

**ANALYSIS OF SECTION 4(1)(J) OF THE ADMIRALTY
(JURISDICTION AND SETTLEMENT OF MARITIME CLAIMS)
ACT, 2017 WHICH ALLOWS THE HIGH COURT TO HEAR
AND DETERMINE DISPUTES CONCERNING TOWAGE**

Section 4(1)(j) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 grants the High Courts the jurisdiction to hear and determine claims concerning towage. Towage refers to the service provided by a vessel (the tug) to assist another vessel (the tow) in moving from one location to another. This service could involve towing a ship that is incapacitated, assisting in docking or undocking, or facilitating the movement of vessels within congested waters. The provision reflects the need to address disputes that may arise from such arrangements, which are an essential part of maritime operations.

In legal terms, towage involves a contract between the tug owner and the tow owner. Disputes may arise in several ways—over the performance of the service, payment, damage to the tug or tow, or loss of cargo or personal injury during the towage service. Section 4(1)(j) recognizes such disputes as falling within the admiralty jurisdiction, allowing the courts to adjudicate these matters comprehensively.

The jurisdiction extends to claims arising from both conventional towage services, where a tug is contracted to tow another vessel, and salvage-related towage. Salvage towage occurs when a tug assists a vessel in distress, potentially overlapping with the law of salvage. In such cases, courts must carefully distinguish between pure towage and salvage operations. For instance, in *The "Tojo Maru"* (1970) case, the English courts emphasized that towage, as opposed to salvage, does not imply a risk to the tug or exceptional circumstances but is instead a routine contractual service.

The inclusion of towage under admiralty jurisdiction ensures that disputes over non-payment, negligence, or contractual performance are effectively resolved. Indian courts, much like their counterparts in other common law jurisdictions, apply both domestic and international principles to resolve such disputes. In towage claims, the key elements include the existence of a contract, the performance of the towage service, and whether any negligence or breach of duty occurred.

Towage contracts are often governed by standard terms, such as the UK Standard Towage Conditions, which outline the responsibilities and liabilities of both parties. If disputes arise regarding these terms, courts will interpret them based on established legal principles and precedent. For instance, in *The "American Eagle"* (1984) case, it was held that liability in towage disputes depends largely on the precise terms of the contract, particularly whether there was an express or implied warranty of seaworthiness of the tow.

Under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, the High Court's jurisdiction over towage claims also extends to cases involving damage caused during the towage operation. This could involve a situation where the tug damages the tow, or where negligence during the towage operation leads to collisions or grounding. Such cases often invoke principles of negligence, where the court must assess whether the tugmaster exercised due care in performing the towage service.

An important aspect of towage claims is determining liability for damage. Courts in India, as well as those in the UK and other common law jurisdictions, have adopted the standard of "reasonable care" in assessing the actions of the tugmaster. If a claim for damages arises, the court must consider whether the tug acted with the level of skill and care expected of a reasonably competent tugmaster. In *"The Portsmouth"* (1912), the court held that a tug that negligently allows a tow to drift into danger may be held liable

for any resulting damage, emphasizing the duty of care owed during towage operations.

In addition, towage claims may involve the doctrine of limitation of liability, which allows shipowners, including tug owners, to limit their liability for damage caused during towage. This doctrine, governed by the Limitation of Liability for Maritime Claims (LLMC) Convention, 1976, as well as Indian domestic law, allows tug owners to limit their liability based on the tonnage of the vessel. Indian courts, in line with international principles, recognize the right of tug owners to limit their liability, unless it can be proven that the damage resulted from their intentional or reckless conduct.

Furthermore, Section 4(1)(j) covers disputes relating to the payment for towage services. Typically, towage contracts specify the amount to be paid for the service, either in a lump sum or based on an hourly or daily rate. Disputes often arise when there is a failure to pay the agreed amount, or where there is a dispute over whether the service was adequately performed. In such cases, the court will interpret the towage contract and assess whether the tug performed its obligations, and whether the payment terms were met.

Courts also consider disputes arising from deviation or delay during towage. If the tug deviates from the agreed route or delays in performing the towage service, the owner of the tow may claim damages for the resulting loss. In *The "Alpenfels"* (1955), it was held that where a tug deviates without reasonable cause, the owner of the tow may recover damages for any loss suffered as a result of the deviation.

Towage disputes can also involve questions of jurisdiction and applicable law. As towage services often involve vessels registered in different jurisdictions, questions may arise about which country's law should govern the dispute. Indian courts have historically applied conflict of laws principles to determine the applicable law in such cases, often giving precedence to the law of the flag state or the place where the contract was formed. In the absence of a specific

choice of law provision in the contract, Indian courts may apply the law of the place where the service was performed.

In adjudicating towage claims, the courts may also need to address issues relating to insurance. Most towage contracts require both the tug and tow to be adequately insured. Disputes often arise over whether the insurance policy covers the damage or loss incurred during towage. In such cases, courts must interpret the insurance policy to determine the scope of coverage and whether the insurer is liable to indemnify the tug or tow owner.

Finally, towage disputes often involve questions of evidence, particularly in cases of negligence or damage. Courts may rely on expert testimony from marine surveyors or tugmasters to determine whether the towage operation was conducted with the requisite level of care. Such evidence is crucial in determining liability, particularly in cases where the cause of the damage is not immediately apparent.

Section 4(1)(j) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 provides a comprehensive legal framework for resolving disputes concerning towage. It ensures that the High Courts have the jurisdiction to hear claims relating to towage contracts, payment disputes, damage during towage, and other related matters. Courts adjudicating such claims will rely on a combination of domestic law, international conventions, and established maritime principles, ensuring that disputes are resolved fairly and efficiently. The provision reflects the importance of towage in maritime operations and ensures that disputes arising from this essential service are resolved within the framework of admiralty jurisdiction.