

**EXECUTION OF ARREST WARRANT, EFFECTING THE
ARREST**

Role of the Sheriff or Admiral Marshal

The Sheriff of Mumbai or the Admiral Marshal or his substitute may execute a warrant of arrest on the ship. If the warrant of arrest is dispensed with by the Admiralty judge while passing the order of arrest of the vessel, the port, custom and other authorities act upon the order passed, not allowing the vessel to sail outward from its jurisdiction. A copy of the order passed by the court for arrest of the vessel should be communicated to all concerned authorities by hand, fax, or email, followed by an authenticated or true copy of the order to the concerned authorities. A copy of the order should also be served upon the port agent of the vessel who acts as the agent of the owner of the vessel.

Practical Steps for Execution

The Marshal or Sheriff will not act until he has received the warrant of arrest issued from the registry and a deposit towards his fees and expenses and, as there is invariably some delay before the warrant of arrest is issued from the office of the registry and reaches the office of the Marshal or Sheriff, it is convenient to intimate to the Marshal or Sheriff, as soon as the judge's order for arrest is signed, or a separate order passed in an application, information as to where the ship is to be found which will enable him to arrange for his substitute, who will effect the arrest, to be readily available to proceed to the ship as soon as the warrant of arrest is lodged in his office. The plaintiff or his advocate will have to provide a conveyance to the ship for the person entrusted with the service and, if the ship happens to be at an anchorage berth, a launch to enable him to go on board.

Financial Considerations

The Marshal or Sheriff, before he proceeds to effect the arrest will require an initial deposit of a sum towards such expenses as may be incurred by him in connection with the custody and care of the ship while under arrest; he will also require a personal undertaking from the plaintiff's advocate to make further deposits towards such expenses as and when required. Before giving such an undertaking, the plaintiff's advocate should ensure that he himself is placed in sufficient funds by his client who may not be resident within the jurisdiction. The plaintiff will have a first charge in respect of the said expenses on the sale proceeds of the ship. In the event of the prompt release of the ship, on giving of security for the claim in suit, there will be no expenses incurred by the Marshal or Sheriff on its custody and the whole of the deposit placed with him will fall to be refunded to the plaintiff or his advocate.

Notification to Authorities

After arresting the ship the Marshal or Sheriff will issue intimations in writing to the customs and harbour authorities of the arrest, enjoining them against the grant of customs and port clearance to the ship until they have received further intimations from him that the arrest has been lifted. It is advisable for the plaintiff's advocate to ensure that such intimations reach the said authorities expeditiously.

Alternative Procedures

If the court has passed an order of arrest of the ship dispensing the Warrant of Arrest, in such event the Sheriff or Marshal will issue a letter and the same along with copy of the order is served on the ship and other concerned authorities and if there is an order for concerned authorities to act on fax or email copies, this is normally done attaching/faxing the cover letter issued by the sheriff/marshal along with copy of the order for arrest of the vessel.

Limitations on Arrest

Freight cannot be arrested separate from the ship or cargo, and so freight which has already been paid to the ship owners by the consignees cannot be arrested. Where, however, a claim is brought against the ship and freight, the court may order that the Sheriff of Mumbai or the Admiral Marshal should sell the cargo under arrest and pay the freight from the proceeds of sale.

The caveat against arrest is a significant legal tool in admiralty law, providing a mechanism to prevent the arbitrary arrest of vessels and ensuring due process. By filing a caveat, the interested party undertakes to enter an appearance and provide security, thereby deterring frivolous claims and protecting the interests of the vessel owner. The legal framework, both nationally and internationally, supports this process, promoting fairness and consistency in maritime law.

Direct service of orders of arrest by many of the High Courts in India is a procedural aspect critical to the effective execution of arrest warrants in maritime law. This practice facilitates the swift enforcement of maritime claims and ensures that vessels are detained promptly when necessary. Here's an expanded discussion on the execution of arrest warrants and the significance of direct service in the Indian context:

Legal Framework and Execution Process

Maritime law in India operates under a robust legal framework that includes the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. This legislation empowers High Courts to adjudicate on maritime disputes and issue orders for the arrest of ships to secure maritime claims. The execution of arrest warrants involves a series of procedural steps aimed at ensuring that the rights of claimants are protected while maintaining fairness and efficiency in the judicial process.

Steps Involved in Execution

Filing of Suit: The process typically begins with the filing of a suit before the High Court having admiralty jurisdiction. The plaintiff, who is usually the claimant seeking to enforce a maritime claim, submits evidence and arguments supporting their claim.

Issuance of Arrest Order: Upon satisfaction of the claimant's case, the High Court issues an order for the arrest of the ship. This order directs the authorities to detain the vessel until the claim is resolved or adequate security is provided.

Service of Arrest Order: Direct service of the arrest order is crucial for its effective execution. The order is served directly to the master of the ship or its agent who is responsible for accepting legal documents on behalf of the vessel.

Role of Bailiff or Sheriff: In some jurisdictions, a court-appointed bailiff or sheriff is responsible for physically executing the arrest warrant. They ensure that the ship is detained in accordance with the court's order and that the arrest process is conducted lawfully.

Detention in Port: Once arrested, the ship is typically detained in a designated port under the supervision of port authorities. This detention prevents the vessel from leaving the jurisdiction and ensures that it remains available to satisfy any judgment or security ordered by the court.

Importance of Direct Service

Direct service of the arrest order is significant for several reasons:

Prevention of Flight: Direct service minimizes the risk of the ship leaving the jurisdiction before the arrest order can be executed. This ensures that the

vessel remains within reach of the court's jurisdiction throughout the legal proceedings.

Timely Enforcement: Prompt service of the arrest order facilitates the timely enforcement of maritime claims. It allows claimants to take immediate legal action to secure their rights without undue delay, which is crucial in cases involving perishable goods or urgent financial claims.

Legal Certainty: Direct service ensures legal certainty by providing clear notice to the shipowner or operator regarding the arrest of their vessel. This transparency promotes fair adjudication and enables the shipowner to exercise their rights to challenge the arrest if necessary.

Efficiency in Judicial Process: By streamlining the execution process, direct service enhances the efficiency of the judicial system. It reduces administrative burdens and legal complexities associated with the arrest of ships, thereby expediting the resolution of maritime disputes.

Challenges and Considerations

While direct service of arrest orders is generally effective, challenges may arise, including:

Jurisdictional Issues: Determining the appropriate jurisdiction for arresting a ship can be complex, especially in cases involving vessels registered under foreign flags or operating in international waters.

Technicalities in Service: Ensuring proper service of legal documents can be challenging, particularly when dealing with vessels at sea or in remote locations. Advanced communication and tracking technologies may be employed to facilitate service in such cases.

Security and Release: Shipowners have the right to apply for the release of their vessel by providing adequate security or challenging the validity of the

arrest. This process requires careful consideration of legal arguments and evidence presented by both parties.

International Perspectives and Conventions

India's adherence to international conventions, such as the International Convention for the Arrest of Ships, 1999, ensures that its maritime laws are aligned with global standards. These conventions provide guidelines for the arrest of ships across different jurisdictions, promoting international cooperation and consistency in maritime dispute resolution.

In conclusion, direct service of orders of arrest by High Courts in India is a fundamental aspect of maritime law enforcement. It enables swift and effective execution of arrest warrants, ensuring that maritime claims are resolved fairly and efficiently. This practice underscores the importance of procedural clarity, legal certainty, and adherence to international standards in the arrest of ships, thereby maintaining the integrity of the maritime legal framework in India.

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After arresting the ship the Marshal or Sheriff will issue intimations in writing to the customs and harbour authorities of the arrest, enjoining them against the grant of customs and port clearance to the ship until they have received further intimations from him that the arrest has been lifted. It is advisable for the plaintiff's advocate to ensure that such intimations reach the said authorities expeditiously.

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1. Introduction

In admiralty law, the execution of an arrest warrant is a critical process designed to secure maritime claims by detaining a vessel within the jurisdiction of the court. The role of the Sheriff or Admiral Marshal is pivotal in ensuring that the arrest is carried out effectively, in accordance with legal procedures and statutory requirements. This analysis delves into the execution process, the responsibilities of the Sheriff or Admiral Marshal, financial considerations, and the notification of authorities, supported by relevant case laws and provisions under Indian law, specifically the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("Admiralty Act, 2017").

2. Legal Framework and Execution Procedures

Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

The Admiralty Act, 2017 governs the admiralty jurisdiction in India, including the arrest of vessels. Under Section 5 of the Act, High Courts in India are empowered to issue arrest orders for ships involved in maritime claims. The execution of these orders is carried out by the Sheriff or Admiral Marshal,

who must follow specific procedural steps to ensure the lawful detention of the vessel.

Role of the Sheriff or Admiral Marshal

Issuance and Execution of Warrant: The Sheriff of Mumbai or the Admiral Marshal, or their substitute, is responsible for executing the warrant of arrest issued by the High Court. The warrant must be duly received from the court registry before any action is taken.

Dispensing with the Warrant: In some instances, the Admiralty judge may dispense with the physical warrant of arrest. In such cases, the order of arrest must be communicated to the relevant authorities, including port and customs authorities, to prevent the vessel from departing the jurisdiction.

Practical Steps for Execution

Receipt of Warrant and Deposit: The Marshal or Sheriff requires the warrant of arrest and a deposit towards fees and expenses before proceeding. Due to potential delays in receiving the warrant, it is advisable to notify the Marshal or Sheriff promptly after the judge's order is signed.

Transportation and Access: The plaintiff or their advocate must arrange for transportation to the vessel, including a launch if the vessel is anchored, to facilitate the service of the arrest order.

Financial Considerations: The Marshal or Sheriff demands an initial deposit for expenses related to the custody and care of the vessel. Further deposits may be required, and the plaintiff's advocate must ensure adequate funding is available. The plaintiff has a first charge on the sale proceeds of the ship for these expenses. If the vessel is promptly released upon providing security, any deposit not utilized will be refunded.

Notification to Authorities

Issuance of Intimations: After arresting the vessel, the Marshal or Sheriff must notify customs and harbour authorities to prevent the ship from obtaining clearance until the arrest is lifted.

Alternative Procedures: If the court has dispensed with the warrant, the Sheriff or Marshal will serve a letter along with a copy of the court order on the vessel and concerned authorities. In cases where orders are communicated via fax or email, it is standard practice to include the cover letter issued by the Sheriff or Marshal.

Limitations on Arrest

Freight cannot be arrested separately from the ship or cargo. However, if a claim involves both the ship and freight, the court may order the sale of the cargo, with proceeds used to pay the freight.

3. Case Law Supporting the Procedures

MV Elisabeth v. Harwan Investment & Trading Pvt. Ltd. (1993) Supp (2) SCC 433: The Supreme Court of India affirmed that Indian High Courts have extensive admiralty jurisdiction, including the authority to arrest vessels within Indian territorial waters, even if the vessel is not berthed.

OIL & Natural Gas Corporation Ltd. v. SAIBOS Offshore Ltd. (2005) 6 SCC 454: This case reinforced that a vessel's presence within the jurisdictional waters is sufficient to invoke admiralty jurisdiction for arrest purposes.

Videsh Sanchar Nigam Ltd. v. MV Kapitan Kud (1996) 7 SCC 127: The Bombay High Court clarified that a vessel does not need to be anchored or berthed for the court to exercise admiralty jurisdiction and effect an arrest.

Bharat Petroleum Corporation Ltd. v. MV Melina (1992) 1 BomCR 527: This case confirmed that the presence of the vessel within the territorial waters at the time of arrest is sufficient for the court's jurisdiction.

MV Al Quamar v. Tsavlis Salvage (International) Ltd. (2000) 8 SCC 278: The Supreme Court upheld the principle that the High Court's admiralty jurisdiction extends to all vessels within Indian territorial waters.

The execution of arrest warrants in admiralty cases is a structured process involving the Sheriff or Admiral Marshal's active role in ensuring the effective detention of a vessel. Compliance with procedural requirements, including the handling of financial aspects and notification to authorities, is essential for the successful enforcement of maritime claims. The framework provided by the Admiralty Act, 2017, and the procedural norms followed by the Sheriff or Marshal, are crucial in upholding the integrity of the legal process in admiralty law.