

MARITIME LAWS

1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

India boasts a robust legal framework governing maritime and shipping matters. The cornerstone of this framework lies in a quartet of prominent statutes:

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (AJSC Act): This act consolidates and streamlines the laws pertaining to admiralty jurisdiction, legal proceedings related to vessels, their arrest, detention, sale, and other associated matters. It establishes High Courts as the competent courts for adjudicating maritime and shipping claims, with jurisdiction determined by the vessel's location.

The Merchant Shipping Act, 1958 (MSA): This comprehensive act serves as the foundation for ship registration, ownership, safety standards, crew competence, marine pollution prevention, and investigation of marine accidents in India.

The Carriage of Goods by Sea Act, 1925 (COGSA): This act incorporates the Hague-Visby Rules, a cornerstone international convention governing contracts for the carriage of goods by sea. It outlines carrier liabilities, bill of lading regulations, and time bar limitations for cargo claims arising from such contracts.

The Marine Insurance Act, 1963 (MIA): This act establishes the legal framework for marine insurance policies in India. It details various types of

coverage available, claim procedures, and subrogation rights pertaining to marine insurance contracts.

Beyond these core statutes, a plethora of regulations and conventions further refine the legal landscape. Common maritime and shipping claims adjudicated in Indian courts include:

Charterparty Disputes: These arise from the performance of charterparty contracts, which govern the use and hire of vessels. Issues like demurrage (delays in loading/unloading), laytime (permitted loading/unloading periods), and hire charges are frequently contested.

Marine Insurance Claims: Disputes concerning loss or damage to vessels and cargo covered under marine insurance policies are settled within this framework.

Collision Claims: When vessels collide, claims for property damage, personal injury, and associated losses are addressed through these legal channels.

Towage Claims: Disputes arising from the provision of towage services, encompassing claims for damage, lost revenue, and demurrage, are heard under this category.

Salvage Claims: When vessels or cargo are rescued at sea in distress, claims for salvage remuneration and awards are determined through this legal process.

General Average Claims: In situations where a vessel and its cargo face a common peril, claims for contribution from ship-owners, cargo-owners, and insurers towards expenses incurred to save the venture are settled under general average principles.

1.2 Port State Control (PSC)

India actively participates in ensuring maritime safety and environmental protection through its Port State Control (PSC) regime. The Directorate General of Shipping, along with the Mercantile Marine Departments in various ports, form the backbone of this system. Their primary function involves inspecting foreign flagged vessels calling at Indian ports to verify compliance with mandatory International Maritime Organization (IMO) Conventions.

Some key conventions enforced by the PSC include:

International Safety Management (ISM) Code: This code mandates a structured approach to safety management on board ships.

International Ship and Port Facility Security (ISPS) Code: This code establishes a framework for enhancing maritime security by ensuring the protection of ships and port facilities against threats, including piracy and terrorism.

International Convention for the Safety of Life at Sea, 1974 (SOLAS 74): This convention sets minimum safety standards for construction, equipment, operation, and crew training for merchant ships.

International Convention for the Prevention of Pollution from Ships (MARPOL 73/78): This convention aims to minimize pollution of the marine environment from ships through operational and technical measures.

International Regulations for Preventing Collisions at Sea, 1972 (COLREGs 72): This regulation establishes the "rules of the road" for preventing collisions at sea.

The Merchant Shipping Act, 1958 empowers the PSC to enforce these and other IMO conventions to which India is a party.

1.3 Domestic Legislation Applicable to Ship Registration

For vessels to operate under the Indian flag, registration is mandatory. The Merchant Shipping Act, 1958 and the Registration of Ships Rules, 1960 govern the ship registration process in India.

A central register maintained by the Director General of Shipping, accessible through the Mercantile Marine Departments, meticulously records all registered vessels. This register serves as a vital source of information on Indian flagged ships.

1.4 Requirements for Ownership of Vessels in India

Indian law allows a variety of entities to own vessels registered in the country. Here's a breakdown of the eligible owners and any associated restrictions:

1.4.1 Indian Citizens:

Any individual with demonstrably valid Indian citizenship can own a vessel registered in India.

There likely won't be any restrictions on the number of vessels an Indian citizen can own, but other factors like tonnage limitations may apply depending on the vessel's purpose.

1.4.2 Companies and Bodies:

Companies or bodies established by or under a central or state act in India are eligible for vessel ownership.

The company/body must have its principal place of business situated in India. This ensures a domestic connection and facilitates regulatory oversight.

1.4.3 Co-operative Societies:

Co-operative societies registered or deemed to be registered under the Co-operative Society Act, 1912, or an equivalent state law can own vessels.

The society must comply with all relevant legislation governing co-operative societies in its state of registration. This ensures adherence to additional regulations specific to cooperative societies.

1.4.4 Additional Considerations:

Restrictions on Vessel Type or Use: While the aforementioned entities are eligible owners, there might be restrictions on the type or use of vessels they can own. Specific regulations or licensing requirements may apply depending on the intended purpose (e.g., commercial cargo shipping, passenger transport, fishing).

Minimum Tonnage Requirement: There might be a minimum tonnage requirement for vessel registration. This means very small vessels may not be eligible for registration under the Merchant Shipping Act.

Exclusions: It's generally not possible to register a vessel that is still under construction. Registration typically occurs after a vessel is built and meets relevant safety and operational standards.

For comprehensive information and to navigate any potential complexities, it's advisable to consult with a maritime lawyer or agent specializing in Indian shipping regulations. They can provide guidance based on the specific type and intended use of the vessel you wish to own.

2. Marine Casualties and Owners' Liability

2.1 International Conventions: Pollution and Wreck Removal

India's legal framework for handling marine casualties with pollution and wreck removal implications is a complex interplay between international conventions and domestic legislation.

Nairobi Convention on the Removal of Wrecks (2007): While India has acceded to this convention, its provisions haven't been formally incorporated into domestic law yet. This means that wreck removal in India currently falls under:

The Merchant Shipping Act, 1958.

The Merchant Shipping (Wrecks and Salvage) Rules, 1974 (amended in 1975).

To a lesser extent, the Indian Ports Act, 1908.

These existing regulations govern wreck removal procedures until the Nairobi Convention is fully integrated into the Indian legal system.

International Conventions on Oil Pollution Compensation: India is a party to several crucial conventions addressing oil pollution compensation:

CLC (Civil Liability Convention) 1992 and its Protocols (1976 & 1992): These conventions establish a framework for holding shipowners liable for oil pollution damage. India has incorporated both CLC and its protocols into its domestic law through Part X-B and X-C of the Merchant Shipping Act, 1958. This ensures that victims of oil pollution incidents in India can seek compensation under these conventions.

IOPC (International Oil Pollution Compensation Fund) 1992: This convention supplements the CLC by providing additional compensation for oil pollution damage beyond the limits established in the CLC. While India is a party to the IOPC convention, it has not yet ratified the Supplementary Fund (2003) which further enhances compensation limits. Consequently, the Supplementary Fund's provisions are not currently enforceable in India.

International Convention for the Prevention of Pollution from Ships (MARPOL) 1973/78: India has actively incorporated MARPOL into its domestic law through Part XI-A of the Merchant Shipping Act, 1958. This

demonstrates India's commitment to minimizing pollution from ships operating in its waters.

2.2 International Conventions: Collision and Salvage

International Regulations for Preventing Collisions at Sea (COLREGS) 1972: Ensuring adherence to international maritime safety standards, India has incorporated COLREGS 1972 and its annexes into domestic law through the Merchant Shipping Act, 1958 and the Merchant Shipping (Prevention of Collisions at Sea) Regulations, 1975.

International Convention on Salvage 1989: India has ratified this convention, which sets out a framework for regulating salvage operations and awarding compensation to salvors. However, similar to the Nairobi Convention, the provisions of the Salvage Convention haven't been fully integrated into domestic legislation yet. Salvage operations in India currently fall under Part XIII of the Merchant Shipping Act, 1958 and the Merchant Shipping (Wrecks and Salvage) Rules, 1974 (amended in 1975).

2.3 1976 Convention on Limitation of Liability for Maritime Claims

India recognizes the importance of limiting shipowner liability for certain maritime claims. Here's a breakdown of India's approach:

Party to the Convention: India is a signatory to the 1976 Limitation of Liability Convention, which has been implemented through the Merchant Shipping Act, 1958 (with some reservations). Notably, India excludes claims arising from contractual rights directly connected with ship operations from the limitation provisions.

1996 Protocol: The subsequent 1996 protocol to the Limitation Convention came into force through the Merchant Shipping (Limitation of Liability for

Maritime Claims) Rules of 2015. Further amendments to the 1996 protocol were incorporated through the 2017 iteration of these rules.

2.4 Entities Eligible for Limitation of Liability

The following entities can benefit from limitation of liability provisions in India:

Shipowners: This includes the owner, charterer, manager, and operator of a sea-going ship.

Salvors: Parties successfully salvaging a vessel or cargo in distress.

Those Responsible for Shipowner/Salvor Actions: Individuals or entities whose actions, negligence, or defaults lead to liability for the shipowner or salvor.

Insurers: Liability insurance providers can also leverage limitation provisions to the same extent as their insured entities.

2.5 Important Caveat

It's crucial to remember Section 352E of the Merchant Shipping Act, 1958. This section specifically excludes ships not flying the flag of a state party

3. Cargo Claims: A Comprehensive Look at Bills of Lading, Liability, and Time Limits in India

Cargo claims are a frequent occurrence in maritime trade. Understanding the legal framework governing bills of lading, ship-owner liability, and time limits for filing claims in India is crucial for both shippers and carriers.

3.1 Bills of Lading: The Foundation of Cargo Claims

The Indian Carriage of Goods by Sea Act, 1925 (COGSA) plays a central role in cargo claims. This act incorporates the Hague Rules (1924) within its schedule, establishing a standardized approach to bills of lading. In 1993, India further amended COGSA to include specific provisions from the Hague-Visby Rules (1968). While the Hague-Visby Rules themselves don't hold independent legal force in India, these amendments significantly increased the limits of liability for carriers compared to the original Hague Rules.

It's important to remember that COGSA only applies under specific circumstances:

The port of loading must be in India. This means COGSA governs shipments originating from Indian ports to foreign ports or between Indian ports themselves.

3.2 Who Can Sue on a Bill of Lading? Establishing Title

Not everyone can file a claim based on a bill of lading. Indian law dictates that only the following parties have the legal standing (title) to sue:

Consignee: The named recipient of the goods in the bill of lading.

Endorsee: An individual to whom ownership of the goods has been transferred through a proper endorsement on the bill of lading.

For instance, if a bill of lading mentions a "Notify Party," this party wouldn't have the direct right to sue based on the bill of lading contract itself.

3.3 Ship-Owner Liability and Limits: Navigating Cargo Damage

The extent of a ship-owner's liability for cargo damage in India hinges on COGSA and their specific role in the transportation process:

Actual Carrier: If the ship-owner is directly responsible for transporting the cargo from loading to discharge port, their liability for damage is generally not limited, with exceptions. These exceptions include situations beyond their control, such as acts of God, fire, perils of the sea, and other unforeseen circumstances.

Contractual Carrier: When the ship-owner enters a formal contract with a shipper for transporting the cargo, their liability becomes limited under COGSA. The act establishes a maximum liability of 666.67 Special Drawing Rights (SDRs) per package or unit, or 2 SDRs per kilogram of the damaged/lost cargo (whichever is higher).

However, this limitation isn't absolute. The shipper can potentially challenge the limitation and seek full compensation if they can prove the damage resulted from the ship-owner's negligence or fault.

3.4 Misdeclaration of Cargo: When Descriptions Go Wrong

Misdeclaration of cargo, where a shipper provides inaccurate information about the cargo's nature, quantity, or condition, can lead to complications. In such cases, COGSA empowers the carrier to file a claim against the shipper for any damages or losses incurred due to the misdeclaration. The rationale behind this is that accurate information is essential for the carrier to assess risks and make proper arrangements for safe transportation.

Indian courts have recently addressed misdeclaration issues. The Supreme Court has ruled that carriers can recover damages from shippers who misdeclare cargo, provided the carrier can demonstrate reliance on the shipper's declaration and subsequent loss. Similarly, the Bombay High Court has upheld a carrier's right to claim damages for misdeclaration of dangerous goods, even if they were aware of the cargo's nature but relied on the shipper's assurances regarding safe handling.

3.5 Time Limits for Cargo Claims: Acting Within the Window

The Limitation Act, 1963, establishes strict time limits for filing claims in India, including those related to damaged or lost cargo. These time limits dictate the validity of a claim:

Breach of Contract: For claims arising from a breach of contract, the time limit is three years from the date the cause of action arose.

Tort-Based Claims: If the claim is based on liability in tort (a civil wrong), the time limit is three years from the date the cause of action arose or when the claimant became aware of the damage, whichever is later.

It's crucial to note that exceeding the time limit doesn't necessarily extinguish the claim itself, but rather the ability to pursue it through legal channels.

The Limitation Act also offers some flexibility under specific circumstances. For example, if a claimant was demonstrably prevented from filing a claim within the prescribed timeframe due to a sufficient cause (like illness), the court might extend the time limit by an equivalent period.

4. Maritime Liens and Ship Arrests in India: A Comprehensive Guide

In the dynamic world of maritime trade, disputes and claims are inevitable. Understanding how to enforce claims through ship arrests and the legal framework governing maritime liens is crucial for both parties involved. This section delves into the intricacies of these aspects in the Indian legal system.

4.1 Ship Arrests: The Power to Detain

Prior to 2017, India relied on international conventions for ship arrests. However, the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (the Admiralty Act) now governs this process. This act takes precedence over any inconsistencies found in previous conventions.

4.2 Maritime Liens: Defining Secured Claims

The Admiralty Act recognizes five categories of maritime liens in India, each with a specific order of priority:

Wages and Crew Claims: This category prioritizes claims for wages, repatriation costs, and social security contributions owed to the master, officers, and other crew members.

Loss of Life or Personal Injury: Claims arising from loss of life or personal injury, whether on land or water, and directly connected to vessel operation, fall under this category.

Salvage Services: If a vessel is salvaged (rescued) at sea, the salvor has a maritime lien on the salvaged vessel for a reward.

Port, Canal, and Other Dues: Charges levied by ports, canals, waterways, and for pilotage services create maritime liens on the vessel.

Torts from Vessel Operation: Claims for damage caused by the operation of a vessel, excluding cargo and container damage, fall under this category.

4.3 High Court Jurisdiction and Dispute Resolution

The Indian High Courts have jurisdiction over maritime claims arising from various situations, including:

Disputes regarding vessel ownership.

Disputes between co-owners concerning vessel employment or earnings.

Vessel mortgages.

Vessel construction, repair, or conversion.

Disputes arising from vessel sales.

Environmental damage caused by a vessel.

The courts have the authority to settle outstanding accounts between parties, order the sale of the vessel or a share of it, and determine the ownership and distribution of proceeds from such sales.

A crucial distinction exists between maritime claims and maritime liens. As the High Court in *Saba International Shipping v. M.V. Brave Eagle* clarified, "not all maritime claims give rise to a maritime lien." A maritime lien grants the right to retain possession of the vessel until the claim is settled.

Interestingly, admiralty jurisdiction can be invoked, and a ship arrested, for claims related to building, equipping, or repairing the vessel.

4.4 Personal Liability of Owners and Demise Charterers

Section 5(1) of the Admiralty Act allows for ship arrest when the court has reason to believe the owner or demise charterer (who leases the vessel) was liable for the claim when it arose and remains so at the time of arrest. However, for claims backed by maritime liens, there's no requirement for in personam (personal) liability of the owner/demise charterer. The claimant can proceed against the vessel itself (in rem).

The Supreme Court has ruled that supplying necessities or bunkers (fuel) doesn't create a maritime lien under Indian law. Therefore, to arrest a vessel for unpaid bunkers, the claimant must establish "privity of contract" - meaning the owner or demise charterer must be personally liable for the claim.

4.5 Unpaid Bunkers: A Complex Scenario

The case of *Dan Bunkering Pte. Ltd v Best Excellence Corporation* highlights the complexities surrounding unpaid bunkers. The court ruled that Section 9 of the Admiralty Act, which restricts maritime liens to five categories, doesn't extend to unpaid bunker supplies. A contractual lien couldn't bind the vessel owner if there was no privity of contract with the bunker supplier. However, the court acknowledged the supplier's status as a maritime claimant under Section 4 of the Act, allowing them to arrest the ship if the owner was established as liable for the supply.

4.6 Arresting a Vessel: Procedural Requirements

To apply for a ship arrest, a claimant must fulfill specific formalities:

Vakalatnama: A document authorizing a lawyer to represent the claimant in court.

Supporting Documents: Copies of power of attorney, board resolutions, and other claim-related documents must be filed. Originals are required for the trial.

Foreign Documents: If documents originate from outside India, they may require notarization and legalization according to the issuing country's laws. Apostilled documents (meeting Hague Convention requirements) are also accepted.

Affidavits: Affidavits from individuals outside India might require similar legalization procedures.

Undertakings: If formalities cannot be completed immediately, the claimant can provide a court undertaking

Streamlined Summary of Maritime Liens and Ship Arrests in India

This guide is presented in a passive voice format to offer a clear and concise explanation of ship arrests and maritime liens in India.

Ship arrests are now strictly governed by the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (the Admiralty Act). Previously, international conventions governed them.

The Admiralty Act recognizes five categories of maritime liens with a specific order of priority (Section 9 of the Act). These categories include wages and crew claims, loss of life/personal injury claims, salvage services claims, port/canal/waterway dues & pilotage dues claims, and tort claims arising from vessel operation (excluding cargo/container damage).

High Courts have jurisdiction over various maritime claims. These claims include disputes regarding vessel ownership, construction/repair issues, and environmental damage caused by vessels.

It is important to distinguish between a maritime lien and a maritime claim. Not all maritime claims create maritime liens. A maritime lien allows the vessel to be detained until the claim is settled.

In the case of maritime liens, there's no requirement for personal liability of the owner/demise charterer. The claimant can proceed against the vessel itself (in rem). This differs from in personam claims, which focus on personal liability.

To arrest a vessel, specific formalities must be completed. These include filing a vakalatnama (appointing a lawyer), submitting supporting documents, and following procedures for foreign documents and affidavits. If necessary, the court can grant time extensions. Electronic filing is available in some jurisdictions for a limited period.

A substantive suit needs to be filed alongside the arrest application. This details the claim against the vessel and its owner(s).

Letters of undertaking issued by P&I Clubs are not typically accepted as security for the arrest. Exceptions exist with the plaintiff's consent or agreement from both parties.

Unpaid bunkers typically require establishing "privity of contract" - meaning the owner or demise charterer must be personally liable for the claim.

Enforcement of Law and Jurisdiction and Arbitration Clauses in India

This section explores how Indian courts enforce law and jurisdiction clauses, particularly those found in bills of lading, and the role of arbitration in maritime disputes.

Key Points:

Governing Law Clauses: Indian courts generally respect express governing law clauses in contracts like bills of lading, provided they are legal and don't violate public policy. The foreign law needs to be proven in court. (Section 57 of the Indian Evidence Act, 1872)

Arbitration Clauses in Bills of Lading: Bills of lading can incorporate arbitration clauses, but they must follow the Supreme Court's judgment in "MV 'Baltic Confidence' v 'The State Trading Corporation of India Ltd'" (2001).

Foreign Arbitral Awards: India recognizes and enforces foreign arbitral awards under the New York Convention (implemented in the Arbitration Act, 1996). However, enforcement is limited to countries designated as "reciprocating territories" by the Indian government. (Section 44 or 53 of the Act)

Challenging Foreign Awards: The scope to challenge foreign awards in India is limited, especially on public policy grounds. Courts cannot review the merits of the award. (Section 48 of the Arbitration Act)

Arrest of Vessels and Jurisdiction Clauses: Indian courts generally recognize forum selection clauses in contracts. However, if India has a strong connection to the case, it may assert jurisdiction regardless of the clause. (British India Steam Navigation Co Ltd v Shanmughavilas Cashew Industries (1990))

Domestic Arbitration Institutes: There's currently no dedicated maritime arbitration center in India, but an initiative is underway to establish the Gujarat International Maritime Arbitration Centre (GIMAC).

Remedies for Breaches of Jurisdiction/Arbitration Clauses: Indian courts can grant interim measures (like asset freeze) to support foreign-seated arbitrations, even if the agreement doesn't explicitly mention it. (Sections 17(2) and 9(3) of the Arbitration and Conciliation Act 1996)

Exhaustive List of Additional Maritime or Shipping Issues (India)

5. Additional Maritime or Shipping Issues

Here's a comprehensive breakdown of various legal aspects related to maritime and shipping in India:

5.1 Jurisdiction-Specific Considerations

Extensive Jurisdiction: Indian courts hold jurisdiction over Indian vessels and seafarers, irrespective of the vessel's location or seafarer's nationality.

5.2 Maritime Labor Laws

International Commitments: India has ratified conventions like the Maritime Labour Convention 2006, ensuring seafarers' rights.

Key Entitlements: Indian seafarers deserve fair wages, safe working conditions, and protection against discrimination.

5.3 Carriage of Goods by Sea

Governing Law: The Carriage of Goods by Sea Act, 1925, regulates the carriage of goods by sea in India.

Liability Framework: This Act establishes a framework for determining liability in case of cargo loss or damage during transit.

5.4 Marine Insurance

Mandatory Coverage: Marine insurance is mandatory for all Indian vessels engaged in international trade.

Legal Framework: The Indian Maritime Insurance Act, 1963 sets the legal ground for marine insurance in India.

5.5 Marine Pollution

International Adherence: India has ratified the MARPOL convention, requiring vessels to adopt measures to prevent and control marine pollution.

Domestic Legislation: The Merchant Shipping Act, 1958 and the Water (Prevention and Control of Pollution) Act, 1974 provide the legal framework for preventing and controlling marine pollution in India.

5.6 Salvage Operations

Governing Convention: The Salvage Convention, 1989 governs salvage operations in India.

Determining Rights and Liabilities: This convention provides a framework for determining the rights and liabilities of salvors and ship-owners involved in salvage operations.

5.7 Maritime Security

International Compliance: India has implemented the ISPS Code, requiring ships and port facilities to enhance security and prevent acts of terrorism and piracy..