

SHIP ARREST IN INDIA



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1. Please give an overview of ship arrest practice in your country.

The Origin of the Admiralty Jurisdiction can be traced to the Colonial Courts of Admiralty Act, 1891. The British parliament had earlier enacted the Colonial Courts of Admiralty Act, 1890. Section 2 of the Colonial Courts of Admiralty Act, 1890 inter alia provided that “every court of law in the British possession which for the time being declared to be so in pursuance of the said Act to be a Court of Admiralty with Original Unlimited Civil jurisdiction” and that the Colonial Courts would exercise the same jurisdiction as Admiralty Court of High Court in England whether existing by virtue of any statute or otherwise. Section 3 of the Colonial Courts of Admiralty Act, 1890 vested power with the legislature of a British possession to declare any Court of unlimited Civil Jurisdiction to be the Colonial Court of Admiralty. By the Colonial Courts of Admiralty (India) Act, 1891 the High Courts of Calcutta, Bombay and Madras were declared the Court to be “Colonial Courts of Admiralty” with unlimited jurisdiction. Until the year 1992 various High Courts in India were exercising Admiralty jurisdiction only in respect of such claims enumerated in the Admiralty Courts Act, 1861 and the Admiralty Courts Act, 1840 being the statutes which were then in force in England until the year 1890.

However, in the year 1992, in the case of *m. v. Elizabeth*¹ the Supreme Court of India scanned through the history of Admiralty jurisdiction, took cognizance of the fact that Indian Parliament had not enacted any legislation on the subject of Admiralty jurisdiction and gave liberal interpretation to the words “whether existing by virtue of any statute or otherwise” in the Colonial Courts of Admiralty Act, 1890. By such liberal construction Supreme Court held that the Admiralty jurisdiction of the High Court would be considered to have been progressed at least upto the level of (English) Supreme Court of Judicature (Consolidation) Act, 1925 which was the last of the series of enactment in England on the subject prior to the year 1947 when India became independent. The Supreme Court further took cognizance of the Arrest Convention, 1952 and held that such Convention itself has been enacted based on the felt necessities of the International trade and therefore made it applicable in India for the enforcement of maritime claims against foreign ships. In the year 2003 the Supreme Court of India in the case of *m. v. Sea Success*² widened the Admiralty jurisdiction to include application of Arrest Convention 1999.

2. Which international Convention applies to arrest of ships in your country?

The Arrest Convention of 1952 and the Arrest Convention of 1999 would be considered by the Courts for the purpose of seeking arrest of the vessel.

3. Is there any other way to arrest a ship in your jurisdiction?

Ship could also be attached/arrested to enforce a decree which is obtained in a foreign country through execution proceedings.

4. Are these alternatives e. g. *saisie conservatoire* or freezing order?

There is no separate freezing order other than the form of an Arrest in the Admiralty Suit or in execution proceedings.

5. For which types of claims can you arrest a ship?

A ship could be arrested for the following claims:

a. Loss or damage caused by the operation of the ship.

¹ *m.v.Elizabeth & Ors. v/s. Harwan Investment and Trading Pvt. Ltd.* 1993 Supp (2) SC433
² *Liverpool & London S. P & I Association Ltd. v/s. m. v. Sea Success* JT 2003 [(9) SC 218]

- b. Loss of life or personal injury occurring, whether on land or water, in direct connection with the operation of the ship.
- c. Salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment.
- d. Damage or threat of damage caused by the ship to the environment, coastline or related interests: measures taken to prevent, minimize, or remove such damage; compensation for such damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage, and damage, costs or loss of a similar nature to those identified in this subparagraph (d).
- e. Costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew.
- f. Any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise.
- g. Any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise.
- h. Loss or damage to or in connection with goods (including luggage) carried on board the ship.
- i. General Average
- j. Towage
- k. Pilotage
- l. Goods or materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance.
- m. Construction, reconstruction, repair, converting or equipping of the ship,
- n. Port, canal, dock, harbour and other waterway dues and charges.
- o. Wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf.
- p. Disbursements incurred on behalf of the ship or its owners.
- q. Insurance premiums (including mutual insurance calls) in respect of the ship payable by or on behalf of the shipowner or demise charterer.
- r. Any commissions, brokerage or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer.
- s. Any dispute as to ownership or possession of the ship
- t. Any dispute between co-owners of the ship as to the employment or earnings of the ship.
- u. A mortgage or a "hypothèque" or a charge of the same nature on the ship.
- v. Any dispute arising out of a contract for the sale of the ship.

6. Can you arrest a ship irrespective of her flag?

Ship could be arrested irrespective of any flag.

7. Can you arrest a ship irrespective of the debtor?

If the ship belongs to Government of Foreign State, in that event consent of the Central Government in India would be required to proceed against the vessel and its owners.

8. What is the position as regards sister ships and ships in associated ownership?

A sister ship could be arrested. There is no separate concept as "associated ownership". As long as the ship is a sister ship and the Directors and the shareholdings are common, the Court would enforce the arrest of the ship.

9. What is the position as regards Bareboat and Time-Chartered vessels?

If the maritime claim is against the disponent owner and if the bareboat charter is still in force, the ship could be arrested. Likewise if the maritime claim is against the registered owner of the ship, the ship could be arrested even if it is on time charter.

10. Do your Courts require counter-security in order to arrest a ship?

Countersecurity is not required to be furnished at the time of arrest of a ship. However, when the ship owner files an application for release of the ship on the ground that the order of arrest is not

maintainable or the Claimants have obtained the order of arrest by suppressing material facts and that the owner has suffered monetary loss as a result of the order of arrest or that the ship owner has a counterclaim, the Court may direct the Claimants to furnish countersecurity to the extent of the counterclaim or such amount the Court may deem fit and proper. However, Court would direct the Claimants to provide countersecurity only in exceptional circumstances.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

A ship could be arrested in respect of a maritime claim or to enforce a maritime lien. Maritime lien is extended only to following five heads of claims. They are:

- a. Damage done by a ship
- b. Salvage
- c. Seamen's wages
- d. Master's wages and disbursements
- e. Bottomary and Respondentia

12. Does your country recognize maritime liens? Under which International Convention, if any?

There is no domestic statute dealing with the concept of maritime lien. However, only those claims mentioned hereinabove have been recognized judicially.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Order could be obtained within 24 hours (excluding Public Holidays) on receipt of all the documents/papers including a Power of Attorney. The Power of Attorney has to be executed in favour of any person in India who is not the lawyer dealing with the subject matter. The order of arrest could also be obtained even if the Court is not working.

14. Do you need to provide a POA, or any other documents of the claim to the Court?

The Power of Attorney is required and it has to be either notarized or attested before the Indian Consulate and has to be in original.

15. What original documents are required, what documents can be filed electronically, what documents require notarization and/or apostille, and when are they needed?

Original Power of Attorney which is either notarized or attested before the Indian Consulate is required. All other documents (photocopies) which are the basis of claim including the exchange of correspondence are required to be produced at the time of filing the suit. However, at the time of the trial or if so ordered by the Court earlier the original documents are required to be produced.

In the application for arrest the entire facts of the case based on which the claim is made has to be stated apart from stating legal grounds on which the arrest is sought. All the papers including the undertaking in the form of an affidavit to pay damages in the event of any party sustaining prejudice by the order of arrest would have to be signed either by the Claimants themselves or by the duly Constituted Attorney. The Court Fees is required to be paid based on the value of claim at the time of filing of the suit. However, Court fees could be paid at a later date by furnishing an Undertaking. The amount of Court Fees varies from State to State in India. However, in so far as the Court Fees in Mumbai is concerned, the maximum Court Fees payable is Rs. 300,000 or approximately US \$ 6300.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Once the Court orders the arrest of the vessel, it retains its jurisdiction to adjudicate the substantive claim. The only event when the Court does not retain its jurisdiction to adjudicate the substantive claim is when the ship Owner claims that the dispute is referable to Arbitration in a foreign jurisdiction. In such a case the Court shall stay the suit but in its discretion may order that the security furnished by the ship owner be retained until the Award is passed.

17. Which period of time will be granted by the Courts in order for the Claimants to take legal action on the merits?

It could take anywhere between two to four years to adjudicate the disputes on merits.

18. Do the Courts of your country acknowledge wrongful arrest?

The Court do acknowledge the concept of wrongful arrest. However, in order to establish wrongful arrest the ship owner must show and establish malice and willful conduct on the part of the Claimants.

19. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The Courts are slow in acknowledging the concept of lifting of the corporate veil at the time of the arrest. In order to obtain arrest by piercing the corporate veil, one need to establish that it is a deliberate attempt on the part of the ship owner to create different entities to avoid legal liabilities. If independent legal entities have been established in the normal course of business the Court would be reluctant to pierce the corporate veil for the purpose of issuing an order or arrest.

20. Is it possible to have a ship sold pendente lite; if so how long does it take?

Ship can be sold pendente lite. The process of sale could be completed within 6 to 9 months from the date of the order of arrest. It could take longer period if any aggrieved party challenges either the order of arrest or the order of sale before the same Court or the superior Court.



** V. K. RAMABHADRAN has been practicing exclusively in Maritime and Commercial law in the High Court of Bombay since the year 1983. Over a period of these years he has successfully handled many noteworthy Admiralty and Commercial cases. He was exclusive Correspondent in India for a Law Magazine titled "International Trade Law Quarterly" published by Lloyds of London for the period 1998 till 2000 (when the publication was discontinued). He has published a paper on "Law of Arbitration in India" in International Trade Law Quarterly in the year 1998. Based on his maritime expertise he was appointed as the Legal Consultant by the Global Ballast Project under the aegis of International Maritime Organization (IMO) for suggesting legal frame work to implement the Convention on Ballast Water. He has submitted a Comprehensive Report in the year 2002 to International Maritime Organization on the existing legal frame work of India specially with reference to the pollution at sea. He has also presented a paper on Maritime Jurisdiction exercised by the Courts in India in the 8th Shiparrested.com conference held in June, 2011.*