the legal framework governing vessel arrests in India, including the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act of 2017, as well as relevant provisions of the CPC. It also looks at selected countries' national legal frameworks, such as the United States, the United Kingdom, and Singapore. While there are established legal frameworks in place, the paper concludes that vessel arrest remains a complex and challenging area of law, with many competing interests at play. It emphasises the importance of safeguarding fundamental rights and the need for ongoing efforts to harmonise international and national legal frameworks.

Keywords: Admiralty Law, Arrest of vessel, International Convention on arrest of Ship,

Jurisdiction, United Nations convention on the law of the Sea.

Objective

The aim of this research paper is to provide an overview of the jurisdictional challenges in the arrest of vessels, considering both international and national legal frameworks. The paper aims to examine the legal framework governing the arrest of vessels in India, including the Admiralty Act, 2017, international treaties, such as the United Nations Convention on the Law of the Sea and the International Convention on the Arrest of Ships and the challenges that arise in the enforcement of foreign judgments.

Research Methodology

The research is based on the doctrinal method of research. The research will involve a comprehensive review of relevant literature, including primary and secondary sources such as international treaties, national legislation, case law, academic articles, and reports from relevant organizations. The research methodology used in this paper is intended to provide a thorough and comprehensive analysis of the jurisdictional challenges in vessel arrests, with a focus on the Indian scenario.

Introduction

The maritime industry is an essential component of the global economy, with the seas carrying a significant portion of



international trade. However, given the vastness of the oceans and the number of players involved in the industry, disagreements are unavoidable. The arrest of vessels is one of the legal mechanisms used to resolve disputes in the maritime industry. Arresting a vessel can be an effective means of enforcing claims. It does, however, raise complex jurisdictional issues that must be addressed. India, as a maritime nation with a sizable shipping industry, is no stranger to these difficulties. In India, vessel arrests are governed by both international and national legal frameworks. The primary international legal instruments governing vessel arrest are the United Nations Convention on the Law of the Sea (UNCLOS) and the International Convention on the Arrest of Ships (ICAS), while the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 is the primary national legal framework in India. Prior to independence, the maritime laws in India were governed by the British government. Some of the laws that govern maritime in India include the Coasting Vessels Act of 1838, the Inland Steam Vessels Act of 1917, the Admiralty Offences (Colonial) Act of 1849, the Indian Registration of Ships Act of 1841, the Indian Ports Act of 1908, and the Control of Shipping Act of 1947.¹

Despite established legal frameworks, several jurisdictional issues arise in the arrest of vessels in India. These include the conflict between Indian courts exercising jurisdiction and the principle of sovereign immunity, the role of flag-state jurisdiction, and the enforcement of foreign judgements. This article provides an overview of the jurisdictional issues involved in vessel arrests in India, considering both international law and treaties as well as the Indian legal framework. It examines the relevant provisions of the Admiralty Act, the principles of UNCLOS and ICAS, and the difficulties encountered in enforcing foreign judgements. The article concludes by emphasising the importance of continuing efforts to harmonise

international and national legal frameworks in order to ensure the smooth operation of India's shipping industry.

Arrest of Ship

Ship arrest is the process of preventing a ship from trading or moving until the matter at hand is resolved. An admiralty court is granted exclusive jurisdiction to detain a vessel in order to secure a maritime claim.

Article 1 of the International Convention Relating to the Arrest of Sea-Going Ships, 1952 defines the term arrest as the following: "(2) 'Arrest' means the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment."²

Furthermore, Article 2 of the 1952 Convention states that a ship flying the flag of one of the Contracting States may be arrested in any Contracting State for any maritime claim only. However, under their existing domestic laws/regulations, governments or their departments, public authorities, or dock or harbour authorities have the right to arrest, detain, or otherwise prevent vessels within their jurisdiction from sailing.

A ship arrest may be exercised under the authority of a court having admiralty jurisdiction, for the following reasons:

- Loss of life
- Loss of property
- Salvage
- Collision
- Execution of decree
- Violation of customs, usages, regulation, or norms

In the case of *Chrisomar Corporation v. MJR Steels Private Ltd.*³, Justices Rohinton Nariman and Sanjay Kishan Kaul stated that the arrest of a foreign ship for a maritime claim is

1 Sethi, Rajesh, 'Ship Arrests And Indian Maritime Law' (Mondaq, 28 June 2019) <https://www.mondaq.com/india/marine-shipping/817974/ship-arrests-and-indian-maritime-law> accessed 3 March 2023.

2 International Convention Relating to the Arrest of Sea-Going Ships, 1952 (adopted 12 May 1952, entered into force 7 August 1956) 189 UNTS 64 <https://treaties.un.org/doc/Publication/UNTS/Volume%20189/volume-189-I-2629-English.pdf> accessed 3 March 2023.

3 *Chrisomar Corporation vs MJR Steels Private Limited*, (2017) 8 SCC 369.



permissible only if there is no change in ownership between the date the claim arose and the date the ship is arrested. So, the case addressed the question of whether a vessel can be arrested if its ownership changes. Court relief is granted in accordance with Article 3 of the International Convention on the Arrest of Ships, which is reproduced below:

"Article 3: Exercise of Arrest Power" 1. Arrest of any ship in relation to which a maritime claim is asserted is permissible if: (a) the person who owned the ship at the time the maritime claim arose is liable for the claim and is the owner of the ship when the arrest is carried out."⁴

National Legal Framework

India has a significant coastline and a growing shipping industry, and the country has developed a strong legal framework governing vessel arrest. The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("the Admiralty Act") and the Code of Civil Procedure, 1908 form the foundation of the Indian legal regime governing vessel arrest.

The Admiralty Act of India consolidates and updates the laws governing admiralty jurisdiction and vessel arrest. A "maritime claim," as defined in Section 2(1)(d) of the Admiralty Act, includes claims relating to the carriage of goods, salvage, collision, loss of life or personal injury, and environmental damage. Section 3 of the Admiralty Act grants the High Courts exclusive jurisdiction to hear maritime claims, including the authority to arrest vessels.⁵

The arrest of vessels in India is governed by the Code of Civil Procedure, 1908, in addition to the Admiralty Act. According to Order XXXVIII, Rule 5 of the Code of Civil Procedure, a court

may issue an order for the arrest of a vessel in execution of a money-payment decree.⁶

The Admiralty act contains provisions for both in rem and in personam actions. Section 5 of the Admiralty Act deals with vessel arrests in rem. An action in rem is brought against the ship itself, whereas an action in personam is brought against people within the court's territorial jurisdiction. The Admiralty Act defines 'arrest' as the detention or restriction of a vessel for the purpose of removing it by order of a High Court to secure a maritime claim, including seizure of a vessel in execution or satisfaction of a judgement or order. The provisions in Section 5 of the Act are intended to provide security for a maritime claim that is the subject of an admiralty proceeding.⁷ Unless explicitly or by necessary implication limited, the court's power is unlimited. In the absence of such a curtailment of jurisdiction, a claimant against a foreign ship and its owner found within the jurisdiction of the concerned High Court has access to all remedies available to courts to administer justice. The court's ability to render justice must necessarily include the ability to issue interlocutory orders for arrest and attachment prior to judgement.⁸

India has established a strong legal framework for vessel arrests, which is primarily based on the Admiralty Act and the Code of Civil Procedure. The Indian legal framework governing vessel arrest is also governed by international laws and treaties. India is a signatory to several international conventions and agreements, including the UN Convention on the Law of the Sea and the International Convention on the Law of the Sea Convention, which impose certain obligations on the country. For example, under the UN Convention on the Law of the Sea, India is required to respect the principle of innocent passage and

4 International Convention on Arrest of Ships, art 3 (adopted 12 March 1999, entered into force 14 September 2011) [https://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Arrest-of-Ships-\(1999\).aspx](https://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Arrest-of-Ships-(1999).aspx) accessed 3 March 2023.

5 Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, s 2(1)(d); s 3.

6 Code of Civil Procedure, 1908, O. 38 r. 5

7 Shrikant Pareshnath Hathi and Binita Hathi, 'Ship Arrest in India and Admiralty Laws of India' (Admiralty Practice) <http://www.admiraltypractice.com> accessed 3 March 2023.

8 Ibid.



ensure that foreign vessels are not arbitrarily detained or arrested within its territorial waters.

The Arbitration and Conciliation Act, 1996

Prior to the 2015 amendment to the Arbitration Act, the case of *Bharat Aluminium Co v Kaiser Aluminium Technical Service, Inc (BALCO)*⁹ established the position on interim measures for foreign-seated arbitration. In this case, the Supreme Court of India overruled its previous decision in *Bhatia International v Bulk Trading SA*¹⁰, in which the Court held that the provisions of Part I of the Arbitration Act apply equally to foreign-seated arbitrations unless the parties expressly or implicitly exclude all or any of its provisions. As a result of the BALCO decision, India's courts lacked the jurisdiction to grant interim relief (under section 9) to secure claims for foreign-seated arbitrations. The 2015 amendment to the Arbitration Act, however, extended the provisions of section 9 to international commercial arbitrations seated outside India.

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2007

Prior to the enactment of the Admiralty Act, the Supreme Court had reinstated the applicability of the International Convention Relating to the Arrest of Sea-Going Ships, 1952 and the International Convention on Arrest of Ships, 1999 (the Conventions) in India.

Article 2(3) of the International Convention on Arrest of Ships, 1999 states:

'A ship may be arrested for the purpose of obtaining security notwithstanding that, by virtue of a jurisdiction clause or arbitration clause in any relevant contract, or otherwise, the maritime claim in respect of which the arrest is effected is to be adjudicated in a State other than the State where the arrest is

effected, or is to be arbitrated, or is to be adjudicated subject to the law of another State.'¹¹

In *JS Ocean Liner v MV Golden Progress*, the Bombay High Court distinguished between an application for interim relief under the Arbitration Act and an admiralty action for vessel arrest. The Court held that an arrest of a ship is a right in rem, as if the vessel has legal personality, whereas a section 9 application under the Arbitration Act is an action in personam, where the proceedings are initiated against a specific person. The Court ruled that a section 9 application seeking interim relief for ship arrest as security for an arbitration award in a foreign-seated arbitration would be unconstitutional. The Court also held that, taking the specific provisions of the Conventions into account, the parties may be granted the right to an action in rem under admiralty jurisdiction for a maritime claim, even if an arbitration agreement with a foreign arbitration seat exists.¹²

Prior to the enactment of the Admiralty Act, courts held that a suit for arrest of a ship to secure a maritime claim would not be affected simply because an arbitration agreement with a foreign seat exists, because the Conventions contained express provisions to that effect.

The Admiralty Act lacks comparable provisions, such as the Conventions' right to file an admiralty suit to arrest a ship as security for foreign-seated arbitration. As a result, it is unclear whether the absence of such a specific provision will alter the previously held position in this regard.¹³

⁹ *Bharat Aluminium Co v Kaiser Aluminium Technical Service, Inc*, (2012) 9 SCC 552.

¹⁰ *Bhatia International v Bulk Trading SA*, (2002) 4 SCC 105.

¹¹ International Convention on Arrest of Ships, art 2(3) (adopted 12 March 1999, entered into force 14 September 2011) [https://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Arrest-of-Ships-\(1999\).aspx](https://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Arrest-of-Ships-(1999).aspx) accessed 3 March 2023.

¹² *S Ocean Liner Llc v MV Golden Progress*, 2007 (2) ARBLR 104 Bom.

¹³ International Bar Association, 'IBA publishes revised guidelines for party representation in international arbitration' (25 January 2021) <https://www.ibanet.org/article/51CBFCEA-D7F4-4DEE-BEFA-B271D267DCA7> accessed 3 March 2023.



International Legal Framework

The International legal framework governing vessel arrest is primarily based on the United Nations Convention on the Law of the Sea (UNCLOS) and the International Convention on Ship Arrest (ICAS). The UN Convention on the Law of the Sea establishes the basic framework for maritime law, whereas ICAS seeks to harmonise the laws of various countries relating to vessel arrest and to establish a uniform system for ship arrest.

According to the UN Convention on the Law of the Sea, coastal states have the right to exercise jurisdiction over foreign vessels within their territorial sea if the vessel has violated their laws and regulations. However, UNCLOS recognises the principle of innocent passage, which allows foreign vessels to pass through another state's territorial sea without engaging in any activity that is detrimental to that state's peace, good order, or security. The primary international legal instrument governing vessel arrest is the United Nations Convention on the Law of the Sea (UNCLOS). Article 220 of the UN Convention on the Law of the Sea states that every State has the authority to arrest a foreign ship within its territorial sea, subject to certain conditions. These conditions include the requirement that the arrest be necessary to secure the enforcement of a monetary claim arising from the use or operation of the ship, and that the claim be unrelated to ship ownership or a dispute between co-owners.¹⁴

ICAS provides a standardised system for vessel arrest in accordance with international law. It defines the circumstances under which a ship can be arrested, the arresting party's rights and obligations, and the procedures to be followed in ship arrests. ICAS also establishes a system for the release of arrested ships and

requires the payment of security to secure the vessel's release.¹⁵

In addition to the UN Convention on the Law of the Sea and the International Convention on the Law of the Sea, there are several other international conventions and treaties that govern specific aspects of maritime law, such as the International Convention for the Prevention of Pollution from Ships (MARPOL)¹⁶ and the International Convention on Salvage¹⁷. These conventions and treaties establish rules and regulations for preventing ship pollution, conducting salvage operations, and resolving maritime disputes.

The Position in Singapore

The Singaporean position clarifies the situation. A ship may be arrested in Singapore under the provisions of the International Arbitration Act (IAA) in order to obtain security for a claim subject to Singapore or foreign arbitration. As a result, it is not uncommon for an arrest to be carried out in Singapore solely to obtain security for the satisfaction of a potential foreign arbitration award.¹⁸

Section 7 of the IAA empowers the court to order the retention of a ship or property arrested, or security furnished to prevent arrest or obtain release from arrest, or the provision of equivalent security in the arbitration, in either case, for the satisfaction of any arbitration award.

¹⁴ United Nations Convention on the Law of the Sea (UNCLOS) (opened for signature 10 December 1982, entered into force 16 November 1994) (United Nations Treaty Series, vol 1833, p 3) https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf accessed 3 March 2023.

¹⁵ International Convention on Arrest of Ships, opened for signature 12 March 1999, 2264 UNTS 231 (entered into force 14 September 2011) https://treaties.un.org/doc/source/docs/2264_XXII_231-English.pdf accessed 3 March 2023.

¹⁶ International Convention for the Prevention of Pollution from Ships (MARPOL), opened for signature 2 November 1973, 1340 UNTS 184 (entered into force 2 October 1983) [https://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](https://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx) accessed 3 March 2023.

¹⁷ International Convention on Salvage, opened for signature 28 April 1989, 1957 UNTS 169 (entered into force 14 July 1996) [https://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Salvage-\(SALVAGE-1989\).aspx](https://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Salvage-(SALVAGE-1989).aspx) accessed 3 March 2023.

¹⁸ TOH Kian Sing, 'Judicial Assistance in Maritime Arbitration: A Singapore Perspective' (2006) 18 Singapore Academy of Law Journal 771, 775-776 <https://www.singaporelaw.sg/sglaw/laws-of-singapore/article/4.-judicial-assistance-in-maritime-arbitration-a-singapore-perspective> accessed 4 March 2023.



In the case of ICL Raja Mahendra¹⁹, the court made the following observation regarding the arrest of a ship to obtain security for an arbitration award:

'I agree that the court's jurisdiction to arrest a ship in an action in rem should not be used to provide security for another award or judgement. A party may apply under Section 6 of the International Arbitration Act as an exception.'

Section 6 of the IAA deals with a mandatory stay of proceedings when a party violates an arbitration agreement that states that disputes must be resolved by an arbitration tribunal in a specific jurisdiction. Section 7 of the IAA expressly grants the courts the authority to retain property arrested as security for foreign arbitration, making Singapore a popular jurisdiction for 'arbitration security' arrests.

It should be noted, however, that an action for vessel arrest brought in Singapore courts to obtain security for foreign court proceedings is not maintainable. In the case of DSA Consultancy vs The 'Eurohope',²⁰ the position was clarified. There is no statutory provision that allows Singapore courts to order the retention of property arrested for the satisfaction of a judgement rendered in a foreign court proceeding.

However, for foreign-seated arbitrations, the position is different, as section 7(1) of the IAA expressly allows ships arrested under the High Court's admiralty jurisdiction to be used as security for pending international arbitrations.

The Position in United States

The United States has a well-established legal framework for vessel arrest that is primarily based on federal law. The Admiralty and Maritime Jurisdiction Act (AMJA) of 1988 is the primary federal statute governing vessel arrests in the United States.

The AMJA gives federal district courts exclusive jurisdiction over civil maritime cases, including vessel arrests. The AMJA also specifies the procedures for arresting vessels, including the requirements for obtaining an arrest warrant, posting a bond, and releasing the vessel.²¹

Aside from the AMJA, the Federal Rules of Civil Procedure govern vessel arrests in the United States. The procedures for the arrest of vessels are outlined in Rule C of the Supplemental Rules for Admiralty or Maritime Claims, which includes the filing of a verified complaint and the posting of a security bond.²²

The United States is also a signatory to a number of international treaties and conventions, including the International Convention on Arrest of Ships, 1999. This convention establishes a framework for the arrest and release of ships in foreign jurisdictions.²³ In conclusion, the United States has a strong legal framework governing vessel arrest that is primarily based on federal law, such as the AMJA and the Federal Rules of Civil Procedure.

The Position in United Kingdom

In UK the arrest of ships is primarily based on the Admiralty Jurisdiction Act of 1840 and the Supreme Court Act of 1981. These acts establish the High Court's admiralty jurisdiction in England and Wales, Northern Ireland, and Scotland. The main legislation governing the arrest of vessels in the UK is the Senior Courts Act 1981, Part III.

The High Court of Justice in England and Wales has jurisdiction to arrest vessels for the purpose of obtaining security for a maritime claim under section 20(2) of the Senior Courts Act 1981. Section 20(1) of the Act defines a maritime claim as one that includes claims for

²¹ *Admiralty and Maritime Jurisdiction Act (AMJA) of 1988.*

²² *Supplemental Rules for Admiralty or Maritime Claims, Rule C.*

²³ International Convention on Arrest of Ships, 1999, art 2(3) (adopted 12 March 1999, entered into force 14 September 2011) [https://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Arrest-of-Ships-\(1999\).aspx](https://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Arrest-of-Ships-(1999).aspx) accessed 4 March 2023.

¹⁹ CL Raja Mahendra, [1999] 1 Singapore Law Reports 329.
²⁰ *DSA Consultancy v The 'Eurohope'* [2017] SGHC 218.



property damage, claims for breach of a contract for the carriage of goods, and claims for salvage.²⁴ In addition to the Senior Courts Act of 1981, the United Kingdom recognises international laws and treaties governing vessel arrest. The United Kingdom is a signatory to the International Convention on the Arrest of Ships, 1999 ("the Arrest Convention"), which establishes uniform rules for the arrest of ships in order to ensure that vessels are released as soon as the claim is satisfied.

Section 20 of the Admiralty Jurisdiction Act 1840 states that in any action in rem where the plaintiff has a maritime claim against the ship or its owners, a court may order the arrest of any ship or vessel within its jurisdiction. Section 3 of the same act defines a maritime claim as a claim in respect of a maritime debt or a maritime lien.²⁵

The Arrest Convention was implemented in the United Kingdom through Part XIV of the Merchant Shipping Act of 1995. A person claiming a maritime lien or a right in rem against a ship may apply to the court for the arrest of the ship under Section 20 of the Merchant Shipping Act 1995.²⁶

Jurisdictional Challenges

One of the most difficult jurisdictional challenges that maritime law enforcement authorities face when arresting vessels is determining the appropriate jurisdiction for the arrest. This may entail determining the nationality of the vessel, the jurisdiction of the flag state, or the jurisdiction of the coastal state where the vessel is located. In some cases, there may be conflicts between the legal frameworks of different countries, complicating jurisdictional issues further. Obtaining the necessary legal authority to arrest the vessel is another challenge. This may necessitate the acquisition of a court order or warrant, which may be subject to different legal requirements in different jurisdictions. In some cases, a lack of

clear legal authority can prevent law enforcement from arresting vessels, even when there is clear evidence of a violation. Various jurisdictional challenges, including the exercise of jurisdiction by Indian courts and the principle of sovereign immunity, apply to vessel arrests in India. In cases involving foreign state-owned vessels, the tension between these two principles frequently arises.

In 2012, the Indian government apprehended an Italian government-owned ship in connection with the killing of two Indian fishermen by Italian marines. The Italian government claimed sovereign immunity for the ship and challenged the arrest in the Indian Supreme Court. The case raised serious legal and diplomatic concerns, and the Indian Supreme Court eventually ordered the vessel's release. The case emphasised the difficulties that Indian courts face in balancing the exercise of jurisdiction with the principle of sovereign immunity. It also emphasises the importance of port-state cooperation in vessel arrests, as well as the need for harmonisation of international and national legal frameworks.

Jurisdiction of Indian Courts

Prior to India's independence, the High Courts of Bombay, Madras, and Calcutta were the only judicial authorities competent to deal with Admiralty matters under The Colonial Court of Admiralty Act, 1890. The other courts of justice were barred from hearing cases involving the Admiralty.

Section 35 of the Admiralty Courts Act, 1861, deals with the jurisdiction of the Admiralty Court and states: "The jurisdiction conferred by this Act on the High Court of Admiralty may be exercised either in rem or in personam."

The Law relating to Admiralty jurisdiction is relevant even today under Article 372 of the Constitution of India. The question in *M.V. Elisabeth vs Harwan Investment and Trading*²⁷, was whether a court with no admiralty

24 Senior Courts Act 1981, Pt III, s 20(1), (2).

25 Admiralty Jurisdiction Act 1840, s 20, s 3.

26 Merchant Shipping Act 1995, Pt XIV, s 20.

27 *M.V. Elisabeth v Harwan Investment and Trading*, 1993 AIR SC 1014.



jurisdiction could hear an admiralty case. In this case, the Supreme Court widened India's admiralty jurisdiction. Court held that, "Although statutes now govern the field, much of the admiralty law is based on judicial decisions and is influenced by Civil Law, Common Law, and equity. Apart from statute, ancient maritime codes such as 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 some of the sources from which English law developed. Any attempt to limit Admiralty or maritime Law to the confines of statutes is not only unrealistic, but also incorrect."²⁸

Action in rem means

'Section 5 of the Act grants the right to arrest a vessel in rem. Its implication was clarified in the case of MV Elizabeth and Ors. v. Harwan Investment and Trading, in which the court stated that "Admiralty Law confers on the claimant a right in rem to proceed against the ship or cargo, as opposed to a right in personam to proceed against the owner... An action... that was originally commenced in rem, upon appearance, becomes a personal action against a defendant, and he becomes liable for the full amount of a judgement unless protected by the statutory provisions for liability limitation."

As a result, while the owner is not sued directly and by name, he or she, or anyone else interested in the proceedings, may appear, and defend. If the owner does not submit to the jurisdiction and appears in court to post bail and release the ship, it may be condemned and sold to satisfy the claims against her. If, however, the owner submits to the jurisdiction and obtains the ship's release by depositing security, he becomes personally liable to be prosecuted in personam in execution of the judgement if the amount decreed exceeds the

amount of the bail. The Gujarat High Court reiterated this in the case of Gp Global Apac Pte Ltd vs Mv Silvia Glory.²⁹

Enforcement of Foreign Judgement

Foreign judgement enforcement is a significant challenge in vessel arrests because it requires national legal systems to recognise and enforce foreign judgements. The Code of Civil Procedure, 1908, and the Foreign Judgments (Reciprocal Enforcement) Act, 1961 govern the recognition and enforcement of foreign judgements in the Indian legal system. However, the process of recognising and enforcing foreign judgements is frequently complicated by jurisdictional issues, such as competing jurisdictional claims by multiple countries, a lack of reciprocity among countries, and the absence of a universal legal framework for recognising and enforcing foreign judgements.

The International Convention on the Arrest of Ships, 1999, is one of the most important international treaties in this regard, and India has ratified it. Under certain conditions, the Convention provides for the recognition and enforcement of foreign judgements in maritime claims. Article 6 of the Convention states that a maritime claim judgement rendered by a court of a State Party shall be recognised and enforced in any other State Party, subject to certain conditions, including that the judgement is final and conclusive and that it falls within the scope of the Convention.³⁰

The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, also known as the New York Convention, is a critical legal instrument that governs the recognition and enforcement of foreign arbitral awards in international law.³¹ The

28 Sethi, Rajesh, 'Ship Arrests And Indian Maritime Law' (Mondaq, 28 June 2019) <https://www.mondaq.com/india/marine-shipping/817974/ship-arrests-and-indian-maritime-law> accessed 4 March 2023.

29 Reddy, 'Ship Arrest by the Admiralty High Courts in India' (n.d.) RedLaw <https://redlaw.in/ship-arrest-by-the-admiralty-high-courts-in-india/> accessed 4 March 2023.

30 International Convention on the Arrest of Ships, 1999, 1956 UNTS 205.

31 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (adopted 10 June 1958, entered into force 7 June 1959) <https://www.uncitral.org/pdf/english/texts/arbitration/New->



Indian legal system recognises and enforces foreign arbitral awards in accordance with the provisions of the New York Convention, and India is a signatory to the Convention. The New York Convention, on the other hand, only governs the recognition and enforcement of foreign arbitral awards and not the recognition and enforcement of foreign judgements.

The competing claims of multiple jurisdictions complicate the enforcement of foreign judgements in the context of vessel arrest. For example, if a foreign court issues a judgement against the owner of a vessel and the vessel is apprehended in Indian waters, the Indian court must decide whether to recognise and enforce the foreign judgement or to exercise its own jurisdiction. This raises complex issues of comity and competing jurisdictional claims, and the Indian court must balance the interests of the foreign court and the vessel owner while ensuring fundamental rights are protected.³²

Conclusion

The arrest of a vessel raises several jurisdictional issues that must be carefully considered and applied under both national and international legal frameworks. International treaties, such as the United Nations Convention on the Law of the Sea, lay the groundwork for regulating maritime activities and establishing jurisdiction over vessels.

The international legal framework governing vessel arrest has evolved over time, and the primary legal instruments governing vessel arrest are UNCLOS and ICAS. Other international conventions and agreements, as well as customary international law, govern vessel arrest. Harmonization of international legal frameworks is critical for the smooth operation of the shipping industry and the

protection of the rights of all stakeholders involved in maritime activities.

Conflicts can arise, however, when national laws diverge from international norms, causing uncertainty and confusion about which legal framework applies in a given situation. As a result, it is critical for states to collaborate and develop consistent policies to address these jurisdictional challenges, ensuring that all parties' rights and interests are respected and protected. The law governing ship arrest is now well established in India. Admiralty law is a developing field that plays an essential role in protecting citizens and ensuring that no organisation or individual violates the Law of the Sea.

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