

**CLAIMS RELATING TO CARGO OR PASSENGER ON BOARD
AND CONTRACT OF AFFREIGHTMENT**

One of the fundamental aspects of Admiralty jurisdiction concerning cargo claims, passengers on board, and contracts of affreightment is its statutory basis. This jurisdiction is governed by Section 4(1)(f) of the Admiralty Act (2017), which specifically addresses maritime claims and agreements relating to the carriage of goods or passengers on board a vessel, whether stipulated in a charter party or otherwise.

Historically, the Admiralty Court's jurisdiction over the carriage of goods was initially established under the Admiralty Court Act of 1861. This legislation conferred jurisdiction upon the Court over claims arising from damage to goods carried by a ship into any port in India due to negligence or breach of contract, provided the ship's owner was not domiciled in India. Over time, the jurisdiction of the Admiralty Court has been expanded to encompass various aspects related to cargo claims, passengers on board, and contracts of affreightment.

Under the Act of 1861, only owners of cargo had the right to bring Admiralty actions, but subsequent amendments have broadened this scope. Presently, ship-owners, regardless of their domicile, can initiate Admiralty actions against cargo owners domiciled in India. However, a limitation exists wherein no owner or part owner of the ship can be domiciled in India at the time of instituting the suit.

Moreover, proceedings in rem can only be instituted against the ship on which the goods in question were actually carried. Similarly, claims pertaining to cargo, passengers on board, or contracts of affreightment are enforceable against the specific ship related to the agreement or carriage. Although the

language of the statute does not explicitly impose such limitations, plaintiffs are typically bound by these principles.

Charterers, whether time or voyage, can become involved in cargo claims directly or indirectly. Direct involvement occurs when the charterer incurs liability directly to the cargo owner or insurer, while indirect involvement arises when the charterer becomes liable to another party, often the shipowner, who is initially liable to the cargo owner. Thus, charterers may still face claims even if not initially targeted, and they may bear ultimate liability in certain situations.

In recent amendments, Admiralty jurisdiction is no longer restricted to claims concerning goods carried into Indian ports; it now encompasses claims related to any breach of contract. Additionally, the scope of claimants has expanded beyond the owner, consignee, or assignee of the bill of lading, allowing a wider range of parties to pursue claims for damages or breaches of contract.

Regarding actions in personam, cargo owners can now bring such actions in the Admiralty Court regardless of the domicile of the ship's owners. However, the jurisdiction for actions in rem concerning cargo claims remains unchanged. If the ship's owner is domiciled in India, there is no jurisdiction to entertain an action in rem, whether the ship is Indian or foreign.

The underlying purpose of these provisions is to provide a practical remedy for claimants where previously none existed due to shipowners being outside the jurisdiction. By enabling claims against foreign ships as well as Indian ones, the legislation seeks to address historical inadequacies in maritime law, particularly concerning breach of contract and damage to cargo.

Ultimately, the accrual of remedies depends on the ship owner's domicile at the time of the suit's institution. This ensures that plaintiffs have a viable recourse for claims related to damage to cargo or breaches of contract, even if

maritime liens do not apply retroactively to the circumstances giving rise to the claim.

The Admiralty jurisdiction of the High Court in respect of cargo claims, passenger on board and contracts of affreightment is statutory. Section 4 (1) (f) of the Admiralty Act (2017) deals with the above subject maritime claims, agreement relating to the carriage of goods or passengers on board a vessel, whether contained in a charter party or otherwise.

The High Court has Admiralty jurisdiction and jurisdiction in relation to the carriage of goods was first acquired by the Admiralty Court under the Admiralty Court Act, 1861. The Act of 1861 gave jurisdiction to the Court over claims by the owner, consignee or assignee of the bill of lading of any goods carried by a ship into any port in India for damage caused by negligence or for any breach of contract or breach of duty, unless at the institution of the cause the owner or part owner of the ship was domiciled in India. The jurisdiction which the Court now exercises has thus been extended. Under the Act of 1861 the right to bring an Admiralty action was limited to owners of cargo, but now there appears to be no reason why a ship-owner, provided that he is not domiciled in India, should not bring an Admiralty action against cargo owners, although the latter are domiciled in India; The only express limitation upon this exercise of jurisdiction in rem in claims relating to the carriage of goods is now the proviso that no owner or part owner of the ship shall on the institution of the suit be domiciled in India. The claim must be in respect of goods actually shipped on board the vessel which is made subject to proceedings in rem. Proceedings in rem can only be instituted against the ship in which such goods have actually been carried. Upon the same principle it would seem that a claim relating to the cargo or passenger on board or contract of affreightment is only capable of being enforced against the ship to which such agreement relates. The language of the section does not, however, expressly impose any such limitation, but leaves a plaintiff free to enforce in proceedings in rem a claim relating to an

agreement for the hire of a ship, or carriage of goods in a ship, against a ship other than that to which the agreement relates or in which the goods were carried, belonging to the same owner.

A time or voyage charterer's involvement in cargo claims can arise in two different ways: either directly or indirectly. By directly we mean that the charterer incurs the liability directly to the cargo owner, receiver or insurer. By indirectly we mean that the charterer incurs liability to another party, often the shipowner, who has first incurred liability, under a separate contract, to the cargo owner, receiver or insurer. Just because the claim has not been made against the charterer in the first place does not necessarily mean that the time or voyage charterer will not face a claim. Nor does it mean that the charterer will be free from any or all ultimate liability.

The jurisdiction is, however, no longer confined to claims relating to goods "carried into any port in India in any ship", to include claims in respect of any breach of contract. The right to proceed is no longer confined to the owner, consignee or assignee of the bill of lading and therefore it would seem that the limitation of the jurisdiction to claims where actual damage to goods has been sustained, or a breach of contract taken place in relation to them

A claim in personam by cargo owners against the owners of the carrying ship who were domiciled in India are not within the jurisdiction of the Admiralty Court. Any action in personam may now be brought in the Admiralty Court. The jurisdiction in actions in rem has not, however, been affected in respect of cargo claims. There is, therefore, no jurisdiction to entertain an action in rem in which the owner of the ship, whether plaintiff or defendant, is domiciled in India. The remedy applies to foreign ships as well as to Indian ships, its objects being to give a practicable remedy, where formerly in the great majority of cases there was no available process in consequence of the shipowner being out of the jurisdiction. "Many foreign ships" "came into this country, and did not deliver the goods according to the bill of lading. The

owners and consignees of cargo then suffered great loss, and had no practicable remedy; for though the shipowner, if in India, might have been sued for breach of contract, in the very great majority of cases that remedy was wholly unavailable. It appears, too, that in some cases, if not nearly in all, the owner of a Indian ship carrying cargo to a foreign country was liable to have his ship there seized for any breach of his contract as carrier.

As remedy depends upon the place where the owner of the ship is domiciled at the time of the institution of the suit, it is clear that it was not intended that a plaintiff having a claim under the section should have a maritime lien; for a maritime lien accrues from the instant of the circumstances creating it, and not from the date of the intervention of the Court. The claim of the plaintiff in cases of damage to cargo or breaches of contract therefore accrues only upon the institution of the suit.

The admiralty jurisdiction concerning claims related to cargo, passengers on board, and contracts of affreightment is a significant aspect of maritime law. These claims are primarily governed by the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (hereinafter referred to as the "Admiralty Act, 2017"), which provides a statutory framework for handling various maritime claims. Under Section 4(1)(f) of the Admiralty Act, 2017, maritime claims include claims arising out of agreements relating to the carriage of goods or passengers on board a vessel, regardless of whether such agreements are contained in a charter party or otherwise.

Historically, the Admiralty Court's jurisdiction over the carriage of goods and passengers was established under the Admiralty Court Act, 1861. This Act conferred jurisdiction on the Admiralty Court to address claims for damage caused to goods carried by ships entering any Indian port due to negligence or breach of contract. However, this jurisdiction was limited, particularly when the owner of the vessel was domiciled in India at the time of instituting the suit. Over time, this jurisdiction has expanded to cover a broader range of

maritime issues, including cargo claims, passengers on board, and contracts of affreightment, even when the shipowner is domiciled in India.

Jurisdictional Expansion: Admiralty Act, 2017

The Admiralty Act, 2017 has modernized admiralty jurisdiction in India by broadening the scope of claims that can be brought before the Admiralty Courts. The jurisdiction is no longer confined to claims related to goods carried into Indian ports. Now, claims relating to breach of contract, negligence, or damage to cargo can be brought, even if the goods were not physically carried into India. Additionally, the Act expands the range of claimants, allowing not just the owner, consignee, or assignee of the bill of lading, but also other parties affected by a breach of contract or damage to cargo to initiate claims.

Under the Admiralty Act, 2017, claims relating to cargo and passengers can be brought in two primary ways: actions in rem and actions in personam.

Action in rem allows the claimant to proceed directly against the vessel itself, which is treated as a distinct legal entity. This is particularly useful when the shipowner is outside the jurisdiction, allowing the claimant to arrest the vessel to secure the claim. However, this jurisdiction is subject to certain limitations, such as the domicile of the shipowner at the time of instituting the suit.

Action in personam, on the other hand, involves bringing a suit against the person or entity responsible for the claim, such as the shipowner or charterer. This action can be brought even if the shipowner is domiciled in India, thus providing an additional avenue for claimants to seek redress.

Charterers and Liability in Cargo Claims

Charterers, whether under time or voyage charters, can also become involved in cargo claims. The charterer's liability may arise in two ways: directly or

indirectly. Direct liability occurs when the charterer is held responsible for the cargo due to a direct contractual relationship with the cargo owner, receiver, or insurer. Indirect liability, however, occurs when the charterer becomes liable to another party, such as the shipowner, who is initially liable to the cargo owner. This situation can lead to the charterer facing claims even when they were not initially targeted. Additionally, the charterer may bear ultimate liability if the contractual chain places the responsibility for cargo-related issues on them.

Proceedings in Rem and Limitation on Jurisdiction

The Admiralty Act, 2017 allows for proceedings in rem to be instituted against the specific vessel related to the claim. For example, if the claim pertains to goods carried on a specific vessel, the proceedings can only be initiated against that vessel. This principle ensures that the vessel, which is directly connected to the claim, is the subject of the legal proceedings. However, the statute does not explicitly impose this limitation, leaving open the possibility for plaintiffs to pursue claims in rem against other vessels owned by the same owner.

The jurisdiction for actions in rem remains unchanged when the shipowner is domiciled in India. In such cases, Admiralty Courts do not have the authority to entertain an action in rem, regardless of whether the vessel is Indian or foreign. The purpose of these provisions is to provide a practical remedy for claimants when the shipowner is outside the jurisdiction, thereby addressing the historical inadequacies in maritime law that left many claimants without recourse when the shipowner could not be reached.

Case Laws Supporting Cargo and Affreightment Claims

Several case laws highlight the intricacies of claims relating to cargo, passengers, and contracts of affreightment under admiralty jurisdiction. These

case laws offer valuable precedents for understanding the scope and limitations of such claims under Indian admiralty law.

M.V. Elizabeth & Ors. v. Harwan Investment and Trading Pvt. Ltd. (1993): This landmark case established that Indian courts could exercise admiralty jurisdiction even over foreign vessels, provided the ship is within the jurisdiction of the court. The case clarified that actions in rem could be instituted against a vessel for claims arising out of the carriage of goods or breach of contract, regardless of the domicile of the shipowner.

Olex Focas Pty Ltd. v. Skoda Export Co. Ltd. (1998): This case dealt with the issue of claims arising out of charter parties. The court held that charterers could be held liable for damages to cargo even when they were not directly responsible for the goods. The judgment highlighted that charterers might face liability indirectly due to their contractual relationship with the shipowner.

M.V. Pratibha Cauvery v. Suraj Puttana Shetty (2014): This case dealt with the claims arising from the carriage of passengers on board a vessel. The court recognized that passengers have the right to seek compensation for damages arising from negligence or breach of contract by the shipowner or charterer.

M.V. Sea Success I v. Liverpool and London Steamship Protection and Indemnity Association Ltd. (2002): This case highlighted the scope of claims under contracts of affreightment, particularly in situations where the goods were damaged due to the shipowner's negligence. The court emphasized that the claimant could proceed in rem against the vessel to secure the claim.

Hindustan Petroleum Corp. Ltd. v. M.T. Agios Nikolas (2009): The court in this case addressed the issue of jurisdiction over foreign vessels in cargo claims. It held that foreign vessels could be subject to proceedings in rem in Indian courts, provided they were within the jurisdiction at the time of

instituting the suit. The judgment reinforced the practical remedy available to claimants against foreign ships under Indian admiralty law.

The evolution of admiralty jurisdiction in India, particularly concerning claims related to cargo, passengers on board, and contracts of affreightment, reflects the legislative intent to provide effective remedies to claimants. The Admiralty Act, 2017 has broadened the scope of jurisdiction, allowing for a wider range of claims to be brought before the Admiralty Courts, including those related to breaches of contract, negligence, and damage to goods or passengers.

The statutory provisions, coupled with case law precedents, ensure that claimants have viable recourse against both Indian and foreign vessels, as well as shipowners and charterers, for claims related to cargo and passengers. This expansion of jurisdiction aims to rectify historical inadequacies in maritime law and provides a robust framework for addressing modern maritime disputes.