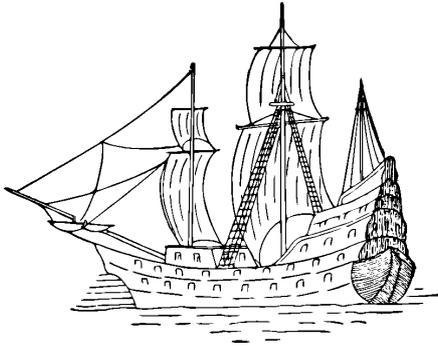


The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017



The importance of maritime trade in an increasingly globalised world has spurred the Indian government to action over the last few years, to reform the various archaic laws governing maritime relations and claims in India.

One of the new laws that has been introduced as part of this reform process is the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. This Act has been enacted and received the assent of the President, but has yet to be brought into force. [1]

The government has also introduced two other bills to reform different aspects of maritime law in the country - the Merchant Shipping Bill, 2016 and the Major Port Authorities Bill, 2016. These bills, however, are yet to be passed by Parliament. [2]

The Admiralty Jurisdiction Act seeks to consolidate the laws relating to admiralty jurisdiction (the jurisdiction to deal with maritime claims), legal proceedings in connection with vessels, their arrest, detention and sale and other connected matters.

Repeal of obsolete laws

The Admiralty Jurisdiction Act repeals and replaces various out-dated laws relating to the admiralty jurisdiction of the Indian High Courts passed by the British in the 1800s. These archaic laws had made British admiralty law applicable to India.

Applicability

The Admiralty Jurisdiction Act applies to all boats, ships and other vessels in Indian territorial waters, except inland vessels, vessels under construction that

"the Act should apply to all kinds of commercial ships, including general cargo ships, bulk carriers, container ships, roll-on/roll-off vessels... carriers... livestock vessels, tug vessels and even commercial passenger ships (such as yachts and cruise ships involved in the tourism and hospitality industry)."

have not been launched and naval or other non-commercial government vessels. It also applies to vessels that have sunk or are stranded or abandoned and the remains of such vessels. The Act will not apply to any foreign vessel that is used for any non-commercial purpose as may be notified by the central government.

This means that the Act should apply to all kinds of commercial ships, including general cargo ships, bulk carriers, container ships, roll-on/roll-off vessels, oil and liquefied gas carriers, chemical carriers, product carriers, livestock vessels, tug vessels and even commercial passenger ships (such as yachts and cruise ships involved in the tourism and hospitality industry).

Vesting of admiralty jurisdiction

Prior to the enactment of the Admiralty Jurisdiction Act, the old British laws vested admiralty jurisdiction only in the Bombay, Madras and Calcutta High Courts. Although various Indian court decisions had suggested that admiralty jurisdiction had been extended to other Indian High Courts as well post-independence, this was never expressly set out in any law.

The new Admiralty Jurisdiction Act expressly vests admiralty jurisdiction in the High Courts of all the coastal states in India, i.e., the Calcutta High Court, the Bombay High Court, the Madras High Court, the Karnataka High Court, the Gujarat High Court, the Orissa High Court, the Kerala High Court and the Hyderabad High Court. Each court has jurisdiction over waters up to (and including) its territorial sea waters. The Act also permits the Central Government to vest admiralty jurisdiction in other High Courts, and extend the jurisdiction of the High Courts, by notification.

Every new High Court that has acquired admiralty jurisdiction under the Admiralty Jurisdiction Act will now need to frame its own rules for the exercise of this jurisdiction.

Maritime claims

"The Admiralty Jurisdiction Act is a much-awaited piece of legislation. It clarifies the admiralty jurisdiction of Indian courts and codifies in a single statute much of what was previously only stated in court judgments."

The Act lists various maritime claims that will fall within the admiralty jurisdiction of the above High Courts, including disputes regarding vessel possession or ownership, disputes between vessel co-owners about the employment or earnings of the vessel, claims regarding mortgages or charges on a vessel, claims regarding loss or damage caused by the operation of a vessel (including environmental damage), claims regarding loss of life or personal injury occurring in direct connection with the

operation of a vessel and claims regarding loss or damage to or in connection with any goods.

Claims in relation to certain types of agreements (agreements relating to the carriage of goods or passengers and agreements relating to the use or hire of a vessel) also fall within the definition of maritime claims, and therefore within the High Courts' admiralty jurisdiction under the Act, as do claims arising out of any goods supplied or services rendered to a vessel for its operation, management, preservation or maintenance, disputes arising out of contracts for sale of a vessel, claims regarding the payment of seamen's wages and insurance related matters.

Interestingly, the Admiralty Jurisdiction Act does not include claims regarding loss or damage caused to a vessel within the definition of maritime claims (although such claims will often fall within some other category of claim and therefore within admiralty jurisdiction under the Act).

Maritime liens

A maritime lien is a special type of maritime claim that continues to exist over a ship or vessel despite any change of ownership, registration or flag. The Admiralty Jurisdiction Act lists which claims will result in a maritime lien over a vessel and describes the order of priority to be given to maritime claims where multiple such claims are made.

Jurisdiction over vessels (arrest of vessels) and persons

Courts with admiralty jurisdiction exercise their authority over both vessels within their territorial waters (jurisdiction *in rem*) and persons within their territory (jurisdiction *in personam*). The Admiralty Jurisdiction Act specifies the circumstances in which courts can exercise both these types of jurisdiction.

The Act also sets out certain procedures to be followed on the arrest or sale of vessels. The Act provides that any vessel ordered to be arrested or any proceeds of a vessel on sale under this Act will be held as security against any claim pending the final outcome of the admiralty proceeding. Further, a claimant seeking the arrest of a vessel may be required to furnish an unconditional undertaking on the terms determined by the High Court to secure the defendant from any loss or damage that may result due to such arrest (for example, if the arrest is wrongful or unjustified). The Act also provides that the High Court ordering the sale of a vessel can determine any questions relating to the title to the proceeds of the sale.

Much-awaited legislation

The Admiralty Jurisdiction Act is a much-awaited piece of legislation. It clarifies the admiralty jurisdiction of Indian courts and codifies in a single statute much of what was previously only stated in court judgments. Once the Act is brought into force, it will be a welcome reference point for courts dealing with admiralty matters. In light of the changes brought in by the Act, it would be prudent to revisit shipping documents including bills of lading, service contracts, charter party agreements, contracts of

affreightment, documents related to the provision of services at various ports, etc. to ensure that these are in conformity with the new law.

- By Krishna Hariani

Editor: Trupti Daphtary

[1]. Please see <http://164.100.47.194/Loksabha/Legislation/NewAdvsearch.aspx>, accessed on 29 January 2018, and judgment dated 14 September 2017 in Civil Appeal No. 1930 Of 2008.

[2]. Please see <http://164.100.47.194/Loksabha/Legislation/NewAdvsearch.aspx> and <http://164.100.47.194/Loksabha/Legislation/NewAdvsearch.aspx>, accessed on 29 January 2018.

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