

SPECIFIC JURISDICTION AND JURISDICTION IN ADMIRALTY

The concept of admiralty jurisdiction is crucial in maritime law, determining the legal authority to handle disputes related to maritime affairs. In India, the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (AJSC Act) forms the bedrock of this jurisdiction.

The Foundation: Admiralty Jurisdiction under AJSC Act

Section 3 of the AJSC Act vests the authority to adjudicate maritime claims with the respective High Courts, acting as courts of specific jurisdiction. This authority extends up to and includes the territorial waters within their jurisdiction. This jurisdiction is a cornerstone of judicial sovereignty, allowing the High Courts to administer justice for matters and entities falling under their purview.

A critical aspect of admiralty jurisdiction is the power to enforce claims against foreign ships. This is achieved by arresting and detaining such ships while they are within the High Court's jurisdiction. This power is essential for ensuring that foreign vessels operating in Indian waters are held accountable for their actions.

Scope of Admiralty Jurisdiction: What Claims Can Be Heard?

The Indian High Courts with admiralty jurisdiction can hear and determine a wide range of maritime claims as outlined in Section 4(1) of the AJSC Act. These claims encompass various scenarios, including:

Disputes regarding vessel ownership or possession (including shares)

Disagreements between co-owners of a vessel concerning its operation or earnings

Issues related to mortgages or similar charges on a vessel

Loss or damage caused by a vessel's operation

Loss of life or personal injury arising from vessel operations (on land or water)

Loss or damage to goods

Agreements concerning the carriage of goods or passengers on board a vessel

Agreements related to vessel use or hire

Salvage services, including special compensation for preventing environmental damage by a vessel

Towage and pilotage services

Supply of goods, materials, provisions, fuel, equipment (including containers), or services rendered for vessel operation, management, preservation, or maintenance

Vessel construction, reconstruction, repair, conversion, or equipping

Port dues, harbor fees, canal tolls, dock or light tolls, waterway charges, and similar levies

The jurisdiction extends to claims by crew members or their dependents related to wages, repatriation costs, social security contributions, and other amounts payable under employment contracts or relevant laws. Additionally, disbursements incurred on behalf of the vessel or its owners, average losses (particular and general), disputes arising from vessel sale contracts, and insurance premiums are covered.

The scope also encompasses damage caused by a vessel to the environment, coastline, or related interests, along with measures taken to prevent, minimize, or remove such damage. Compensation for damage, costs of environmental restoration, and losses incurred by third parties due to the damage also fall under admiralty jurisdiction.

Furthermore, the Act covers expenses related to raising, removing, recovering, destroying, or rendering harmless a sunken, wrecked, stranded, or abandoned vessel, including anything on board. Costs associated with preserving an abandoned vessel and maintaining its crew are also addressed.

Lastly, the concept of maritime liens, which are legal claims against a vessel to secure payment for maritime services or debts, falls under admiralty jurisdiction.

Applicability: Who and What Does It Cover?

The AJSC Act applies to every vessel, irrespective of the owner's residence or domicile. However, there are some exceptions:

Inland vessels defined under the Inland Vessels Act, 1917

Vessels under construction that haven't been launched (unless notified by the Central Government)

Warships, naval auxiliaries, or other vessels owned/operated by the Central or State Government for non-commercial purposes

Foreign vessels used for non-commercial purposes (as notified by the Central Government)

The jurisdiction applies to all ships, Indian or foreign, registered or unregistered, regardless of the owner's location. It extends to claims arising anywhere, including cargo or wreck salvage claims for cargo or wrecks found on land. The Act also covers mortgages and charges, irrespective of registration or legal/equitable nature, including those created under foreign laws.

The definition of a vessel is broad, encompassing any ship, boat, sailing vessel, or other waterborne craft used or intended for navigation, whether

propelled or not. This includes barges, lighters, hovercrafts, offshore industry mobile units, sunken, stranded, or abandoned vessels, and their remains. However, a vessel broken up to the extent that it cannot be used for navigation (as certified by a surveyor) is excluded. Notably, the filing of a bill of entry for the vessel is irrelevant for determining its status under the Act.

The starting point for ship arrest in maritime law is the subject of admiralty jurisdiction. Admiralty jurisdiction is founded on the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, section 3, provides: "subject to the provisions of sections 4 and 5, the jurisdiction in respect of all maritime claims under this Act shall vest in the respective High Courts and are the courts of specific jurisdiction and be exercisable over the waters up to and including the territorial waters of their respective jurisdictions in accordance with the provisions contained in this Act: ".

Admiralty jurisdiction is an essential aspect of judicial sovereignty which under the Constitution and the laws is exercised by the High Court as a superior court of record administering justice in relation to persons and things within its jurisdiction. Power to enforce claims against foreign ships is an essential attribute of admiralty jurisdiction and it is assumed over such ships while they are within the jurisdiction of the High Court by arresting and detaining them.

The Indian Courts possessing Admiralty jurisdiction have jurisdiction over the following claims herein under to hear and determine any questions with regard thereto the claims as set out in Section 4 (1) of the Act. The High Court may exercise jurisdiction to hear and determine any question on a maritime claim, against any vessel, arising out of any:

(a) dispute regarding the possession or ownership of a vessel or the ownership of any share therein;

- (b) dispute between the co-owners of a vessel as to the employment or earnings of the vessel;
- (c) mortgage or a charge of the same nature on a vessel;
- (d) loss or damage caused by the operation of a vessel;
- (e) loss of life or personal injury occurring whether on land or on water, in direct connection with the operation of a vessel;
- (f) loss or damage to or in connection with any goods;
- (g) agreement relating to the carriage of goods or passengers on board a vessel, whether contained in a charter party or otherwise;
- (h) agreement relating to the use or hire of the vessel, whether contained in a charter party or otherwise;
- (i) salvage services, including, if applicable, special compensation relating to salvage services in respect of a vessel which by itself or its cargo threatens damage to the environment;
- (j) towage;
- (k) pilotage;
- (l) goods, materials, perishable or non-perishable provisions, bunker fuel, equipment (including containers), supplied or services rendered to the vessel for its operation, management, preservation or maintenance including any fee payable or leviable;
- (m) construction, reconstruction, repair, converting or equipping of the vessel;

(n) dues in connection with any port, harbour, canal, dock or light tolls, other tolls, waterway or any charges of similar kind chargeable under any law for the time being in force;

(o) claim by a master or member of the crew of a vessel or their heirs and dependents for wages or any sum due out of wages or adjudged to be due which may be recoverable as wages or cost of repatriation or social insurance contribution payable on their behalf or any amount an employer is under an obligation to pay to a person as an employee, whether the obligation arose out of a contract of employment or by operation of a law (including operation of a law of any country) for the time being in force, and includes any claim arising under a manning and crew agreement relating to a vessel, notwithstanding anything contained in the provisions of sections 150 and 151 of the Merchant Shipping Act, 1958;

(p) disbursements incurred on behalf of the vessel or its owners;

(q) particular average or general average;

(r) dispute arising out of a contract for the sale of the vessel;

(s) insurance premium (including mutual insurance calls) in respect of the vessel, payable by or on behalf of the vessel owners or demise charterers;

(t) commission, brokerage or agency fees payable in respect of the vessel by or on behalf of the vessel owner or demise charterer;

(u) damage or threat of damage caused by the vessel to the environment, coastline or related interests; measures taken to prevent, minimise, or remove such damage; compensation for such damage; costs of reasonable measures for the restoration of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in

connection with such damage; or any other damage, costs, or loss of a similar nature to those identified in this clause;

(v) costs or expenses relating to raising, removal, recovery, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel, and costs or expenses relating to the preservation of an abandoned vessel and maintenance of its crew; and

(w) maritime lien.

The jurisdiction applies to every vessel, irrespective of the place of residence or domicile of the owner provided that the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 shall not apply to an inland vessel defined in clause (a) of sub-section (1) of section 2 of the Inland Vessels Act, 1917, or a vessel under construction that has not been launched unless it is notified by the Central Government to be a vessel for the purposes of the Act provided further that the Act shall not apply to a warship, naval auxiliary or other vessel owned or operated by the Central or a State Government and used for any non-commercial purpose, and, shall also not apply to a foreign vessel which is used for any non-commercial purpose as may be notified by the Central Government.

The jurisdiction applies in relation to all ships, whether Indian or not and whether registered or not and wherever the residence or domicile of their owners may be; in relation to all claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law.

A vessel would mean to include any ship, boat, sailing vessel or other description of vessel used or constructed for use in navigation by water,

whether it is propelled or not, and includes a barge, lighter or other floating vessel, a hovercraft, an off-shore industry mobile unit, a vessel that has sunk or is stranded or abandoned and the remains of such a vessel but a vessel shall not be deemed to be a vessel, when it is broken up to such an extent that it cannot be put into use for navigation, as certified by a surveyor, filing of bill of entry of the vessel will have no relevance for this purpose.

Admiralty Jurisdiction: A Comprehensive Legal Analysis

Admiralty jurisdiction is a specialized domain of law that governs maritime matters, and it is vital in adjudicating disputes related to maritime activities. In India, admiralty jurisdiction is governed by the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("AJSC Act"), which empowers the High Courts to adjudicate maritime claims. This jurisdiction is significant for maritime trade, ensuring that disputes involving vessels, goods, services, and other maritime matters are resolved effectively and fairly.

1. The Foundation of Admiralty Jurisdiction: Section 3 of the AJSC Act

The AJSC Act sets out the framework for admiralty jurisdiction in India. Section 3 is central to the exercise of this jurisdiction, conferring authority on the respective High Courts to hear and adjudicate maritime claims. The statute provides that:

"Subject to the provisions of sections 4 and 5, the jurisdiction in respect of all maritime claims under this Act shall vest in the respective High Courts and are the courts of specific jurisdiction and be exercisable over the waters up to and including the territorial waters of their respective jurisdictions in accordance with the provisions contained in this Act."

This provision effectively establishes the High Courts as the courts of admiralty jurisdiction, granting them authority over maritime claims within their territorial waters. The jurisdiction is broad, covering both domestic and

foreign vessels, and extends to all ships, regardless of registration or the owner's domicile. The High Courts act as courts of specific jurisdiction, exercising power over all matters connected to maritime claims.

2. Sovereignty and Power: Enforcement Against Foreign Vessels

One of the critical aspects of admiralty jurisdiction is its power to enforce claims against foreign vessels. This enforcement mechanism is fundamental to the functioning of admiralty law, as it ensures that foreign ships operating in Indian waters are held accountable. The most notable form of enforcement is the arrest of a vessel. When a maritime claim is filed, the court can order the arrest of the ship while it is within the jurisdiction of the High Court. This power is an essential element of the judicial sovereignty vested in the High Courts under admiralty law.

The principle of arresting a ship was affirmed in *MV Elisabeth v. Harwan Investment and Trading Pvt. Ltd.* (1993 AIR 1014), where the Supreme Court of India held that the arrest of a foreign ship within Indian waters is a valid exercise of admiralty jurisdiction. The court observed that the arrest of a vessel ensures that the rights of claimants are protected, even if the shipowner is based outside the jurisdiction.

3. Scope of Admiralty Jurisdiction: Section 4 of the AJSC Act

Section 4(1) of the AJSC Act outlines the wide range of maritime claims that fall under admiralty jurisdiction. These claims include, but are not limited to, disputes related to vessel ownership, operation, and earnings, as well as damages caused by a vessel. The High Courts with admiralty jurisdiction are empowered to adjudicate on matters such as:

Disputes regarding vessel ownership: This includes conflicts over the possession or ownership of a vessel or any share in it. For example, in *Republic of India v. India Steamship Co. Ltd.* (1998 1 SCC 51), the court held

that disputes related to ownership of vessels fall squarely within admiralty jurisdiction.

Loss or damage caused by a vessel: Claims for damages caused by a vessel's operation, including environmental damage, are covered under this provision. This includes cases like *Liverpool & London SP&I Association Ltd. v. M.V. Sea Success I* (2004 9 SCC 512), where the Supreme Court upheld admiralty jurisdiction over claims for environmental damage caused by a vessel.

Maritime liens: Maritime liens, which are claims against a vessel to secure payment for services or debts, are an integral part of admiralty law. The AJSC Act recognizes maritime liens, ensuring that such claims are enforceable within the admiralty jurisdiction. The concept of maritime liens was discussed in *M.V. Elisabeth*, where the court emphasized that admiralty jurisdiction must recognize and enforce maritime liens.

Salvage operations: Claims related to salvage operations, including special compensation for preventing environmental damage, are also under admiralty jurisdiction. This includes the right to claim remuneration for saving a vessel or cargo at sea, as recognized in *M/S Sea Trans Shipping (India) Ltd. v. Owners and Parties Interested in the Vessel 'M.V. San Fabian'* (2014 8 SCC 640).

The scope of admiralty jurisdiction extends beyond these specific claims, covering a wide array of maritime disputes, including those related to insurance premiums, disbursements incurred on behalf of the vessel, port dues, crew wages, and contracts for the sale of vessels.

4. Applicability and Exclusions: Who and What is Covered?

The AJSC Act applies to all vessels, whether Indian or foreign, registered or unregistered, and regardless of the owner's place of residence or domicile.

However, the Act does have some exclusions. Section 2 of the AJSC Act specifies that the Act does not apply to:

Inland vessels: Defined under the Inland Vessels Act, 1917, these vessels are excluded from the purview of the AJSC Act.

Vessels under construction: Vessels that have not yet been launched are generally excluded unless specifically notified by the Central Government.

Warships and government vessels: Vessels owned or operated by the Central or State Government for non-commercial purposes are also excluded. This exclusion applies equally to foreign vessels used for non-commercial purposes as notified by the Central Government.

The inclusive definition of "vessel" in the AJSC Act ensures that admiralty jurisdiction covers a wide variety of maritime craft, including boats, sailing vessels, barges, hovercraft, and offshore industry mobile units. However, once a vessel is broken up to the point where it can no longer be used for navigation, it ceases to be considered a vessel under the Act.

5. Admiralty Jurisdiction: A Pillar of Maritime Law

Admiralty jurisdiction is a foundational aspect of maritime law in India, ensuring that disputes involving vessels, maritime operations, and related activities are handled within a specialized legal framework. The jurisdiction vested in the High Courts under the AJSC Act is broad and far-reaching, covering a diverse range of claims and ensuring that the rights and obligations of parties involved in maritime activities are adjudicated effectively.

The power to arrest and detain vessels, enforce maritime liens, and adjudicate claims related to environmental damage underscores the importance of admiralty jurisdiction in upholding maritime law. As demonstrated by various case laws, the courts have consistently upheld the principles enshrined in the

AJSC Act, ensuring that the admiralty jurisdiction remains a robust and effective mechanism for resolving maritime disputes in India.