

INDIAN FLAG SHIP

Ship flying any flag can be arrested by invoking admiralty jurisdiction. It shall apply to every vessel, irrespective of the place of residence or domicile of the owner.

The arrest of an Indian-flagged ship, like any vessel irrespective of its flag, can be executed under admiralty jurisdiction in India. The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, governs this process, allowing for the arrest of a vessel to secure maritime claims. This jurisdiction applies to any vessel regardless of the owner's residence or domicile.

Maritime claims warranting the arrest of a ship include those related to loss of life, loss of property, salvage operations, collisions, and violations of regulations. The process involves filing an application with the relevant High Court, detailing the claim and the necessity for arrest..

Historically, the High Courts of Bombay, Madras, and Calcutta were the principal courts dealing with admiralty matters, a legacy from the British colonial period. These courts had powers equivalent to the High Court of England under the Admiralty Courts Act, 1861. This jurisdiction was reinforced by Article 372 of the Indian Constitution, which retains the pre-independence laws until amended or repealed.

A landmark case in this context is *M.V. Elisabeth vs Harwan Investment and Trading*, where the Supreme Court of India expanded the scope of admiralty jurisdiction, emphasizing that admiralty law in India could not be strictly confined within statutory bounds and is influenced by judicial decisions and international conventions.

In practice, to arrest a vessel, the claimant must submit an admiralty suit in the appropriate High Court, which must include the claimant's and vessel's details, the nature of the dispute, and the grounds for the claim. The court may issue an arrest warrant *ex-parte*, meaning without notifying the shipowner beforehand. Once arrested, the ship cannot trade or move until the dispute is resolved or adequate security is provided by the shipowner.

Security for the release of an arrested vessel can be furnished in several forms: depositing the claim amount into the court, posting bail, or offering an acceptable guarantee. If the shipowner fails to appear or settle the claim, the court may order the sale of the vessel to satisfy the claim. This ensures that the claimant's interests are protected while also providing a legal mechanism for the resolution of maritime disputes.

The case *G.P. Global Apac Pte. Ltd v. Mv Silvia Glory* further underscores the application of these principles, highlighting the potential for the shipowner's liability to extend beyond the bail amount if the judgment exceeds it. Additionally, in cases of wrongful arrest, the claimant may be required to compensate the shipowner for any resultant damages.

Thus, the arrest of a ship under Indian admiralty jurisdiction is a robust legal process designed to ensure that maritime claims are effectively secured, balancing the interests of claimants and shipowners within a structured legal framework.

The arrest of an Indian-flagged ship, as well as vessels flying any other flag, is governed by the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("Admiralty Act, 2017"). This legislation grants the High Courts in India admiralty jurisdiction to arrest vessels within Indian waters to secure maritime claims, regardless of the place of residence or domicile of the shipowner. The Admiralty Act, 2017, applies uniformly to all vessels, ensuring that admiralty jurisdiction can be invoked for ships flying any flag, including those under the Indian registry.

Jurisdiction and Applicable Maritime Claims

The Admiralty Act, 2017, provides that the jurisdiction of Indian admiralty courts extends to any vessel within Indian territorial waters, regardless of the flag the vessel is flying. Section 3 of the Act explicitly states that the jurisdiction of the High Courts over admiralty matters shall apply to every vessel, irrespective of the place of residence or domicile of the owner. This broad jurisdictional reach ensures that both foreign-flagged and Indian-flagged vessels are subject to the same legal principles when it comes to the arrest of a vessel.

Maritime claims that warrant the arrest of a ship are listed in Section 4 of the Admiralty Act, 2017. These include claims related to:

Loss of life or personal injury occurring during the operation of the vessel;

Loss or damage to property caused by the vessel;

Salvage operations;

Collisions involving the vessel;

Breach of maritime contracts, such as charter parties and carriage of goods by sea;

Wages owed to the master or crew of the vessel.

The arrest of a ship under Indian admiralty jurisdiction is not limited to claims arising within Indian waters. The Act permits the arrest of a vessel for any maritime claim, irrespective of where the underlying cause of action occurred, so long as the vessel is within Indian territorial waters at the time of the arrest.

Procedure for Arrest of an Indian-Flagged Ship

To initiate the arrest of an Indian-flagged ship, a claimant must file an admiralty suit in the High Court exercising admiralty jurisdiction. Historically, the High Courts of Bombay, Madras, and Calcutta have been the primary courts handling admiralty matters. This jurisdiction stems from colonial-era legislation, particularly the Admiralty Courts Act, 1861, which granted these courts powers similar to those of the High Court of England. These powers were preserved post-independence by Article 372 of the Indian Constitution, which allows pre-existing laws to continue until they are repealed or amended.

The claimant must file an application detailing the nature of the maritime claim and demonstrating the necessity for arrest. The court may issue an arrest warrant *ex-parte* (without notifying the shipowner beforehand) if it is satisfied that there is a *prima facie* case. Once the arrest warrant is issued and executed, the ship is detained and cannot trade, move, or leave the port until the dispute is resolved or adequate security is provided by the shipowner.

A significant legal precedent in this area is the *M.V. Elisabeth vs Harwan Investment and Trading* (1992) case, where the Supreme Court of India expanded the scope of admiralty jurisdiction. The court held that admiralty law in India could not be strictly confined within statutory bounds and must evolve through judicial decisions, considering international conventions and maritime practices. This landmark ruling confirmed that Indian admiralty jurisdiction extends beyond statutory law to embrace equitable principles and judicial precedents.

Security and Release of Arrested Vessels

After a vessel is arrested, the shipowner may secure the release of the vessel by furnishing security. The security can be provided in several forms, including:

Depositing the claim amount into the court;

Posting bail;

Offering an acceptable bank guarantee or other financial guarantee.

Once adequate security is provided, the court may order the release of the vessel. If the shipowner fails to provide security or resolve the claim, the court may order the judicial sale of the vessel. The proceeds from the sale are used to satisfy the maritime claims against the ship, following a priority ranking of claims as set out in the Admiralty Act, 2017.

In *G.P. Global Apac Pte. Ltd v. Mv Silvia Glory* (2018), the court dealt with the implications of providing security for the release of an arrested vessel. The court emphasized that the shipowner's liability could extend beyond the security amount if the final judgment exceeds the security provided. Moreover, in cases where the arrest is deemed wrongful, the claimant may be held liable for compensating the shipowner for any damages resulting from the wrongful arrest, including loss of hire or charter opportunities.

Protection Against Wrongful Arrest

The Admiralty Act, 2017, incorporates safeguards to protect shipowners from wrongful arrests. Under Section 12 of the Act, the court has the discretion to award damages for wrongful arrest if it is proven that the arrest was made without reasonable grounds. This provision aligns with the principle established in the English case of *The Evangelismos* (1858), which set the standard for wrongful arrest, requiring proof of mala fides or gross negligence by the arresting party.

Indian courts have consistently upheld the need to balance the claimant's right to arrest a vessel with the protection of shipowners against unfounded or excessive claims. In cases of wrongful arrest, Indian courts may order the claimant to compensate the shipowner for any losses incurred due to the arrest, ensuring that the arrest mechanism is not misused.

The arrest of an Indian-flagged ship under admiralty jurisdiction in India is governed by a well-structured legal framework that seeks to balance the rights of claimants with the protection of shipowners. The Admiralty Act, 2017 provides a robust mechanism for securing maritime claims through the arrest of vessels, irrespective of the flag they fly or the domicile of the owner. The procedural safeguards built into the Act ensure that both the arrest process and the release of vessels are handled equitably, with provisions for wrongful arrest claims further protecting the interests of shipowners.

The principles laid down in landmark cases, including *M.V. Elisabeth* and *G.P. Global Apac Pte. Ltd*, continue to shape the practice of admiralty law in India, ensuring that the arrest of ships remains an effective tool for resolving maritime disputes while adhering to principles of justice and fairness.