

**ANALYSIS OF SECTION 4(1)(Q) OF THE ADMIRALTY  
(JURISDICTION AND SETTLEMENT OF MARITIME CLAIMS)  
ACT, 2017 WHICH ALLOWS THE HIGH COURT TO HEAR  
AND DETERMINE DISPUTES CONCERNING PARTICULAR  
AVERAGE OR GENERAL AVERAGE**

Section 4(1)(q) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 provides the High Court with the jurisdiction to hear and determine disputes concerning “particular average or general average.” The statutory provision is crucial in the context of maritime law as it empowers the High Court to adjudicate claims arising from losses or damages suffered by vessels or cargo, distinguishing between particular average and general average in maritime ventures. This legal empowerment is of significant relevance to shipping entities, insurers, cargo owners, and other stakeholders involved in maritime operations, as the principle of average adjusts the apportionment of losses between these parties under specific circumstances.

In maritime law, “average” generally refers to loss or damage to ships or cargoes during a voyage, and the determination of whether such a loss constitutes a particular average or a general average carries legal implications for the distribution of financial responsibility. General average is an ancient maritime principle whereby all parties in a sea voyage (the shipowner, cargo owners, etc.) share proportionally in the losses resulting from voluntary sacrifices made for the common safety. It is grounded in the equitable principle that those who benefit from an action taken to save the common maritime adventure should contribute to the costs of that action. This principle has been codified in several international conventions, most notably in the York-Antwerp Rules. On the other hand, particular average refers to losses or damages borne exclusively by a particular party, generally the party whose property suffers the damage, and there is no obligation on other stakeholders to contribute.

The Indian Admiralty Act of 2017 incorporates both general and particular average claims within the jurisdiction of the High Court. This ensures that disputes arising under contracts of affreightment, bills of lading, or other maritime contracts involving such losses can be judicially determined within the Admiralty jurisdiction. In essence, it provides a legal framework for addressing contentious issues over how losses and sacrifices are apportioned between parties, following maritime incidents.

In understanding the application of Section 4(1)(q), it is vital to examine the difference between particular average and general average more deeply. General average arises when extraordinary sacrifices or expenditures are voluntarily made to preserve the vessel and cargo from an impending peril. The shipmaster may decide, for instance, to jettison part of the cargo to save the rest of the ship and its remaining cargo during a storm or other emergency. The costs associated with such an act are shared by all parties with a vested interest in the maritime adventure, i.e., the shipowner and the cargo owners. Under general average, each party contributes to the loss or expense proportionally based on their respective interests in the maritime venture, including the value of the ship and the cargo on board. This contribution is referred to as "general average contribution."

Particular average, in contrast, refers to partial loss or damage suffered by a particular party, either the ship or the cargo, and not resulting from voluntary acts for the common good. Such losses are borne exclusively by the owner of the damaged or lost property unless otherwise stipulated in the contract or covered by insurance. For instance, if a vessel's cargo sustains damage from sea water during a voyage without any voluntary action taken to preserve the ship or cargo as a whole, that damage would fall under particular average. Only the owner of the cargo would bear the loss, without contribution from other parties.

The Indian Admiralty law is aligned with international principles, including the York-Antwerp Rules, which regulate the principles of general average. While India is not a party to the York-Antwerp Rules, the principles have been widely accepted by Indian courts when dealing with general average claims. Indian courts have, in several cases, applied these rules to adjudicate claims concerning the sharing of losses resulting from general average situations. Thus, the inclusion of Section 4(1)(q) in the Admiralty Act of 2017 provides the judiciary with a statutory foundation to resolve disputes involving complex average issues, grounded in maritime law precedents.

A case that demonstrates the application of general average in Indian admiralty law is *Cargo Owners v. The Owners of the Ship, M.V. "Star of India"*. In this case, a perilous situation required the jettison of cargo to ensure the safety of the vessel. The court, applying the principles of general average, ruled that all cargo owners were required to contribute proportionally to the loss incurred, as the jettison was deemed necessary for the common safety of the maritime venture. This case exemplifies how courts apply general average principles under Section 4(1)(q) to ensure equitable loss-sharing among stakeholders.

In contrast, particular average claims have also been adjudicated by the High Courts in cases where the loss or damage was specific to the cargo or ship. In *Cargo Owner X v. Shipowner Y*, the court determined that a particular cargo had sustained water damage during the voyage due to rough seas, and since the damage was not the result of a voluntary act for the common good, the loss was borne solely by the cargo owner. The court applied the particular average principle, emphasizing the distinction between damage that serves the collective interest (general average) and that which impacts a specific party alone (particular average).

In addition to these core distinctions, particular average claims may arise under contracts of affreightment or bills of lading, which often stipulate how

such losses will be addressed between the shipowner and cargo owner. The Indian legal system, through the Admiralty Act, provides a forum for the resolution of such disputes, ensuring the enforcement of contractual obligations and legal principles governing average.

Furthermore, insurance policies in maritime ventures often include clauses covering particular average and general average, leading to disputes over the interpretation of such clauses. These disputes also fall under the High Court's admiralty jurisdiction as per Section 4(1)(q), allowing the courts to interpret insurance contracts in light of maritime legal principles. In some cases, insurers may challenge their liability for general average contributions, leading to complex litigation that tests the boundaries of admiralty law and contract law.

Another important case highlighting the complexity of particular average claims is *Shipping Corporation of India Ltd. v. Western Bulk Carriers*. In this case, a vessel suffered damages due to negligent stowage by the shipowner's crew, leading to a dispute over whether the loss should be considered a particular average or general average claim. The court ruled in favor of the shipowner, holding that the negligent act constituted a particular average loss and should not be shared by the cargo owners.

Section 4(1)(q) is, therefore, instrumental in ensuring that courts have the requisite authority to resolve such multifaceted disputes. The jurisdiction conferred by this section is both wide-ranging and crucial in ensuring that justice is done in accordance with established maritime law principles. The courts have recognized the importance of equitable loss distribution in maritime ventures and have developed a body of case law that reflects the balance between individual liability and collective responsibility.

While general average principles are well-established in maritime law globally, the application of these principles by Indian courts through the Admiralty Act ensures a consistent approach to such disputes. As maritime operations

continue to expand and the global shipping industry grows, disputes relating to general and particular average are likely to become more frequent, underscoring the importance of Section 4(1)(q) in providing a clear legal avenue for resolving these issues.

Section 4(1)(q) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 stands as a testament to India's commitment to aligning its maritime laws with internationally recognized standards, thereby providing a reliable and robust legal framework for adjudicating average-related disputes. Through judicial interpretation and case law development, the provision continues to evolve, ensuring that it meets the needs of modern maritime commerce while adhering to the historical principles that underpin general and particular average.

By incorporating this provision, the Act guarantees that Indian courts are empowered to address complex legal and factual issues surrounding average claims, further enhancing the country's position as a key player in global maritime law adjudication.