SHIP ARREST IN INDIA
AND ADMIRALTY LAWS OF INDIA

TWELFTH EDITION
2019

by

Dr. Shrikant Hathi
BCom, LL.B., LL.M., Solicitor (India & United Kingdom), Ph.D
Advocate Bombay High Court
Advocate on Record, Supreme Court of India
Solicitor, Bombay Incorporated Law Society
Solicitor, England and Wales (Non-Practising)

Ms. Binita Hathi
BCom, LL.B., LL.M., Solicitor (India)
Advocate Bombay High Court
Advocate on Record, Supreme Court of India
Solicitor, Bombay Incorporated Law Society

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AND ADMIRALTY LAWS OF INDIA
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Ragavjana Rehelo
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PREFACE

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 was brought in force on April 1, 2018 repealing the obsolete Admiralty Courts Act of 1861. The jurisdiction with respect to maritime claims under the act vest with the respective High Courts and extends up to the territorial waters of their respective jurisdictions. The act also provides for central government extending their jurisdiction.

The jurisdiction of the High Courts of Bombay, Calcutta, Madras, Gujarat, Hyderabad Telangana, Karnataka, Kerala, and Odisha have Admiralty actions.

We are of the view that all High Courts having admiralty jurisdiction should be given Pan-India jurisdiction instead of restricting to State territorial waters of the respective High Courts, this will protect claimants interest and also India will be more user friendly for ship arrest.

A ship sailing arrives to a port for a short period for loading and discharge of a cargo and then sails out for its onward destination either in India or outside India it is near impossible for the claimant to file an action for several reasons thereby frustrating the claimants claim. The new act is already working against the claimants because, the party initiating the suit invokes the Jurisdiction of the High court within whose territorial waters, the vessel is, which leaves the claimant vulnerable when the vessel sails out. If the vessel sails out to another port in India, it falls under the territorial Jurisdiction of another High Court and fresh proceedings to obtain an order of arrest or release will have to be initiated and the court fees will have to be deposited again without getting a refund from the previous court.
More so, an order of withdrawal of the suit will have to be obtained so that fresh action can be initiated in that other state where the vessel has sailed and with paucity of time, instructing another law firm or a lawyer in that state and preparation for filing of the admiralty suit the vessel will move out of that state by the time an order of arrest is obtained. This frustrates the claimant’s claim and virtually makes it impossible to initiate any legal action in India or file any admiralty suits.

A claimant who wishes to arrest a vessel for his genuine claim in the jurisdiction of a specific High Court would not be able to arrest the same vessel in the Jurisdiction of another High Court unless he has withdrawn his application in the previous jurisdiction, should the vessel leave the initial port before the Claimant has obtained the arrest order from the first High Court. In this way the vessel owner can dodge the claimant and escape arrest/liability and it is not possible for the claimant to chase the vessel.

Prior to the new Act, India was considered as one of the best jurisdiction for ship arrest work and had attracted claimants globally to initiate legal action in India.

The admiralty jurisdiction of the High Court is dependent on the presence of the foreign ship in Indian waters and found on the arrest of that ship. This jurisdiction can be assumed by the concerned High Court, whether or not the defendant resides or carries on business, or the cause of action arose wholly or in part, within the local limits of its jurisdiction.

The Act could have ideally granted that each of the High courts having admiralty jurisdiction should be given pan India jurisdiction instead of restricting and extending only up to the territorial waters of their respective jurisdictions.

This act inclines more in the favor of ship owners and P&I Clubs protecting the vessel interest and making it almost impossible for the vessel to be arrested in Indian waters and ought to have taken under its purview, the interest of the claimants and petitioners.
Also, according to section 9, subsection (1) & (2), The limitation period has decreased from 3 years to 1 year in the case of maritime lien specified in sub-section (1) shall continue to exist on the vessel notwithstanding any change of ownership or of registration or of flag and shall be extinguished after expiry of a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized and such arrest or seizure has led to a forced sale by the High Court.

The limitation period has decreased from 3 years to 2 years in the case of a claim under clause (a) of sub-section (1), the period shall be two years from the date on which the wage, sum, cost of repatriation or social insurance contribution, falls due or becomes payable.

Needless to say that this works against the claimants and crew members because it restricts their chance to obtain justice and redress their grievance or get reimbursed for their loss.

Otherwise, the Act would be a great advancement to the maritime regime and jurisprudence in India.

Although the focal points of Ship Arrest in India and Admiralty Laws of India are admiralty laws and procedures, this twelfth edition book contains the entire gamut of admiralty edicts including ship arrest and substantive admiralty law prevalent in India, several new chapters are also introduced including procedures, summary and notes.

Ship Arrest in India was accessible for private use only, is now available for free to all also sharing the content database of Admiralty Practice in India. The online edition includes a research engine wherefrom you can search for reported or unreported Indian Admiralty court orders or judgments, articles.

This book is about a subject that has been lurking in the scourges of darkness of Indian maritime history for many decades. It provides an in-depth insight into Indian Admiralty law and procedures, thus placing maritime and admiralty practice at the threshold of the legal fraternity.
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This book is a compact, integrated guide to admiralty law and procedure in India. The primary purpose of this book is to better enlighten shipping and industry related professionals to take prompt and decisive decisions.

We seek to clarify what the law requires, allow and prohibit, not to comment on how well it does so or whether what it should. We hope that this publication will contribute towards the realistic assessment and debate of the surrounding issues.

The book does not indulge exhaustively in any topic neither does it predicts any outcome of any particular case nor can it be considered as a substitute for competent legal counsel. Although we believe that the entire text is accurate at the time of publication, if it does not already fall short of this standard, it surely will with the passage of time.

This book is the first of its kind on admiralty laws published in India. Utility of the book with respect to a second central aim, to advance general understanding about the regulation of admiralty laws in India, is less apt to erode.

Dr. Shrikant Paresnath Hathi

and

Mrs. Binita Shrikant Hathi

Mumbai, India, August 24, 2019
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INTRODUCTION

This book is intended to provide general direction on the conduct of proceedings in the Admiralty Court and the established practice procedure of the Court within the framework of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, Rules and applicable procedures and relevant Practice Directions. This Book is not intended in any way to override the Rules of Court or Practice Directions made under them, or as fettering the discretion of the Registrars or Judges of the Admiralty Court.

This book is about a subject that has been lurking in the scourges of darkness of Indian maritime history for many decades. It provides an in-depth insight into Indian Admiralty law and procedures, thus placing maritime and admiralty practice at the threshold of the legal fraternity.

Although the focal points of Ship Arrest in India and Admiralty Laws of India are admiralty laws and procedures, this twelfth edition book contains the entire gamut of admiralty edicts including ship arrest and substantive admiralty law prevalent in India, several new chapters are also introduced including procedures, summary and notes.

This book is a compact, integrated guide to admiralty law and procedure in India. The primary purpose of this book is to better enlighten shipping and industry related professionals to take prompt and decisive decisions.
Chapter 1

HISTORY AND ADMIRALTY JURISDICTION OF THE HIGH COURTS

For the first Admiralty jurisdiction came to be invested in the Recorder's Court at Bombay which was established by a Charter dated 20th February, 1798. The Recorders' Court, however, was substituted by the Supreme Court of Judicature at Bombay which was established by Letters Patent issued under the Charter of 1823. The Supreme Court of Judicature at Bombay was invested with the same jurisdiction on its Admiralty Side as the jurisdiction which was exercised by the High Court of Admiralty in England.

The Indian High Courts Act was passed by the British Parliament on the 6th August, 1861 and was titled as an act for establishing high courts of judicature in India. This legislation contained only 19 sections only.

Its main function was to abolish the supreme courts and the Sadar Adalats in the three Presidencies and to establish the high courts in their place. The records and document of the various courts became the records and documents of the High Court concerned. It gave power authority in Her Majesty to issue letters patent under the great seal of the United Kingdom, to erect and establish High courts of judicature at Calcutta, Madras and Bombay.

Each High court was to consist of a chief justice and as many puisne judges not exceeding fifteen as her majesty might think fit to appoint. Each high court was to have and exercise all such civil and criminal admiralty and vice-admiralty, testamentary, intestate and matrimonial jurisdiction and original and appellate.

The High Court was to have superintendence over all courts subject to its appellate jurisdiction. It got power, authority to call for return, to transfer any
suit or appeal from one court to another and to make and issue general rules for regulating the practice and proceedings of such courts.

The charter for the Calcutta High Court was issued on May 14, 1862 and was published in Calcutta on the 1st July 1862 establishing the high court from the next day. The charter for the High Courts of Bombay and Madras were issued on June 26, 1862 and these courts were inaugurated on the 14th and 15th August 1862.

The Supreme Court of Judicature at Bombay which was established in 1823 as aforesaid was superseded by the High Court of Judicature at Bombay established by the Letters Patent of 1862. Clause 31 of the Letters Patent dealt with admiralty and Vice admiralty jurisdiction. The Letters Patent of 1862 were once again superseded by Letters Patent of 1865 and Clause 32 of these Letters Patent provided:

"And we do further ordain that the High Court of Judicature at Bombay shall have and exercise all such civil and maritime jurisdiction as may now be exercised by the said High Court as a Court of Admiralty or of Vice Admiralty, and also such jurisdiction for the trial and adjudication of prize clauses and other maritime questions arising in India as may now be exercised by the said High Court."

In the year 1890, Colonial Courts of Admiralty Act, 1890 was enacted. Section 2(1), section 3 and section 7 of the said Act read thus:--

"2. Colonial courts of Admiralty.---(1) Every Court of law in a British possession, which is for the time being declared in pursuance of this Act to be a Court of Admiralty, or which, if no such declaration is in force in the possession, has therein original unlimited civil jurisdiction, shall be a Court of Admiralty, with the jurisdiction in this Act mentioned, and may for the purpose of that jurisdiction, exercise all the powers which it possesses for the purpose of its other Civil jurisdiction and such Court
in reference to the jurisdiction conferred by this Act is in this Act referred to as a Colonial Court of Admiralty. Where in a British possession the Governor is the sole judicial authority the expression "Court of law" for the purposes of this section includes such Governor.

3. Power of Colonial legislature as to Admiralty jurisdiction.---The legislature of a British possession may by any Colonial law:

(a) declare any Court of unlimited civil jurisdiction, whether original or appellate, in that possession to be a Colonial Court of Admiralty, and provide for the exercise by such Court of its jurisdiction under this Act, and limit territorially, or otherwise, the extent of such jurisdiction; and

(b) confer upon any inferior or subordinate Court in that possession such partial or limited Admiralty jurisdiction under such regulations and with such appeal (if any) as may seem fit;

Provided that any such Colonial law shall not confer any jurisdiction which is not by this Court conferred upon a Colonial Court of Admiralty.

7. Rules of Court.--

(1) Rules of Court for regulating the procedure and practice (including fees and costs) in a Court in a British possession in the exercise of the jurisdiction conferred by this Act, whether original or appellate, may be made by the same authority and in the same manner as rules touching the practice, procedure, fees, and costs in the said Court in the exercise of its Ordinary Civil Jurisdiction respectively are made:

Provided that the rules under this section shall not, save as provided by this Act, extend to matters relating to the slave trade, and shall not (save as provided by this section) come into operation until they have been
approved by Her Majesty in Council, but on coming into operation shall have full effect as if enacted in this Act, and any enactment inconsistent therewith shall, so far as it is so inconsistent, be repealed.

(2) It shall be lawful for Her Majesty in Counsel, in approving rules made under this section, to declare that the rules so made with respect to any matters which appear to Her Majesty to be matters of detail or of local concern may be revoked, varied, or added to without the approval required by this section.

(3) Such rules may provide for the exercise of any jurisdiction conferred by this Act by the full Court, or by any Judge or Judges thereof, and subject to any rules, where the Ordinary Civil Jurisdiction of the Court can in any case be exercised by a Single Judge, any jurisdiction conferred by this Act may in the like case be exercised by a Single Judge."

By Act No. 16 of 1891 i.e. Colonial Courts of Admiralty (India) Act, 1891, the High Court of Bombay along with the High Court of judicature at Fort William in Bengal and at Madras were declared to be Colonial Courts of Admiralty. The preamble of the said Act stated "Whereas it is provided by the Colonial Courts of Admiralty Act, 1890 that the Legislature of a British possession may by any colonial law declare any Court of unlimited civil jurisdiction in that possession to be a Colonial Court of Admiralty."

The High Court of Bombay being the Court of record which had unlimited civil jurisdiction was also declared to be Colonial Court of Admiralty having the same jurisdiction in extent and quality as was vested in the High Court of England by virtue of any statute or custom.

The Colonial Court of Admiralty Act of 1890 equated the High Courts of Bombay, Calcutta and Madras to the High Courts of England with regard to admiralty jurisdiction. Admiralty jurisdiction in India was governed by Admiralty Courts Act 1861 applied by (English) Colonial Courts of Admiralty Act 1890 and adopted by Colonial Courts of Admiralty (India) Act 1891. This
state of affairs continued due to legislative inaction. Further Section 3 of the 1890 Act empowered the Colonial Legislature to enact law to declare any Court of unlimited jurisdiction to be a Colonial Court of Admiralty. As per this provision the Indian Legislature enacted the Colonial Courts of Admiralty established under the 1890 Act at Calcutta, Bombay and Madras. Their powers and jurisdiction were continued in the 1915 and 1935 Government of India Acts. The Admiralty jurisdiction of the High Courts continued even after the promulgation of the Constitution by virtue of Art.372 which provided for the continuance of existing laws. Though the Admiralty jurisdiction was extended to a considerable extent in England, it continued to be the same in India as per the 1861 Act, today the Admiralty jurisdiction in India is governed by the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.

Common law legal systems of the United States and Britain are in contrast to civil law legal systems which prevail in continental Europe and trace back to old Roman codified law. Even in England, however, admiralty courts were/are separate from common law courts, and generally follow civil law principles. Most of the common law countries (including Pakistan, Singapore, India, and many other Commonwealth of Nations countries) follow English statute and case law. India still follows many Victorian-era British statutes such as the Admiralty Court Act 1861 [24 Vict c 10]. Whilst Pakistan now has its own statute, the Admiralty Jurisdiction of High Courts Ordinance, 1980 (Ordinance XLII of 1980), it also follows English case law. One reason for this is that the 1980 Ordinance is partly modelled on old English admiralty law, namely the Administration of Justice Act 1956. The current statute dealing with the Admiralty jurisdiction of the England and Wales High Court is the Supreme Court Act 1981, ss. 20-24, 37. The provisions in those sections are, in turn, based on the International Arrest Convention 1952. Other countries which do not follow the English statute and case laws, such as Panama, also have established well-known maritime courts which decide international cases on a regular basis. Admiralty courts assume jurisdiction by
virtue of the presence of the vessel in its territorial jurisdiction irrespective of whether the vessel is national or not and whether registered or not, and wherever the residence or domicile or their owners may be. A vessel is usually arrested by the court to retain jurisdiction. State-owned vessels are usually immune from arrest.

In M. V. Elisabeth and another v. Harwan Investment & Trading Co. and another, the question before the Apex Court was whether the High Court in India was invested with admiralty jurisdiction to order the arrest of the vessel in respect of a cause of action relating to outward cargo. While dealing with the said contention, the Apex Court referred to the history of the admiralty law and the various paragraphs, particularly 14, 17, 20, 25, 26, 30, 44, 48, 49, 56, 58, 59, 65, 66, 67, 68, 72, 75, 78, 80, 83, 85, 88, 89 and 101 throw immense light on the extent and power of admiralty jurisdiction possessed by the High Courts.

What is clearly laid down by the Apex Court in M.V. Elisabeth in respect of admiralty jurisdiction is that despite its peculiarity of original growth, it nevertheless is a part of the totality of jurisdiction vested in the High Court as the superior Court of record and is not a distinct and separate jurisdiction as was once the position in England before the unification of codes. The Colonial Courts of Admiralty Act, 1890 and Colonial Courts of Admiralty (India) Act, 1891 conferred admiralty jurisdiction on Indian High Courts by reason of their being courts of unlimited jurisdiction. The two Acts of 1890 and 1891 did not confer any separate or distinct jurisdiction but by passage of these acts equated the Indian High Courts to the position of English High Courts for the exercise of admiralty powers within their jurisdiction. The jurisdiction is not confined to the High Courts who were conferred power and jurisdiction under the Act of 1891 alone.

The State Reorganisation Act, 1956 was enacted to provide for the reorganisation of the States of India. The existing States were divided or
expanded and the new States came to be formed from the appointed day i.e. 1st November 1956. Under section 8 of the Act of 1956 a new Part A State to be known as the State of Bombay came to be formed comprising the territories stated therein which inter alia included the territories of the existing State of Kutch. Part V of the Act of 1956 deals with High Courts. Section 49 provides that the High Courts exercising jurisdiction immediately before the appointed day shall be deemed to be High Courts of New States and accordingly High Court of Judicature at Bombay became empowered to exercise its jurisdiction in respect of new State of Bombay by virtue of section 52 of the Act of 1956. Sections 49 and 52 which are relevant for the present purposes read thus:--

49. (1) The High Courts exercising immediately before the appointed day jurisdiction to relation to existing States of Bombay, Madhya Pradesh and Punjab shall, as from the appointed day, be deemed to be the High Courts for the new States of Bombay, Madhya Pradesh and Punjab respectively.

52. The High Court for a new State shall have, in respect of any part of the territories included in that new State, all such original, appellate and other jurisdiction as, under the law in force immediately before the appointed day, is exercisable in respect of that part of the said territories by any High Court or Judicial Commissioner's Court for an existing State.

The State of Bombay which came to be formed in the year 1956 under the Act of 1956 was further reorganised under the Bombay Reorganisation Act, 1960 (Act of 1960). The appointed day of the said Act is 1st of May 1960. Under section 3 of the Act of 1960, State of Gujarat was formed comprising some of the territories of Bombay and the residuary State of Bombay was named the State of Maharashtra. The territories which form the State of Gujarat include Kutch district. Section 3 reads thus:
3. (1) As from the appointed day, there shall be formed a new State to be known as the State of Gujarat comprising the following territories of the State of Bombay, namely:--

(a) Banaskantha, Mehsana, Sabarkantha, Ahmedabad, Kaira, Panchmahals, Baroda, Broach, Surat, Dangs, Amreli, Surendra nagar, Rajkot, Jamnagar, Junagadh, Bhavnagar and Kutch districts; and

(b) the villages in Umbergaon taluka of Thana district, the villages in Nawapur and Nandurbar talukas of West Khandesh district and the villages in Akkalkuwa and Taloda talukas of West Khandesh district, respectively specified in Parts I, II and III of the First Schedule; and thereupon, the said territories shall cease to form part of the State of Bombay, and the residuary State of Bombay shall be known as the State of Maharashtra.

(2) The villages in Umbergaon taluka specified in Part I of the First Schedule shall form a separate taluka of the same name and be included in Surat district, and the remaining villages in the said taluka shall be included in, and form part of, Dahanu taluka of Thana district; and the villages specified in Parts II and III of the First Schedule shall respectively be included in, and form part of, Sangadh taluka of Surat district and Sagbara taluka of Broach district."

The separate High Court for the State of Gujarat was established under section 28 of the Act of 1960 which also provide that High Court of Bombay shall become the High Court for the State of Maharashtra. The High Court of Gujarat, under section 30 of the said Act was conferred jurisdiction in respect of the territories included in the State of Gujarat having the same powers and the jurisdiction which the High Court of Bombay had in respect of the said territories immediately before the appointed date.

The historical development of admiralty jurisdiction and procedure is of practical as well as theoretical interest, since opinions in admiralty cases
frequently refer to the historical background in reaching conclusions on the questions at issue. The special jurisdiction of admiralty has a maritime purpose, different from the common law. It is not exclusively rooted in the civil law system, although it includes substantial derivations there from. It has a strong international aspect, but may undergo independent changes in several countries. Certain universal features exist in all countries that have admiralty law and such international features are given serious consideration by admiralty courts. By the end of the seventeenth century the admiralty jurisdiction in England was restricted, it was not as extensive as compared to other European maritime countries due to a long standing controversy in which the common law courts with the aid of the Parliament had succeeded in limiting the jurisdiction of admiralty to the high seas and as such excluded admiralty jurisdiction from transactions arising on waters within the body of a country.

A suit against a foreign ship owned by a foreign company not having a place of residence or business in India is liable to be proceeded against on the admiralty side of the High Court by an action in rem in respect of the cause of action alleged to have arisen by reason of a tort or a breach of obligation arising from the carriage of goods from a port in India to a foreign port. Courts having admiralty jurisdiction is not limited to what was permitted by the Admiralty Court, 1861 and the Colonial Courts of Admiralty Act, 1890. Prior to the decision of m.v Elisabeth-v- Harwan Investment & Trading Pvt Ltd., Goa, the courts exercising Admiralty Jurisdiction statutorily in India were the three High Courts at Calcutta, Madras and Bombay. The High Courts of the other littoral states of India, viz. Gujarat, Karnataka, Kerala, Andhra Pradesh and Orissa, do not possess Admiralty jurisdiction, albeit there have been instances of the High Courts of Gujarat, Andhra Pradesh and Orissa having entertained Admiralty causes apparently on a perfunctory consideration of the various States Reorganisation Acts enacted by the Indian Parliament and presumably without the benefit of a full argument. However, after the decision of the Supreme Court in m.v Elisabeth-v- Harwan
Investment & Trading Pvt Ltd) interpreting under A.225 the High Courts in India is superior courts of record. They have original and appellate jurisdiction. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate or discretionary jurisdiction of the Supreme Court, the High Courts have unlimited jurisdiction, including the jurisdiction to determine their own powers.

The Admiralty jurisdiction of the High Courts at Calcutta, Madras and Bombay were the same as the Admiralty jurisdiction of the High Court in England at the time of the enactment by the British Parliament of the Colonial Courts of Admiralty Act 1890 and is, under subsection (2) of the said Act, and subject to the provisions thereof, over the like places, persons, matters and things as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise and exercised in the like manner and to as full an extent as the High Court in England having the same regard as that court to international law and the comity of nations. The subsequent extension of the Admiralty jurisdiction of the High Court in England by statutes passed after that date by the British Parliament, the Administration of Justice Act 1920, re-enacted by the Supreme Court of Judicature (Consolidation) Act, 1925, is not shared by the said three High Courts. After India attained independence, the Indian Parliament has so far not exercised it powers to make laws with respect to Admiralty and thus the three Indian High Courts were to apply Admiralty laws as it was applied by the English Court of Admiralty as defined in the Admiralty Court Act, 1861. The scope and nature of the Admiralty jurisdiction exercised by the High Courts in India have been examined and ascertained in Kamlakar v. The Scindia Steam Navigation Co. Ltd; Rungta Sons Ltd. v. Owners and Master of Edison6; National Co. Ltd. v. M. S. Asia Mariner ; m.v Elisabeth-v- Harwan Investment & Trading Pvt Ltd., Goa

The fact that the High Court continues to enjoy the same jurisdiction as it had immediately before the commencement of the Constitution, as stated in Art.
225, does not mean that a matter which is covered by the Admiralty Court Act, 1861 cannot be otherwise dealt with by the High Court, subject to its own Rules, in exercise of its manifold jurisdiction, which is unless barred, unlimited. To the extent not barred expressly or by necessary implication, the judicial sovereignty of this country is manifested in the jurisdiction vested in the High Courts as superior courts. It is true that the Colonial statutes continue to remain in force by reason of Art. 372 of the Constitution of India, but that do not stultify the growth of law or blinker its vision or fetter its arms. Legislation has always marched behind time, but it is the duty of the Court to expound and fashion the law for the present and the future to meet the ends of justice.

It was because of the unlimited civil jurisdiction that was already vested in these High Courts that they were declared to be Colonial Courts of Admiralty having the same jurisdiction in extent and quality as was vested in the High Court of England by virtue of any statute or custom. The High Courts were declared competent to regulate their procedure and practice in exercise of admiralty jurisdiction in accordance with the Rules made in that behalf. There is, therefore, neither reason nor logic in imposing a fetter on the jurisdiction of those High Courts by limiting it to the provisions of an imperial statute of 1861 and freezing any further growth of jurisdiction. This is even truer because the Admiralty Court Act, 1861 was in substance repealed in England a long time ago.

Assuming that the admiralty powers of the High Courts in India are limited to what had been derived from the Colonial Courts of Admiralty Act, 1890, that Act, having equated certain Indian High Courts to the High Court of England in regard to admiralty jurisdiction, must be considered to have conferred on the former all such powers which the latter enjoyed in 1890 and thereafter during the period preceding the Indian Independence Act, 1947. What the Act of 1890 did was not to incorporate any English statute into Indian law, but to equate the admiralty jurisdiction of the Indian High Courts
over places, persons, matters and things to that of the English High Court. 
There is no reason to think that the jurisdiction of the Indian High Courts
have stood frozen and atrophied on the date of the Colonial Courts of
Admiralty Act, 1890.

Yet there appears no escape from it, notwithstanding its unpleasant echo in
ears. The shock is still greater when it transpired that this state of affairs was
and is due to lack of legislative exercise.

Viewed in the background of enactment of 1890 it would be too artificial to
confine the exercise of power by the High Courts in Admiralty to what was
contained in 1861 Act. Even otherwise for deciding the jurisdiction exercised
by the High Court in India founded on jurisdiction exercised by the High
Court of England it is not necessary to be governed by the decisions given by
English Courts. Law is pragmatic in nature to problems arising under an Act
and not by abdication or surrender, 1890 Act is an unusual piece of legislation
expansive in scope, wider in outlook, opening out the wings of jurisdiction
rather than closing in. The authority and power exercised by the High Court
in England, the width of which was not confined to the statute but went deep
into custom, practice, necessity and even exigency.

Law of 1890 apart, can the Indian High Courts after 1950 be denied
jurisdiction to arrest a foreign ship to satisfy the claim of an owner of a bill of
lading for cargo taken outside the country? Without entering into any
comparative study regarding the jurisdiction of the High Court of England
and the High Courts in our country the one basic difference that exists today
is that the English Courts derive their creation, constitution and jurisdiction
from Administration of Justice Act or Supreme Court Act but the High
Courts in our country are established under the Constitution. Under Art. 225
enlarged preserves the jurisdiction, including inherent jurisdiction, which
existed on the date the Constitution came into force and Art. 226 enlarged it
by making it not only a custodian of fundamental rights of a citizen but a
repository of power to reach its arms to do justice. A citizen carrying on a particular business which is a fundamental right cannot be rendered helpless on the premise that the jurisdiction of the High Courts stands frozen either by the statute of England or any custom or practice prevailing there or the High Court of England cannot exercise the jurisdiction.

The jurisdiction of the High Court of Admiralty in England used to be exercised in rem in such matters as from their very nature would give rise to a maritime lien - e.g. collision, salvage, bottomry. The jurisdiction of the High Court of Admiralty in England was, however, extended to cover matters in respect of which there was no maritime lien, i.e., necessaries supplied to a foreign ship. In terms of Section 6 of the Admiralty Act, 1861, the High Court of Admiralty was empowered to assume jurisdiction over foreign ships in respect of claims to cargo carried into any port in England or Wales. By reason of Judicature Act of 1873, the jurisdiction of the High Court of Justice resulted in a fusion: of admiralty law, common law and equity. The limit of the jurisdiction of the Admiralty court in terms of Section 6 of the 1861 Act was discarded by the Administration of Justice Act, 1920 and the jurisdiction of the High Court thereby was extended to (a) any claim arising out of an agreement relating to the use or hire of a ship; (b) any claim relating to the carriage of goods in any ship; and (c) any claim in tort in respect of goods carried in any ship.

The admiralty jurisdiction of the High Court was further consolidated by the Supreme Court of Judicature (Consolidation) Act, 1925 so as to include various matters such as any claim "for damage done by a ship", and claim 'arising out of an agreement relating to the use or hire of a ship'; or 'relating to the carriage of goods in a ship'; or "in tort in respect of goods carried in a ship".

The admiralty jurisdiction of the High Court was further widened by the Administration of Justice Act, 1956 so as to include not only the claims
specified under Section 1(i) of Part I but also any other jurisdiction which either was vested in the High Court of Admiralty immediately before the date of commencement of the Supreme Court of Judicature Act, 1873 (i.e. November 1, 1875) or is conferred by or under an Act which came into operation on or after that date on the High Court as being a court with admiralty jurisdiction and any other jurisdiction connected with ships vested in the High Court apart from this section which is for the time being assigned by rules of court to the Probate, Divorce and Admiralty Division.

Sub-section (4) of Section 1 removed the restriction based on the ownership of the ship. By reason of Clauses (d)(g) and (h) of the said Section the jurisdiction in regard to question or claims specified under Section 1(i) included any claim for loss of or damage to goods carried in a ship, any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship.

In the course of time the jurisdiction of the High Courts of Calcutta, Bombay, Madras, Gujarat, Hyderabad, Telangana, Karnataka, Kerala and Orissa have entertained Admiralty actions.

The Admiralty jurisdiction exercised by the High Courts in Indian Republic is now governed by the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, repealing the English Admiralty Courts Act, 1861 applied by (English) Colonial Courts of Admiralty Act, 1890 and adopted by Colonial Courts of Admiralty (India) Act, 1891 (Act XVI of 1891).

The 1861 Act was discarded by the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 on August 9, 2017.
Chapter 2

ADMIRALTY COURTS IN INDIA

The Indian Courts vested with Admiralty jurisdiction are the High Court’s of Bombay, Calcutta, Madras, Odisha, Telangana, Hyderabad, Karnataka, Kerala and Gujarat. The Admiralty jurisdiction of each of these courts is concurrent and territorially extends over the coast line of India.

The jurisdiction in respect of all maritime claims is vested with the Indian Courts having Admiralty jurisdiction. The Admiralty jurisdiction of each of these courts is concurrent and territorially extends over the coast line of India and is exercisable over the waters up to and including the territorial waters of their respective state jurisdictions provided that the Central Government may, by notification, extend the jurisdiction of the High Court up to the limit as defined in section 2 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976).
Chapter 3

SPECIFIC JURISDICTION AND JURISDICTION IN ADMIRALTY

The starting point for ship arrest in maritime law is the subject of admiralty jurisdiction. Admiralty jurisdiction is founded on the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, section 3, provides: "subject to the provisions of sections 4 and 5, the jurisdiction in respect of all maritime claims under this Act shall vest in the respective High Courts and are the courts of specific jurisdiction and be exercisable over the waters up to and including the territorial waters of their respective jurisdictions in accordance with the provisions contained in this Act: ".

Admiralty jurisdiction is an essential aspect of judicial sovereignty which under the Constitution and the laws is exercised by the High Court as a superior court of record administering justice in relation to persons and things within its jurisdiction. Power to enforce claims against foreign ships is an essential attribute of admiralty jurisdiction and it is assumed over such ships while they are within the jurisdiction of the High Court by arresting and detaining them.

The Indian Courts possessing Admiralty jurisdiction have jurisdiction over the following claims herein under to hear and determine any questions with regard thereto the claims as set out in Section 4 (1) of the Act. The High Court may exercise jurisdiction to hear and determine any question on a maritime claim, against any vessel, arising out of any:

(a) dispute regarding the possession or ownership of a vessel or the ownership of any share therein;

(b) dispute between the co-owners of a vessel as to the employment or earnings of the vessel;
(c) mortgage or a charge of the same nature on a vessel;

(d) loss or damage caused by the operation of a vessel;

(e) loss of life or personal injury occurring whether on land or on water, in direct connection with the operation of a vessel;

(f) loss or damage to or in connection with any goods;

(g) agreement relating to the carriage of goods or passengers on board a vessel, whether contained in a charter party or otherwise;

(h) agreement relating to the use or hire of the vessel, whether contained in a charter party or otherwise;

(i) salvage services, including, if applicable, special compensation relating to salvage services in respect of a vessel which by itself or its cargo threatens damage to the environment;

(j) towage;

(k) pilotage;

(l) goods, materials, perishable or non-perishable provisions, bunker fuel, equipment (including containers), supplied or services rendered to the vessel for its operation, management, preservation or maintenance including any fee payable or leviable;

(m) construction, reconstruction, repair, converting or equipping of the vessel;

(n) dues in connection with any port, harbour, canal, dock or light tolls, other tolls, waterway or any charges of similar kind chargeable under any law for the time being in force;
(o) claim by a master or member of the crew of a vessel or their heirs and dependents for wages or any sum due out of wages or adjudged to be due which may be recoverable as wages or cost of repatriation or social insurance contribution payable on their behalf or any amount an employer is under an obligation to pay to a person as an employee, whether the obligation arose out of a contract of employment or by operation of a law (including operation of a law of any country) for the time being in force, and includes any claim arising under a manning and crew agreement relating to a vessel, notwithstanding anything contained in the provisions of sections 150 and 151 of the Merchant Shipping Act, 1958;

(p) disbursements incurred on behalf of the vessel or its owners;

(q) particular average or general average;

(r) dispute arising out of a contract for the sale of the vessel;

(s) insurance premium (including mutual insurance calls) in respect of the vessel, payable by or on behalf of the vessel owners or demise charterers;

(t) commission, brokerage or agency fees payable in respect of the vessel by or on behalf of the vessel owner or demise charterer;

(u) damage or threat of damage caused by the vessel to the environment, coastline or related interests; measures taken to prevent, minimise, or remove such damage; compensation for such damage; costs of reasonable measures for the restoration of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; or any other damage, costs, or loss of a similar nature to those identified in this clause;
(v) costs or expenses relating to raising, removal, recovery, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel, and costs or expenses relating to the preservation of an abandoned vessel and maintenance of its crew; and

(w) maritime lien.

The jurisdiction applies to every vessel, irrespective of the place of residence or domicile of the owner provided that the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 shall not apply to an inland vessel defined in clause (a) of sub-section (1) of section 2 of the Inland Vessels Act, 1917, or a vessel under construction that has not been launched unless it is notified by the Central Government to be a vessel for the purposes of the Act provided further that the Act shall not apply to a warship, naval auxiliary or other vessel owned or operated by the Central or a State Government and used for any non-commercial purpose, and, shall also not apply to a foreign vessel which is used for any non-commercial purpose as may be notified by the Central Government.

The jurisdiction applies in relation to all ships, whether Indian or not and whether registered or not and wherever the residence or domicile of their owners may be; in relation to all claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law.

A vessel would mean to include any ship, boat, sailing vessel or other description of vessel used or constructed for use in navigation by water, whether it is propelled or not, and includes a barge, lighter or other floating vessel, a hovercraft, an off-shore industry mobile unit, a vessel that has sunk or is stranded or abandoned and the remains of such a vessel but a vessel shall
not be deemed to be a vessel, when it is broken up to such an extent that it
cannot be put into use for navigation, as certified by a surveyor, filing of bill
of entry of the vessel will have no relevance for this purpose.
EXERCISE OF THE ADMIRALTY JURISDICTION

Section 5 and 6 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 sets out the mode of exercise of the admiralty jurisdiction, which may take the form of action in *rem* or action in *personam*.

Admiralty jurisdiction is statutory, with specific heads of subject matter. It entertains both claims in rem and claims in *personam*.

Ships are peripatetic and incur liabilities internationally, making, obtaining and enforcing security over them by their creditors. Merchant ships of different nationalities (including ship owned by Indian Company solvent or insolvent) travel from port to port carrying goods or passengers. They incur liabilities in the course of their voyage and they subject themselves to the jurisdiction of foreign States when they enter the waters of those States. They are liable to be arrested for the enforcement of maritime claims, or seized in execution or satisfaction of judgments in legal actions arising out of collisions; salvage, loss of life or personal injury, loss of or damage to goods and the like. The main purpose of arrest is to obtain security for satisfaction of judgment in the action in *rem* and it is necessary to arrest the ship in order to establish jurisdiction.
IN REM AND PERSONAM ACTIONS

Section 5 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 sets out action in *rem*

5. (1) The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding, where the court has reason to believe that—

(a) the person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected; or

(b) the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected; or

(c) the claim is based on a mortgage or a charge of the similar nature on the vessel; or

(d) the claim relates to the ownership or possession of the vessel; or

(e) the claim is against the owner, demise charterer, manager or operator of the vessel and is secured by a maritime lien as provided in section 9.

(2) The High Court may also order arrest of any other vessel for the purpose of providing security against a maritime claim, in lieu of the vessel against which a maritime
claim has been made under this Act, subject to the provisions of sub-section (1):

Provided that no vessel shall be arrested under this sub-section in respect of a maritime claim under clause (a) of sub-section (1) of section 4.

Section 6 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 sets out action in personam

6. Subject to section 7, the High Court may exercise admiralty jurisdiction by action in personam in respect of any maritime claim referred to in clauses (a) to (w) of sub-section (1) of section 4.

Section 7 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 sets out the restrictions on actions in personam in certain cases.

7. (1) Where any maritime claim arising in respect of a damage or loss of life or personal injury arising out of any—

(i) collision between vessels,

(ii) the carrying out of or omission to carry out, a manoeuvre in the case of one or more vessels,

(iii) non-compliance, on the part of one or more vessels, with the collision regulations made in pursuance of section 285 of the Merchant Shipping Act, 1958, the High Court shall not entertain any action under this section against any defendant unless—

(a) the cause of action, wholly or in part, arises in India; or
(b) the defendant, at the time of commencement of the action by the High Court, actually and voluntarily resides or carries on business or personally works for gain in India:

Provided that an action may be entertained in a case, where there are more defendants than one and where one of the defendants who does not actually and voluntarily reside or carry on business or personally work for gain in India is made a party to such action either with the leave of the court, or each of the defendants acquiesces in such action.

(2) The High Court shall not entertain any action in personam to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside India against the same defendant in respect of the same incident or series of incidents have been discontinued or have otherwise come to an end.

(3) The provisions of sub-section (2) shall apply to counter-claims as they apply to actions except counter-claims in proceedings arising out of the same incident or series of incidents.

(4) A reference to the plaintiff and the defendant for the purpose of sub-section (3) shall be construed as reference to the plaintiff in the counter-claim and the defendant in the counter-claim respectively.

(5) The provisions of sub-sections (2) and (3) shall not apply to any action or counterclaim if the defendant submits or agrees to submit to the jurisdiction of the High Court.

(6) Subject to the provisions of sub-section (2), the High Court shall have jurisdiction to entertain an action in personam to enforce a claim to which this section applies whenever any of the conditions specified, in clauses (a) and (b) of sub-section (1) is satisfied and any law for the
time being in force relating to the service of process outside the jurisdiction shall apply.

An action in rem is directed towards a ship rather than against a person (which is an in personam or personal action).

A personal action may be brought against the defendant if he is either present in the country or submits to the jurisdiction. If the foreign owner of an arrested ship appears before the court and deposits security as bail for the release of his ship against which proceedings in rem have been instituted, he submits himself to jurisdiction.

An action in rem is directed against the ship itself to satisfy the claim of the plaintiff out of the res. The ship is for this purpose treated as a person. Such an action may constitute an inducement to the owner to submit to the jurisdiction of the court, thereby making himself liable to be proceeded against by the plaintiff in personam. It is however, imperative in an action in rem that the ship should be within jurisdiction at the time the proceedings are started. A decree of the court in such an action binds not merely the parties to the writ but everybody in the world at large who might dispute the plaintiff’s claim.

It is by means of an action in rem that the arrest of a particular ship is secured by the plaintiff. He does not sue the owner directly and by name; but the owner or any one interested in the proceedings may appear and defend. The writ is issued to the "owner and parties interested in the property proceeded against." A maritime lien is a privileged claim against the ship or a right to a part of the property in the ship, and it "travels" with the ship. Because the ship has to "pay for the wrong it has done", it can be compelled to do so by forced sale. In addition to maritime liens, a ship is liable to be arrested in enforcement of statutory rights in rem. If the owner does not submit to the jurisdiction and appear before the court to put in bail and release the ship, she is liable to be condemned and sold to satisfy the claims against her. If,
however, the owner submits to jurisdiction and obtains the release of the ship by depositing security, he becomes personally liable to be proceeded against in personam in execution of the judgment if the amount decreed exceeds the amount of the bail. The arrest of the foreign ship by means of an action in rem is thus a means of assuming jurisdiction by the competent court.

The admiralty action in rem, is unknown to the civil law. In countries following the civil law, all proceedings are initiated by actions in personam. The Court having competence in the matter has the power to order an attachment of the ship if it is convinced that the plaintiff is likely to lose his security unless the ship is detained within the jurisdiction. Its hands are not fettered by the technicalities of an action in rem and the scopes of the proceedings are not limited to maritime liens or claims. According to the French law, arrest of a ship is allowed even in respect of non-maritime claims and whether or not the claimant is a secured or unsecured creditor. A vessel may be arrested either for the purpose of immobilising the vessel as security (Saisie Conservatoire) or in execution of judgment (Saisie Execution) whether or not the claim has any relation to the vessel. Arrest of the vessel has the advantage of forcing the owner to furnish security to guarantee satisfaction of any decree that may be passed against him. On furnishing sufficient security with the Court, he is usually allowed to secure the release of the vessel.

The real purpose of arrest is to obtain security as a guarantee for satisfaction of the decree, although arrest is the basis of assumption of jurisdiction, unless the owner has submitted to jurisdiction. In any event, once the arrest is made and the owner has entered his appearance, the proceedings continue in personam. All actions in the civil law- whether maritime or not- are in personam, and arrest of a vessel is permitted under the provision of the act, and the vessel is treated as any other property of the owner, and its very presence within jurisdiction is sufficient to clothe a competent high court with admiralty jurisdiction over the owner in respect of any claim. Admiralty actions, whether in rem or in personam, are confined to well defined maritime
liens or claims and directed against the res (ship, cargo and freight) which is the subject-matter of the dispute or any other ship in the same beneficial ownerships as the res in question.

Where statutes are silent and remedy has to be sought by recourse to basic principles, it is the duty of the court to devise procedural rules by analogy and expediency. Action in rem, as seen above, were resorted to by courts as a devise to overcome the difficulty of personal service on the defendant by compelling him to enter appearance and accept service of summons with a view to furnish security for the release of the res; or, in his absence, proceed against the res itself, by attributing to it a personality for the purpose of entering a decree and executing the same by sale of the res. This is a practical procedural device developed by the courts with a view to rendering justice in accordance with substantive law not only in cases of collision and salvage, but also in cases of other maritime liens and claims arising by reason of breach of contract for the hire of vessels or the carriage of goods or other maritime transactions, or tortious acts, such as conversion or negligence occurring in connection with the carriage of goods. Where substantive law demands justice for the party aggrieved, and the statute has not provided the remedy, it is the duty of the court to devise procedure by drawing analogy from other systems of law and practice. To the courts of the "civil law countries" in Europe and other places, like problems seldom arise, for all persons and things within their territories (including their waters) fall within their competence to deal with. They do not have to draw any distinction between an action in rem and an action in personam.

It is likewise within the competence of the appropriate Indian Courts to deal, in accordance with the general principles of maritime law and the applicability of provisions of statutory law, with all persons and things found within their jurisdiction. The power of the court is plenary and unlimited unless it is expressly or by necessary implication curtailed. In the absence of such curtailment of jurisdiction, all remedies, which are available to the courts to
administer justice, are available to a claimant against a foreign ship and its owner found within the jurisdiction of the concerned High Court. This power of the court to render justice must necessarily include the power to make interlocutory orders for arrest and attachment before judgment.

The High Courts in India are superior courts of record. They have original and appellate jurisdiction. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate or discretionary jurisdiction of the Court, the High Courts have unlimited jurisdiction, including the jurisdiction to determine their own power.

A person who, maliciously and without reasonable and probable cause procures the arrest of a ship by Admiralty proceedings is liable to pay damages to the person aggrieved. A separate suit has to be filed for wrongful arrest proving malicious cause. Wrongful arrest may result in the condemnation of the claimant for damages only where the court is satisfied that the arrest was motivated by mala fides (bad faith) or crassa negligentia (gross negligence). Merely unjustified (i.e. erroneous) arrest would not normally entitle the defendant to claim damages, although he might then be able to recover costs.

The safeguarding of ownership/private property rights when ships are arrested in rem by the Admiralty Court are built into the rules of the High Court having admiralty jurisdiction for ship arrest. For example, a party wishing to prevent the arrest of property in an action in rem may, by filing a praecipe in the prescribed form, obtain the entry of a caveat against arrest in the caveat book kept in the Admiralty Registry/ Prothonotary & Senior Master of the High Court. Although the entry of the caveat does not prevent arrest of the res, the caveator, on a subsequent motion after arrest, may obtain the discharge of the arrest warrant and the condemnation of the arresting party in damages, if the latter is unable to show "good and sufficient reason" for having arrested.
Where a foreign ship registered in a port of a country having a consulate in jurisdiction of the High Court where arrest application is sought /is to be arrested in India in an action in rem for wages, prior notice of the arrest must be given to the consul concerned.

In the decision of the Supreme Court in Videsh Sanchar Nigam Limited -vs- m.v. Kapitan Kud (1986) the court observed that the admiralty action is an action in rem and that there is strong triable case. The ship is a foreign ship and if it leaves the shores of Indian territorial waters it is difficult to get hold of it and it may not return to the jurisdiction of Indian courts. The claim thereby, even if successful, would remain unenforceable or land in trouble in private international law in its enforcement. Under these circumstances, we are of the firm opinion that the vessel may be released on the certain conditions..., viz., [i] the respondent shall deposit a sum of Rs.10 crores; [ii] the Ukrainian Government shall give an undertaking through its accredited authority, more particularly may be its Ambassador attached to its Embassy in India in writing duly undertaking that in the event of the suit being decreed they would comply with the decree without reference to the execution; [iv] the undertaking should be for balance amount of Rs.18 crores and towards costs and other expenses roughly put at Rs.25 crores. It would be open to them to comply with these directions at any time. We are not fixing any time limit because it would be open to them to comply with it at any time and until then the ship shall remain arrested and shall not leave the shores of the Indian territorial waters. On deposit of Rs.10 crores and on furnishing of undertakings to the satisfaction of the Division Bench of the High Court, as stated above, the High Court would give appropriate direction for releasing the vessel in accordance with law.

In m.v. Kapitan Kud the Supreme court also observed that whether the appellant (VSNL) has made out prima facie case. Rules on Admiralty Jurisdiction in Part III were framed by Bombay High Court to regulate the procedure and practice thereof on the original side of the Bombay High
Equally, Original Side Rule 941 is relevant in this regard which provides that party applying under this rule in a suit in rem for arrest of the property shall give an undertaking in writing or through advocate to pay such sum by way of damages as the court may award as compensation in the event of a party affected sustaining prejudice by such order. In Mahadeo Savlaram Shelke & Ors. v. Pune Municipal Corporation & Anr. [ (1995) 3 SCC 33], even in case of civil court, exercising its power under order 39 Rule 1, this Court held that while granting interim injunction, the Civil Court or Appellate Court is enjoined to impose as a condition that in the event of the plaintiff failing to prove the case set up and if damages are caused to the defendant due to the injunction granted by the court, the court would first ascertain whether the plaintiff would adequately be compensated by damages if injunction is not granted. Equally the court should also impose condition for payment of damages caused to the defendant in the same proceeding without relegating the parties for a separate suit. The plaintiff should give such an undertaking as a part of the order itself. Rule 954 of Admiralty Rules provides that subject to the provisions of Rule 952 [caveat property not to be released unless notice is given to the caveator], property arrested under a warrant may be ordered to be released - [i] at the request of the plaintiff, before an appearance in person or a vakalatnama is filed by the defendant; or [ii] on the defendant paying into Court the amount claimed in the suit; or [iii] on the defendant giving such security for the amount claimed in the suit as the Court may direct; or [iv] on any other ground that the Court may deem just. Thus a ship arrested under warrant maybe released on fulfillment of any of the conditions mentioned hereinbefore. This could be done on the plaintiff showing prima facie best case.

Action in rem is an action against a thing, good or against certain property (ship or cargo) rather than a person. By proceeding against a res a plaintiff obtains security for his claim, the res may be arrested by the court and sold to satisfy a judgment in rem against it. An action may be brought in rem provided the property proceeded against (the res) is within the jurisdiction.
The jurisdiction conferred by this Act on the High Court of Admiralty may be exercised either by proceedings in rem or by proceedings in personam.

An action in personam is an ordinary action as in common law courts.

In Halsbury's Laws of England, the nature of action in rem and the nature of action in personam at para 310 is stated to be as -Nature of actions in rem and actions in personam. - An action in rem is an action against the ship itself but the view that if the owners of the vessel do not enter an appearance in the suit in order to defend their property no personal liability can be established against them has recently been questioned. It has been stated that, if the defendant enters an appearance, an action in rem becomes, or continues also as, an action in personam; but the Admiralty jurisdiction of the High Court may now in all cases be invoked by an action in personam, although this is subject to certain restrictions in the case of collision and similar cases, except where the defendant submits or agrees to submit to the jurisdiction of the Court.

The foundation of an action in rem is the lien resulting from the personal liability of the owner of the res. Thus an action in rem cannot be brought to recover damages for injury caused to a ship by the malicious act of the master of the defendant's ship, or for damage done at a time when the ship was in the control of third parties by reason of compulsory requisition. On the other hand, in several cases, ships allowed by their owners to be in the possession and control of charterers have been successfully proceeded against to enforce liens which arose whilst the ships were in control of such third parties.

The defendant in an Admiralty action in personam is liable, as in other actions in the High Court, for the full amount of the plaintiff's proved claim. Equally in an action in rem a defendant who appears is now liable for the full amount of the judgment even though it exceeds the value of the res or of the bail provided. The right to recover damages may however be affected by the right
of the defendant to the benefit of statutory provisions relating to limitation of liability."
Chapter 6

ORDER OF PRIORITY OF MARITIME CLAIMS

Section 10 (1) and (2) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 sets out the order of priority of maritime claims.

(1) The order of maritime claims determining the inter se priority in an admiralty proceeding shall be as follows:—

(a) a claim on the vessel where there is a maritime lien;

(b) registered mortgages and charges of same nature on the vessel;

(c) all other claims

(2) The following principles shall apply in determining the priority of claims inter se—

(a) if there are more claims than one in any single category of priority, they shall rank equally;

(b) claims for various salvages shall rank in inverse order of time when the claims thereto accrue.
Chapter 7

MARITIME CLAIMS AND ANALYSIS

Section 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 sets out a list of maritime claims in respect whereof, the High Courts can exercise their Admiralty Jurisdiction. The lists of maritime claims are similar to the maritime claims defined under the International Convention in relation to the Arrest of Sea-Going Ships 1952, Brussels and the International Convention on the Arrest of Ships, 1999, Geneva. However, the Admiralty (Jurisdiction & Settlement of Maritime Claims) Act, 2017 incorporates the following additional claims as maritime claims in relation to which a vessel can be proceeded against and arrested. They are claims related to port or harbor dues, canal, dock or light tolls, waterway charges and such like; particular average claims; claims by master or crew or their heirs, dependents for wages, cost of repatriation or social insurance contributions; insurance premiums, mutual insurance calls; commission/brokerage agency fees payable by vessel owner or demise charterer; environment damage claims or threat thereof; and wreck removal claims.

The enforcement of the maritime claims by an action in rem has been narrowed down. Arrest of vessels owned by Time Charterers and Voyage charterers in respect of Maritime claims against them is conspicuously absent from the Admiralty Act (2017); i.e. Article 3 (2) of the 1999 Arrest Convention, does not find a place in the Admiralty Act; which gives rise to issues in this behalf and in relation to enforcements of maritime claims against time and voyage charterers in India.

Section 5. (1) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017: The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against a maritime
claim which is the subject of an admiralty proceeding, where the court has reason to believe that—

(a) the person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected; or

(b) the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected; or

(c) the claim is based on a mortgage or a charge of the similar nature on the vessel; or

(d) the claim relates to the ownership or possession of the vessel; or

(e) the claim is against the owner, demise charterer, manager or operator of the vessel and is secured by a maritime lien as provided in section 9.

The above provision of the Admiralty Act (2017) and its divergence from the Arrest Conventions has led to questions/ issues relating to arrest of ships and sister ships for claims against time charterers, which issue is presently pending for decision before the Bombay High Court.

Section 5(2) permits sister-ship arrests. But, what a sister-ship is, would be subject to Section 5(1).

Section 6 of the Admiralty Act also confers Admiralty Jurisdiction in personam in respect of certain Maritime claims, subject to certain restrictions as contained in Section 7. Under Section 7, for claims arising out of a collision and related claims, an in personam action can be initiated against the Defendant only if the cause of action, wholly or in part arises in India, or if the Defendant, at the time of commencement of the action actually and voluntarily resides or carries on business or personally works for gain in India.
The Admiralty Act (2017) defines ‘maritime lien’ under section 2(1)(g) and recognizes certain claims as Maritime Liens; and sets out their priorities in Section 9. The Admiralty Act also specifies the period of limitation for Maritime Lien, and states that the maritime lien shall stand extinguished after expiry of one year unless the vessel is arrested and seized and such arrest and seizure has led to a forced sale by the High Court. However, in respect of Maritime Liens relating to claims for wages or other employment related payments, including cost of repatriation and social insurance contributions, the limitation period is two years. The period of limitation would run continuously without any suspension or interruption, except the period during which the vessel was under arrest or seizure which time is to be excluded.

Likewise, the Admiralty Act (2017) also provides for priority of Maritime Claims in Admiralty proceedings in Section 10. Maritime Liens have the highest priority, followed by registered mortgages and charges, and thereafter all other claims. If there are more than one claim in any single category of priority, they shall rank equally and salvage claims rank in inverse order of time to when the claims accrued.

The Conventions are inconsistent with the Municipal Law as found in Section 433 of the MS Act and Rule 954 of the Original Side Rules of this Court. Hence, the Municipal Law will apply and not the convention. Therefore, as per the settled legal position, in case of such inconsistency or conflict, it is the Municipal law which will prevail and not the International Convention. There is no controversy about the proposition that in case of conflict between municipal law and an International 1999 Convention, the Court will have to apply the municipal law therefore it makes it clear that in case of conflict between the municipal law and the international law or conventions, the court will have to apply the municipal law. However, when there is no conflict between the two then all just principles of international law or conventions
could be legitimately applied unless either they are in conflict with any statute or are prohibited by any municipal law.

The observation of the Supreme Court (m.v. Sea Success) clearly suggest that unless there is any prohibition by the municipal laws the principles of transnational law or international conventions could be applied for affording remedy for the satisfaction or realisation of maritime claim.

The Supreme Court held that though the Merchant Shipping Act provides a detailed code of substantive and procedural law regulating shipping as an industry and the control exercised over it by the competent authorities, the jurisdictional questions concerning arrest of foreign ships are in many respects left unregulated by the Indian legislation. While the provisions of various international conventions concerning arrest of ships, civil and penal jurisdiction in matter of collision, maritime liens and mortgages etc. have been incorporated in the Municipal Laws in many maritime States, India lags behind them in adopting these unified rules. In the absence of specific statutory provisions, can be adopted and adapted by courts to supplement and complement national statutes on the subject.

The list of maritime claims is a closed list, the claim must fall within one or more of the categories of claims listed the Admiralty Act (2017). If it does not, then it cannot be the subject of an action in rem and a ship or other property cannot be arrested in the enforcement of that claim. The claims listed are all claims that are expressed to or impliedly concern or relate to ‘a ship’. They therefore contemplate some connection between the claim and a particular ship or ships. That being so, it is not sufficient for the pursuit of an action in rem that the intended claim be one against a ship owner either generally or in respect of its ships or operations generally. Nor is it sufficient that the person who is alleged to be liable for that claim happens to own a ship. It is therefore not possible to pursue as an action in rem against a ship in a claim that is not related to or concerns that ship, or in the case of sister ship
arrest, a maritime claim that is not related to or concerns some other ship that was at the time the cause of action arose owned or chartered by or in the possession or control of the owner of the sister ship.

Accordingly, in order to pursue a claim as an action in rem against a ship or other property, there must be some connection between that claim and either the ship that is intended to be the subject of the in rem proceeding or of which the ship the subject of the in rem proceeding is intended to be a sister ship.
Chapter 8

MARITIME LIEN AND ANALYSIS

A maritime lien is a species of charge that attaches to property and follows the property – most commonly a ship – to secure certain types of claims. It is inchoate from the time of the events giving rise to it, attaching to the ship, travelling with the ship into anyone’s possession even a bona fide purchaser for value without notice, except a purchaser at an admiralty court sale and perfected by legal process. Only a limited class of maritime liens are recognised under section 9 (1) of the Admiralty Act (2017).

Maritime lien means a maritime claim as recognised under section 4 (1) (w) of the Admiralty Act (2017) against the owner, demise charterer, manager or operator of the vessel referred to in clauses (a) to (e) of sub-section (1) of section 9, which shall continue to exist under sub-section (2) of that section;

Maritime lien and its characteristics are:—

(a) claims for wages and other sums due to the master, officers and other members of the vessel’s complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;

(b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;

(c) claims for reward for salvage services including special compensation relating thereto;

(d) claims for port, canal, and other waterway dues and pilotage dues and any other statutory dues related to the vessel;
(e) claims based on tort arising out of loss or damage caused by the operation of the vessel other than loss or damage to cargo and containers carried on the vessel.

The maritime lien shall continue to exist on the vessel notwithstanding any change of ownership or of registration or of flag and shall be extinguished after expiry of a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized and such arrest or seizure has led to a forced sale by the High Court. Provided that for a claim for wages and other sum due to the master, officers and other members of the vessel, the period shall be two years from the date on which the wage, sum, cost of repatriation or social insurance contribution, falls due or becomes payable.

In admiralty law, a maritime lien is a privileged claim upon sea-connected property, such as a ship, for services rendered to, or the injuries caused by that property. In common law, a lien is the right of the creditor to retain the properties of his debtor until the debt is paid.

It is a proprietary lien where interest is about the property. It should be understood that “res” may be the vessel including its appurtenances and equipment, the cargo, the freight or even the proceeds of sale. The rights include jus in re (right on the property) and jus in rem (right against the property). The doctrine of maritime lien is that a ship will be treated as a wrongdoer, not the owner, that the loss, damage or harm is caused by the maritime property, itself, and it has to make good for the loss. The attachment of maritime lien will start when the cause of action arises and will not be eliminated even by change of ownership in a good faith purchase.

Two significant differences between maritime liens, which only exist in admiralty law, and the right to keep that exist in general civil law are that in general civil law, "Prior in time is prior in right", i.e., the rights of the lien holder with the earliest lien are superior to those of later lien holders, whereas
in maritime law the rights of the most recent lien holder are superior, and all maritime liens are superior to all non-maritime liens.
Chapter 9

TITLE, POSSESSION, OWNERSHIP, EMPLOYMENT OR EARNINGS OF A SHIP

The jurisdiction of the Admiralty Court in regard to possession and co-ownership is exercised for a fourfold purpose:

1. to place claimants in possession of a ship

2. or of the earnings of a ship to which they may be entitled

3. while protecting the interests of one or more co-owners as against others, to enable a ship to be employed

4. to examine accounts between co-owners, and to apportion the earnings after such examination.

Section 4 (1) (a) and (b) of the Admiralty Act (2017) deals with the above subject maritime claims.

Under ordinary circumstances, when the owner of a personal chattel is wrongfully deprived of it, his only remedy is a personal action against the wrongdoer but where a ship is wrongfully detained, the ship itself, by Admiralty process, may be at once arrested and proceeded against, and a specific decree obtained, restoring it to the owner's possession. The court of Admiralty acquired ample jurisdiction to adjudicate upon all questions of title.

The master of the ship was formerly regarded as having possession of his ship as bailee for the owners, and he could thus effectively transfer possession. Today this view of the position of the master is no longer entertained, and the master is regarded merely as a custodian for the owner, whose servant he is, and who is the person in actual possession.
In a maritime claim, admiralty suit for possession by co-ownership, partners, majority owners, minority owners may be instituted for ship arrest including claim for employment or earnings of a ship.
Chapter 10

MORTGAGE OR A CHARGE

By a mortgage the mortgagee acquires a right to the ownership of a vessel in a certain event, namely, on default of payment of principal and interest, since it is a transfer of all the mortgagor's interest by way of security for the payment of a loan. Mortgagee by reason of his mortgage shall not be deemed to be the owner of the ship, the mortgagor remains the dominus of the ship with regard to everything connected with its employment until the moment arrives when the mortgagee takes possession. The mortgagor therefore does not cease to be the owner of such mortgaged ship except so far as may be necessary for making it available as a security for the mortgage debt. From this it necessarily follows that a mortgagee cannot bring an action of restraint as if he were a co-owner.

The mortgagee under a mortgage of a ship becomes entitled to have as part of his security all the articles necessary to the navigation of the vessel, such as sails, lights, whether on board at the date of the mortgage, or placed on board subsequently and he becomes entitled to the freight due when he takes actual or constructive possession of his security, he cannot, therefore, recover from the mortgagor any freight which he has allowed him to receive since the date of the loan, and before he take possession. Nor can the charterers take from the freight payable by them any sum in respect of advances which the master has agreed shall be deducted from such freight, for the sum which it is agreed by the charterparty shall be advanced and taken from the freight is the only amount by which the freight may be reduced. Nor can suppliers of fuel obtain a deduction of the price thereof from freight, even though the fuel was consumed in earning it, where the fuel was sold to and was the property of the mortgagees.
Section 4 (1) (c) of the Admiralty Act (2017) deals with the above subject maritime claims.

Any claim in respect of any mortgage duly registered according to the provisions of the (Indian) Merchant Shipping Act, 1958, whether the ship or the proceeds thereof be under arrest of the Court or not."

Section 51 of the Merchant Shipping Act 1958, regarding the rights of a registered mortgagee of a ship, which is as follows:

"(1) A registered mortgagee of a ship or share shall be entitled to recover the amount due under the mortgage in the High Court, and when passing a decree or thereafter the High Court may direct that the mortgaged ship or share be sold in execution of the decree.

(2) Subject to the provisions of Sub-s. (1), no such mortgagee shall merely by virtue of the mortgage be entitled to sell or otherwise dispose of the mortgaged ship or share."

The "High Court" referred to in the section by definition in the Act means the High Court within the limits of whose appellate jurisdiction (a) the port or registry of the ship is situate; or (b) the ship is for the time being; or (c) the cause of action wholly or in part arises. The High Court need not be one having Admiralty jurisdiction and the sale of the ship which the High Court directs to be sold will not extinguish all the claims to or liens on the ship so as to give the purchaser a free and clear title to the ship.
Chapter 11

LOSS OR DAMAGE DONE BY ANY SHIP

The claimant must establish that the ship has done the damage (whether by collision or otherwise) to invoke admiralty jurisdiction over any claim for damage done and some authority must be shown that the damage as caused in the present case entitles the parties to proceed in rem. Damage done by a Ship means the damage done by any negligent act or behaviour of those in charge of the ship and a maritime lien arises.

Section 4 (1) (d) of the Admiralty Act (2017) deals with the above subject maritime claims.

In, The Clara Killam (1870) L. R. 3 Ad. Eccl. 161., and The Energy (1870) L. R. 3 Adm. Eccl. 48 cases the injury was directly caused by the wrongful act of the ship against which the action in rem was brought. In the case of The Batavier (1889) L. R. 15 P. D. 37., it was the disturbance made by the ship passing close to the boat that upset the boat. In the case of The Clara Killam (1870) L. R. 3 Ad. Eccl. 161., it was the fact that the ship entangled herself with a submarine cable, and that the cable was cut in clearing her, which was the direct cause of injury to the cable; and in the case of The Industrie (1871) L. R. 3 Ad. & Eccl. In VSNL -vs- Kapitan Kud, an admiralty action was initiated in the Bombay High Court for damage done by ship Kapitan Kud by breaking submarine cable.

In the case of The Vera Cruz (1881) L. R. 9 P. D. 96., decided in 1884, the question 'arose, and Lord Justice Bowen, in interpreting the meaning of the expression "damage done by a ship," says that it means "damage done by those in charge of a ship, with the ship as a noxious instrument;" and the Master of the Rolls, in interpreting the same words, says The section indeed seems to intend by the words 'jurisdiction over any claim' to give a jurisdiction
over any claim in the nature of an action on the case for damage done by any ship, or in other words, over a case in which the ship was the active cause, the damage being physically caused by the ship.

In the case of "The Vinalines Pioneer [2016] 1 SLR 448. The Singapore High Court has confirmed that damage or loss to cargo or other property caused by the carrying ship (i.e. offending ship) was not a claim within the meaning of “a claim for damage done by a ship” and did not give rise to a right of arrest."
Chapter 12

LOSS OF LIFE OR PERSONAL INJURY

A seafarer or its family member (in case of seafarers death) can initiate legal action by filing an admiralty suit in the High Court having admiralty jurisdiction and obtain an order of arrest of the offending ship or sister ship owned by the offending ship and claim compensation, when the ship is in Indian territorial waters.

Section 4 (1) (e) of the Admiralty Act (2017) deals with the above subject in maritime claims and under section 9 (1) (b) as a maritime lien shall have priority for loss of life or personal injury occurring whether on land or on water, in direct connection with the operation of a vessel.
Chapter 13

LOSS OR DAMAGE TO OR IN CONNECTION WITH ANY GOODS

Section 4 (1) (f) of the Admiralty Act (2017) deals with the above subject maritime claims, loss or damage to or in connection with any goods;

Ship is liable to be arrested for the enforcement of maritime claims, or seized in execution or satisfaction of judgments in legal actions arising out of loss or damage to or in connection with any goods.

Loss of or damage to goods indicate that the scope of this head of claim is loss of or damage to cargo. Whether, in case such claims are brought in respect of carriage of goods under a time or a voyage charterparty is immaterial. This also applies for new forms of contracts, such as space contracts and slot charters.

The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of
lading. The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

The carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.
CLAIMS RELATING TO CARGO OR PASSENGER ON BOARD AND CONTRACT OF AFFREIGHTMENT

The Admiralty jurisdiction of the High Court in respect of cargo claims, passenger on board and contracts of affreightment is statutory. Section 4 (1) (f) of the Admiralty Act (2017) deals with the above subject maritime claims, agreement relating to the carriage of goods or passengers on board a vessel, whether contained in a charter party or otherwise.

The High Court has Admiralty jurisdiction and jurisdiction in relation to the carriage of goods was first acquired by the Admiralty Court under the Admiralty Court Act, 1861. The Act of 1861 gave jurisdiction to the Court over claims by the owner, consignee or assignee of the bill of lading of any goods carried by a ship into any port in India for damage caused by negligence or for any breach of contract or breach of duty, unless at the institution of the cause the owner or part owner of the ship was domiciled in India. The jurisdiction which the Court now exercises has thus been extended. Under the Act of 1861 the right to bring an Admiralty action was limited to owners of cargo, but now there appears to be no reason why a ship-owner, provided that he is not domiciled in India, should not bring an Admiralty action against cargo owners, although the latter are domiciled in India; The only express limitation upon this exercise of jurisdiction in rem in claims relating to the carriage of goods is now the proviso that no owner or part owner of the ship shall on the institution of the suit be domiciled in India. The claim must be in respect of goods actually shipped on board the vessel which is made subject to proceedings in rem. Proceedings in rem can only be instituted against the ship in which such goods have actually been carried. Upon the same principle it would seem that a claim relating to the cargo or passenger on board or contract of affreightment is only capable of being enforced against the ship to which such agreement relates. The language of
the section does not, however, expressly impose any such limitation, but leaves a plaintiff free to enforce in proceedings in rem a claim relating to an agreement for the hire of a ship, or carriage of goods in a ship, against a ship other than that to which the agreement relates or in which the goods were carried, belonging to the same owner.

A time or voyage charterer's involvement in cargo claims can arise in two different ways: either directly or indirectly. By directly we mean that the charterer incurs the liability directly to the cargo owner, receiver or insurer. By indirectly we mean that the charterer incurs liability to another party, often the shipowner, who has first incurred liability, under a separate contract, to the cargo owner, receiver or insurer. Just because the claim has not been made against the charterer in the first place does not necessarily mean that the time or voyage charterer will not face a claim. Nor does it mean that the charterer will be free from any or all ultimate liability.

The jurisdiction is, however, no longer confined to claims relating to goods "carried into any port in India in any ship", to include claims in respect of any breach of contract. The right to proceed is no longer confined to the owner, consignee or assignee of the bill of lading and therefore it would seem that the limitation of the jurisdiction to claims where actual damage to goods has been sustained, or a breach of contract taken place in relation to them

A claim in personam by cargo owners against the owners of the carrying ship who were domiciled in India are not within the jurisdiction of the Admiralty Court. Any action in personam may now be brought in the Admiralty Court. The jurisdiction in actions in rem has not, however, been affected in respect of cargo claims. There is, therefore, no jurisdiction to entertain an action in rem in which the owner of the ship, whether plaintiff or defendant, is domiciled in India. The remedy applies to foreign ships as well as to Indian ships, its objects being to give a practicable remedy, where formerly in the great majority of cases there was no available process in consequence of the
shipowner being out of the jurisdiction. "Many foreign ships" "came into this
country, and did not deliver the goods according to the bill of lading. The
owners and consignees of cargo then suffered great loss, and had no
practicable remedy; for though the shipowner, if in India, might have been
sued for breach of contract, in the very great majority of cases that remedy
was wholly unavailable. It appears, too, that in some cases, if not nearly in all,
the owner of a Indian ship carrying cargo to a foreign country was liable to
have his ship there seized for any breach of his contract as carrier.

As remedy depends upon the place where the owner of the ship is domiciled
at the time of the institution of the suit, it is clear that it was not intended that
a plaintiff having a claim under the section should have a maritime lien; for a
maritime lien accrues from the instant of the circumstances creating it, and
not from the date of the intervention of the Court. The claim of the plaintiff
in cases of damage to cargo or breaches of contract therefore accrues only
upon the institution of the suit, and is subject to claims subsisting on the ship
at the time of the institution of the suit.
USE OR HIRE OF ANY SHIP

Section 4 (1) (h) of the Admiralty Act (2017) deals with the above maritime claims pertaining to agreement relating to the use or hire of the vessel, whether contained in a charter party or otherwise.

Chartering is an activity within the shipping industry. In some cases a charterer may own cargo and employ a shipbroker to find a ship to deliver the cargo for a certain price, called freight rate. Freight rates may be on a per-ton basis over a certain route or alternatively may be expressed in terms of a total sum - normally in U.S. dollars - per day for the agreed duration of the charter. A charterer may also be a party without a cargo who takes a vessel on charter for a specified period from the owner and then trades the ship to carry cargoes at a profit above the hire rate, or even makes a profit in a rising market by re-letting the ship out to other charterers. Depending on the type of ship and the type of charter, normally a standard contract form called a charter party is used to record the exact rate, duration and terms agreed between the shipowner and the charterer.

The chartering of a ship, in its simplest terms, is a rental agreement in which a charterer agrees to hire a ship from its owner. Typically it is the charterer who will be the owner of the cargo, which he needs to move to some other part of the world, and unless he has ships of his own, he will depend on others to move the cargo for him. The hire money for this transaction is known as “freight” and is the reward to the shipowner for the use of his vessel.

It is, of course a good deal more complicated than this in practice. The type of charter varies considerably. The cargo owner may wish to hire the ship to move his cargo from A to B and no more, and will hire the ship on the “spot” market for a single voyage charter. The market may however be tight, with
few ships and the price will be accordingly high, so the cargo owner may elect to take a ship for a longer period, giving him in this time charter, at least the security of a known price for subsequent voyages. Indeed, he may have a long term demand for tonnage, over many years, so he may virtually take over the ship from its owner, subsequently arranging its crewing, management and maintenance in a bareboat charter. And there are derivations of all these types of charter to suit the trades and the demands of the market, which is what shipping remains.

Like any market, prices, indicated as the freight levels that will be paid and earned, depend entirely on supply and demand. A shortage of ships and freights will be high; a seller's market that will keep shipowners happy and cargo owners shrouded in gloom. But if there are too many ships chasing too little cargo, the boot is on the other foot, and the shipowner will be hard pressed to earn sufficient freight to pay for his running and capital costs. And the market is known for its volatility, subject to seasonal fluctuations and influenced by so many external factors, such as a hard winter that uses up oil stocks, or political uncertainty, or poor harvests.

The market is also relatively inelastic, with the passage of years being required to contract for and build a new ship, which once delivered, will be around for 20 to 30 years. Shipping is a service industry and one of “derived” demand, with owners (other than those moving passengers) unable to do much to actively promote greater use of their ships.

So the balance of supply and demand, and the fluctuations in freight rates form a fascinating and dynamic backdrop to the charter market which was once more “physical” than it is today, with bourses like the Baltic Exchange, where brokers representing owners met those with cargo interests, every day of the week. Today these chartering transactions take place globally, over screens, facilitated by the internet and brilliant communications we all take for granted. Even the charter parties - the contracts which are used for the hire of
ships are undertaken in electronic form. But that is the modern charter market.

Charter types

a. A voyage charter is the hiring of a vessel and crew for a voyage between a load port and a discharge port. The charterer pays the vessel owner on a per-ton or lump-sum basis. The owner pays the port costs (excluding stevedoring), fuel costs and crew costs. The payment for the use of the vessel is known as freight. A voyage charter specifies a period, known as laytime, for loading and unloading the cargo. If laytime is exceeded, the charterer must pay demurrage. If laytime is saved, the charter party may require the shipowner to pay despatch to the charterer.

b. A Contract of Affreightment is a contract similar to a voyage charter, but ship-owner undertakes to carry number of cargoes within a specified period of time on a specified route. Agreed frequency of cargoes may require more than one ship.

c. A time charter is the hiring of a vessel for a specific period of time; the owner still manages the vessel but the charterer selects the ports and directs the vessel where to go. The charterer pays for all fuel the vessel consumes, port charges, commissions, and a daily hire to the owner of the vessel.

d. A trip time charter is a comparatively short time charter agreed for a specified route only (as opposed to the standard time charter where charterer is free to employ the vessel within agreed trading areas).

e. A bareboat charter or demise charter is an arrangement for the hiring of a vessel whereby no administration or technical maintenance is included as part of the agreement. The charterer obtains possession
and full control of the vessel along with the legal and financial responsibility for it. The charterer pays for all operating expenses, including fuel, crew, port expenses and P&I and hull insurance. In commercial demise chartering, a subtype of bareboat chartering, the charter period may last for many years and may end with the charterer acquiring title (ownership) of the ship. In this case, a demise charter is a form of hire-purchase from the owners, who may well have been the shipbuilders. Demise chartering is common for tankers and bulk-carriers.
SALVAGE

Salvor has a maritime lien on the salvaged property. A successful salvage claim requires three proofs: (1) marine peril; (2) voluntary service rendered when not required as an existing duty or from a special contract; and (3) success in whole or in part, or contribution to the success of the operation.

Section 4 (1) (i) of the Admiralty Act (2017) deals with salvage services, including, if applicable, special compensation relating to salvage services in respect of a vessel which by itself or its cargo threatens damage to the environment.

Admiralty action lies for any claim in the nature of salvage services rendered to a ship, whether such ship or vessel may have been within India or the high seas at the time when its services were rendered in respect of which the claim is made.

Salvage signifies the services rendered by a salvor, or, in its primary meaning, the reward to which he becomes entitled by reason of such services. All services rendered at sea to a vessel in danger or distress are salvage services, but the expression salvage services is especially used to indicate a voluntary personal services successfully rendered to property in danger at sea. Salvage in its simple character is the services which those who recover property from loss or danger at sea render to the owner, with the responsibility of making restitution and with a lien for their reward. This service entitles a salvor to a reward in a court exercising admiralty jurisdiction.

Subject to the broad discretionary approach of the court to do what is just in each case, all liens rank pari passu, except in relation to salvage, where the last in time may take priority on the justification that the ship is saved by the last salvor for the benefit of all other claimants. Claims for various salvages shall
rank in inverse order of time when the claims thereto accrue. Such an approach serves also to encourage salvors to save maritime property. It must be the latest in time of creation as compared with all other liens (including all other salvage and damage liens) in order to take priority. As regards wages, no distinction is made between wages earned before or after salvage; the salvage claim takes priority over wages. In relation to the ranking of claims it is interesting to note that salvage has priority over (a) earlier salvage, (b) earlier damage, (c) earlier wages, (d) earlier claims to forfeiture by the crown, (e) subsequent possessory liens, (f) necessaries, and (g) mortgages. A salvors lien ranks first (and in reverse order of time if there is more than one salvor -ie., later before earlier) simply because without the emergency services he renders there would be no funds preserved out of which anybody could be satisfied.

Section 402 of the (Indian) Merchant Shipping Act 1958 provided as follows:

"(1) Where services are rendered: -

(a) wholly or in part within the territorial waters of India in saving life from any vessel or elsewhere in saving life from a vessel registered in India; or

(b) in assisting a vessel or saving the cargo or equipment of a vessel which is wrecked, stranded or in distress at any place on or near the coasts of India; or

(c) by any person other than the receiver of wreck in saving any wreck; there shall be payable to the salvor by the owner of the vessel cargo, equipment or wreck, a reasonable sum for salvage having regard to all the circumstances of the case.

(2) salvage in respect of the preservation of life when payable by the owner of the vessel shall be payable in priority to all other claims for salvage."
(3) where salvage services are rendered by or on behalf of the Government or by a vessel of the Indian Navy or the commander or crew of any such vessel, the Government, the commander or the crew, as the case may be, shall be entitled to salvage and shall have the same rights and remedies in respect of those services as any other salvor.

(4) any dispute arising concerning the amount due under this section shall be determined upon application made by either of the disputing parties -

(a) to a Judicial Magistrate of the first class or Metropolitan Magistrate as the case may be where the amount claimed does not exceed ten thousand rupees; or

(b) to the High Court, where the amount claimed exceeds ten thousand rupees.

(5) where there is any dispute as to the persons who are entitled to the salvage amount under this section, the Judicial Magistrate of the first class or the Metropolitan Magistrate or the High Court as the case may be shall decide the dispute and if there are more persons than one entitled to such amount, such Magistrate or the High Court shall apportion the amount thereof among such persons.

(6) The costs of and incidental to all proceedings before a Judicial Magistrate of the first class or Metropolitan Magistrate or the High Court under this section shall be in the discretion of such Magistrate or the High Court, and such Magistrate or the High Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid and to give all necessary directions for the purpose aforesaid."
The section provides that any dispute as to salvage shall be determined by a magistrate where the amount does not exceed Rs.10,000 and by the High Court where the amount exceeds that sum. For the purpose of the said Act the term "High Court" has been defined by section 3(15) of the said Act in relation to a vessel to mean the High Court within the limits of whose appellate jurisdiction:

(a) the port of registry of the vessel is situate; or

(b) the vessel is for the time being; or

(c) the cause of action wholly or in part arises.

One of the effects of the said section is that all the High Courts of littoral states will have jurisdiction to entertain a cause relating to salvage and not just the High Courts having Admiralty Jurisdiction. That part it is arguable that the Admiralty Jurisdiction exercised by the High Courts in relation to such a cause has been replaced and substituted by or must yield to the special jurisdiction conferred by the Act and that consequently a suit on such a cause is not maintainable in the Admiralty jurisdiction of the High Courts.
Chapter 17

TOWAGE

A Towage service may be described as the employment of one vessel to expedite the voyage of another, when nothing more is required than accelerating her progress.

Section 4 (1) (j) of the Admiralty Act (2017) deals with towage.

The High Court has admiralty jurisdiction to hear and determine any claim in the nature of towage, whether the services were rendered within Indian waters or on the high seas. In order that the owner of the tug may recover the amount of remuneration, if disputed, from the owner of the tow, the claim must, whether specified at the outset or not, be reasonable, and, if the sum was agreed, it must be certain, nothing extra being payable, beyond the fixed amount, for an alleged subsidiary service, such as delay in the transit and the tug must have fulfilled her obligations.

Although the contract between the owner or master of the tug and the owner of the ship requires the tug to obey the directions of the shipowner and act as his servant, and though the tug and tow are, for the purposes of rendering the ship in the tow subject to the rules of navigation applicable to steamers, regarded as one vessel, it has been laid down that, as the employment of the tug is a voluntary act on the part of the shipowner, and not, like the employment of a pilot, forced upon the shipowner by compulsion of law, the contract between tug and tow does not affect third parties. Therefore, if a steam tug towing a vessel under a towage contract comes into collision with a third vessel, it is no defence to an action by the owners of the third vessel against the tug that the tow was in charge of a pilot by compulsion of law whose default solely occasioned the collision.
Ordinary towage is confined to vessels that have received no injury or damage, and mere towage reward only is payable in those cases where the vessel receiving the services is in the same condition she would ordinarily be in without having encountered any damage or accident.

In ordinary towage all that is stipulated for on behalf of the vessel towing is, that she shall receive the ordinary reward which is paid in compensation for that towage services but there are two species of agreement which may be entered into by a vessel, whose usual occupation it is to tow vessels from one place to another. One is, where she meets with a vessel disabled, and where she undertakes, for any sum agreed upon between the parties, to perform the services of bringing the vessel from one port to another, or a place of safety. This may be called extra-ordinary towage, because it is not in the ordinary occupation of the vessel, and not to be considered ordinary towage.

Though an action in rem lies, ordinary towage services do not give rise to a maritime lien.

Ships may need towage assistance in various circumstances. However, the most common circumstances are the following:

i. Deep sea towage: Ships are often towed long distances to repair yards and large structures such as floating docks, power plants and oil rigs are often towed from one part of the world to the other. Such services are provided by large ocean going tugs which are capable of spending long periods at sea, with a significant fuel range and a very large towing power. These vessels are also sometimes used in providing salvage services and are often stationed near important navigational routes. A number of these vessels provide multi-purpose services such as towage, salvage, oil-rig supply and services.
ii. Coastal and river towage: The tugs that are involved in this activity are generally smaller versions of ocean-going tugs and are primarily used to tow or push barges loaded with cargo and other materials along coastlines, major navigable rivers, and across short ocean passages. Such tugs are occasionally also used in order to provide salvage services.

iii. Harbour towage: Ships will often require tug assistance in berthing, docking or undocking in confined port areas and, in many instances, such assistance will be mandatory as a condition of port entry. This operation may require the use of more than one tug but may not involve actual attachment to the towed vessel since in many cases, pushing will be sufficient. The tugs that are involved in this form of activity are often highly manoeuvrable, with very sophisticated steering and/or propulsion systems.

Towage is normally provided by specialist towage companies pursuant to a formal towage contract that has been negotiated well in advance between shipowners and towing companies. In some instances (particularly in the case of coastal, river or harbour towage) such contracts are period contracts which relate to the provision of towage as and when needed at particular locations within a specified period.

However, even if no formal agreement is negotiated, completed or signed, a towage contract may be deemed to exist by implication especially where the shipowner or the master has consistently accepted such terms on previous and similar occasions. Furthermore, should the need for towage arise at short notice, the master of a vessel has implied authority to engage towage services that are reasonably necessary for the safe and proper performance of the voyage.
The Distinction between Towage and Salvage

However, an important distinction should be drawn between a towage contract and a salvage contract. A towage contract was described as long ago as 1848 as:

“… the employment of one vessel to expedite the voyage of another when nothing more is required then the accelerating of her progress.”

Therefore, a towage contract is normally negotiated at a time when the ship that is to be towed is not facing imminent peril and remuneration is negotiated and agreed in advance, usually on a fixed fee basis. However, a salvage contract (normally a standard form of salvage contract such as the Lloyd's Open Form of Salvage Agreement (LOF)) is agreed when the ship that is to be assisted is facing imminent peril and remuneration is assessed after the completion of the salvage services by a specialist system of arbitration based on a number of factors including the degree of danger to the salved property, the value of the property at risk, the degree of skill demonstrated by the salvor and the cost to the salvor of performing the services.

Furthermore, the remuneration that is normally payable under a towage contract is payable regardless of the success of the operation whereas a salvage contract is based on the principle of 'no cure-no pay' which means that the salvor is rewarded only if he succeeds in saving the ship and/or cargo and receives no reward if he fails to do so. Therefore, since the public policy of most countries is to encourage salvage for the common good, a salvage claim normally qualifies as a maritime lien whereas a claim under a towage contract does not do so.

However, the demarcation between towage and salvage may become blurred. For example, a ship which may be proceeding perfectly normally without tug assistance may suffer a problem such as an engine breakdown which does not
place the ship in imminent peril but which nevertheless, requires the attendance of a tug to tow the vessel to a port where she can be repaired. Disputes can then arise as to whether the services provided by the tug should be considered to be salvage and remunerable on the usual ‘no cure no pay’ basis, or towage services for which remuneration should be in the form of a lump sum. Therefore, it is important whenever time allows that the owners of the ship which requires assistance should involve those other parties who may have to contribute to such remuneration in due course (e.g. his hull and machinery and P&I insurers, and cargo insurers) in such discussions to avoid future disagreements between the interested parties.

Alternatively, if it is known that the ship will need tug assistance to perform a voyage and the shipowners enter into a towage contract in advance for that purpose they will normally envisage that the tow may encounter some difficulties en route and conclude terms that will govern their relationship in circumstances which are reasonably foreseeable and anticipated. In particular, the tug will normally be obliged to use its best endeavours to protect the tow in such circumstances.

Therefore, if an event that was anticipated occurs during the towage and the tug is obliged to take steps to preserve the safety of the tow such services will normally be considered to be an integral part of the towage contract and the tug is not entitled to any additional remuneration. However, if the safety of the tow is imperilled by an event or danger that was not within the reasonable contemplation of the parties, such services may be considered to be salvage services, notwithstanding the existence of the towage contract, and the tug may be entitled to claim additional salvage remuneration if it succeeds in saving the towed ship.

Article 17 of the Salvage Convention states that a salvage reward is payable only where “… the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger
arose.” Therefore, to convert a towage contract into a salvage it has been held that the tug must prove (a) that the services that it performed were of such an extraordinary nature that they could not have been within the reasonable contemplation of the parties to the original towage contract, and that (b) the services that had in fact been performed and the risks in fact run would not have been reasonably remunerated by the contractual remuneration that had been agreed in the towage contract.

Each case will depend on its particular facts. However, it is possible for a towage contract to expressly exclude the right to salvage if a clause to that effect is included in the towage contract.
Chapter 18

PILOTAGE

The remuneration of pilots, being in the nature of wages, must be touched on. By maritime law the Admiralty Court would entertain claims by them for payment of sums due, whether in an action in rem or in personam. A pilot may proceed either in rem or in personam for the authorised pilotage dues to which he may be entitled.

Section 4 (1) (k) of the Admiralty Act (2017) deals with towage.

Pilots with local knowledge are employed on board ships for centuries to guide vessels into or out of port safely - or wherever navigation may be considered hazardous, particularly when a shipmaster is unfamiliar with the area.

In addition to local knowledge and expertise, pilots are able to provide effective communication with the shore and with tugs, often in the local language.

Qualified pilots are usually employed by the local port or maritime administration and provide their services to ships for a fee, calculated in relation to the ship's tonnage, draught or other criteria.

The importance of employing qualified pilots in approaches to ports and other areas where specialized local knowledge is required was formally recognized by IMO in 1968, when the Organization adopted Assembly resolution A.159(ES.IV) Recommendation on Pilotage. The resolution recommends Governments organize pilotage services where they would be likely to prove more effective than other measures and to define the ships and classes of ships for which employment of a pilot would be mandatory.
One of the problems encountered by pilots is that of getting on board the ship - particularly when the weather is bad or the ship is very large. Requirements to make this easier are contained in Chapter V of the SOLAS Convention, and have also formed the subject of IMO resolutions covering for embarking and disembarking pilots in very large ships; and pilot transfer arrangements. IMO has also adopted Recommendation on pilot transfer arrangements and approved Required Boarding Arrangement for Pilots.
SUPPLIES OR SERVICES RENDERED TO ANY SHIP

Section 4 (1) (l) of the Admiralty Act (2017) deals with the above subject maritime claims, goods, materials, perishable or non-perishable provisions, bunker fuel, equipment (including containers), supplied or services rendered to the vessel for its operation, management, preservation or maintenance including any fee payable or leviable.

If it is conclusively shown that supplies or services rendered to any ship are prima facie for its operation, management, preservation or maintenance including any fee payable or leviable and are within the scope and ambit of 4 (1) (l) of the Admiralty Act (2017), admiralty action will lie.

The supplies or services are in the nature of necessaries contemplated supply of goods or materials to a particular ship for her operation, management, preservation or maintenance. For a ship to be able to trade in commerce and in the present time context, the term necessaries have to be given broad and liberal meaning. The maritime law has developed over a period of many centuries and is still in process of development. It cannot be confined to historical characteristic principles, rules and practices in fast developing international trade and commerce. The expression necessaries for supplies or services has to be given meaning within the modern context of shipping and commerce and commercial expedience cannot be over looked and ignored altogether.

Maritime law, to a great extent is international law and it is important for commercial reasons that the courts in interpreting its principles and terms have regard to broader global view and felt necessities. The expression goods, materials, perishable or non-perishable provisions, bunker fuel, equipment (including containers), supplied or services rendered to the vessel for its
operation, management, preservation or maintenance including any fee payable or leviable "needs to be construed keeping aforesaid position in mind. A reasonable test to be applied is that goods supplied or services rendered to the ship must be sufficiently and proximately connected with the operation of the ship. The words operation of the ship cannot be construed narrowly and must be viewed as a complete commercial operation. All things reasonably requisite for a voyage or maritime adventure on which the ship is bound to be covered and held to come within the section 4 (1) (I). The operation of the ship would necessarily include operation of ship necessary for voyage.

Supplies or services rendered to the vessel for its operation, management, preservation or maintenance would not include bunker oil supplied to the ship for sale to other ships could not be conceived as goods supplied for her operation but if supplied to the ship for her consumption then it is for her operation. The phrase 'operation of the ship' should not be equated with the business activities of the shipowner and the section as enacted could not cover goods which are loaded onto two ship only to be unloaded or disposed of soon thereafter by sale.
CONSTRUCTION, REPAIR OR EQUIPMENT OF ANY SHIP

A classification certificate has been held to be equipment and so a claim by a classification society for their charges in connection with issuing such a certificate. Claims under this head do not give rise to a maritime lien, but a repairer has a possessory lien at common law.

A ship can be arrested under admiralty jurisdiction for any outstanding dues under Section 4 (1) (m) of the Admiralty Act (2017) which deals with construction, reconstruction, repair, converting or equipping of the vessel.

Shipbuilding is the construction of ships and other floating vessels. It normally takes place in a specialised facility known as a shipyard. The construction of a ship is a highly technical and complicated process. It involves the blending of many skilled trades and contract employees working under the control of a primary contractor.

Shipbuilding has changed radically. Formerly, most construction took place in a building or graving dock, with the ship constructed almost piece by piece from the ground up. However, advances in technology and more detailed planning have made it possible to construct the vessel in subunits or modules that have utilities and systems integrated within. Thus, the modules may be relatively easily connected. This process is faster, less expensive and provides better quality control. Further, this type of construction lends itself towards automation and robotics, not only saving money, but reducing exposures to chemical and physical hazards.

All ships need repair work at some point in their working lives. A part of these jobs must be carried out under the supervision of the classification society. A lot of maintenance is carried out while at sea or in port by ship's crew. However, a large number of repair and maintenance works can only be
carried out while the ship is out of commercial operation, in a ship repair yard.

Prior to undergoing repairs, a tanker must dock at a deballasting station for completing the tank cleaning operations and pumping ashore its slops (dirty cleaning water and hydrocarbon residues).

Ship repair generally includes all ship conversions, overhauls, maintenance programmes, major damage repairs and minor equipment repairs. Ship repair is a very important part of the shipping and shipbuilding industry.

With fleets worldwide becoming old and inefficient, and with the high cost of new ships, the situation is putting a strain on shipping companies. In general, conversion and repair work in shipyards is more profitable than new construction. In new-construction shipyards, repair contracts, overhauls and conversions also help to stabilize the workforce during times of limited new construction, and new construction augments the repair labour workload. The ship repair process is much like the new construction process, except that it is generally on a smaller scale and is performed at a faster pace. The repair process requires a more timely coordination and an aggressive bidding process for ship repair contracts. Repair work customers are generally the navy, commercial ship owners and other marine structure owners.

Ships are similar to other types of machinery in that they require frequent maintenance and, sometimes, complete overhauls to remain operational. Many shipyards have maintenance contracts with shipping companies, ships and/or ship classes that identify frequent maintenance work. Examples of maintenance and repair duties include:

a. blasting and repainting the ship’s hull, freeboard, superstructure, interior tanks and work areas
b. major machinery rebuilding and installation (e.g., diesel engines, turbines, generators and pump stations)

c. systems overhauls, maintenance and installation (e.g., flushing, testing and installation of a piping system)

d. new system installation, either adding new equipment or replacing systems that are outdated (e.g., navigational systems, combat systems, communication systems or updated piping systems)

e. propeller and rudder repairs, modification and alignment

f. creation of new machinery spaces on the ship (e.g., cut-out of existing steel structure and adding new walls, stiffeners, vertical supports and webbing).

In many cases, repair contracts are an emergency situation with very little warning, which makes ship repair a fast moving and unpredictable environment. Normal repair ships will stay in the shipyard from 3 days to 2 months, while major repairs and conversions can last more than a year.
Chapter 21

PORT, HARBOUR, CANAL, DOCK, TOLLS, WATERWAY CHARGES AND DUES

A ship can be arrested under admiralty jurisdiction for any outstanding dues under Section 4 (1) (n) of the Admiralty Act (2017) which deals with dues in connection with any port, harbour, canal, dock or light tolls, other tolls, waterway or any charges of similar kind chargeable under any law for the time being in force.

A ship can be arrested in India for any dues of any India or overseas port, harbour, canal, dock or light tolls, other tolls, waterway or any charges of similar kind.
Chapter 22

WAGES

A seaman to whom wages are due has a right of action against the owner, the crew may bring an action in the Admiralty court either in personam against the owner, or in rem against the ship.

The general rule is that any person who has done any work on board a ship can bring an action to obtain what is due to him. The jurisdiction of the court extends to foreign seamen on board foreign ships, but when a foreign ship is sued in rem, notice of the action should be sent to the consul of the country to which the ship belongs.

Section 4 (1) (o) of the Admiralty Act (2017) deals with the above subject claim by a master or member of the crew of a vessel or their heirs and dependents for wages or any sum due out of wages or adjudged to be due which may be recoverable as wages or cost of repatriation or social insurance contribution payable on their behalf or any amount an employer is under an obligation to pay to a person as an employee, whether the obligation arose out of a contract of employment or by operation of a law (including operation of a law of any country) for the time being in force, and includes any claim arising under a manning and crew agreement relating to a vessel, notwithstanding anything contained in the provisions of sections 150 and 151 of the Merchant Shipping Act, 1958.

The claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf, the limitation period for filing of the admiralty suit shall be two years from the date on which the wage, sum, cost of repatriation or social insurance contribution, falls due or becomes payable.
The meaning of the word wages and the times from which they begin to accrue and at which they are payable have to be considered. To fall within the term wages for the purpose of an action in the Admiralty court, the sums sued for must have been earned on board the ship, not necessarily at sea, but in work on the vessel itself, or in duties connected with it.

A maritime lien is extinguished with the destruction of the vessel or property, or laches (undue delay in enforcement), or is discharged by payment or judicial act. A maritime lien would be extinguished when the intention of the owner of the vessel is no longer to deploy the vessel for navigation and the vessel has been imported into India for the purpose of demolition/ship recycling.

Section 4 (1) (o) of the Admiralty Act (2017) deals with the above subject in maritime claims and under section 9 (1) (a) as a maritime lien shall have priority for claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf.
Chapter 23

DISBURSEMENTS

A ship can be arrested under admiralty jurisdiction for any outstanding dues under Section 4 (1) (p) of the Admiralty Act (2017) which deals with disbursements incurred on behalf of the vessel or its owners.

Disbursements by the master on account of the ship can be recovered in a suit for wages. The terms disbursements includes all proper expenditure made by the master on the ship and must generally be explained by reference to what disbursements has been incurred for the ship. A master can claim for disbursements not necessarily only for the sum for which he had actually paid and was suing, he needs to establish that the master is bringing an action in respect of claims for which he is personally liable as master of the ship in respect of necessaries for the ship.

The claim for disbursements is limited to masters, and cannot be enforced by a mate and both in suits for wages and disbursements the claimant should furnish accounts before commencing the action.
Chapter 24

GENERAL AVERAGE OR AVERAGE

The lien on cargo for general average charges can be exercised only by the shipowner in possession of the goods and, where necessary, it is his duty to other cargo owners to protect their interests by retaining possession of any goods in respect of which a contribution in general average is outstanding. However, owing to the difficulty of assessing the amount of such contributions and the time required for general average adjustment, it is not usual for shipowners to avail themselves of the right of lien in these circumstances. The customary procedure is for the goods to be delivered in exchange for the security afforded by a general average bond, a general average deposit, or both.

Section 4 (1) (q) of the Admiralty Act (2017) deals with the above subject claim on average or general average.

York Antwerp Rules of 1974 established the standard basis for adjusting general average and stated the rules for adjusting claims.

In order to constitute a general average the sacrifice or expenditure made or incurred and in respect of which contribution in general average is sought must have been extraordinary; have been made intentionally or voluntarily; in time of peril; for the common adventure; have been reasonable.

There is no maritime lien in respect of a claim for general average. However, at common law, a shipowner has a possessory lien over the cargo for cargo owners proportion of general average which is enforceable against the consignee of the cargo even though the consignee is under no personal liability to contribute in general average, not being the owner of the cargo when the general average act occurred.
Chapter 25

DISPUTE UNDER CONTRACT FOR THE SALE OF VESSEL

Section 4 (1) (r) of the Admiralty Act (2017) deals with the above subject claim on dispute arising out of a contract for the sale of the vessel.

A contract for sale of the vessel would include vessel for further trading or a vessel for demolition or a scrap.

There are some clauses under the sales form protecting the interest of the buyer of ship. For example, clause 9 of Sale Form 1993 has provided some limited protection for the buyer. Under the clause 9, the seller warrants that the vessel is free from all charters, encumbrances, mortgages and maritime liens or any other debts whatsoever at the time of delivery. The buyer can claim against the seller for all consequences of claims made against the vessel which have been incurred prior to the time of delivery. If the ship cannot settle down all the mortgages and other claim attached to the ship before the delivery, the buyer can discharge the purchase price to cover this part of claim. Normally, the buyer would also retain part of the payment for around six months to secure there is no any claims and Maritime Liens of the ship.

However, it is difficult for the buyer to terminate the contact even if the vessel still has some encumbrances, mortgages or maritime liens at the time of delivery. Under the English law, the "warranty" is a contractual promise which is not the condition of the contract, so the innocent party can only claim damages but not terminate the contact if there is breach of warranty. Thus, it is difficult for the buyer to terminate the contract.

To terminate the sales and purchase contract, there are two main procedures and the buyer must follow these steps:
Firstly, the buyer should put a notice to inform the seller that there is an encumbrance he/she is aware of and, secondly, the buyer should seek clarification on seller's intention with regard to the encumbrance by specifically referring to Seller's obligations under clause 9 of Sale Form 1993.

If, after the buyer taking the above two steps, the seller fails to remove all the encumbrance in time, the buyer will be entitled to terminate the contract.

The seller is entitled to exercise a possessory lien over the vessel until payment by the buyer. Also, the seller is entitled to resell the vessel to another buyer if the buyer fails to settle the payment in time. An unpaid seller may bring an action to recover the sale cost where the buyer has acquired the property in the ship but refuses or fails to pay the price.

The buyer is entitled to take action for non-delivery of the ship and claim for damages. For the delay of delivery, the buyer can claim for the difference in value of the vessel if the price to buy the other vessel instant is different. Also, the buyer can terminate the contract and claim for damages if the vessel is not delivered after a certain period.

Fundamentally, the main duty of the seller is to deliver the ship in accordance with the terms, conditions and warranties of the contract. The time of delivery may or may not be an essential part of the contract depending on the clause of the contract. If time is of the essence, the buyer can have the option to cancel the contract when delivery is not made by the stipulated date.

Furthermore, the seller also has the obligation to avoid misrepresentation. Although there is no general duty of disclosure and the buyer is free to onboard inspections on the vessel to be purchased, the seller should not induce the other party to enter into the contract by making material representations which are untrue. Statements or assurances made during negotiations leading to a contract may be either "terms" which form the express terms of the contract or just the statements which do not intend to be
part of the contract, but help to induce the contract. Even if the statement is not "Misrepresentation", it is difficult for the buyer to claim for remedies if this misrepresentation does not become a contractual term.

The main duty of the buyer is paying the agreed purchase price of the vessel. Normally, the time of payment is not the essential factor unless there is an express clause in the contract. The buyer must also accept delivery. Payment and delivery should be concurrent unless otherwise stipulated. Of course, the buyer also has the obligations to prevent misrepresentation during the negotiation stage.
Chapter 26

INSURANCE PREMIUM

Insurance Premium is within the closed list for ship arrest. Section 4 (1) (s) of the Admiralty Act (2017) deals with the above subject claim on insurance premium (including mutual insurance calls) in respect of the vessel, payable by or on behalf of the vessel owners or demise charterers.

Protection and indemnity insurance, more commonly known as "P&I" insurance, is a form of mutual maritime insurance provided by a P&I Club. Whereas a marine insurance company provides "hull and machinery" cover for shipowners, and cargo cover for cargo owners, a P&I Club provides cover for open-ended risks that traditional insurers are reluctant to insure. Typical P&I cover includes: a carrier's third-party risks for damage caused to cargo during carriage; war risks; and risks of environmental damage such as oil spills and pollution.

A P&I Club is a mutual insurance association that provides risk pooling, information and representation for its members. Unlike a marine insurance company, which reports to its shareholders, a P&I club reports only to its members. Originally, P&I Club members were typically shipowners, ship operators or demise charterers, but more recently freight forwarders and warehouse operators have been able to join.

Whereas the assured pays a premium to an underwriter for cover which lasts for a particular time (say, a year, or a voyage), a P&I Club member instead pays a "call". This is a sum of money that is put into the Club's pool, a kind of "kitty". If, at the end of the year, there are still funds in the pool, each member will pay a reduced call the following year; but if the Club has made a major payout (say, after an oil spillage) club members will immediately have to pay a further call to replenish the pool.
Any unpaid commission, brokerage or agency fees by the vessel owner or demise charterer of the vessel are within the close list of maritime claim and the claimant can arrest a ship for recovery. Section 4 (1) (s) of the Admiralty Act (2017) deals with the above subject claim on commission, brokerage or agency fees payable in respect of the vessel by or on behalf of the vessel owner or demise charterer.

In order to obtain an arrest the broker would have to show that the commission claim fell within section 4 (1) (s) of the Admiralty Act (2017). Only parties to a contract, the owner and charterer under a charterparty, has rights and obligations to enforce. If there is a contract a ship broker can sue the owner and receive his claim for commission this includes the chartering brokers’ ability to enforce their rights.
Chapter 28

DAMAGE OR THREAT TO ENVIRONMENT

Section 4 (1) (u) of the Admiralty Act (2017) deals with the above subject claim on damage or threat of damage caused by the vessel to the environment, coastline or related interests; measures taken to prevent, minimise, or remove such damage; compensation for such damage; costs of reasonable measures for the restoration of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; or any other damage, costs, or loss of a similar nature to those identified in this clause.

Parts X-B, X-C and XI-A of the Merchant Shipping Act deal with the prevention and containment of pollution of the sea by oil. India follows the International Convention on Civil Liability for Oil Pollution Damage, 1992 (as amended). Section 352 G applies to every Indian ship, wherever it is, and every foreign ship while it is at a port or place in India or within Indian territorial waters or marine areas adjacent thereto over which India has or may have exclusive jurisdiction. In regard to control of marine pollution under Territorial Waters and on the continental shelf, the Exclusive Economic Zone and any Maritime Zones Act, 1976 or any other law currently in force applies, also there are several rules that have been drawn up with regard to pollutions. A ship can be arrested for Loss or Damage done by any Ship or Damage received by any ship or sea-going vessel whether such ship or vessel may have been within Indian waters or upon high seas at the time when the damage was received.
ENVIRONMENT; COST OR EXPENSES RELATING TO WRECKED, STRANDED, ABANDONED AND SUNKEN SHIP

Section 4 (1) (v) of the Admiralty Act (2017) deals with the above subject claim on costs or expenses relating to raising, removal, recovery, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel, and costs or expenses relating to the preservation of an abandoned vessel and maintenance of its crew.

Section 9 (4) of the Admiralty Act (2017) reads as:

(4) No maritime lien shall attach to a vessel to secure a claim which arises out of or results from—

(a) damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which compensation is payable to the claimants pursuant to any law for the time being in force;

(b) the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive products or waste.

In the 1993 Maritime Liens and Mortgage Convention, wreck removal is no longer included in the list of maritime liens but, to the extent that the removal is effected by a public authority in the interest of safe navigation or the protection of the marine environment, the costs of such removal are paid out of the proceeds of sale before all other claims secured by a maritime lien on the vessel (article 12(4)). Within the above limits, therefore, the costs of the removal had to be qualified as a maritime claim. It appeared, however,
reasonable to qualify all costs of removal as a maritime claim, irrespective of their priority in the distribution of the proceeds of sale.

The concept of abandonment is not the same in all cases; the abandoned ship is the ship abandoned by the crew, which therefore, may become a danger to other ships; the same conclusion cannot hold, since reference is also made to the maintenance of the crew of the abandoned ship. It follows that this time the intention is to refer to a ship abandoned by its owners.

Section 11 (3) of the Admiralty Act (2017) reads as

If the owner or demise charterer abandons the vessel after its arrest, the High Court shall cause the vessel to be auctioned and the proceeds appropriated and dealt with in such manner as the court may deem fit within a period of forty-five days from the date of arrest or abandonment. Provided that the High Court shall, for reasons to be recorded in writing, extend the period of auction of the vessel for a further period of thirty days.
A ship is liable to be forfeited under section 33, 35, 68 and 69 (Part V) of the Merchant Shipping Act 1958,

'33. Power of Central Government to inquire into title of Indian ship to be so registered“

(1) Where it appears to the Central Government that there is any doubt as to the title of any Indian ship to be registered as an Indian ship, it may direct the registrar of her port of registry to require evidence to be given to his satisfaction within such time, not being less than thirty days as the Central Government may fix, that the ship is entitled to be registered as an Indian ship.

(2) If within such time as may be fixed by the Central Government under sub-section (1) evidence to the satisfaction of the registrar that the ship is entitled to be registered as an Indian ship is not given, the ship shall be liable to forfeiture.

'35. Custody and use of certificate“

(1) The certificate of registry shall be used only for the lawful navigation of the ship, and shall not be subject to detention by reason of any title, lien, charge or interest whatever, had or claimed by any owner, mortgagee or other person to, on or in the ship.

(2) No person, whether interested in the ship or not, who has in his possession or under his control the certificate of registry of a ship, shall refuse or omit without reasonable cause to deliver such certificate on demand to the person entitled to the custody thereof for the purposes
of the lawful navigation of the ship or to any registrar, customs collector or other person entitled by law to require such delivery.

(3) Any person refusing or omitting to deliver the certificate as required by sub-section (2) may, by order, be summoned by [any Judicial Magistrate of the first class or any Metropolitan Magistrate, as the case may be,] to appear before him and to be examined touching such refusal; and if the person is proved to have absconded so that the order of such Magistrate cannot be served on him, or if he persists in not delivering up the certificate, [the said Magistrate] shall certify the fact, and the same proceedings may then be taken as in the case of a certificate mislaid, lost or destroyed, or as near thereto as circumstances permit.

(4) If the master or owner of an Indian ship uses or attempts to use for her navigation a certificate of registry not legally granted in respect of the ship, he shall be guilty of an offence under this sub-section and the ship shall be liable to forfeiture.'

'68. Liabilities of ships not recognised as Indian ships”

Where it is declared by this Act that an Indian ship shall not be recognised as such, that ship shall not be entitled to any privileges, benefits, advantages or protection usually enjoyed by Indian ships or to use the Indian national colours for Indian ships or to assume the Indian national character, but so far as regards the payment of dues, the liability to fine and forfeiture and the punishment of offences committed on board such ship, or by any persons belonging to her, such ship shall be dealt with in the same manner in all respects as if she were a recognised Indian ship.'
'69. Proceedings on forfeiture of ship-

Where any ship has either wholly or as to any share therein become subject to forfeiture under this Part, any commissioned officer of the Indian Navy, any customs collector or any Indian consular officer or any other officer authorised by the Central Government, may seize and detain in the ship, and bring her for adjudication before the High Court, and the High Court may thereupon adjudge the ship with her equipment to be forfeited to the Government, and make such order in the case as to the High Court seems just and may award to the officer bringing in the ship for adjudication such portion of the proceeds of the sale of the ship or any share therein as the High Court thinks fit.
PUBLICLY OWNED SHIP AND FOREIGN STATE OWNED

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 shall not apply to a warship, naval auxiliary or other vessel owned or operated by the Central or a State Government and used for any non-commercial purpose, and, shall also not apply to a foreign vessel which is used for any non-commercial purpose as may be notified by the Central Government.

A vessel owned by Government owned companies are within the purview of the act.

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. State-owned vessels serving commercial purposes are subject to the same rules as private vessels and therefore do not enjoy immunity. On the other hand, state-owned vessels serving public purposes (Navy, etc.) enjoy immunity from arrest.
ARREST AND BUYERS RIGHTS IN AUCTION

Section 2 (1) (c) of the Admiralty Act (2017) defines ‘arrest’ and it means detention or restriction for removal of a vessel by order of a High Court to secure a maritime claim including seizure of a vessel in execution or satisfaction of a judgment or order.

Arrest of a vessel is part of the process by which an Admiralty Court gains jurisdiction over the subject matter of a lawsuit. These lawsuits are known as ‘in rem’ actions meaning that the action is again a ‘thing’ or the ‘res’ rather than a person.

An arrest of a vessel is the prerequisite for the court to establish jurisdiction. If the vessel cannot be seized, the court may have no right over the vessel. Once seized, the court, through the marshal's or 'sheriff's service or substitute custodian, maintains possession of the vessel and the owner loses all control. To avoid this situation and its effect on commerce, the court will allow the owner to post a bond or other suitable security. Once the security is accepted, the vessel is returned to the owner and the litigation continues with the security as the subject of execution of judgement.

Once the marshal or the sheriff or the custodian has seized a vessel, he is obligated to preserve the vessel and its equipment. Generally, the custodian of a seized vessel should not interfere with the conduct of cargo and other operations normal to a vessel in berth unless directed so by court order.

If a vessel is not released by the posting of security, the court may order an interlocutory sale. An interlocutory sale, means a sale prior to the completion of the litigation and the entering of a judgment. As a general rule the court will allow sale of the vessel at the earliest within reasonable time. If the owner or demise charterer abandons the vessel after its arrest, the High Court shall
cause the vessel to be auctioned and the proceeds appropriated and dealt with in such manner as the court may deem fit within a period of forty-five days from the date of arrest or abandonment: Provided that the High Court shall, for reasons to be recorded in writing, extend the period of auction of the vessel for a further period of thirty days.

The valid reason provided for sale if the arrested property is perishable, liable to deterioration, of if the cost of keeping it is excessive or disproportionate.

Regardless as whether the sale is interlocutory or a judgment sale, the purchaser at the auction does not have any right in the vessel, until the sale is confirmed by the court. Once confirmation is received, the buyer receives title which extinguishes all other liens and provided him with a clear title. An "in rem" action resolves claims of all of the world against the vessel and no lien for past debts can be created or asserted.

The proceeds of the sale are paid into the court and are used to satisfy any expenses incurred by the keeping of the vessel and fees to the marshal or sheriff or the custodian. The balance is paid to the claimants as per priority and any balance left over is paid to the owner. If the sums received are not sufficient to pay all claims, the claimants pay proportionately to the shortfall.

Section 8 of the Admiralty Act (2017) reads as:

(8). On the sale of a vessel under this Act by the High Court in exercise of its admiralty jurisdiction, the vessel shall vest in the purchaser free from all encumbrances, liens, attachments, registered mortgages and charges of the same nature on the vessel.
SHIP AND SISTERSHIPS

Section 2 (1) (l) of the Admiralty Act (2017) defines ‘vessel’ and it includes any ship, boat, sailing vessel or other description of vessel used or constructed for use in navigation by water, whether it is propelled or not, and includes a barge, lighter or other floating vessel, a hovercraft, an offshore industry mobile unit, a vessel that has sunk or is stranded or abandoned and the remains of such a vessel. A vessel shall not be deemed to be a vessel for the purposes of this clause, when it is broken up to such an extent that it cannot be put into use for navigation, as certified by a surveyor.

The Admiralty Act (2017) shall apply to every vessel, irrespective of the place of residence or domicile of the owner but shall not apply to an inland vessel defined in clause (a) of sub-section (1) of section 2 of the Inland Vessels Act, 1917, or a vessel under construction that has not been launched unless it is notified by the Central Government to be a vessel for the purposes of the Act and shall not apply to a warship, naval auxiliary or other vessel owned or operated by the Central or a State Government and used for any non-commercial purpose, and, shall also not apply to a foreign vessel which is used for any non-commercial purpose as may be notified by the Central Government.

The word "vessel" was substituted for "ship" and is defined as including "any ship or boat, or any other description of vessel used in navigation," whilst "ship" includes any description of vessel used in navigation not propelled by oars. This latter definition does not exclude things not specified, so that it will include any vessel used in navigation not habitually propelled by oars, and will include a hopper barge not navigable without external assistance where it was held that a hopper barge with rudder and navigating lights but without means of propulsion, has been held to be a "ship". The expression "ship" includes
any description of vessel used in navigation not propelled by oars, and the statutory jurisdiction of the High Court over salvage claims for services rendered to a ship would therefore appear to be confined to services rendered to vessels not propelled by oars.

In Steedman v Scofield [1992] 2 Lloyd's Rep 163 (Sheen J.) Mr. Justice Sheen said, "To my mind the word "boat" conveys the concept of a structure, whether it be made of wood, steel or fiberglass, which by reason of its concave shape provides buoyancy for the carriage of persons or goods. Thus a lifeboat differs from a life raft in that the boat derives its buoyancy from its shape, whereas a raft obtains its buoyancy from some method of utilizing air receptacles." "A vessel is usually a hollow receptacle for carrying goods or people. In common parlance "vessel" is a word used to refer to craft larger than rowing boats and it includes every description of watercraft used or capable of being used as a means of transportation on water."

In Steedman v Scofield Mr. Justice Sheen considered what was meant by the phrase "used in navigation" and he said "Navigation is the nautical art or science of conducting a ship from one place to another. The navigator must be able to determine the ship's position and to determine the future course or courses to be steered to reach the intended destination. The word "navigation" is also used to describe the action of navigating or ordered movement of ships on water. Hence "navigable waters" means waters on which ships can be navigated. To my mind the phrase "used in navigation" conveys the concept of transporting persons or property by water to an intended destination. A fishing vessel may go to sea and return to the harbour from which she sailed, but that vessel will nevertheless be navigated to her fishing grounds and back again. "Navigation" is not synonymous with movement on water. Navigation is planned or ordered movement from one place to another."
Under the so called "Dead vessel" doctrine, a vessel permanently withdrawn from use for navigational purposes is not a vessel, in terms of admiralty jurisdiction. However, a vessel is not a "dead vessel" merely because it is not actively engaged in trade or commerce, where arrangements have been made to alter it to fit it for an intended maritime service. In addition, a ship may be a "live ship," not a "dead vessel," when it is in dry dock.

An action in rem lies in the English High Court in respect of matters regulated by the Supreme Court Act, 1981, and in relation to a number of claims the jurisdiction can be invoked not only against the offending ship in question but also against a "sistership" i.e., a ship in the same beneficial ownership as the ship in regard to which the claim arose.

In m.v. Mariner IV v. Videsh Sanchar Nigam Limited decided on 15th December 1997 by the appeal court of the Bombay High Court observed that "In view of the decision of the in m. v. Elizabeth, we are of the clear view that the High Court does have jurisdiction to arrest a "sister ship" for securing any maritime claim."

The Appeal Court of the Bombay High Court in m.v. Sea Sucess I v. Liverpool and London Steamship Protection and Indemnity Association Ltd., are of the view that a subsidiary company and a parent company of the subsidiary company are two separate entity. The Appeal court has the following view, "In maritime law worldwide ownership of a ship is denoted by the concept of the owner of the shares in a ship...... Fundamentally each company incorporated in law is a distinct legal entity and mere incorporation of 100% subsidiary company by its parent Company cannot lead to the conclusion that the assets of the former belong to and are owned by parent company. ....The action in rem under admiralty jurisdiction has been initiated by the plaintiffs against the defendant no.1 vessel Sea Success -I on the basis of allegations of it being a sister ship i.e. a ship in the same beneficial ownership as the ships " Sea Glory" and " Sea Ranger" in regard to which the
claim arose. In case of m.v. Mariner IV, 1998 (1) Mah. L.J. 751, the Division Bench of this Court held, "The admiralty jurisdiction could be invoked not only against the offending ship in question but also against a sister ship in regard to which the claim arose". The ships are deemed to be in the same ownership when all the shares are owned by the same person or persons (Article 3(2) of 1952 Brussels Arrest Convention).

The Appeal Court further viewed that "....the defendant no. 1 vessel is a sister ship of the two vessels "Sea Glory" and "Sea Ranger" in view of the beneficial ownership, management and control of all three vessels having vested in defendant no. 2. The basis of this deduction by the plaintiff in the plaint is that the defendant no. 1 vessel is owned by defendant no. 2 through its 100% subsidiary S.S. Shipping Corporation Inc., Monrovia"....the law permits the plaintiff to arrest a ship which is beneficially owned by the defendant no. 2 then the plaintiff is required to plead the material facts which discloses the beneficial ownership of the defendant no. 2 over the ship which is to be arrested and an inference drawn by itself in the pleading about beneficial ownership which is legally unsustainable cannot be said to disclose a cause of action. It is true that while ascertaining whether the plaint discloses a cause of action or not, the court is not required to make any enquiry into doubtful or complicated questions of fact or law and that the court proceeds with the assumption that the facts stated therein true but then those facts as they stand must disclose plaintiffs right to sue".

The Supreme Court of India in the matter of m.v. Sea Success I has stated that "...we do not intend to delve deep into the questions as to whether the two ships named hereinabove are the sister ships of the respondent No. 1 Vessel or whether the requirement of law as regard ownership of a ship in the Respondent No. 1 as beneficial owner has been fulfilled or not. Such issues must be considered at an appropriate stage".
Beneficial owner means, one recognized in equity as the owner of something because use and title belong to that person, even though legal title may belong to someone else; esp., one for whom property is held in trust- also termed equitable owner. Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement. The defining characteristic of the beneficial owner of an asset is that he holds a degree of control over the asset that allows him to benefit from it. Whether he is the legal owner (that is, holds legal title to it) is irrelevant. The essence of beneficial ownership is precisely not ownership in the ordinary sense of the word—but rather control. Control and legal title often will lie in the same hands.

Beneficial ownership is a concept that is relatively straightforward in theory but difficult to apply in practice. The essence is to identify the person who ultimately controls a corporate vehicle. This identification always will be a highly context-dependent, de facto judgment; beneficial ownership cannot be reduced to a legal definition.

“Sister-Ship” is a ship which is under the same beneficial ownership or in simple terms, owned in majority by the same owner or class of owners. More importantly, apart from arresting an offending ship in order to secure a maritime claim, a claimant may also arrest a sister ship of the offending ship in order to secure his claim. The International Convention Relating to the Arrest of Sea-Going Ships, Brussels, 1952 (the “Brussels Convention”) and the International Convention on the Arrest of Ships, Geneva, 1999 (the “Geneva Convention”) are very clear regarding the position of the arrest of a sister ship for maritime claims. Both the Conventions provide for the arrests of the sister ships for securing maritime claims.
In order to evade the arrest of a sister ship, in some instances, the (beneficial) owners of the said sister ships register the ships under different companies. This makes it difficult to trace it back to the beneficial owners and becomes an obstacle in arresting the “sister-ship” since it is not registered to the same beneficial owner. Such ships are known as “Associated Ships”. The associated ship arrest provision was introduced into South African legislation as an extension of the English sister ship provisions which was incorporated into Nigerian Admiralty Law. This legislation works by way of following the principle of “Piercing the corporate veil” and provides for the arrest of a ship owned by a different company than the one owning the offending vessel on the grounds that the two companies are commonly controlled or owned.

In Euroceanica (UK) Ltd. Vs Gem of Safaga, the Federal Court of Australia did not allow the Plaintiff to arrest the vessel “Gem of Safaga” as a ‘surrogate ship’ for securing the maritime claims against the vessels “JBU Opal” and “JBU Onyx”. In the present case, West Asia Maritime Limited, owned 9 out of the 10 shares of the vessel “Gem of Safaga” and the 10th share was owned by Four M Maritime Limited, a company controlled by or associated with West Asia Maritime Limited’s Managing Director, Abdul Qadir. A subsidiary of West Asia Maritime Limited, viz West Asia Maritime Singapore Pte Ltd, had chartered the said vessels “JBU Opal” and “JBU Onyx”, in respect of whom the maritime claims arose from the plaintiff, Euroceanica (UK) Ltd. The plaintiff, Euroceanica (UK) Ltd., sought to arrest the vessel “Gem of Safaga” stating that, notwithstanding the terms of the contract, which stated that West Asia Singapore Pte Ltd. were the charterers of the vessels “JBU Opal” and “JBU Onyx”, the parent company of the said chartering company, i.e West Asia Maritime Limited were ultimately the charterers of the vessel “JBU Opal” and “JBU Onyx”. The Court held that West Asia Maritime Limited was the owner of “Gem of Safaga” at the time of commencement of proceedings and that it was in control of the vessels “JBU Opal” and “JBU Onyx” when the maritime claim arose with respect to the said vessels. The Court however held that, the vessel, “Gem of Safaga” cannot be arrested to
secure the said maritime claims because West Asia Maritime Limited was not the sole owner of the vessel “Gem of Safaga” and notwithstanding the fact that the other co-owner of “Gem of Safaga” owned only 1 out of the 10 shares of the vessel, arresting the said vessel would impair the rights of Four M Maritime Limited.

Jurisdictions all over the world allow the arrest of sister ships in order to secure a maritime claim, either directly or at times, when the circumstances call for it, by piercing the corporate veil. However, arrests of associate ships are not well known in all jurisdictions. One of the leading pioneers of associate ship arrests is the South African Admiralty Jurisdiction. South African provisions are so extensive that they permit piercing of the corporate veil. In this respect a vessel owned by a different company from the company which owns the ship concerned is susceptible to arrest simply by virtue of the fact that the two companies are commonly controlled or owned. This was buttressed in the case of Belfry Marine ltd Vs Palm Base Maritime. It therefore goes without saying that ships are associated so long as there is common shareholding in the owning companies and any arrest affected on any such ship is valid in South Africa.

The Bombay High Court division bench hearing appeal, in the matter of Lufeng Shipping Company Ltd -vs- m.v. Rainbow Ace & Anr has handed down a decision that lifting of corporate veil will arise if there is fraud and evidence thereof.

A ship can be arrested under beneficial ownership for a maritime claim supported with evidence of the beneficial ownership of the ship sought to be arrested is the same as the one who is responsible and liable for the claim, and not merely on suspicion.

Indian Courts are encouraging when it comes to the arrest of sister ships, the same cannot be said for the arrest of associate ships or surrogate ships as well as ships that are in the same beneficial ownership. Indian Courts do not lift
the corporate veil where it is not evident that the ships are not sister ships or that they are in the same beneficial ownership as the concerned vessel.
Chapter 34

CLAIMANTS UNDERTAKING

The claimant filing admiralty suit in the High Court having admiralty jurisdiction have to file an undertaking along with the suit in an affidavit form mainly for protection of owner, demise charterer, manager or operator or crew of vessel arrested under Section 11 (1) of the Admiralty Act (2017). Section 11 reads as:

11. (1) The High Court may, as a condition of arrest of a vessel, or for permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of the vessel, an obligation to provide an unconditional undertaking to pay such sums of money as damages or such security of a kind for an amount and upon such terms as may be determined by the High Court, for any loss or damage which may be incurred by the defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to the following, namely:—

(a) the arrest having been wrongful or unjustified; or

(b) excessive security having been demanded and provided.
ARREST OF SHIP

The main purpose of arrest is to obtain security for satisfaction of judgment in the action in rem and it is necessary to arrest the ship in order to establish jurisdiction.

Merchant ships of different nationalities travel from port to port carrying goods or passengers. They incur liabilities in the course of their voyage and they subject themselves to the jurisdiction of foreign States when they enter the waters of those States. They are liable to be arrested for the enforcement of maritime claims, or seized in execution or satisfaction of judgments in legal actions arising out of collisions; salvage, loss of life or personal injury, loss of or damage to goods and the like. They are liable to be detained or confiscated by the authorities of foreign States for violating their customs, regulations, safety measures, rules of the road, health regulations, and for other causes. The coastal State may exercise its criminal jurisdiction on board the vessel for the purpose of arrest or investigation in connection with certain serious crimes. In the course of an international voyage, a vessel thus subjects itself to the public and private laws of various countries. A ship travelling from port to port stays very briefly in any one port. A plaintiff seeking to enforce his maritime claim against a foreign ship has no effective remedy once it has sailed away and if the foreign owner has neither property nor residence within jurisdiction. The plaintiff may therefore detain the ship by obtaining an order of attachment whenever it is feared that the ship is likely to slip out of jurisdiction, thus leaving the plaintiff without any security.

A ship may be arrested (i) to acquire jurisdiction; or (ii) to obtain security for satisfaction of the claim when decreed; or (iii) in execution of a decree. In the first two cases, the court has the discretion to insist upon security being furnished by the plaintiff to compensate the defendant in the event of it being
found that the arrest was wrongful and was sought and obtained maliciously or in bad faith. The claimant is liable to pay damages for wrongful arrest. The practice of insisting upon security being furnished by the party seeking arrest of the ship is followed in the United States, Japan and other countries. The reason for the rule is that a wrongful arrest can cause irreparable loss and damages to the ship owner; and he should in that event be compensated by the arresting party.

The attachment by arrest is only provisional and its purpose is merely to detain the ship until the matter has been finally settled by a competent court. The attachment of the vessel brings it under the custody of the marshal, sheriff or any other authorised officer. Any interference with his custody is treated as contempt of court, which has ordered the arrest. But the Marshal's or Sheriff's right under the attachment order is not one of possession, but only of custody. Although the custody of the vessel has passed from the defendant to the marshal/sheriff, all the possessory rights, which previously existed, continue to exist, including all the remedies, which are based on possession. The warrant usually contains admonition to all persons interested to appear before the court on a particular day and show cause why the property should not be condemned and sold to satisfy the claim of the plaintiff.

The attachment being only a method of safeguarding the interest of the plaintiff by providing him with a security, it is not likely to be ordered if the defendant or his lawyer agrees to "accept service and to put in bail or to pay money into court in lieu of bail".

Affixing it on the main mast or single mast of the ship usually affects the service of a warrant. The court may release a ship, which has been arrested under an order of attachment, if sufficient bail is put in to cover the claim of the plaintiff as well as the costs of the action. The sureties are liable for the amount entered in the bail bond.
If the ship or cargo under arrest before judgment has not been released by the defendant by putting in sufficient bail, and if the property is found deteriorating, the court has the power to order the sale of the property after notice has been duly issued to the parties interested.

If the plaintiff has finally obtained a decree of condemnation and sale of the ship, the court will issue an order to the competent officer commanding him to sell the property, in execution of the decree, and to bring the proceeds into court. Thereupon the officer shall issue proper notice and arrange for the sale of the property by auction. The proceeds of the sale are paid into the registry of the court and they shall be disposed of by the court according to law.

A personal action may be brought against the defendant if he is either present in the country or submits to the jurisdiction. If the foreign owner of an arrested ship appears before the court and deposits security as bail for the release of his ship against which proceedings in rem have been instituted, he submits himself to jurisdiction.

An action in rem is directed against the ship itself to satisfy the claim of the plaintiff out of the res. The ship is for this purpose treated as a person. Such an action may constitute an inducement to the owner to submit to the jurisdiction of the court, thereby making himself liable to be proceeded against by the plaintiff in personam. It is however, imperative in an action in rem that the ship should be within jurisdiction at the time the proceedings are started. A decree of the court in such an action binds not merely the parties to the writ but everybody in the world at large who might dispute the plaintiff's claim.

It is by means of an action in rem that the arrest of a particular ship is secured by the plaintiff. He does not sue the owner directly and by name; but the owner or any one interested in the proceedings may appear and defend. The writ is issued to the "owner and parties interested in the property proceeded against." The proceedings can be started in England or in the United States in
respect of a maritime lien, and in England in respect of a statutory right in rem. A maritime lien is a privileged claim against the ship or a right to a part of the property in the ship, and it "travels" with the ship. Because the ship has to "pay for the wrong it has done", it can be compelled to do so by forced sale. In addition to maritime liens, a ship is liable to be arrested in enforcement of statutory rights in rem. If the owner does not submit to the jurisdiction and appear before the court to put in bail and release the ship, she is liable to be condemned and sold to satisfy the claims against her. If, however, the owner submits to jurisdiction and obtains the release of the ship by depositing security, he becomes personally liable to be proceeded against in personam in execution of the judgment if the amount decreed exceeds the amount of the bail. The arrest of the foreign ship by means of an action in rem is thus a means of assuming jurisdiction by the competent court.

The admiralty action in rem, as practised in England or in the United States, is unknown to the civil law. In countries following the civil law, all proceedings are initiated by actions in personam. The President of the Court having competence in the matter has the power to order an attachment of the ship if he is convinced that the plaintiff is likely to lose his security unless the ship is detained within the jurisdiction. His hands are not fettered by the technicalities of an action in rem and the scopes of the proceedings are not limited to maritime liens or claims. According to the French law, arrest of a ship is allowed even in respect of non-maritime claims and whether or not the claimant is a secured or unsecured creditor. A vessel may be arrested either for the purpose of immobilising the vessel as security (Saisie Conservatoire) or in execution of judgment (Saisie Execution) whether or not the claim has any relation to the vessel. Arrest of the vessel has the advantage of forcing the owner to furnish security to guarantee satisfaction of any decree that may be passed against him. On furnishing sufficient security with the Court, he is usually allowed to secure the release of the vessel. Maritime law is part of the general law of France and other "civil law countries", and is dealt with by the ordinary courts or tribunals. The presence of any property belonging to the
defendant within the territorial jurisdiction confers jurisdiction on the French Court.

The real purpose of arrest in both the English and the Civil Law systems is to obtain security as a guarantee for satisfaction of the decree, although arrest in England is the basis of assumption of jurisdiction, unless the owner has submitted to jurisdiction. In any event, once the arrest is made and the owner has entered his appearance, the proceedings continue in personam. All actions in the civil law—whether maritime or not—are in personam, and arrest of a vessel is permitted even in respect of non-maritime claims, and the vessel is treated as any other property of the owner, and its very presence within jurisdiction is sufficient to clothe a competent tribunal with jurisdiction over the owner in respect of any claim. Admiralty actions in England, on the other hand, whether in rem or in personam, are confined to well defined maritime liens or claims and directed against the res (ship, cargo and freight) which is the subject-matter of the dispute or any other ship in the same beneficial ownerships as the res in question.

Where statutes are silent and remedy has to be sought by recourse to basic principles, it is the duty of the court to devise procedural rules by analogy and expediency. Action in rem, as seen above, were resorted to by courts as a devise to overcome the difficulty of personal service on the defendant by compelling him to enter appearance and accept service of summons with a view to furnish security for the release of the res; or, in his absence, proceed against the res itself, by attributing to it a personality for the purpose of entering a decree and executing the same by sale of the res. This is a practical procedural device developed by the courts with a view to rendering justice in accordance with substantive law not only in cases of collision and salvage, but also in cases of other maritime liens and claims arising by reason of breach of contract for the hire of vessels or the carriage of goods or other maritime transactions, or tortious acts, such as conversion or negligence occurring in connection with the carriage of goods. Where substantive law demands justice
for the party aggrieved, and the statute has not provided the remedy, it is the
duty of the court to devise procedure by drawing analogy from other systems
of law and practice. To the courts of the "civil law countries" in Europe and
other places, like problems seldom arise, for all persons and things within
their territories (including their waters) fall within their competence to deal
with. They do not have to draw any distinction between an action in rem and
an action in personam.

It is likewise within the competence of the appropriate Indian Courts to deal,
in accordance with the general principles of maritime law and the applicability
of provisions of statutory law, with all persons and things found within their
jurisdiction. The power of the court is plenary and unlimited unless it is
expressly or by necessary implication curtailed. In the absence of such
curtailment of jurisdiction, all remedies, which are available to the courts to
administer justice, are available to a claimant against a foreign ship and its
owner found within the jurisdiction of the concerned High Court. This power
of the court to render justice must necessarily include the power to make
interlocutory orders for arrest and attachment before judgment. The High
Courts in India are superior courts of record. They have original and appellate
jurisdiction. They have inherent and plenary powers. Unless expressly or
impliedly barred, and subject to the appellate or discretionary jurisdiction of
the Court, the High Courts have unlimited jurisdiction, including the
jurisdiction to determine their own power.

A person who, maliciously and without reasonable and probable cause
procures the arrest of a ship by Admiralty proceedings is liable to pay
damages to the person aggrieved. A separate suit has to be filed for wrongful
arrest proving malicious cause. Wrongful arrest may result in the
condemnation of the claimant for damages only where the court is satisfied
that the arrest was motivated by mala fides (bad faith) or crassa negligentia
(gross negligence). Merely unjustified (i.e. erroneous) arrest would not
normally entitle the defendant to claim damages, although he might then be able to recover costs.

The safeguarding of ownership/private property rights when ships are arrested in rem by the Admiralty Court are built into the rules of the High Court having admiralty jurisdiction for ship arrest. For example, a party wishing to prevent the arrest of property in an action in rem may, by filing a praecipe in the prescribed form, obtain the entry of a caveat against arrest in the caveat book kept in the Admiralty Registry/ Prothonotary & Senior Master of the High Court. Although the entry of the caveat does not prevent arrest of the res, the caveator, on a subsequent motion after arrest, may obtain the discharge of the arrest warrant and the condemnation of the arresting party in damages, if the latter is unable to show "good and sufficient reason" for having arrested.

Where a foreign ship registered in a port of a country having a consulate in jurisdiction of the High Court where arrest application is sought /is to be arrested in India in an action in rem for wages, prior notice of the arrest must be given to the consul concerned.

In the decision of the Supreme Court in Videsh Sanchar Nigam Limited -vs- m.v. Kapitan Kud (1986) the court observed that the admiralty action is an action in rem and that there is strong triable case. The ship is a foreign ship and if it leaves the shores of Indian territorial waters it is difficult to get hold of it and it may not return to the jurisdiction of Indian courts. The claim thereby, even if successful, would remain unexecutable or land in trouble in private international law in its enforcement. Under these circumstances, we are of the firm opinion that the vessel may be released on the certain conditions..., viz., [i] the respondent shall deposit a sum of Rs.10 crores; [ii] the Ukrainian Government shall give an undertaking through its accredited authority, more particularly may be its Ambassador attached to its Embassy in India in writing duly undertaking that in the event of the suit being decreed
they would comply with the decree without reference to the execution; [iv]
the undertaking should be for balance amount of Rs.18 crores and towards
costs and other expenses roughly put at Rs.25 crores. It would be open to
them to comply with these directions at any time. We are not fixing any time
limit because it would be open to them to comply with it at any time and until
then the ship shall remain arrested and shall not leave the shores of the Indian
territorial waters. On deposit of Rs.10 crores and on furnishing of
undertakings to the satisfaction of the Division Bench of the High Court, as
stated above, the High Court would give appropriate direction for releasing
the vessel in accordance with law.

In m.v. Kapitan Kud the Supreme court also observed that whether the
appellant (VSNL) has made out prima facie case. Rules on Admiralty
Jurisdiction in Part III were framed by Bombay High Court to regulate the
procedure and practice thereof on the original side of the Bombay High
Court. Equally, Original Side Rule 941 is relevant in this regard which
provides that party applying under this rule in a suit in rem for arrest of the
property shall give an undertaking in writing or through advocate to pay such
sum by way of damages as the court may award as compensation in the event
of a party affected sustaining prejudice by such order. In Mahadeo Savlaram
Shelke & Ors. v. Pune Municipal Corporation & Anr. [ (1995) 3 SCC 33],
even in case of civil court, exercising its power under order 39 Rule 1, this
Court held that while granting interim injunction, the Civil Court or Appellate
Court is enjoined to impose as a condition that in the event of the plaintiff
failing to prove the case set up and if damages are caused to the defendant
due to the injunction granted by the court, the court would first ascertain
whether the plaintiff would adequately be compensated by damages if
injunction is not granted. Equally the court should also impose condition for
payment of damages caused to the defendant in the same proceeding without
relegating the parties for a separate suit. The plaintiff should give such an
undertaking as a part of the order itself. Rule 954 of Admiralty Rules provides
that subject to the provisions of Rule 952 [caveat property not to be released
unless notice is given to the caveator], property arrested under a warrant may be ordered to be released - [i] at the request of the plaintiff, before an appearance in person or a vakalatnama is filed by the defendant; or [ii] on the defendant paying into Court the amount claimed in the suit; or [iii] on the defendant giving such security for the amount claimed in the suit as the Court may direct; or [iv] on any other ground that the Court may deem just. Thus a ship arrested under warrant maybe released on fulfillment of any of the conditions mentioned hereinbefore. This could be done on the plaintiff showing prima facie best case.

An action in rem is commenced by filing an Admiralty suit in the High Court having admiralty jurisdiction, supported by an affidavit along with interim application and affidavit in support may be made for an arrest warrant to be issued in respect of the ship concerned. The request is filed together with an undertaking to the Court towards any wrongful arrest in relation to the arrest.
Chapter 36

INTERNATIONAL CONVENTION FOR ARREST OF SHIPS

Where statutes are silent and remedy has to be sought by recourse to basic principles, it is the duty of the court to devise procedural rules by analogy and expediency. Action in rem, as seen above, were resorted to by courts as a devise to overcome the difficulty of personal service on the defendant by compelling him to enter appearance and accept service of summons with a view to furnish security for the release of the res; or, in his absence, proceed against the res itself, by attributing to it a personality for the purpose of entering a decree and executing the same by sale of the res. This is a practical procedural device developed by the courts with a view to rendering justice in accordance with substantive law not only in cases of collision and salvage, but also in cases of other maritime liens and claims arising by reason of breach of contract for the hire of vessels or the carriage of goods or other maritime transactions, or tortious acts, such as conversion or negligence occurring in connection with the carriage of goods. Where substantive law demands justice for the party aggrieved, and the statute has not provided the remedy, it is the duty of the court to devise procedure by drawing analogy from other systems of law and practice. To the courts of the "civil law countries" in Europe and other places, like problems seldom arise, for all persons and things within their territories (including their waters) fall within their competence to deal with. They do not have to draw any distinction between an action in rem and an action in personam.

It is likewise within the competence of the appropriate Indian Courts to deal, in accordance with the general principles of maritime law and the applicability of provisions of statutory law, with all persons and things found within their jurisdiction. The power of the court is plenary and unlimited unless it is expressly or by necessary implication curtailed. In the absence of such curtailment of jurisdiction, all remedies, which are available to the courts to
administer justice, are available to a claimant against a foreign ship and its owner found within the jurisdiction of the concerned High Court. This power of the court to render justice must necessarily include the power to make interlocutory orders for arrest and attachment before judgment.

India did not sign and consequently did not ratify or promulgate either the International Convention Relating to the Arrest of Seagoing Ships, signed at Brussels on 10 May 1952 and at Geneva on 12 March 1999 but the principles were adopted by Supreme Court of India judgements in m.v. Elizabeth and in m.v.ea Success matter as part of the common law of India and applicable for the enforcement of maritime claims against foreign ships as is held. Although the Admiralty Act (2017) has imported most of the articles from the conventions to the act but there are some grey areas not covered, the admiralty court will have to deal with.

The scope and nature of the Admiralty jurisdiction exercised by the High Courts in India have been examined and ascertained in Kamlakar v. The Scindia Steam Navigation Co. Ltd; Rungta Sons Ltd. v. Owners and Master of Edison; National Co. Ltd. v. M. S. Asia Mariner ; m.v Elisabeth-v- Harwan Investment & Trading Pvt Ltd., Go ; Liverpool and London S.P. and I Asson. Ltd -Vs- m.v. Sea Success I and Anr amongst other decided judgments.

The admiralty jurisdiction of the High Court is dependent on the presence of the foreign ship in Indian waters and founded on the arrest of that ship. This jurisdiction can be assumed by the concerned High Court, whether or not the defendant resides or carries on business, or the cause of action arose wholly or in part, within the local limits of its jurisdiction. Once a foreign ship is arrested within the local limits of the jurisdiction of the High Court, and the owner of the ship has entered appearance and furnished security to the satisfaction of the High Court for the release of the ship, the proceedings continue as a personal action.
A foreign vessel, no matter what flag she flies, owes temporary and local allegiance to the sovereign of any port to which she comes. Moreover, the persons in such a vessel likewise must obey the laws and regulations of the port. Such jurisdiction is discretionary. Once a foreign vessel passes out of territorial waters, she owes no further duty to the place, which she has left, unless there is a hot pursuit. However, her conduct on the high seas or in foreign ports may subject her to penalties on returning on a subsequent visit.

In the words of Chief Justice Marshal of the United States Supreme Court "it would be obviously inconvenient and dangerous to society and would subject the laws to continual infraction, and the government to degradation, if such (alien) individuals or merchants (trading in ships) did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country."

All foreign merchant ships and persons thereon fall under the jurisdiction of a coastal State as they enter its waters. Subject to the right of "innocent passage", the coastal State is free to exercise its jurisdiction over such ships in respect of matters on which the consequences extend beyond the ships. Such ships are subject to the local jurisdiction in criminal, civil and administrative matters. This jurisdiction is, however, assumed only when, in the opinion of the local authorities, the peace or tranquility of the port is disturbed, when strangers to the vessel are involved or when the local authorities are appealed to. Questions which affect only the internal order and economy of the ship are generally left to the authorities of the flag State. Coastal States are entitled to assume jurisdiction in respect of maritime claims against foreign merchant ships lying in their waters. These ships are liable to be arrested and detained for the enforcement of maritime claims. The courts of the country in which a foreign ship has been arrested may determine the cases according to merits, provided they are empowered to do so by the domestic law of that country or in any of the cases recognised by the International Convention relating to the Arrest of Seagoing Ships, Brussels, 1952. The maritime claims in respect of which the power of arrest is recognised in law includes claims relating to
damage caused by any ship either in collision or otherwise; claims relating to carriage of goods in any ship whether by charter party or otherwise, loss of or damage to goods etc. These principles of international law, as generally recognised by nations, leave no doubt that, subject to the local laws regulating the competence of courts, all foreign ships lying within the waters of a State, including waters in ports, harbour, roadsteads, and territorial waters, subject themselves to the jurisdiction of the local authorities in respect of maritime claims and they are liable to be arrested for the enforcement of such claims.

In India, carriage of goods by sea is governed by the Indian Bills of Lading Act, 1856, the Indian Carriage of Goods by Sea Act, 1925, the Merchant Shipping Act, 1958, and general statutes, such as the Marine Insurance Act, 1963, the Contract Act, 1872, the Evidence Act, 1872, the Indian Penal Code, 1860, the Transfer of Property Act, 1882, the Code of Civil Procedure, 1908, the Criminal Procedure Code, 1973, the Companies Act, 1956 etc as well as the general principles of law such as the law of tort, public and private international law etc. In this connection, reference may also be made to the Indian Ports Act, 1908 and the Major Port Trusts Act, 1963 concerning the administration of the port and the jurisdiction over ships in ports, the Customs Act, 1962 containing various regulatory measures affecting ships, goods and persons in connection with importation or exportation of goods, as well as the provisions governing employment of labour. The Indian Bills of Lading Act, 1856 emphasis the negotiable and other characteristics of a bill of lading. The Carriage of Goods by Sea Act, 1925, contains the Hague Rules regulating the respective rights and liabilities of the parties to a contract governed by bills of lading or similar documents of title for carriage of goods by sea "from any port in India to any other port whether in India or outside India". The Merchant Shipping Act embodies rules regarding registration of Indian ships; transfers or mortgages of ships or shares; national character and flag; employment of seamen; safety, nuclear ships; collisions; accidents at sea and liability; limitation of liability; navigation; prevention of pollution; investigation and enquiries; wreck and salvage; coasting trade; sailing vessels;
penalties and procedure, etc. Many of these provisions have been adopted from rules formulated by various international conventions.


All persons and things within the waters of a State fall within its jurisdiction unless specifically curtailed or regulated by rules of international law. The power to arrest a foreign vessel, while in the waters of a coastal State, in respect of a maritime claim, wherever arising, is a demonstrable manifestation and an essential attribute of territorial sovereignty. This power is recognised by several international conventions. These conventions contain the unified rules of law drawn from different legal systems. Although many of these conventions have yet to be ratified by India, they embody principles of law recognised by the generality of maritime States, and can therefore be regarded as part of our common law.
The judicial power of this country, which is an aspect of national sovereignty, is vested with the people and is articulated in the provisions of the Constitution and the laws and is exercised by courts empowered to exercise it. It is absurd to confine that power to the provisions of imperial statutes of a bygone age. Access to court which is an important right vested with every citizen implies the existence of the power of the Court to render justice according to law. Where the statute is silent and judicial intervention is required, Courts strive to redress grievances according to what is perceived to be the principles of justice, equity and good conscience.

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 is now in force and has repealed all the previous admiralty laws.
CAVEAT AGAINST ARREST

Any person desiring to prevent the arrest of any property shall file in the registry a praecipe, signed by himself or his Advocate, who may be acting for him, requesting that a caveat be entered against the arrest of the said property and undertaking to enter an appearance in person or a vakalatnama (appearance) in any suit that may be instituted against the said property and to give security in such suit in a sum not exceeding the amount to be stated in the praecipe or to pay such sum into the registry. A caveat against the issue of a warrant for the arrest of the said property shall thereupon be entered in a book to be kept in the registry, called the “Caveat Warrant Book”. A caveat against arrest is valid for 90 days. Successive caveats may be entered upon expiry.

The caveator agrees to enter appearance and put up security to prevent an arrest of the ship. Although the caveat does not guarantee that an arrest will not be effected, it nevertheless acts as a deterrent to arrest. Unless the arresting party can demonstrate that there was a good and sufficient reason for arresting despite the caveat.

The Caveat Warrant Book or the Register is open for inspection.

A Caveat is a Notice given by a person, informing the Court that another person may file a suit or application against him and that the Court must give the Caveator (person filing the Caveat) a fair hearing before deciding any matter brought before it in the relevant case.

Section 148A of the Code of Civil Procedure Code, 1908, right to lodge a caveat.
(1) Where an application is expected to be made, or has been made, in a suit or proceedings instituted, or about to be instituted, in a Court, any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof.

(2) Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been or is expected to be, made, under sub-section (1).

(3) Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the Court, shall serve a notice of the application on the caveator.

(4) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator at the caveator's expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.

(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (1) has been made before the expiry of the said period.
EXECUTION OF ARREST WARRANT, EFFECTING THE ARREST

The Sheriff of Mumbai or the Admiral Marshal or his substitute may execute a warrant of arrest on the ship.

If the warrant of arrest is dispensed with by the Admiralty judge while passing the order of arrest of the vessel, the port, custom and other authorities act upon the order passed, not allowing the vessel to sail outward from its jurisdiction. A copy of the order passed by the court for arrest of the vessel should be communicated to all concerned authorities by hand, fax or email, followed by authenticated or true copy of the order to the concerned authorities. A copy of the order should also be served upon the port agent of the vessel who acts as the agent of the owner of the vessel.

The Marshal or Sheriff will not act until he has received the warrant of arrest issued from the registry and a deposit towards his fees and expenses and, as there is invariably some delay before the warrant of arrest is issued from the office of the registry and reaches the office of the Marshal or Sheriff, it is convenient to intimate to the Marshal or Sheriff, as soon as the judge's order for arrest is signed, or an separate order passed in an application, information as to where the ship is to be found which will enable him to arrange for his substitute, who will effect the arrest, to be readily available to proceed to the ship as soon as the warrant of arrest is lodged in his office. The plaintiff or his advocate will have to provide a conveyance to the ship for the person entrusted with the service and, if the ship happens to be at an anchorage berth, a launch to enable him to go on board.
The Marshal or Sheriff, before he proceeds to effect the arrest will require an
initial deposit of a sum towards such expenses as may be incurred by him in
connection with the custody and care of the ship while under arrest; he will
also require a personal undertaking from the plaintiff’s advocate to make
further deposits towards such expenses as and when required. Before giving
such an undertaking, the plaintiff’s advocate should ensure that he himself is
placed in sufficient funds by his client who may not be resident within the
jurisdiction. The plaintiff will have a first charge in respect of the said
expenses on the sale proceeds of the ship. In the event of the prompt release
of the ship, on giving of security for the claim in suit, there will be no
expenses incurred by the Marshal or Sheriff on its custody and the whole of
the deposit placed with him will fall to be refunded to the plaintiff or his
advocate.

After arresting the ship the Marshal or Sheriff will issue intimations in writing
to the customs and harbour authorities of the arrest, enjoining them against
the grant of customs and port clearance to the ship until they have received
further intimations from him that the arrest has been lifted. It is advisable for
the plaintiff’s advocate to ensure that such intimations reach the said
authorities expeditiously.

If the court has passed an order of arrest of the ship dispensing the Warrant
of Arrest, in such event the Sheriff or Marshal will issue a letter and the same
along with copy of the order is served on the ship and other concerned
authorities and if there is a order for concerned authorities to act on fax or
email copies, this is normally done attaching /faxing the cover letter issued by
the sheriff/marshal along with copy of the order for arrest of the vessel.

Freight cannot be arrested separate from the ship or cargo, and so freight
which has already been paid to the ship owners by the consignees cannot be
arrested. Where, however, a claim is brought against ship and freight, the
court may order that the Sheriff of Mumbai or the Admiral Marshal should sell the cargo under arrest and pay the freight from the proceeds of sale.
Sheriff or the Marshal or other officer including administrative assistants such as Bailiffs or other subordinate officers who shall assist in carrying out their duties to execute the process of the Court including serving order of arrest or executing arrest warrants on ships; taking all appropriate steps to retain safe custody of, and to preserve, a ship under arrest, including removing from the ship, cargo that is under arrest; removing cargo from a ship that is under arrest; and moving the ship that is under arrest; arranging for the release of a ship pursuant to an Order of Court or instrument of Release; arranging for the valuation and sale of a ship pursuant to an Order of Court; filing a return of the sale, and an account of the sale and documents in support of the account for taxation; arranging for the payment of the proceeds of the sale of a ship into the Court.

The Sheriff or Marshall or other officer shall serve the process of the Court and shall return the process to the Registry within four days from the service thereof. Service of writ or warrant, when dispensed with in suit in rem – In a suit in rem no service of Writ of Summons or warrant of arrest shall be required, when the Advocate for the defendant agrees to accept service and to give security or to pay money into Court.

Service of Writ of Summons or warrants of arrest in a suit in rem

- In a suit in rem the Writ of Summons or the Warrant of arrest shall be served on property against which the suit is brought. Service how effected.

- Where the property is ship or cargo on board, service shall be effected by affixing the original Writ of Summons or the warrant of arrest for a short time on any mast of the ship or on the outside of any suitable
part of the ship’s superstructure and leaving a duplicate thereof affixed in its place, when removing the original Writ of Summons or the warrant of arrest.

- Where the property is cargo which has been landed or transhipped, service shall be effected by placing the original Writ of Summons or the warrant of arrest for a short time on the cargo and leaving a duplicate thereof upon the cargo, when removing the original Write of Summons or the warrant or arrest.

- Where a cargo is in the custody of a person who will not permit access to it, service shall be made upon the custodian.

- Where the property is freight, service shall be effected by serving on the cargo in respect of which the freight is payable or on the ship in which the cargo was carried, in the manner hereinabove prescribed in this rule for service on a cargo or on a ship.

Sheriff or the Marshal or the other officer may apply for directions – The sheriff may at any time make a report to the Court and apply for directions with respect to property under arrest in a suit. The Court may direct notice of the application to be given to any person concerned with the property before passing orders on the report.
Chapter 40

PROPERTY (SHIP) UNDER ARREST AND ITS EFFECT

The effect of arrest is that it constitutes the ship or other property as security in the hands of the court for the claim in the action and this security cannot be defeated by the subsequent insolvency of the owner of the arrested property. The arrest enables the Court to keep the property as security to answer the judgment, and unaffected by chance events which may happen between the arrest and the judgment.

Once the warrant for arrest has been executed, the property is arrested and is in the custody of the Sheriff or the Marshall or other officer on behalf of the court. Interference by any party with the arrest process such as removing the property to be arrested with knowledge that an arrest has been issued is a contempt of court, this includes any interference with the custody of the property after arrest such as moving the property within the jurisdiction without authority, or removing it from the jurisdiction, as was held in The "Jarlinn" [1965] 1 W.L.R. 1098 and also in The "Abodi Mendi" [1939] 178.

The arrest of a ship is a defining moment in its life. Immediately upon arrest the ship becomes security in the custody of the court to abide the result of the proceedings giving rise to the arrest. Once arrested, the ship remains in the custody of the court until released upon the provision of alternative security or sale by the court. As Sheen J explained in The Falcon:

A ship is usually arrested in order to provide security for the plaintiffs claim. The extent of that security is measured by the net proceeds of the sale of the vessel. The amount of the net proceeds of sale is arrived at by deducting from the gross proceeds of sale the expenses of that sale and other expenses incurred by the Sheriff or the Marshal or the other officer and the necessary costs of the plaintiff in whose action the ship was arrested up to the moment
of arrest and all subsequent expenses of maintaining the arrest up to and including the completion of the sale of the ship.

A warrant of arrest on a ship covers everything belonging to it as part of its equipment, even items which are physically detached from it, but not items which do not belong to the ship owner such as the personal property of the master and crew or the luggage of a passenger.

A ship may be arrested but the cargo on board her is not under arrest, or cargo is arrested but the ship in which it is laden is not. If a ship is to be arrested while she is in the course of discharging her cargo, the Sheriff or the Marshal or the other officer will not stop the discharge operations unless the arrest is in respect of the cargo. When cargo is arrested the ship owners can request the Sheriff or the Marshal or the other officer to take the appropriate steps to enable the ship to be discharged.

When arrest of a ship in a port causes considerable and continuing disruption to the operation of the port and the port authority had to turn away other ships so harming its reputation and causing its financial loss in such circumstances the court has inherent jurisdiction to allow a party to intervene if the effect of an arrest is to cause that party serious hardship or difficulty or danger. The court may pass directions to remove the ship to a safe berth in such other place as he shall think appropriate.

A ship is arrested by the Sheriff or the Marshal or the other officer acting as an officer of the court. The ship comes into the custody, but not the possession, of the Sheriff or the Marshal or the other officer. The position was described by Lord Atkin in Government of the Republic of Spain v SS "Arantzazu Mendi".

The ship arrested does not by the mere fact of arrest pass from the possession of its then possessors to a new possession of the Sheriff or the Marshal or the other officer. His right is not possession but custody. Any interference with
his custody will be properly punished as a contempt of the Court which ordered arrest, but, subject to his complete control of the custody, all the possessory rights which previously existed continue to exist, including all remedies which are based on possession.

Once arrested, a ship cannot be moved from the place of arrest without the authority of the Sheriff or the Marshal or the other officer. To move the ship without such authority, whether to another place within the jurisdiction or to flee the jurisdiction, constitutes contempt of court. Similarly, any interference with the ship while under arrest, whether or not it involves any movement or attempted movement of the ship, will constitute contempt.

The duty of the Sheriff or the Marshal or the other officer is to ensure the safe custody and preservation of the ship.

The Sheriff or the Marshal or the other officer shall, unless the court otherwise orders, take all appropriate steps to retain safe custody of, and to preserve, the ship or property, including removing from the ship, or storing, cargo that is under arrest; removing cargo from a ship that is under arrest and storing it; removing, storing or disposing of perishable goods that are under arrest or are in a ship that is under arrest; and moving the ship that is under arrest.

The Sheriff or the Marshal or the other officer owes no duty to the crew on board as such.
ARREST OF A SHIP DOES NOT INCLUDE CARGO

If a ship is ordered to be arrested while she is in the course of discharging her cargo, the Sheriff or the Marshal or the other officer will not stop the discharge operations except when the claim is in respect of a claim for salvage and the cargo is to be arrested. Normally, when an order of arrest of ship is obtained it is only the ship and their appurtenance are arrested but does not include the cargo unless there is an order from the court for arrest of the cargo also.
Chapter 42

ARREST OF CARGO DOES NOT INCLUDE SHIP

If cargo on board the ship is ordered to be arrested, the Sheriff or the Marshal will arrest the cargo. Without intervening in the claim in which the cargo has been arrested the ship owners or the vessel interest can request the Sheriff or the Marshal to take the appropriate steps to enable the ship to be discharged, the Sheriff or Marshal will make an application to the court for appropriate relief.

Alternatively, the ship owner or the vessel interest can make an appropriate application to the court for the ship to be discharged.
CAVEAT AGAINST RELEASE AND PAYMENT

Any person desiring to prevent the release of any property under arrest shall file in the registry a praecipe, signed by himself or his Advocate, who may be acting for him, requesting that a caveat be entered against the release of the said property. A caveat against the release of the said property shall thereupon be entered in a book to be kept in the registry, called the “Caveat Release Book”.

Any person desiring to prevent the payment out of court of any money in court representing the proceeds of sale of any property shall file in the registry a praecipe, signed by himself or his Advocate who may be acting for him, requesting that a caveat be entered against payment out of Court of the said proceeds of sale. A caveat against the payment out of Court of such sale proceeds shall thereupon be entered in a book to be kept in the registry, called the “Caveat Payment Book.”.

A caveat against release and payment is valid for 90 days beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a praecipe. Successive caveats may be entered upon expiry. If there is a caveat against release in force in relation to the ship or property under arrest, the party entitled to its issue shall give notice to the party at whose instance the caveat against release was entered or his solicitor requiring it to be withdrawn.
Chapter 44

ARRESTED SHIP AFFECTING PORT OPERATION

Should the arrest of a ship in a port cause considerable and continued disruption to the operation of the port, the port authorities may remove the ship to a safe berth or in such other place as he think appropriate within its jurisdiction and not allowing the ship to sail away and keeping her under arrest.
Chapter 45

POSSESSORY LIEN

Possessory liens are usually asserted by shipyards who have not been paid for repairs to vessels. This is a self-help remedy long recognised by the courts. Shipyards exercising possessory lien are entitled to detain the vessel without having to arrest the vessel. On occasions, parties exercising possessory lien may need to arrest the vessel in order to obtain the assistance of the court to sell the vessel, as a right to exercise possessory lien does not carry the right to sell the vessel. The arrest of vessels by parties exercising possessory lien has created some uncertainty as to whether in arresting the vessel, the party exercising the possessory lien is deemed to have lost possession of the vessel and consequently their lien. After some uncertainty, the position is now clear, both in the UK and in Singapore, that in arresting the vessel, the possessory lienee retains his lien over the vessel - The Dwina [1996] 2 SLR 670.

As possessory liens are recognised as self-help remedies, the courts in England have consistently held that they would not interfere to assess the value of the lien in the absence of fraud - Gebruder Naf -v- Ploton (1890) 25 QBD 13 (CA) and Segbedzi -v- Glah (1989) New LJ 1303 (CA). This English principle was tested in Singapore in The Solitaire. The shipyard asserted a possessory lien against the vessel in the sum of $300m. The shipowner applied to court to reduce the security demand and invited the court to depart from established English principles. The judge at first instance refused to do so and allowed the shipyard to retain their lien for the full amount of their security demand since there was no evidence of fraud on the part of the shipyard. In the Court of Appeal, the lien was reduced to $125m. Unfortunately, there are no written grounds for the decision, but it is clear that in doing so, the Court of Appeal departed from English principles to assess the value of the possessory lien despite the absence of fraud on the part of the shipyard.
Possessory Liens are subdivided into particular liens and general liens.

Possessory Liens (Particular)

A particular lien is the right of a person in possession of goods to retain possession of them until payment has been made by their real owner of any sum due in respect of those goods. Such a lien arises (i) when the person in possession has bestowed labour, skill or expense in altering or improving the goods, (ii) where the person in possession has been obliged to receive the goods or render the service which has given rise to the lien, (iii) where the person in possession has saved the goods from loss at sea or capture by an enemy.

Such lien cannot arise until the work contracted for has actually been performed; but if the owner of the goods prevents the work from being completed, the lien attaches for the work actually done.

At common law, a person enforcing a particular lien has no right to sell the goods. He may retain them until his charges are settled, and once he parts with either actual or constructive possession of the goods his right of lien is lost. In certain circumstances, however, the possessor may have a statutory right to sell the goods.

The most common cases of particular liens are:

1. the common law lien of a carrier on the goods he carries for his charge for carriage (e.g., shipowner's lien on cargo for freight);

2. tradesmen's liens in respect of labour expended for reward on goods;

3. the lien of an unpaid seller of goods

4. warehousemen's liens on goods for their services for reward in connection with the goods.
Shipowners' Possessory Liens

At common law, a shipowner has a lien on the cargo carried on board his ship for:

1. Freight
2. Cargo's contribution in general average
3. Salvage expenditure

Possessory liens on cargo for charges other than the above must be specifically contracted for.

Freight. The common law lien on cargo for freight only arises when the freight is due on delivery of the cargo. Obviously no lien can arise in connection with freight that is payable in advance, or where a contract provides for freight to be payable after delivery. In the latter case delivery must be made before the freight can be demanded, and in the event of such freight remaining unpaid when due the carrier would have to seek some other remedy for its recovery.

In exercising his lien for freight the shipowner may lawfully retain all the goods for which freight is payable, and that is so even though the value of the goods exceeds the freight due. He may, however, if he wishes, merely retain sufficient of the goods to give adequate security for the freight due on them all. Where a number of bills of lading have been issued in respect of one shipment and the various bills have been endorsed to different consignees, the shipowner has a separate lien under each B/L extending only to the freight due under each particular bill. The shipowner cannot exercise his lien on goods carried under one B/L in respect of freight due from the holder of another B/L. Nevertheless, if several B's/L issued in pursuance of the same
agreement between shipper and carrier are all endorsed to the same person, the carrier may retain goods shipped under one of those bills in exercise of his lien for the freight due under them all. Further, the lien for freight applies only to the freight due on the particular goods carried; it cannot be exercised in respect of a payment due from the owner of the goods under some other transaction.

General Average. The lien on cargo for general average charges can be exercised only by the shipowner in possession of the goods and, where necessary, it is his duty to other cargo owners to protect their interests by retaining possession of any goods in respect of which a contribution in G/A is outstanding. However, owing to the difficulty of assessing the amount of such contributions and the time required for general average adjustment, it is not usual for shipowners to avail themselves of the right of lien in these circumstances. The customary procedure is for the goods to be delivered in exchange for the security afforded by a general average bond, a general average deposit, or both.

Salvage. Whenever salvage expenditure has been incurred by a shipowner for the preservation of ship and cargo, he has a lien on the cargo for its proportion so long as the salvage was not made necessary by neglect or default of the shipowner himself.

Demurrage and Detention. A lien on cargo for demurrage exists only when the contract of affreightment expressly gives one. Where a charter-party does provide one, that lien does not extend to damages for detention at the loading port when a fixed number of demurrage days have been agreed and the ship is detained after the lay days and demurrage days have expired. To give the shipowner full protection, it would be necessary to stipulate in the C/P that the ship is to have a lien on cargo for demurrage and detention. Liens for demurrage and detention expressly given by a charter-party do not hold good against a bill of lading holder, unless they are specifically incorporated in the
B/L. It has been held that the words "all other conditions... as per charter-party" are sufficient to incorporate in the B/L all liens expressly provided by the C/P.

Deadfreight. As deadfreight is payable, in respect of space which has been booked but not used, no common law lien for it can arise. There are no goods which the shipowner can retain by way of exercising a lien. All the same, it is quite common for a C/P to give an express lien for deadfreight, and such a lien, evidently, can be exercised only by refusing delivery of goods which have been carried to enforce payment of the deadfreight chargeable in respect of goods which have not been carried. Where an express lien for deadfreight exists, it applies not only where the entire cargo is carried at the same rate of freight but also where different parcels are carried at different rates.

Voyage Chartered Ships. The shipowner's lien for freight and other charges on goods shipped under a B/L on a chartered ship may, according to circumstances, apply to the freight due under the C/P or to the freight due under the B/L. The following appear to be established rulings.

1. If the consignee is the charterer, or charterer's agent, he is bound by the lien for freight due under the C/P and by express liens given by the C/P for other charges. But if it be found that the shipowner and the charterer-cum-consignee intended that the C/P should be varied by the B/L (and such an intention can only be found where the charterer is not only the shipper but also the consignee), then the lien extends only to the B/L freight. The consignee will, in any case, be bound by liens expressly given in the C/P, provided they are clearly incorporated in the B/L.

2. If the consignee is an agent of the shipper who is not the charterer, or if the consignee is an endorsee of the B/L, he is bound only by the lien for freight due under the terms of the B/L. Such consignee is also bound by express liens given in the B/L. Express liens given by the
C/P will not bind such consignee, unless it is incorporated in the B/L by the insertion of an adequate clause.

3. A shipper or endorsee of a B/L, even if he is acquainted with the terms of the C/P, will ordinarily be bound only by the terms which are expressly incorporated in the B/L. But if a person who does not know the C/P terms is also aware that the mast chartered ship has no authority to issue a B/L that does incorporate the liens expressed in the C/P, the shipowner will able to exercise such liens, in spite of the fact that the B/L has not included them.

Time Chartered Ships. A simple time charter usually contains a clause giving the shipowner a lien on all cargoes and all sub-freights for hire and general average contributions, and giving the charterer a lien on the vessel for all moneys paid in advance and not earned. If the vessel is sub-chartered, the lien on the sub-freight can be exercised before the sub-freight has been paid to the charterer, the exercise of such a lien is considered advisable for the shipowner to give a formal notice to the sub-charterer or consignee requiring him to pay the sum to the owner before payment is made to the charterer or his agent.

Demise Chartered Ships. The cargo carried in a ship has been demised or leased to the charterer is in the charterer's possession, not the shipowner's. Accordingly, no shipowner's lien on such cargo can arise.

Effect of Warehousing Goods. To preserve his lien owner must retain actual or constructive possession of goods. If they are warehoused with an independent agent the lien is lost except in the United Kingdom where goods landed to a warehouse because the owner has failed to take delivery remain there subject to lien under the M.S. Act. In all other cases, in order to preserve the lien, goods not retained in the ship must be stored in the shipowner's name or placed in a warehouse over which the shipowner or his agent has exclusive control.
Abandoned Goods. Since at common law freight is not earned until the goods are delivered at their proper destination, it follows that no lien for freight can exist in a case where goods have been abandoned by the shipowner before their arrival at the agreed destination and afterwards carried on to that destination by a salvor or other third party.

Waiver of Lien. A shipowner will be deemed to have waived his lien on goods for freight if he has accepted a bill of exchange for freight in advance which has not matured by the time of delivery, and this is still the case should the acceptor of the bill be bankrupt at the time of delivery.

Possessory Liens (General)

A general lien is the right which arises by custom in certain trades or professions, or by contract, to retain goods not only until any sum due in respect of them is paid; but also in respect of any sum which may be owing by the owner of the goods to the person in possession of them. Examples of general liens are (i) a solicitor's lien over all the papers of his client except his will, (ii) a factor's lien on the goods of his principal.
SECURITY FOR RELEASE OF A SHIP

In the case of arrest of a trading ship which is ready to sail from the port, it is not only usual but considered to be the prudent thing to do for security to be furnished to the extent fixed by the court, together with the sheriff's poundage, and to sail away the ship and thereby avoid detention loss, unless there is a caveat against release outstanding in the Caveat Release Book in which case notice will have to be issued to the caveator. It is not necessary that the filing of the appearance or the giving of security shall be under protest as to the Court's jurisdiction to receive and try the suit and the entry of an appearance and giving of security will not amount to submission to the court's jurisdiction.

The objection to the jurisdiction of the court to entertain the suit can be raised on behalf of the defendant by way of a notice of motion, supported by an affidavit, praying for an order that the warrant of arrest issued by the court be superseded and set aside and the amount of the bail or guarantee furnished on behalf of the defendant be released, and there is no necessity to deliver a written statement traversing the jurisdiction unless the validity of the objection to jurisdiction depended upon the proof of controversial facts. In cases where the arrested ship is likely to remain at the port for a few days, the notice of motion for superseding the warrant of arrest may be heard as a matter of urgency.

In cases where the amount of the security directed to be furnished is excessive, an application on notice of motion may be made for its reduction either before or after the security is furnished.

Security for the claim in the suit is furnished by means of a cash deposit in the registry or a bank guarantee for the amount stated in the warrant of arrest.
The bank guarantee is required to be from a nationalized bank or a foreign bank carrying on business in India and having an office at Calcutta, Madras or Bombay where the warrant of arrest is issued. The bank giving the guarantee will itself require an acceptable counter-guarantee from a bank abroad before it will furnish its guarantee to the court.

The courts are not acquainted with P.& I. clubs and a P.& I. club guarantee is not accepted. However, a plaintiff is free to accept a letter of indemnity issued by a P.& I. club. The master of an arrested ship can represent the ship in taking steps to have it released. The bank guarantee, unless discharged, will have to continue to remain in force till the suit is finally disposed of and for a period of one year thereafter. It is possible to substitute a bank guarantee for the cash deposit. In the case of a cash deposit it is usual for the court, at the instance of the parties, to invest the amount on an interest-bearing term deposit, pending the disposal of the suit.

Property arrested under admiralty jurisdiction by a warrant may be ordered to be released

(i) at the request of the plaintiff, before an appearance in person or a vakalatnama is filed by the defendant; or

(ii) on the defendant paying into Court the amount claimed in the suit; or

(iii) on the defendant giving such security for the amount claimed in the suit as the Court may direct; or

(iv) on any other ground that the Court may deem just.

In The "Christiansborg" (1885) 10 P.D. 141 (C.A), a ship had been arrested in Holland and released by the court against an insurance company guarantee. Subsequently the ship was arrested in England in respect of the same cause of
action. It was held that the arrest in England was oppressive and against good faith and the ship would therefore be released.
Chapter 47

RELEASE OF ARRESTED PROPERTY (SHIP)

Property arrested under a warrant may be ordered to be released.

(i) at the request of the plaintiff, before an appearance in person or a Vakalatnama is filed by the defendant; or

(ii) on the defendant paying into Court the amount claimed in the suit; or

(iii) on the defendant giving such security for the amount claimed in the suit as the Court may direct; or

(iv) on any other ground that the Court may deem just.

Property arrested under a warrant shall only be released under the authority of an instrument issued by the Prothonotary and Senior Master, to be called a release, unless the same has been dispensed by the court.

The release when obtained shall be lodged with a praecipe in the office of the Sheriff or Marshal by the party obtaining the same who shall also at the same time pay all costs, charges and expense attending the care and custody of the property whilst under arrest, and the Sheriff or the Marshal shall thereupon release the property.

In cases where the arrested ship is released on security being furnished for the plaintiff’s claim, the suit, unless compromised, will proceed to trial and judgment in the normal course.

Problems are, however, encountered in those cases where the ship is not released, usually because of the owner's bankruptcy and the master and crew have also abandoned the ship. The Marshal or the Sheriff or the other officer
who has the custody and care of the ship is expected to take steps involving expenses for protecting the ship and its equipment; he has to provide a skeleton crew in accordance with the requirements of the port regulations in order to maintain an anchor watch and to tend to the lights to be exhibited between sunset and sunrise in compliance with the Collision Regulations; and to keep the ship up to full sea-going standards, entailing over and inspection of machinery and watchmen to prevent thefts of valuable equipment and fittings.

The Marshal's or the Sheriff's office does not have either the personnel or the wherewithal to undertake these measures in order to prevent undue deterioration and reduction of the ship's value. The arresting party will be called upon to provide the marshal/sheriff with funds to meet the expenses involved and, in the event of failure to do so, the marshal/sheriff will report the matter to the court and apply for directions with respect to the ship. On the report coming up for consideration after notice to the arresting party and interveners, if any, the court may order the arrested ship to be released.

In such a situation, it is appropriate for any other party who was an intervener in the suit, especially a mortgagee with a high ranking priority, to volunteer to provide the marshal/sheriff with funds to engage a caretaker, usually a firm of marine surveyors, to undertake the said measures. The court may be moved to make the appropriate order appointing the caretaker and directing that the expenses incurred shall be a first charge on the proceeds of sale of the ship to be paid first out of the sale proceeds to the party advancing them, regardless of the priority ranking of its claim and irrespective of the result of its own suit. The advocate of the arresting plaintiff and/or intervener advancing the funds should ensure that this provision is specifically included in the order.

Following its arrest, the ship is usually released from arrest after security has been provided by the ship owner or any interested parties for the claim. The security may be in the form of a bail bond, a payment of money into court, a
bank guarantee or a letter of undertaking (LOU) from the ship owner's protection and indemnity club (P.& I. Club). The security is seen as replacing the arrested res, thereby precluding re-arrest in most cases. The amount of security is set by the court in its discretion, but the general principle is a sum sufficient to cover the claimant's "reasonably arguable best case", together with interest and costs, not exceeding the value of the arrested vessel. A final judgment in the claimant's favour may be enforced against the substituted security, just as it could have been against the arrested ship. Although the arrest of his ship may have grave effects on the ship owner's business, it is not usual for the courts to impose any requirement on the plaintiff/claimant to put up countersecurity to guarantee the defendant against losses which the latter may incur as a result of the arrest, although countersecurity is sometimes ordered, in the court's discretion, under order XXV Rule 1 of Code of Civil Procedure, 1908 for Security for Cost. Security for Cost may be required from the Plaintiff at any stage of a suit, the court may either of its own motion or on application of any defendant, order the plaintiff, for reasons to be recorded, to give within time fixed by it security for payment of all cost incurred or likely to be incurred by any defendant provided that such an order shall be made in all cases in which it appears to the court that a sole plaintiff is, or (when there are more plaintiffs' than one) that all the plaintiffs are, residing out of India and that such plaintiff does not possess or that no one of such plaintiffs' possess any sufficient immovable property within India other than property in suit.

Any person desiring to prevent the release of any property under arrest shall file in the registry a praecipe, signed by himself or his advocate, who may be acting for him, requesting that a caveat be entered against the release of the said property. A caveat against the release of the said property shall thereupon be entered in a book to be kept in the registry, called the "Caveat Release Book."
Chapter 48

WRONGFUL ARREST

The test for wrongful arrest of a vessel dates back 150 years to the Privy Council decision of The Evangelismos (1858) 12 Moo PC 352. To succeed in a claim for wrongful arrest, the owners must demonstrate that there is either mala fides (bad faith) or crassa negligentia (gross negligence) which implies malice. Subsequent to The Evangelismos, several UK decisions have applied the test 'without reasonable or probable cause' so as to infer malice interchangeably with the test of gross negligence. In Singapore, the phrase 'without reasonable or probable cause' has also found favour in two local decisions: The Evmar [1989] 2 MLJ 460; [1989] SLR 474 and The Ohm Mariana [1992] 2 SLR 623. In 1999, the Court of Appeal in Singapore in The Kiku Pacific [1999] 2 SLR 595 settled the test once and for all. The Court of Appeal held that while the use of the term 'reasonable or probable cause' is well established in actions for malicious prosecution (not involving vessels), they would be uncomfortable with the import of such a term into admiralty law as part of the test for wrongful arrest of a vessel. The Court of Appeal ruled that the test for wrongful arrest of a vessel should be the test laid down in The Evangelismos, ie mala fides or crassa negligentia implying malice.

The cases involving wrongful arrest are rather rare. However, in 1999 there were two attempts to obtain damages for wrongful arrest. It succeeded in The Trade Resolve [1999] 4 SLR 424. It is interesting to note that in The Trade Resolve, the judge relied on the test of no reasonable or probable cause and found that the arrest was wrongful. However, in my view, even if the judge had applied the test of gross negligence, he would nevertheless have reached some conclusion on the facts in The Trade Resolve. In that case, the Sheriff authorised the plaintiffs’ solicitors to serve the writ and arrest the vessel within port limits. The vessel was outside port limits but the plaintiffs maintained that she was nevertheless within territorial waters. Despite being
aware that the vessel was in fact outside port limits, the plaintiffs proceeded to arrest the vessel which the court found to be '... a contumacious act in deliberate and flagrant disregard of the limited authority granted to them'. The decision of The Trade Resolve is also significant in one other respect, i.e. vessels can only be arrested if they are within port limits. It is irrelevant whether the vessel is within territorial waters as long as she is outside port limits.

In Armada Lines Ltd. v. Chaleur Fertilizers Ltd., (June 26, 1997) No. 24351 (S.C.C.) This important case concerns when an arresting party is liable for wrongful arrest. In a ground breaking decision reported at [1995] 1 F.C. 3, the Federal Court of Appeal (Canada) held that an arresting party could be liable for wrongful arrest merely upon a finding that the arrest was "illegal" or "without legal justification". The Supreme Court of Canada, however, reversed this ruling and re-established the rule from The "Evangelismos"(1858) 14 E.R. 945, that damages for wrongful arrest may only be awarded where the arresting party acts with either bad faith or gross negligence. The Supreme Court noted that a change in such a long standing rule should only be made by the legislature.
Chapter 49

APPLICABLE LAW

The applicable law for ship arrest is the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.

Though not binding, the dicta in some of the recent English cases in Admiralty and some other countries of the Common wealth, principally Australia and Canada, may be relied upon as authorities of highly persuasive value in deciding a point of practice though not to add to the Admiralty causes presently taken cognizance of.
Chapter 50

ADMARALTY SUIT AND PLEADINGS

Plaint

In the title of the plaint in a suit in rem, after the name of the ship which is sued, its nationality is usually stated followed by the words "together with its engines, boats, gear, tackle, apparel furniture and papers and everything belonging to it whether on board or ashore", and a statement as to its location. Some draftsmen include in the title "The Owners and other parties interested in the first defendant ship" as the second defendants. The Plaint should be very clear as regards maritime claim/ lien. Affidavit in Support to the Plaint should be drawn up and filed along with the Plaint.

Judge's order or Interim application for arrest and its affidavit in support

The Judge's order or Interim application for the arrest of the ship will direct that the ship be arrested at any hour of the day or night, including Sundays and holidays, and that it may not be arrested if payment of the sum stated in the order, comprising the amount of the claim in the suit and the ad valorem court fee and the sheriff's poundage, is paid on behalf of the ship or satisfactory security for the claim is furnished. The affidavit in support should state as to why the Judges Order should be allowed, this affidavit should also mention that notice to consul has been given, wherever applicable.

Undertaking, Certificate et al

An undertaking from the Plaintiff securing cost and damages should be given to the court by way of an affidavit when an application for arrest of the Defendant vessel is made.
A Certificate from the Prothonotary or the registry should be obtained prior to making an application for arrest of the vessel stating that a search of the caveat against arrest register has been taken and that no caveat are filed or has been filed, depending on the search result and if a caveat exist, a notice to the caveator has to be given.

Warrant for Arrest

The warrant for arrest when issued by the Court's registry will be served by the bailiff of the Marshal or of the Sheriff or his substitute, in some cases direct service who is required to effect the service by affixing (i.e. attaching and not just holding in position by hand) the original warrant of arrest for a short time (the duration should be about 10 to 15 minutes) on any mast of the ship or on the outside of any suitable part of the ship's superstructure, then removing the original and leaving a duplicate thereof affixed in its place. (This mode of service is enjoined in the case of service of the writ of summons, see infra, on the ship).

There have been occasions where persons entrusted with the service are not competently instructed as to the mode of the service, which is of particular importance in a suit in rem, and, indeed, there have been instances where service has been effected on the master or a mate by delivering the duplicate of the warrant to him and obtaining his acknowledgment on the original. This would constitute bad service as would service on any other person on board the ship - The Marie Constance. There have been no instances of the arrest having been impugned on account of bad service.

There is no provision made in the Rules for effecting service on a ship lying at a port other than that in whose registry the writ has been
issued. This lacuna puts the plaintiff to the expense of taking the marshal's/sheriff's substitute to that port to arrest the ship and there is also the possibility of the ship sailing away before service can be accomplished.

To avoid this possibility it is advisable that the registry should be requested by a praecipe (after obtaining order from the Court to that effect) to give telegraphic/facsimile, email intimation to the Port authorities and to the Commissioner of Customs at the particular port of issue of the warrant for arrest of the ship and instruct that officer not to grant port clearance to the ship, pending arrival of the warrant of arrest. Alternatively, while obtaining an order of arrest the Warrant of Arrest should be dispensed with and an order should be obtained that all authorities should act on fax and email copies.

Whereas the Admiralty Rules require that the warrant shall be returned within a stipulated period from the service thereof.

The Calcutta and Madras Rules provide that, after expiration of 12 days from the return of the warrant for arrest, if no appearance shall have been entered in the suit the advocate for the plaintiff may cause the suit to be set down for hearing and also provide that, if when the suit comes up before the court, the judge is satisfied that the plaintiff's claim is well founded he may pronounce the claim and may order the ship to be sold with or without previous notice and the proceeds of the sale paid into the registry or make such order in the premises as he deems fit.

The warrant of arrest issued by the said two High Courts is in its form citatory, calling upon the owners and all parties interested in the ship to appear before the court, is deemed sufficient notice to all whom it may concern regarding the suit. It, however, does not require them to file a written statement to the suit.
In the cause title the defendant is styled as below:

M. V. XXXXXXXX, vessel flying a xxxx flag together with her hull, tackle, engines, machinery, paraphernalia and all her appurtenant on board presently lying and being at stream/port and harbour/jetty of xxxx, xxxxx and all persons claiming to be interested in the vessel

...DEFENDANT.
Chapter 51

APPLICATION FOR ARREST

The procedure for commencing an action on a claim in the Admiralty jurisdiction of the High Courts is totally unlike that which prevailed in England in the year 1890, or which now prevails in England and in many other countries, and is an ordinary procedure. The Admiralty Rules of the High Courts having Admiralty Jurisdiction require that a suit shall be instituted by a plaint drawn up, subscribed and verified according to the provisions of the Civil Procedure Code 1908. The plaint must be signed and verified by the plaintiff, if he is an individual, in the case of a firm by any one of its partners and if it is a corporation by a director, the secretary or other principal officer.

In the case of a foreign plaintiff it may be necessary for it to grant a power of attorney to a person, usually, at the place where the action is to be instituted, authorising that person to institute the action with incidental powers to sign and verify all pleadings, petitions, applications etc. A foreign firm is not recognised in India and in this case all its partners will have to be nominated as the plaintiffs and must execute the power of attorney. A power of attorney in a Common-wealth country may be executed before and authenticated by a notary public. In the case of other countries it is advisable that the signature of the notary public be legalised by an Indian consular officer. Alternatively, the power of attorney may be executed before an Indian consular officer under the provisions of section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948.

The aforesaid requirement of signing and verification of the plaint has often been a major disadvantage to foreign maritime claimants by making a quia timet action for arrest before departure of the ship impossible.
In the title of the plaint in a suit in rem, after the name of the ship which is sued, its nationality is usually stated followed by the words "together with its engines, boats, gear, tackle, apparel furniture and papers and everything belonging to it whether on board or ashore", and a statement as to its location. Some draftsmen include in the title "The Owners and other parties interested in the first defendant ship" as the second defendants. The Plaint should be very clear as regards maritime claim/ lien. Affidavit in Support to the Plaint should be drawn up and filed along with the Plaint.

The Judge's order or an interim application for the arrest of the ship will direct that the ship be arrested at any hour of the day or night, including Sundays and holidays, and that it may not be arrested if payment of the sum stated in the order, comprising the amount of the claim in the suit and the ad valorem court fee and the sheriff's poundage, is paid on behalf of the ship or satisfactory security for the claim is furnished. The affidavit in support should state as to why the Judges Order should be allowed, this affidavit should also mention that notice to consul has been given, wherever applicable.

An undertaking from the Plaintiff securing cost and damages should be given to the court when an application for arrest of the Defendant vessel is made.

A Certificate from the Prothonotary or the registry of the High Court should be obtained prior to making an application for arrest of the vessel stating that a search of the caveat against arrest register has been taken and that no caveat are filed or has been filed, depending on the search result and if a caveat exist, a notice to the caveator has to be given.

Unless a caveat against the issue of a warrant for arrest has been entered, an application for arrest of a ship proceeded against may be applied for at any time after instituting the suit and, in a situation where the departure of the ship from the port is imminent, may be entertained even before the registry has scrutinised and admitted the plaint to the court's file.
The judge in chambers before whom the application is made may, in any case, allow the warrant of arrest to issue, though the affidavit leading to the warrant or the plaint may not contain all the required particulars and, in a suit for wages, may also waive the service of the notice to the consul of the state to which the ship belongs.

The application for arrest is normally moved ex parte. However, some judges in their anxiety to prevent a wrongful arrest are inclined to direct that the application be moved after notice to the master of the ship and there have been rare instances of a master, on getting wind of the proceedings, clandestinely weighing anchor and slipping out. The giving of such a notice is, however, often useful in that it may produce a speedy settlement of the claim out of court, of the furnishing of security or payment of money into court, along with an undertaking by an advocate appointed for the defendant ship to accept service and will thus save the plaintiff the poundage payable to the Sheriff.

Warrant of Arrest is served by the bailiff of the Sheriff/ Marshall and in a state where there is no Sheriff court allows direct service. The Sheriff shall serve the process of the Court and shall return the process to the Registry within four days from the service thereof.

In a suit in rem the Writ of Summons or the Warrant of arrest shall be served on the property against which the suit is brought; Where the property is ship or cargo on board, service shall be effected by affixing the original Writ of Summons or the Warrant of arrest for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure, and leaving a duplicate thereof affixed in its place, when removing the original Writ of Summons or the Warrant of arrest; Where the property is cargo which has been landed or transshipped, service shall be effected by placing the original Writ of Summons or the warrant of arrest for a short time on the cargo and leaving a duplicate thereof upon the cargo, when removing the original Writ
of Summons or the warrant of arrest; Where the cargo is in the custody of a person who will not permit access to it, service shall be made upon the custodian; Where the property is freight, service shall be effected by serving on the cargo in respect of which the freight is payable or on the ship in which the cargo was carried, in the manner hereinabove prescribed in this rule for service on a cargo or on a ship.

The effect of arrest is that it constitutes the ship or other property as security in the hands of the court for the claim in the action and this security cannot be defeated by the subsequent insolvency of the owner of the arrested property. The arrest enables the Court to keep the property as security to answer the judgment, and unaffected by chance events which may happen between the arrest and the judgment.

Once the warrant for arrest has been executed, the property is arrested and is in the custody of the Sheriff/ Marshal on behalf of the court. Interference by any party with the arrest process such as removing the property to be arrested with knowledge that an arrest has been issued is a contempt of court, this includes any interference with the custody of the property after arrest such as moving the property within the jurisdiction without authority, or removing it from the jurisdiction, as was held in The "Jarlinn" [1965] 1 W.L.R. 1098 and also in The "Abodi Mendi" [1939] 178.

A warrant of arrest on a ship covers everything belonging to it as part of its equipment, even items which are physically detached from it, but not items which do not belong to the ship owner such as the personal property of the master and crew or the luggage of a passenger.

A ship may be arrested but the cargo on board her is not under arrest, or cargo is arrested but the ship in which it is laden is not. If a ship is to be arrested while she is in the course of discharging her cargo, the Sheriff/ Marshal will not stop the discharge operations unless the arrest is in respect of
the cargo. When cargo is arrested the ship owners can request the Sheriff/ Marshal to take the appropriate steps to enable the ship to be discharged.

When arrest of a ship in a port causes considerable and continuing disruption to the operation of the port and the port authority had to turn away other ships so harming its reputation and causing its financial loss in such circumstances the court has inherent jurisdiction to allow a party to intervene if the effect of an arrest is to cause that party serious hardship or difficulty or danger. The court may pass directions to remove the ship to a safe berth in such other place as he shall think appropriate.

A person who, maliciously and without reasonable and probable cause procures the arrest of a ship by Admiralty proceedings is liable to pay damages to the person aggrieved. A separate suit has to be filed for wrongful arrest proving malicious cause. Wrongful arrest may result in a condemnation of the claimant for damages only where the court is satisfied that the arrest was motivated by mala fides (bad faith) or crassa negligentia (gross negligence). Merely unjustified (i.e. erroneous) arrest would not normally entitle the defendant to claim damages, although he might then be able to recover costs.

The safeguarding of ownership/private property rights when ships are arrested in rem by the Admiralty Court are built into the rules of the High Court having admiralty jurisdiction for ship arrest. For example, a party wishing to prevent the arrest of property in an action in rem may, by filing a praecipe in the prescribed form, obtain the entry of a caveat against arrest in the caveat book kept in the Admiralty Registry/ Prothonotary & Senior Master of the High Court. Although the entry of the caveat does not prevent arrest of the res, the caveator, on a subsequent motion after arrest, may obtain the discharge of the arrest warrant and the condemnation of the arresting party in damages, if the latter is unable to show "good and sufficient reason" for having arrested.
Where a foreign ship registered in a port of a country having a consulate in jurisdiction of the High Court where arrest application is sought /is to be arrested in India in an action in rem for wages, prior notice of the arrest must be given to the consul concerned.

To institute an Admiralty action the plaintiff must file a praecipe for the search of the caveat registry to find out if any caveat against arrest of the vessel is filed and to obtain a Prothonotary Certificate to that effect and at the time of application for arrest of a vessel the Plaintiff should be lodged, the draft of the Judges Order, affidavit in support to Judges Order, undertaking as per rule of the High Court should be with the court file. A notice to consul may be required prior to making an application for arrest of a vessel as per rule of the High Court and an averment to that effect should be made in the affidavit.
Chapter 52

ORDER OF ARREST AND WARRANT OF ARREST

The Judge's order or the interim application for the arrest of the ship will direct that the ship be arrested at any hour of the day or night, including Sundays and holidays, and that it may not be arrested if payment of the sum stated in the order, comprising the amount of the claim in the suit and the ad valorem court fee and the sheriff's poundage (depending on jurisdiction), is paid on behalf of the ship or satisfactory security for the claim is furnished. The affidavit in support should state as to why the Judges Order or the interim application should be allowed, this affidavit should also mention that notice to consul has been given, wherever applicable. The Admiralty Judge may pass a separate order arresting the ship and also sign the Judges Order for arrest of the ship.

Warrant of Arrest are sometimes dispenses with by the Judge. if not, Warrant of Arrest is served by the bailiff of the Sheriff or the Marshal and in a state where there is no Sheriff or Marshal court allows direct service. The Sheriff or Marshal shall serve the process of the Court and shall return the process to the Registry within four days from the service thereof.

In a suit in rem the Writ of Summons or the Warrant of arrest shall be served on the property against which the suit is brought; Where the property is ship or cargo on board, service shall be effected by affixing the original Writ of Summons or the Warrant of arrest for a short time on any mast of the ship or on the outside of any suitable part of the ship’s superstructure, and leaving a duplicate thereof affixed in its place, when removing the original Writ of Summons or the Warrant of arrest; Where the property is cargo which has been landed or trans-shipped, service shall be effected by placing the original Writ of Summons or the warrant of arrest for a short time on the cargo and leaving a duplicate thereof upon the cargo, when removing the original Writ
of Summons or the warrant of arrest; Where the cargo is in the custody of a person who will not permit access to it, service shall be made upon the custodian; Where the property is freight, service shall be effected by serving on the cargo in respect of which the freight is payable or on the ship in which the cargo was carried, in the manner hereinabove prescribed in this rule for service on a cargo or on a ship.

The effect of arrest is that it constitutes the ship or other property as security in the hands of the court for the claim in the action and this security cannot be defeated by the subsequent insolvency of the owner of the arrested property. The arrest enables the Court to keep the property as security to answer the judgment, and unaffected by chance events which may happen between the arrest and the judgment.

Once the warrant for arrest has been executed, the property is arrested and is in the custody of the Sheriff or the Marshal on behalf of the court. Interference by any party with the arrest process such as removing the property to be arrested with knowledge that an arrest has been issued is a contempt of court, this includes any interference with the custody of the property after arrest such as moving the property within the jurisdiction without authority, or removing it from the jurisdiction, as was held in The "Jarlinn" [1965] 1 W.L.R. 1098 and also in The "Abodi Mendi" [1939] 178.

A warrant of arrest on a ship covers everything belonging to it as part of its equipment, even items which are physically detached from it, but not items which do not belong to the ship owner such as the personal property of the master and crew or the luggage of a passenger.

A ship may be arrested but the cargo on board her is not under arrest, or cargo is arrested but the ship in which it is laden is not. If a ship is to be arrested while she is in the course of discharging her cargo, the Sheriff or the Marshal will not stop the discharge operations unless the arrest is in respect of
the cargo. When cargo is arrested the ship owners can request the Sheriff or the Marshal to take the appropriate steps to enable the ship to be discharged.

The warrant for arrest when issued by the Court's registry will be served by the bailiff of the Marshal of Calcutta and by the bailiff of the Sheriff of Mumbai (Bombay) or Chennai (Madras) or his substitute who is required to effect the service by affixing (i.e. attaching and not just holding in position by hand) the original warrant of arrest for a short time (the duration should be about 10 to 15 minutes) on any mast of the ship or on the outside of any suitable part of the ship's superstructure, then removing the original and leaving a duplicate thereof affixed in its place. (This mode of service is enjoined in the case of service of the writ of summons, on the ship.) There have been occasions where persons entrusted with the service are not competently instructed as to the mode of the service, which is of particular importance in a suit in rem, and, indeed, there have been instances where service has been effected on the master or a mate by delivering the duplicate of the warrant to him and obtaining his acknowledgment on the original. This would constitute bad service as would service on any other person on board the ship - The Marie Constance. There have been no instances of the arrest having been impugned on account of bad service.

There is no provision made in the Rules for effecting service on a ship lying at a port other than that in whose registry the writ has been issued, viz, Calcutta, Madras or Bombay, through the Collector of Customs at such other port. This lacuna puts the plaintiff to the expense of taking the Marshal's or the Sheriff's substitute to that port to arrest the ship and there is also the possibility of the ship sailing away before service can be accomplished. To avoid this possibility it is advisable that the registry should be requested by a praecipe (after obtaining order from the Court to that effect) to give telegraphic/facsimile or by email intimation to the Port Conservator and to the Commissioner of Customs at the particular port of issue of the warrant
for arrest of the ship and instruct that officer not to grant port clearance to
the ship, pending arrival of the warrant of arrest.

Whereas the Admiralty Rules require that the warrant shall be returned within
a stipulated period from the service thereof.

The Calcutta and Madras Rules provide that, after expiration of 12 days from
the return of the warrant for arrest, if no appearance shall have been entered
in the suit the advocate for the plaintiff may cause the suit to be set down for
hearing and also provide that, if when the suit comes up before the court, the
judge is satisfied that the plaintiff’s claim is well founded he may pronounce
the claim and may order the ship to be sold with or without previous notice
and the proceeds of the sale paid into the registry or make such order in the
premises as he deems fit. The warrant of arrest issued by the said two High
Courts is in its form citatory, calling upon the owners and all parties interested
in the ship to appear before the court, is deemed sufficient notice to all whom
it may concern regarding the suit. It, however, does not require them to file a
written statement to the suit.
The Admiralty Rules of the High Courts provide that the rules and practice of the court in the matter of suits and proceedings on the original side of the court shall, if not inconsistent with the said Rules, apply to suits and proceedings on the Admiralty side of the court.

In the title of the plaint in a suit in rem, after the name of the ship which is sued, its nationality is usually stated followed by the words "together with its engines, boats, gear, tackle, apparel furniture and papers and everything belonging to it whether on board or ashore", and a statement as to its location. Some draftsmen include in the title "The Owners and other parties interested in the first defendant ship" as the second defendants. If the claim is under a contractual document, it is usual for a copy thereof and, if it be in a language other than English, a translation thereof to be annexed to the plaint as an exhibit and in the case of a claim for repairs or necessaries, copies of the unpaid bills (In case of urgency, courts allow application for arrest on fax copy of the Power of Attorney/Letter of Authority; on Lodging number of the Suit; and also on clear photocopies of the documents). The court may at any time require that they be produced for its scrutiny when applying for arrest.

The Admiralty Rules of the High Courts require that in a suit for wages or for possession against a foreign ship, notice of the institution of the suit be given to the consul of the state to which the ship belongs, if there be one resident at those places and a copy of the notice be annexed to the affidavit leading to the warrant. The Rules of the High Court at Bombay require that such notice shall be given in a suit for necessaries also and that, if there is no such consul resident in Bombay, a statement of that fact be made in the affidavit leading.
to the warrant. The Rules of the High Courts relevant to filing of the various caveats are substantially similar.

Whereas the Rules of the High Courts require that before issuing the warrant of arrest the registrar of the court shall ascertain whether or not any caveat warrant has been entered, rule 941 of the Bombay Rules, inter alia, requires that a Certificate of the Prothonotary & Senior Master (i.e. the Admiralty Registrar of the Court), certifying that search has been made in the Caveat Warrant Book and that no caveat has been filed, be annexed to the affidavit leading to the warrant.

The Rules of all High Courts having Admiralty Jurisdiction require that the affidavit leading to the warrant shall state the nature of the claim in the suit and that it has not been satisfied.

The Rules of the Calcutta and Madras courts also require that in a suit for bottomry a copy of the bottomry bond and, if in a foreign language, also a copy of a notarial translation thereof certified to be correct shall be annexed to the affidavit and the original bond and the notarial translation thereof shall be produced for the inspection and perusal of the court's registrar.
Chapter 54

PROCEDURE FOR SHIP ARREST

a. Claimant executes a Power of Attorney normally to a person as may be suggested by the Claimant's solicitor to act on behalf of the Claimant. A format of the said Power of Attorney is normally forwarded by the Claimant's solicitor with the name of the Constituted attorney. The said Power of Attorney is properly executed, notarized and legalized and the original is couriered to the constituted attorney, normally they are employed by the solicitors. Since time is of essence the Power of Attorney when executed and notarized (pending legalization) is scanned and forwarded for further action. At the time of filing of the Plaint in the court Solicitors give an undertaking to the court to produce the original when received from the Claimant. The Original Power of Attorney is required to be stamped under the laws of India.

b. Claimants solicitor takes search of the caveat book for caveats against arrest.

c. Notice is given to the Consul General as per High Court Rules.

d. Claimants files the Plaint, Undertaking, draft Judges Order, Draft Warrant of Arrest and its affidavit to the court under Admiralty jurisdiction. All the Exhibits and the documents relied are normally filed by way of a separate Compilation of Documents at the time of making an application for Arrest.

e. Urgent application for obtaining order of arrest is moved before the Admiralty Judge, at the time of making the said application Plaintiff and other pleadings including the draft Judges Order should be produced before the Judge. The Caveat book for caveat against arrest is also produced. Admiralty Judge passes an order in terms of the Judges Order given to court. In some
cases Admiralty Judge dictates a separate order for arrest of a vessel. Sometimes Issue of Warrant of Arrest is dispensed with and also an order is obtained to complete service of the court order by fax to all concerned authorities.

f. If Warrant of Arrest is not dispensed with then the court issues the same signed by the Court.

g. The Bailiff effects or completes the service of the Warrant of Arrest or the Order of the court upon all the concerned authorities.
Chapter 55

PRESENCE OF A SHIP (RES) AT THE TIME OF FILING OF ADMIRALTY SUIT

It is not necessary that the vessel should take berth, the vessel can be anywhere in the Indian territorial waters. An order of arrest of a ship can be obtained from the High Court having admiralty jurisdiction and that the ship should be in that state jurisdiction of the High Court.
Chapter 56

INDIAN FLAG SHIP

Ship flying any flag can be arrested by invoking admiralty jurisdiction. It shall apply to every vessel, irrespective of the place of residence or domicile of the owner.
MAREVA INJUNCTION

There being no provision in the law of India equivalent to section 45 of the Supreme Court of Judicature (Consolidation) Act 1925, a Mareva injunction, to the extent that it may be regarded as an alternative, albeit far narrower in concept, form of proceeding to an action in rem in order to make a ship lying within the jurisdiction available as pre-judgment security, it is not yet allowed in the Indian Courts in the exercise of their Admiralty Jurisdiction and it is also not available in their ordinary original civil jurisdiction.

The intention of a Competent Court hearing a dispute between two or more parties is to arrive at a logical and legal conclusion, keeping in mind the business needs and to give credit where it is due. For a variety of reasons, no court worldwide is able to determine a dispute on merits forthwith on reference. In other words, there is a considerable time gap between commencement of litigation and its final conclusion. This interregnum can however provide a party sufficient opportunity to make itself judgment-proof by tampering or destroying evidence or leaving the jurisdiction (and thereby evading the effect of a restraint order). These and other realities, which in the past have enabled, a defendant snapping his fingers at a judgment of a court with impunity" and defeat the effectiveness of a legal system, have fuelled the growth of relief in the interregnum i.e. interim relief.

English Courts, since the mid-seventies have revolutionized the role of interim relief by enlarging the role of judicial discretion and granting two very effective orders The Mareva and the Anton Piller thereby infusing a huge degree of professionalism and expertise, both for the business community and the legal fraternity
Of even greater relevance has been the exponential growth in their use, the development and branching of other incidental relief, the use of the concept of full and frank disclosure of all material facts, standardization and clarity of the orders actually passed and the speed of their implementation to keep up with technological and business strides which have made movement of funds and persons from one to another jurisdiction easy and quick and to ensure balanced application of the relief in consonance with human rights issues. Prominent among these are the interest of third parties, the acknowledgment of judicial power of courts of other nation states in worldwide relief, granting orders in criminal matters and use of costs undertakings for damages.

In several litigation proceedings, the interim relief, actually meant to support the main claim, can make or break the dispute commercially, if not legally and thus the need for a court is to see, "that the stable door is locked before the horse has gone".

To fully understand and comprehend the history and growth of the Mareva and the Anton Piller, other supplementary orders and writs, like the writ ne exeat regno (arrest of defendant pending provision of security), delivery up of chattels and goods, order for disclosure of information (for the Mareva to bite available assets) or inspection of books, writs of assistance through a receiver or sequestration and Security for costs. Novel developments have taken place for service outside jurisdiction and grant of worldwide orders.

The essential ingredients, which an applicant should satisfy on an ex-parte application to become entitled to a Mareva are

a. a good arguable claim;
b. a real risk that the final judgment in its favour would remain unsatisfied;
c. full and frank disclosure of all material facts;
d. the exercise of discretion by the court
"Attachment" before judgment of a ship, as of any other property, is available in all the Indian courts of ordinary civil jurisdiction having jurisdiction over the subject-matter of the claim for most kinds of claims, which would include claim for charter hire or stevedoring services or necessaries supplied, provided the court is convinced on affidavit or otherwise that the ship is the only asset of the defendant within the jurisdiction and is about to be disposed of or removed out of the limits of the court's jurisdiction with intent to defeat, obstruct or delay the execution of any decree that may be passed against the defendant.
ARRESTING SHIP TO OBTAIN SECURITY FOR ARBITRAL AWARD OR COURT JUDGMENT

A ship may be arrested for the purpose of obtaining security notwithstanding that, by virtue of a jurisdiction clause or arbitration clause in any relevant contract, or otherwise, the maritime claim in respect of which the arrest is effected is to be adjudicated in a State other than the State where the arrest is effected, or is to be arbitrated, or is to be adjudicated subject to the law of another State.

Notwithstanding the pendency of the arbitration proceedings and award that may be passed, claimant is entitled to file admiralty suit seeking arrest of a ship as security for claimants' claim in the suit. Claimant is also entitled to seek decree against defendant vessel and obtain security for its claim in the suit. The ship can be retained as security for the arbitration proceedings that is commenced.

Under the new Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, the Act does not provide for security in foreign arbitrations which provision was there under Article VII of the International Convention on Arrest of Ships, 1999 and as the Admiralty Act (2017) has excluded that provision similar to Article VII, the suit for security pending arbitration is not maintainable.

Applying the provisions of Section 5(2) read with Section 5(1)(b) of the Admiralty Act, 2017, a ship is liable to be arrested for the purpose of providing security in respect of the maritime claim.
EFFECT OF ARBITRATION CLAUSE ON ARREST

The Supreme Court of India in SLP (Civil) no.17183/ 1999, the Owners & Parties Interested in m.v B.C & Anr -vs- State Trading Corporation of India Ltd & Anr has held that on a careful consideration of the entire matter we are of the view that there is no good ground or acceptable reason why the intention of the parties to incorporate the arbitration clause in the Charter Party Agreement in the Bill of Lading should not be given effect to. The High Court was not right in rejecting the prayer of the appellants for stay of the suit.

A claim which is brought in the Admiralty Court by an action in rem is subject to an arbitration agreement so that if an action were commenced the court would stay the proceedings to arbitration upon the application of the defendant.

Under the provision of English Law, under section 26 of The Civil Jurisdiction and Judgments Act, 1982, which is in force since November 1, 1984 provides that where the court stays or dismisses Admiralty proceedings on the ground that the dispute in question should be submitted to arbitration the court may order that any property arrested or security given to prevent arrest or to obtain release from arrest shall be retained as security for satisfaction of the arbitration award or order that the stay be conditional upon the provision of equivalent security for the satisfaction of the arbitration award.

The Court of Appeal has held in The Bazias 3 & 4 [1993] 1 Lloyds Rep. 101, that the effect of section 26 is to assimilate arbitration claims with in rem proceedings in the Admiralty Court. Thus there is no longer a wider discretion when the claim is subject to an arbitration clause, and the ship
arrested will ordinarily be released only if security is provided sufficient to cover the amount of the claim, together with interest and costs, on the basis of the plaintiffs reasonably arguable best case.

Position in UK

Domestic and non-domestic arbitration agreements

The rules of English law relating to domestic and non-domestic arbitration is set out in: (i) the Arbitration Act 1950; and (ii) the Arbitration Act 1975 and 1996.

A domestic arbitration agreement is one that provides for arbitration in the UK, where both parties are UK residents or bodies incorporated or managed in the UK. In the case of a domestic arbitration clause the court has the discretion to stay the proceedings. Section 4(1) of the English Arbitration Act 1950 provides that a court may stay the proceedings if satisfied that there is no sufficient reason why the matter should not be referred to arbitration. Since the power of the court is discretionary, it may impose such terms as it thinks fit as a condition for agreeing to grant a stay of proceedings. In particular, it can require the owner of the vessel to provide alternative security for the arbitration.

Most shipping contracts contain non-domestic arbitration clauses. The position of non-domestic clauses are contained in s 1 of the UK Arbitration Act 1975, which imposes a mandatory duty on the courts to stay proceedings when a contract incorporates a non-domestic clause. The Arbitration Act 1975 was passed in the English Parliament to give effect to the ratification of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, otherwise known as “The New York Convention.”
Section 1(1) states: "If any party to an arbitration agreement to which this section applies, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the agreement, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to that proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceedings; and the court unless satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed or that there is not in fact any dispute between the parties with regard to the matter referred, shall make an order staying the proceedings.

However, s 9 of the Arbitration Act 1996 re-enacts s 1(1) of the Arbitration Act 1975 and now states that a court shall grant a stay unless satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed. The remaining words in s 1 of the Arbitration Act 1975 are omitted.

The effect of this change was seen in the case of The Halki. 1 The plaintiff was a shipowner that chartered the vessel to the defendant for carriage of goods from Far East to Europe. The charterparty contained an arbitration clause, which stated that disputes are to be determined in London in accordance with English law. The plaintiffs claimed damages under the charterparty and made an O 14 application stating that the defendants had no arguable defence. The defendants did not admit liability and sought to stay the proceedings on grounds that there was a "dispute within the meaning of s 9(4) of the Arbitration Act 1996 and the matter should be referred to arbitration."
The Court of Appeal held that s 9 introduced a significant restriction on the previous power of the court by omitting the words in s 1 of the Arbitration Act 1975 whereby the court could order a stay “unless satisfied there is not in fact any dispute between the parties with regard to the matter agreed to be referred. Accordingly, once the court was satisfied that there was a dispute under an arbitration agreement which governed the contract between the parties, it was not open to the plaintiff to bring proceedings to enforce a claim which the defendant had no arguable defence, and the court had to grant a stay unless it found the arbitration to be null and void. In the instant case, there was a dispute which arose once the plaintiff claimed damages for breach of the charterparty and, therefore, until the defendant admitted that the sum was due and payable, the matter had to be referred to arbitration for determination.

Arrest of ships as security for arbitration in the UK

Prior to the English Civil Jurisdiction and Judgments Act 1982, the law was not very clear on the arrest of ships as security for arbitration. Generally, there were two issues that faced a court when deciding whether to allow an arrest of a vessel as security for arbitration claims. The first involves the issue as to whether the court has the jurisdiction to arrest a vessel for a claim in arbitration. The second issue is whether in its discretion, it is prepared to do so. It has been submitted that the motive for effecting an arrest is irrelevant to the question of jurisdiction. If a vessel is within the jurisdiction of the court and the claim falls within the categories of maritime claims provided for in the Supreme Court Act 1981, the court’s power of arrest can be invoked even if the plaintiff’s motive in applying for arrest is to obtain security for an arbitration claim. 2 The motive for the arrest is, however, relevant when deciding whether the court should exercise its discretion to order an arrest. In The Cap Bon, 3 Brandon J said that the purpose of an action in rem was solely to obtain security in respect of a judgment in court or sum due under settlement of action and that security was not available for ensuring payment
of the judgment of some other court or an award of an arbitration tribunal. 4

Thus, if the purpose of arrest was solely to obtain security for an arbitration award, the court would decline to exercise its discretion in the plaintiffs favour. Further, any security or bail actually provided would only be available to satisfy an Admiralty Court judgment; it could not be used to satisfy an award since it would not, in terms, be expressed to cover this. Usually, when an action in rem is commenced and there is a non-domestic clause, the shipowner would apply to stay the proceedings under s 1(1) of the Arbitration Act 1975. The court is then faced with how to deal with the arrest of the vessel or the substitute security tendered in its place. The natural thing to do would be to disallow the execution of the arrest or to release the ship from arrest if arbitration proceedings have already commenced. 5 However, Brandon J in The Rena K 6 was of the view that whilst the Arbitration Act 1975 makes it mandatory for the court to stay the admiralty proceedings and precludes him from imposing a condition as to alternate security in favour of arbitration, it does not oblige the court to release the vessel as security or retain security already given to secure its release if the arrest has already been made. The court still had the discretion, when granting the mandatory stay of proceedings, to continue any arrest already obtained if it was shown by the plaintiff that any arbitration award in his favour was unlikely to be satisfied by the defendant. 7 This reasoning was applied in The Tuyuti 8 where the Court of Appeal reversed the High Courts stay on the execution of the warrant of arrest. Robert Goff LJ said that in arresting or continuing the arrest of a ship as security, the security was being administered not in relation to the arbitration proceedings but in relation to a possible judgment in the action in rem. The above exception is popularly known as the principle in The Rena K and it should be emphasized that the burden is on the plaintiff to produce evidence in court that the defendant would not be able to satisfy an award that may be made against him. Failing to do so would compel the court to stay the proceedings and release the vessel in the usual manner.
Whilst on one hand, the English cases do not allow for the arrest of ships as security for arbitration claims because of jurisdictional issues, the judges have made exceptions in cases where the defendant is unable to satisfy an award that may be made against him. This uncertainty in the law is one of the reasons that eventually led to the Civil Jurisdiction and Judgments Act 1982.

The English Civil Jurisdiction and Judgments Act (‘CJJA’) 1982 only came into force in November 1984, some two years later. It provides:

26 (1) Where in England and Wales or Northern Ireland a court stays or dismisses Admiralty proceedings on the ground that the dispute in question should be submitted to arbitration or to the determination of the courts of another part of the United Kingdom or of an overseas country, the court may, if in those proceedings property has been arrested or bail or other security has been given to prevent or obtain release from arrest

(a) order that the property arrested be retained as security for the satisfaction of any award or judgment which

(i) is given in respect of the dispute in the arbitration or legal proceedings in favour of which those proceedings are stayed or dismissed; and

(ii) is enforceable in England and Wales or, as the case may be, in Northern Ireland; or

(b) order that the stay or dismissal of those proceedings be conditional on the provision of equivalent security for the satisfaction of any such award or judgment.

(2) Where a court makes an order under sub-s (1), it may attach such conditions to the order as it thinks fit, in particular conditions with respect to the institution or prosecution of the relevant arbitration or legal proceedings.
Section 26 at least clarifies the position with the pre-CJJA case law and now makes clear that where admiralty proceedings are stayed on the basis of an agreement to arbitrate, the court either orders the retention of the arrested property to stand as security for the satisfaction of any arbitration award, or it may order that alternative security be provided. It is noteworthy that s 26 does not say in clear precise terms that it is possible to arrest as security for arbitration; instead, all it actually does is prescribe a form of procedure where the court can order the retention of security if those procedural requirements are met. This makes little practical difference since a plaintiff may bring an action in rem against the defendants vessel in the UK despite his motive to solely obtain security for arbitration and even if the court stays the in rem proceedings it may order that the vessel be retained as security (or alternative security is provided) which is all the plaintiff wants after all.

An example is seen in The World Star 10 where charterers arrested the ship solely to obtain security for arbitration proceedings. This was the sort of application that the English courts had held to be impermissible prior to the advent of s 26. The defendant shipowners applied for a stay and for an order that the vessel be released from arrest. Sheen J concluded that since, as a matter of procedure, the case fell squarely within s 26, the court could order the retention of the vessel as security for the satisfaction of the arbitration award. In another case, The Bazias 3 and Bazias 4; the plaintiffs issued in rem proceedings against the vessel, having given due warning that they intended to arrest the vessel in order to obtain security amounting to $10.7 m. The defendants applied for a stay under s 1 of the English Arbitration Act 1975. On appeal, they argued that the pre-existing practice was preserved by s 26 so that in respect of a claim that was subject to an arbitration clause, the court had a discretion to release the vessel without requiring equivalent security depending on whether the defendant was likely to be able to meet any arbitration award in the plaintiffs favor. In other words, s 26 does not bind the court to make an order under sub-s (a) and sub-s (b). It may take a third route, that is, to make an order releasing the vessel without equivalent...
security. The plaintiffs, on the other hand, argued that the effect of s 26 was to assimilate claims in arbitration with in rem proceedings in the Admiralty Court so that the discretion would be the same in both classes of case.

In reply to the defendants argument, the court stated that the wider discretion in arbitration cases was an inevitable consequence of the security afforded by in rem proceedings not being able to enforce an award and only being available in respect of in rem proceedings. Lloyd LJ agreed with the plaintiffs that the purpose of s 26 was to assimilate the three classes of claim in all respects and there is nothing in the language of s 26 nor in the cases decided immediately before the CJJA 1982, which is inconsistent with that argument. Having said that, the usual practice has always been that the vessel will only be released on the provision of sufficient security to cover the amount of the claim, plus interest and costs on the basis of the plaintiffs reasonably best arguable case.

14 Counsel for the defendants also wanted the courts to exercise their powers under s 26(2) of the CJJA 1982 to order the plaintiffs to give a cross-undertaking in damages in case the arrest turns out to be unjustified by which they mean the plaintiffs claim in arbitration fails in toto. But the courts stated that it is not usual admiralty practice and they do not regard this case as being one in which they could introduce so far reaching a change in the practice for the first time. But there is nothing to stop the defendants from requesting the plaintiffs to deposit security for the losses they are likely to suffer whilst the vessel remains under arrest.
Chapter 61

ARBITRATION

Many contracts with which ship owners and their masters are concerned, such as bills of lading, charter-parties, salvage agreements, and marine insurance policies, nowadays provide for various litigious matters to be referred to arbitration. Some of the terms used in connection with this method of settling disputes, together with the main advantages and disadvantages of arbitration, the various methods of referring to arbitration, and so on, form the subject matter of this section.

Arbitration Clauses in contracts of Carriage by Sea

Bills of lading and charter-parties frequently contain clauses to that effect that the parties agree to refer to arbitration disputes arising under the contract. Such clauses are perfectly valid, but what constitutes a "dispute arising under the contract" is a matter deserving of some consideration. If, for instance, one party contends against the other that the contract has never been entered into at all, that is a dispute which cannot go to arbitration under the clause, for the party who denies that he entered into the contract is at the same time denying that he joined in the submission. On similar grounds, if a party alleges that the contract is void, that cannot be a matter for arbitration under the clause, for on the view that the whole contract is void the part (i.e., the submission) must be seen to be void as well.

An arbitration clause may provide that if the claimant fails to appoint an arbitrator within a stipulated time the claim shall be barred absolutely. Generally, this provision is effective, but there are some exceptions. For instance, by the Arbitration Act, 1950, the court may grant an extension of time if of the opinion that undue hardship would otherwise be caused.
No dispute arises within the meaning of the clause where a charterer admits a shipowner's claim for freight but fails to satisfy it. Where a shipowner claimed freight and the charterer, having admitted the claim, sought to set off the amount due against his counter-claim the Court held that failure to appoint an arbitrator within the prescribed time barred the counter-claim but not the claim which was never in issue.

The question may arise as to whether an arbitration clause in a charter-party is imported into a bill of lading when the latter contains an incorporating clause such as "Freight and all other terms, conditions and exceptions, including the negligence clause, as per charter-party". It would seem that it is not, but as between a shipowner and a charterer who is also the shipper and who, in his capacity as shipper, has obtained a bill of lading, the arbitration clause in the charter-party remains effective even though the charter party contains a cesser clause, and even after the bill of lading has been assigned to a third party.

It appears that a merchant has no right to arrest a ship in respect of a dispute arising under a contract, which contains an arbitration clause.

International Arbitration

International arbitration is a means by which international disputes can be definitively resolved, pursuant to the parties' agreement, by independent, non-governmental decision-makers. There are almost as many other definitions of international arbitration as there are commentators on the subject. Commercial arbitration is common in both international and domestic contexts. Arbitration has several defining characteristics, they are as follows:

1. Arbitration is generally consensual in most cases, the parties must agree to arbitrate their differences.

2. Non-governmental decision-makers resolve arbitrations, arbitrators do not act as state judges or government agents, but are private persons ordinarily selected by the parties.
3. Arbitration produces a binding award, which is capable of enforcement through national courts, but not a mediator's or conciliators non-binding recommendation.

4. Arbitration is comparatively flexible, as contrasted to most court procedures.

In many circumstances, national law permits parties to agree upon the arbitral procedures that will govern the resolution of their dispute. As a consequence, the procedural conduct of arbitrations can vary dramatically across industrial sectors, arbitral institutions, geographic regions, and categories of disputes. In particular fields, or individual cases, parties may agree upon procedural rules that are tailor-made for their individual needs. Apart from specialized fields, commercial arbitration often bears broad resemblances to commercial litigation in national courts. Arbitration will frequently involve the submission of written pleadings and legal argument (often by lawyers), the presentation of documentary evidence and oral testimony, the application of "law" (in the form of judicial precedents and statutes), and the rendition of a reasoned, binding award. Nevertheless, in practice, arbitral procedures are usually less formal than litigation, particularly on issues such as pleadings and evidence. Arbitration often lacks various characteristics that are common in national court litigation, including broad discovery, summary disposition procedures, and appellate review. In smaller matters, domestic arbitrations are frequently conducted without the participation of legal advisers, before a lay-arbitrator, according to highly informal procedures.

International commercial arbitration is similar to domestic arbitration. As in domestic matters, international arbitration is a consensual means of dispute resolution, by a non-governmental decision-maker, that produces a legally binding and enforceable ruling. In addition, however, international arbitration has several characteristics that distinguish it from domestic arbitration. Most importantly, international arbitration is designed and accepted particularly to
assure parties from different jurisdictions that their disputes will be resolved neutrally. Among other things, the parties usually seek an independent decision-maker, detached from the courts, governmental institutions, and cultural biases of either party. They also ordinarily contemplate the arbitrator's application of internationally neutral procedural rules, rather than a particular national legal regime.

In addition, international arbitration is frequently regarded as a means of mitigating the peculiar uncertainties of transnational litigation. These uncertainties can include protracted jurisdictional disputes, expensive parallel proceedings, and choice-of-law debates. International arbitration seeks to avoid these uncertainties by designating a single, exclusive dispute resolution mechanism for settling the parties' disagreements. Moreover, international arbitration awards are often more readily enforceable in jurisdictions other than their place of origin than national court judgments.

Although international arbitration is a consensual means of dispute resolution, it has binding effect only by virtue of a complex framework of national and international law. As we discuss below, international conventions, national arbitration legislation, and institutional arbitration rules provide a specialized legal regime for most international arbitrations. This legal regime enhances the enforceability of both arbitration agreements and arbitral awards, and seeks to insulate the arbitral process from interference by national courts or other governmental authorities.

On the most universal level, the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") has been ratified by more than 120 nations, including all significant trading states and most major developing states. The Convention obliges member states to recognize and enforce both international commercial arbitration agreements and awards, subject to limited exceptions. Other international conventions impose comparable obligations on member states with respect to
particular categories of disputes or with respect to particular bilateral or regional relationships.

In addition, most developed trading states have enacted national arbitration legislation that provides for the enforcement of international arbitration agreements and awards, that limits judicial interference in the arbitration process, and that authorises specified judicial support for the arbitral process. National arbitration legislation typically affirms the capacity of parties to enter into valid and binding agreements to arbitrate future commercial disputes, provides mechanisms for the enforcement of such arbitration agreements (through orders to stay litigation or (less frequently) to compel arbitration), and requires the recognition and enforcement of arbitration awards. In addition, most modern arbitration legislation narrowly limits the power of national courts to interfere in the arbitration process, either when arbitral proceedings are pending or in reviewing ultimate arbitration awards. In many cases, national arbitration statutes also authorize limited judicial assistance to the arbitral process. This assistance can include selecting arbitrators or arbitral situses, enforcing a tribunal's orders with respect to evidence taking or discovery, and granting provisional relief in aid of arbitration.

In recent years, there have been a number of efforts to harmonise national laws relating to international arbitration. The UNCITRAL Model Law on International Commercial Arbitration is the leading example. About twenty nations expect the United States, have adopted the Model Law to date, and others are considering it. Similarly, national and international bar associations have produced rules or codes of conduct dealing with various arbitration-related subjects, such as evidence taking in arbitration, organizing arbitral proceedings, and the ethics of arbitrators.

International commercial arbitration frequently occurs pursuant to institutional arbitration rules, which are often incorporated by reference into parties' arbitration agreements. The leading international arbitration
institutions include the International Chamber of Commerce, the London Court of International Arbitration, London Maritime Arbitrators Association and the American Arbitration Association, each of which has adopted its own set of rules governing the procedural aspects of arbitration. These institutions, as well as another several dozen or so less widely known bodies, supervise international arbitrations when parties agree to dispute resolution under their auspices. In addition, the UNCITRAL Commercial Arbitration Rules are widely used in so-called ad hoc (or non-institutional) arbitrations.

Advantages and Disadvantages of International Arbitration

The popularity of arbitration as a means for resolving international commercial disputes has grown tremendously over the past several decades. This popularity reflects important advantages provided by international arbitration as a means of resolving international commercial disputes. Despite these advantages, however, international arbitration also has significant disadvantages. These advantages and disadvantages can be summarised as follows:

1. International arbitration is often perceived as ensuring a genuinely neutral decision-maker in disputes between parties from different countries. International disputes inevitably involve the risk of litigation before a national court of one of the parties, which may be biased, parochial, or unattractive for some other reason. Moreover, outside an unfortunately limited number of industrialized nations, local court systems simply lack the competence, experience, resources, and traditions of even-handedness satisfactorily to resolve many international commercial disputes.

International arbitration offers a theoretically competent decision-maker satisfactory to the parties, who are, in principle, independent of either party or any national or international governmental authority. On the other hand, private arbitrators can have financial, personal, or
professional relations with one party (or its counsel). In the eyes of some observers, this poses the risk of even greater partiality than the favoritism or parochialism of local courts.

2. A carefully-drafted arbitration clause generally permits the resolution of disputes between the parties in a single forum pursuant to an agreement that most national courts are bound by international treaty to enforce. This mitigates the expense and uncertainty of multiple judicial proceedings in different national courts.

On the other hand, incomplete or otherwise defective arbitration clauses can result in judicial and arbitral proceedings where the scope or enforceability of the provision, as well as the merits of the parties’ dispute, must be litigated. Moreover, even well drafted arbitration agreements cannot entirely exclude the expense and delay of a litigant determined to confound the arbitral process.

3. Arbitration agreements and arbitral awards are generally (but not always) more easily and reliably enforced in foreign states than forum selection clauses or foreign court judgments. As described, some 120 nations have acceded to the New York Convention, which obliges contracting states to enforce arbitration agreements and awards (subject to specified, limited exceptions). In contrast, there are no worldwide treaties relating to either forum selection agreements or judicial judgments. The perceived ease of enforceability of arbitral awards has contributed to fairly substantial voluntary compliance with arbitral awards, although there is little empirical data comparing such compliance with that applicable to judicial judgments.

In some developing and other countries, there has been a perception that international commercial arbitration was developed by, and was biased in favor of, Western commercial interests. As a consequence, national law in many countries was historically hostile towards
international arbitration. In some states, this remains the case today. Hostile or simply archaic national law can therefore still pose significant obstacles to the effective enforcement of international arbitration agreements and awards. In general, this hostility has waned somewhat over the past decade, with many states acceding to the New York Convention and enacting "pro-arbitration" legislation.

4. Arbitration tends to be procedurally less formal and rigid than litigation in national courts. As a result, parties have greater freedom to agree on neutral and appropriate procedural rules, set realistic timetables, select technically expert and neutral decision-makers, involve corporate management in dispute-resolution, and the like. On the other hand, the lack of a detailed procedural code or decision-maker with direct coercive authority may permit party misconduct or create opportunities for an even greater range of procedural disputes between the parties.

5. International arbitration typically involves less extensive discovery than is common in litigation in some national courts (particularly common law jurisdictions). This is generally attractive to international businesses because of the attendant reduction in expense, delay, and disclosure of business secrets.

6. International arbitration is usually more confidential than judicial proceedings - as to submissions, evidentiary hearings, and final awards. This protects business and commercial confidences and can facilitate settlement by reducing opportunities and incentives for public posturing. On the other hand, few arbitrations are entirely confidential, with disclosures often occurring by means of judicial enforcement actions, unilateral party action, regulatory inquiries, or otherwise.

7. The existence of an arbitration clause, a workable arbitral procedure, and an experienced arbitral tribunal may create incentives for
settlement or amicable conciliation. The cooperative elements that are required to constitute a tribunal and agree upon a procedural framework can sometimes help foster a climate conducive to settlement. Indeed, parties sometimes agree to conciliation (rather than, or in addition to, binding arbitration) or to arbitration ex aequo et bono (not based on the strict application of law) in a deliberate effort to foster settlement. On the other hand, where relations are irrevocably soured, the need for some measure of cooperation between the parties in conducting the arbitration can permit party misconduct greatly to impede dispute resolution.

8. Arbitration is often lauded as a prompt, inexpensive means of dispute resolution. That can sometimes be the case, but international arbitration is also frequently criticized as both slow and expensive. The difficulties in scheduling hearing dates (with busy arbitrators, lawyers, and clients in different countries), the need to agree upon various procedural steps, and other factors often gives international arbitrations a fairly stately pace. Nonetheless, national court proceedings are also often slow, and the existence of appellate review (and possible re-trials) introduces additional delays not ordinarily encountered in arbitration.

Although sometimes advertised on grounds of economy, even its proponents rightly acknowledge that "international arbitration is an expensive process." Both private arbitrators (unlike judges) and arbitral institutions (unlike most courts) must be paid by the parties. And there is a perception that some institutional fees, charged for "administrative" services, are unnecessarily high. Nonetheless, these expenses generally will be less than the legal fees and other costs required for lengthy appellate proceedings or (in some jurisdictions) discovery. Given this background, it is not difficult to find enthusiastic proponents of the arbitral process:
In the realm of international commercial transactions, arbitration has become the preferred method of dispute resolution. Arbitration is preferred over judicial methods of dispute resolution because the parties have considerable freedom and flexibility with regard to choice of arbitrators, location of the arbitration, procedural rules for the arbitration, and the substantive law that will govern the relationship and rights of the parties.

Equally vigorous are some critics, including those who regard arbitration as "the slower, more expensive alternative," or conclude that "arbitration sometimes involves perils that even surpass the 'perils of the seas.'" In fact, the truth is less clear-cut, and lies somewhere between these extremes: "The more enthusiastic of sponsors have thought of arbitration as a universal panacea. We doubt whether it will cure corns or bring general beatitude. Few panaceas work as well as advertised." At bottom, if generalizations must be made, international arbitration is much like democracy; it is nowhere close to ideal, but it is generally better than the existing alternatives. To those who have experienced it, litigation of complex international disputes in national courts is often distinctly unappealing. Despite the daunting procedural complexities and other uncertainties, arbitration often offers the least ineffective way to finally settle the contentious disputes that arise when international transactions go awry.

**Institutional and Ad hoc Arbitration International Arbitration**

International arbitration can be either "institutional" or "ad hoc." There are important differences between these alternatives. A number of international organisations and institutions, located in different countries, provide institutional arbitration services. The best-known international arbitration institutions are the International Chamber of Commerce ("ICC"), the American Arbitration Association ("AAA"), and the London Court of International Arbitration ("LCIA"), apart from this international organisations like the World Intellectual Property Organisation ("WIPO"), International
Center for Settlement of Disputes ("ICSID"), World Trade Organisation and like provide for international arbitration.

These arbitral institutions have promulgated sets of procedural rules that apply where parties have agreed to arbitration pursuant to such rules. Among other things, institutional rules set out the basic procedural framework and timetable for the arbitration process. Institutional rules also typically authorize the host arbitral institution to select arbitrators in particular disputes (that is, to serve as "appointing authority"), to resolve challenges to arbitrators, to designate the place of arbitration, to fix or influence the fees payable to the arbitrators, and to review the arbitrator's awards to reduce the risk of unenforceability on formal grounds. Each arbitral institution has a staff (with the size varying significantly from one institution to another) and a decision-making body. Of course, arbitral institutions charge an administrative fee, which can sometimes be substantial, for rendering these various services. This fee is in addition to compensation paid by the parties to the arbitrators.

It is fundamental that arbitral institutions do not themselves arbitrate the merits of the parties' dispute. This is the responsibility of the particular individuals selected as arbitrators. Arbitrators are virtually never employees of the arbitral institution, but instead are private persons selected by the parties. If parties cannot agree upon an arbitrator, most institutional rules provide that the host institution will act as an "appointing authority," which chooses the arbitrators in the absence of the parties' agreement.

Ad hoc arbitrations are not conducted under the auspices or supervision of an arbitral institution. Instead, parties simply agree to arbitrate, without designating any institution to administer their arbitration. Ad hoc arbitration agreements will often choose an arbitrator or arbitrators, who is to resolve the dispute without institutional supervision or assistance. The parties will sometimes also select a preexisting set of procedural rules designed to govern
ad hoc arbitrations. For international commercial disputes, the United Nations Commission on International Trade Law ("UNCITRAL") has published a commonly used set of such rules. Where ad hoc arbitration is chosen, parties usually will designate an "appointing authority," that will select the arbitrators if the parties cannot agree. If the parties fail to select an appointing authority, then the national arbitration statutes of many nations permit national courts to appoint arbitrators.

Both institutional and ad hoc arbitration have their strengths as well as weaknesses. Institutional arbitration is conducted according to a standing set of procedural rules and supervised, to a greater or lesser extent, by a professional staff. This reduces the risks of procedural breakdowns, particularly at the beginning of the arbitral process, and of technical defects in the arbitral award. The institution's involvement can be particularly constructive on issues relating to the appointment of arbitrators, the resolution of challenges to arbitrators, and the arbitrators' fees. Less directly, the institution lends its standing to any award that is rendered, which may enhance the likelihood of voluntary compliance and judicial enforcement.

On the other hand, ad hoc arbitration is typically more flexible, less expensive (since it avoids sometimes substantial institutional fees), and more confidential than institutional arbitration. Moreover, the growing size and sophistication of the international arbitration bar, and the efficacy of the international legal framework for commercial arbitration, have partially reduced the relative advantages of institutional arbitration. Nonetheless, many experienced international practitioners prefer the more structured, predictable character of institutional arbitration, at least in the absence of unusual circumstances arguing for an ad hoc approach.
Overview of International Arbitral Institutions & Laws

Introduction to Institutional Arbitration

Different arbitral institutions offer somewhat different products. As noted above, the ICC, the LCIA, and the AAA are presently the leading international arbitral institutions. Each of these institutions, as well as several other important international arbitral institutions, are briefly described below as follows

1. The ICC's International Court of Arbitration: It was established in Paris in 1923. The ICC remains the world's leading international commercial arbitration institution, and has less of a national character than any other arbitral institution. Its annual caseload was well above 300 cases per year during the 1980s and early 1990s, and it now exceeds 500 cases per year. Most of these cases are international disputes, many involving very substantial sums. The ICC's caseload involves parties from around the world, with Western European parties being involved in less than 50% of all ICC cases in many recent years.

The ICC has promulgated the ICC Rules of Arbitration ("ICC Rules"), which were most recently revised in 2000, as well as the ICC Rules of Optional Conciliation. Under the ICC Rules, the ICC is extensively involved in the administration of individual arbitrations. Among other things, the ICC is responsible for service of the Request for Arbitration and other preliminary submissions on the parties, fixing and receiving payment of advances on costs by the parties at the outset of an arbitration confirming the parties' nominations of arbitrators, appointing arbitrators if a party defaults or if the parties are unable to agree upon a presiding arbitrator or sole arbitrator, considering challenges to the independence of arbitrators, in certain cases, reviewing so-called "Terms of Reference," which define the issues and
procedures for the arbitration, reviewing a tribunal's award for formal defects, and fixing the arbitrator's compensation.

The ICC's International Court of Arbitration ("ICC Court") is responsible for most significant administrative decisions in ICC arbitrations. The ICC Court is not, in fact, a "court," and does not itself decide substantive legal disputes or act as an arbitrator. Rather, the ICC Court acts in a supervisory and appointing capacity under the ICC Rules. The ICC Court is supported by a sizeable legal and administrative staff of some twenty persons, of more than ten nationalities, organized as a Secretariat. The Secretariat is substantially involved in the day-to-day management of arbitrations.

In appointing and confirming arbitrators, the ICC Court considers "the prospective arbitrator's nationality, residence and other relationships with the countries of which the parties or the other arbitrators are nationals and the prospective arbitrator's availability and ability to conduct the arbitration". The ICC Court's appointments of arbitrators are generally based upon recommendations made by a neutral "national committee," which is usually a business or similar organization in a specific country. Currently, more than 60 countries have ICC National Committees.

ICC arbitrations can be sited almost anywhere in the world. In 1997, for example, ICC arbitrations were conducted in more than different countries. By far the most common situses for ICC arbitrations are France, Switzerland, England, other Western European states, and the United States. The ICC Rules set out schedules of administrative costs and arbitrators' fees. Both are based upon the amount in dispute, with the arbitrators' fees being fixed by the ICC Court, within a prescribed range, in light of the difficulty of the case, the expedition of proceeding, the amount in dispute, and other factors. The ICC Rules
also provide for "advances on costs" to be paid by the parties at the outset of the arbitral proceedings, designed to secure payment of future administrative costs and arbitrators' fees.

The ICC's Rules have sometimes been criticised as expensive and cumbersome. The 1998 amendments to the Rules reflected a concerted and promising effort to meet these charges. Despite criticism, the ICC clearly remains the institution of last resort for most sophisticated commercial users.

2. London Court of International Arbitration (LCIA): The LCIA is, by some accounts, the second most popular European arbitration institution. Its annual caseload, which is increasing, has reached about 50 disputes per year. Founded in 1892, the LCIA has made a determined and generally successful effort in recent years to overcome perceptions that it is an exclusively English organization. Among other things, it has appointed two successive non-English presidents, and its vice-presidents include non-English practitioners.

The LCIA administers a set of arbitration rules, the London Court of International Arbitration Rules ("LCIA Rules"), which were extensively revised in 1998. Although identifiably English in drafting style and procedural approach, the LCIA Rules generally provide a sound, neutral basis for international dispute resolution. Broadly speaking, LCIA arbitrations are administered in a less comprehensive fashion than ICC cases. Among other things, the LCIA Rules contain no Terms of Reference procedure and do not provide for administrative review of draft awards.

In contrast to most other institutional rules, the LCIA Rules set out the powers of an LCIA arbitral tribunal in some detail. The powers to order discovery and security for legal costs (i.e., a deposit or bank guarantee securing the estimated amounts which an unsuccessful
claimant would be liable to reimburse to a successful respondent for its costs of legal representation) are prominently included among the arbitrators' powers.

The LCIA's appointments of arbitrators are drawn largely from the English bar and retired judiciary, particularly in cases governed by English law. The LCIA fixes the arbitrators' fees according to the time expended by the arbitrators at the hourly rate agreed by the arbitrators with the parties. The LCIA provides a scale of customary fees for arbitrators, to assist in fixing rates. The LCIA's administrative fees are calculated based upon the time spent by LCIA personnel.

Most LCIA arbitrations are sited in London. In the absence of agreement by the parties to the contrary, London will ordinarily be selected by the LCIA as the arbitral situs.

3. American Arbitration Association (AAA): The AAA was founded in 1926 (three years after the ICC) and is based in New York, with nearly 40 regional offices throughout the United States. The AAA is the leading U.S. arbitral institution, and handles what it describes as the largest number of arbitral disputes in the world. It administers more than 60,000 arbitrations or other forms of alternative dispute resolution each year, with specialized rules for numerous different industries. Nonetheless, only a few of these disputes are "international." Although its methods for identifying "international" disputes are sometimes questioned, the AAA claims a caseload of some 400 international disputes per year.

The primary arbitration rules promulgated by the AAA are the AAA Commercial Arbitration Rules. These rules are widely used in domestic arbitrations between businesses in the United States. In 1991, the AAA promulgated the AAA International Arbitration Rules designed specifically for international arbitrations. The rules are based principally
on the UNCITRAL Arbitration Rules, and were intended to permit a maximum of flexibility and a minimum of administrative supervision. They were most recently revised in April 1997. Numerous other sets of AAA arbitration rules also exist, including rules for specialized types of disputes, and can be selected in the parties' arbitration agreement.

The 1997 version, of the AAA International Arbitration Rules provide the applicable set of AAA arbitration rules in "international" disputes (except where the parties have otherwise agreed). This alters the pre-1997 position, in which the primarily domestic AAA Commercial Arbitration Rules provided the fallback rules when parties to international agreements had agreed to AAA arbitration without designating a particular set of rules.

Under all versions of AAA rules, the AAA administrative staff plays a less significant supervisory role than does the ICC Secretariat. Among other things, the AAA does not receive or serve initial notices or requests for arbitration; does not require or review a Terms of Reference; does not review draft awards; and plays a less significant role in setting the arbitrators' fees. The AAA's appointments of arbitrators are generally based on a list procedure, whereby names drawn from the AAA's files are presented to the parties for expressions of preference. Although the AAA's lists are heavily domestic in character, it increasingly seeks to appoint arbitrators with international experience in appropriate cases. To that end, the AAA reports that it has enhanced the quality of its international panel of arbitrators.

The AAA's administrative charges are based on the amount in dispute. With respect to the arbitrators' fees, the AAA case administrator will initially attempt to broker an agreement between the proposed arbitrators and the parties on a basis for compensation. Failing such agreement, the AAA will fix the arbitrators' fees after considering the
arbitrators' hourly rates, the amount in dispute, and the complexity of the dispute.

Non-U.S. parties are often reluctant to agree to arbitration under AAA rules, fearing parochial predisposition and unfamiliarity with international practice. The AAA is working to overcome this image. In addition to upgrading its approach to selecting arbitrators, the AAA has concentrated the handling of all international cases in an "International Center" in New York, staffed by specialized attorneys with language skills. It remains to be seen how these efforts will be received.

4. International Center for Settlement of Investment Disputes (ICSID): The International Center for the Settlement of Investment Disputes ("ICSID") administers arbitrations conducted pursuant to the ICSID Convention. ICSID is located in Washington, D.C., where it operates under World Bank auspices.

As discussed below, the ICSID Convention provides a specialized arbitration regime for certain "investment disputes" between states and foreign investors. Before adopting an ICSID arbitration clause or commencing an ICSID arbitration, care should be taken to ensure that the Convention's jurisdictional limits are satisfied (e.g., that the relevant foreign state has ratified the ICSID Convention and that an "investment dispute" would be involved). If these limits are satisfied, parties must consider whether ICSID arbitration is suitable for their needs.

Sophisticated users have been reluctant to embrace ICSID arbitration because of uncertainties about jurisdictional limits, appointment procedures for arbitrators, and the risk of internal review. With respect to the final point, the annulment of two ICSID awards by appellate panels has provoked concerns among foreign investors.
5. Stockholm Chamber of Commerce Arbitration Institute (SCC): The Arbitration Institute was founded in Stockholm in 1917, the Stockholm Chamber of Commerce Arbitration Institute ("SCC") developed into a substantial forum for disputes involving parties from the USSR and China during the 1970s and 1980s. The SCC typically appoints members of the Swedish bar, with international experience, or former Swedish judges, as arbitrators. SCC arbitrations are usually sited in Sweden, although other situses can be chosen.

6. Singapore International Arbitration Center (SIAC): The SIAC was established in 1990, principally for disputes arising out of construction, shipping, banking, and insurance. The SIAC Rules are based largely on the UNCITRAL Arbitration Rules. The SIAC has not yet won broad favor among sophisticated users, in part because of historic perceptions of an interventionist attitude of local courts. There are signs that this disfavor is waning, especially in conjunction with concerns about Hong Kong as an arbitral situs.

7. Hong Kong International Arbitration Center (HKIAC): The Hong Kong International Arbitration Center ("HKIAC") was established in 1985 and had developed into Asia's leading international arbitration institution prior to departure of the British administration. The HKIAC's Rules are based on the UNCITRAL Arbitration Rules, although parties are free to agree upon alternative procedural regimes. The HKIAC still enjoys a substantial case-load (approximately 200 disputes annually in recent years), but many users are now reluctant to designate it in new agreements. Concerns about future stability and judicial independence in Hong Kong are typically cited.

8. World Intellectual Property Organisation (WIPO): The Arbitral Center of WIPO was established in Geneva, Switzerland in 1994. WIPO and the WIPO Arbitration Rules are designed particularly for
intellectual property disputes, although other types of controversies are not excluded from their facilities. WIPO's Arbitration Rules contain detailed provisions dealing with issues that are of particular importance in intellectual property disputes. These include provisions relating to discovery, disclosure and protection of trade secrets, and confidentiality of arbitral proceedings. As yet, WIPO has had insufficient opportunity to establish a track record with respect to its selection of arbitrators and/or administration of arbitral proceedings.

9. German Institution of Arbitration: The German Institution of Arbitration ("Deutsche Institution für Schiedsgerichtsbarkeit" or "DIS") was originally founded in 1920. It has since 1992 incorporated the arbitration institutions of the former German Democratic Republic, and provides nationwide arbitration services in Germany. The DIS Arbitration Rules (published in English translation as well as an authoritative German text) are intended for both national and international arbitrations. A majority of the DIS's caseload consists of domestic disputes, although Germany's recent enactment of the UNCITRAL Model Law is expected to attract greater international usage.

International Conventions and National Laws on International Commercial Arbitration

International businesses and industrialized trading nations have long sought to establish a stable, predictable legal environment in which international commercial arbitrations can be conducted. Because national arbitration laws have historically varied considerably from state to state, substantial uncertainties often attend the enforcement of international arbitral agreements and awards. To reduce these uncertainties, major trading nations have entered into international treaties and conventions designed to facilitate the transnational enforcement of arbitration awards and agreements.
International agreements concerning commercial arbitration originally took the form of bilateral treaties. Later, multilateral conventions sought to facilitate international arbitration by encouraging the recognition of arbitration agreements and awards. The first such arrangement in the contemporary era was the Montevideo Convention, signed in 1889 by various Latin American states. Like other early efforts in the field, the Montevideo Convention attracted few signatories and had little practical impact. Following are the conventions dealing with International Arbitration:

1. Geneva Protocol of 1923 and Geneva Convention of 1927: In the early 1920s, at the behest of the International Chamber of Commerce, the Geneva Protocol of 1923 was negotiated and adopted under the auspices of the League of Nations. The Protocol was ultimately ratified by the United Kingdom, Germany, France, Japan, India, Brazil, and about a dozen other nations. Although the United States did not ratify the Protocol, the nations that did so represented a very significant portion of the international trading community at the time.

The Geneva Protocol's primary focus was to require the enforcement of arbitration agreements (with respect to both existing and future disputes). In addition, the Protocol also sought to facilitate the enforceability of arbitral awards, although it addressed only the enforcement of awards within the state where they were made.

The Protocol was augmented by the Geneva Convention for the Execution of Foreign Arbitral Awards of 1927. The Geneva Convention expanded the enforceability of arbitration awards rendered pursuant to arbitration agreements subject to the Geneva Protocol. It did so by requiring the enforcement of such awards within any contracting state (rather than only within the state where they were made).
The Geneva Protocol and Convention were major early steps towards an effective international framework for commercial arbitration. Nevertheless, both agreements were subject to significant limitations on their scope and were not widely ratified. More important, because of a relative dearth of international commercial arbitrations at the time, neither agreement received frequent application nor had extensive practical effect.

2. The New York Convention: The successor to the Geneva Protocol and the Geneva Convention was the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Often referred to as the "New York Convention," the treaty is by far the most significant contemporary international agreement relating to commercial arbitration.

The Convention was signed in 1958 in New York after lengthy negotiations under U.N. auspices. The Convention is widely regarded as "the cornerstone of current international commercial arbitration." In the apt words of Judge Stephen Schwebel, former President of the International Court of Justice, "It works."

The Convention was designed to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory nations."

In broad outline, the Convention is as follows:

1. It requires national courts to recognize and enforce foreign arbitral awards, subject to specified exceptions.

2. It requires national courts to recognize the validity of arbitration agreements, subject to specified exceptions.
3. It requires national courts to refer parties to arbitration when they have entered into a valid agreement to arbitrate that is subject to the Convention.

The New York Convention made significant improvements in the regime of the Geneva Protocol and Geneva Convention of 1927. Particularly important was the New York Convention's shifting of the burden of proving the validity or invalidity of arbitral awards to the party resisting enforcement and its recognition of substantial party autonomy with respect to choice of arbitral procedures and applicable law. In the words of the President of the U.N. Conference on the Convention:

"It was already apparent that the document represented an improvement on the Geneva Convention of 1927. It gave a wider definition of the awards to which the Convention applied, it reduced and simplified the requirements with which the party seeking recognition or enforcement of an award would have to comply; it placed the burden of proof on the party against whom recognition or enforcement was invoked. It gave the parties greater freedom in the choice of the arbitral authority and of the arbitration procedures. It gave the authority before which the award was sought to be relied upon the right to order the party opposing the enforcement to give suitable security."

It became available in the 1960s and 1970s, as world trade and investment began significantly to expand. With this expansion came substantially greater numbers of international commercial disputes and arbitrations, which gave practical utility to the Convention. Despite its contemporary significance, the New York Convention initially attracted relatively few signatories. The Convention was drafted at the United Nations Conference on Commercial Arbitration held in New York in 1958. Twenty-six of the forty-five countries participating in the Conference ratified the Convention. Many other nations, including the United Kingdom, Sweden, and most Latin American and African states, failed to ratify the Convention for some time thereafter. The
United States also did not initially ratify the Convention, nor did it do so for some time.

Over time, states from all regions of the globe reconsidered their position and today some 120 nations have ratified the Convention. The Convention's parties include all major trading states and many Latin American, African, Asian, Middle Eastern, and former socialist states. During the past decade, numerous states (including a number in the Middle East and Latin America) have departed from long traditions of distrust of international arbitration, and ratified the Convention. In ratifying the Convention, many states have attached reservations that can have significant consequences in private disputes.

Art. VII(1) of the New York Convention specifically provides that the Convention does not affect the validity of any bilateral or other multilateral arrangements concerning the recognition and enforcement of foreign arbitral awards (except the Geneva Protocol and Geneva Convention). That has been interpreted by many national courts in a "pro-enforcement" fashion, to permit agreements and awards to be enforced under either the Convention or another treaty.

In virtually all countries, the New York Convention has been implemented through national legislation. The practical effect of the Convention is therefore dependent on both the content of such national legislation and the interpretation given by national courts to the Convention and national implementing legislation.

An important aim of the Convention's drafters was uniformity; they sought to establish a single, stable set of international legal rules for the enforcement of arbitral agreements and awards. The fulfillment of that aim is dependent upon the willingness of national legislatures and courts, in different signatory states, to adopt uniform interpretations of the Convention. In general, however, national courts have performed adequately, but no better, in arriving at
uniform interpretations of the Convention.

3. The Inter-American Convention on International Commercial Arbitration: After the pioneering Montevideo Convention in 1889, much of South America effectively turned its back on international commercial arbitration. Only Brazil ratified the Geneva Protocol of 1923, and even it did not adopt the Geneva Convention. South American states were very reluctant to ratify the New York Convention, for the most part only beginning to do so in the 1980s.

Nevertheless, in 1975 the United States and most South American nations negotiated the Inter-American Convention on International Commercial Arbitration, also known as the "Panama Convention." The United States ratified the Convention in 1990; other parties include Mexico, Venezuela, Columbia, Chile, Ecuador, Peru, Costa Rica, El Salvador, Guatemala, Honduras, Panama, Paraguay, and Uruguay. The Inter-American Convention is similar to the New York Convention in many respects. Among other things, it provides for the general enforceability of arbitration agreements and arbitral awards, subject to specified exceptions similar to those in the New York Convention.

The Inter-American Convention introduces a significant innovation, not present in the New York Convention, by providing that, where the parties have not expressly agreed to any institutional or other arbitration rules, the rules of the "Inter-American Commercial Arbitration Commission" ("IACAC") will govern. In turn, the Commission has adopted rules that are almost identical to the UNCITRAL Arbitration Rules. Less desirably, the Panama Convention also departs from the New York Convention by omitting provisions dealing expressly with judicial proceedings brought in national courts in breach of an arbitration agreement.
4. The ICSID Convention: The International Center for the Settlement of Investment Disputes ("ICSID") is a specialized arbitration institution, established pursuant to the so-called "Washington Convention" of 1965. ICSID was established at the initiative of the International Bank for Reconstruction and Development and is based at the World Bank's Washington headquarters.

The ICSID Convention is designed to facilitate the settlement of a limited range of "investment disputes" that the parties have specifically agreed to submit to ICSID. Investment disputes are defined as controversies that arise out of an "investment" and involve a signatory state or designated state entity (but not merely a private entity headquartered or based in a signatory state) and a national of another signatory state. As to such disputes, the Convention provides both conciliation and arbitration procedures.

The Convention contains a number of unusual provisions relating to international arbitration.

1. The Convention provides that, absent agreement by the parties, ICSID arbitrations are governed by the law of the state that is party to the dispute (including its conflicts rules) "and such rules of international law as may be applicable." In contrast, neither the New York nor Panama Conventions contains comparable substantive choice of law provisions.

2. ICSID awards are theoretically directly enforceable in signatory states, without any method of review in national courts. There has thus far been very little experience with judicial enforcement of ICSID awards.

3. When a party challenges an ICSID award, the Convention empowers the Chairman of the Administrative Council of ICSID to appoint an ad
hoc committee to review, and possibly annul awards; if an award is annulled it may be resubmitted to a new arbitral tribunal. The ICSID annulment mechanism has been vigorously criticised, on the grounds that it permits politicised appellate review.

Nearly 100 countries, from all geographical regions of the world, have ratified the ICSID Convention. Until relatively recently, however, relatively few cases had been brought under the Convention. ICSID's caseload is gradually increasing, particularly as a consequence of arbitrations brought pursuant to bilateral investment treaties or investment protection legislation.

Unfortunately, the prospects for greatly-increased usage of the ICSID Convention have been threatened by the annulment of several ICSID awards by ad hoc panels assigned to review awards. In addition, uncertainty as to the jurisdictional scope of the Convention and the Convention's appointment mechanism for arbitrators have led many to question ICSID's usefulness as a means of dispute resolution.

5. Iran-United States Claims Tribunal: The Iran-United States Claims Tribunal is one of the most ambitious international claims commissions. The Tribunal was established pursuant to the so-called Algiers Accords, which resolved some of the legal disputes arising from the Iranian seizure of U.S. hostages during President Carter's administration. Pursuant to the Accords, litigation in national courts concerning defined claims between U.S. and Iranian entities was suspended. A nine-person tribunal was established in the Hague, with defined jurisdiction over claims arising from U.S.- Iran hostilities; three tribunal members were appointed by the United States, three by Iran, and three from other states. The tribunal adopted the UNCITRAL Arbitration Rules and has issued a substantial number of decisions.
6. Bilateral Investment Treaties or Investment Protection Agreements: Bilateral investment treaties ("BITs") or investment protection agreements ("IPAs") became common during the 1980s and 1990s, as a means of encouraging capital investment in developing markets. Capital-exporting states (including the United States, most Western European states, and Japan) have entered into numerous BITs or IPAs with countries in developing regions. A recent tally indicated that more than 1,300 BITs are presently operative.

Many BITs contain provisions dealing with the enforceability of international arbitration agreements and awards. In addition, some BITs contain provisions, which permit foreign investors to require international arbitration of certain categories of disputes including in the absence of an arbitration agreement in the contract(s) giving rise to the dispute. The possibility of "arbitration without privity" is an important option in some international commercial disputes, which counsels careful attention to applicable BITs.

7. Bilateral Friendship, Commerce and Navigation Treaties: A number of nations have entered into bilateral treaties dealing principally with commercial relations and incidentally with international arbitration. These treaties generally provide for the reciprocal recognition of arbitral awards made in the territory of the contracting states. For example, the United States has included an article relating to arbitration in many of its bilateral Friendship, Commerce and Navigation treaties. U.S. and other FCN provisions regarding arbitration are often drafted along the following lines:

"Contracts entered into between nationals or companies of either party and nationals or companies of the other party that provide for settlement by arbitration of controversies shall not be deemed unenforceable within the territories of such other party merely on the
grounds that the place designated for arbitration proceedings is outside such territories or that the nationality of one or more of the arbitrators is not that of such other party. Awards duly rendered pursuant to any such contracts which are final and enforceable under the laws of the place where rendered shall be deemed conclusive in enforcement proceedings brought before the courts of competent jurisdiction of either party, and shall be entitled to be declared enforceable by such courts, except where found contrary to public policy." Such provisions have been interpreted liberally by national courts.

Many nations historically regarded international commercial arbitration with a mixture of suspicion and hostility. That was particularly true of various parts of Latin America and the Middle East, as well as developing countries elsewhere. This hostility arose from reluctance to compromise principles of national sovereignty and from perceptions concerning the fairness, neutrality, and efficacy of contemporary international commercial arbitration. Although historic distrust for international arbitration has waned, it continues to influence legislation, judicial decisions, and other actions in many states.

Against this background, contemporary arbitration legislation in many foreign states does not provide effective enforcement of arbitration agreements; such provisions are either revocable at will or unenforceable in broad categories of disputes. Similarly, in a number of states, international arbitral awards are subject to either de novo judicial review or to similarly rigorous scrutiny on other grounds. Finally, some national courts have been prepared to interfere in the international arbitral process for example, by purporting to remove arbitrators, to resolve "preliminary" issues, to bar foreign lawyers from appearing, or to enjoin arbitrations.
During the last decade, a number of states, which historically distrusted international arbitration, have ratified the New York Convention and/or enacted legislation supportive of the arbitral process. These include Russia, India, China, Saudi Arabia, Argentina, Algeria, Bahrain, Tunisia, Nigeria, Peru, and Venezuela. Although there is often little practical experience with the application of arbitration statutes in such states, these statutes have the potential for providing a more stable, predictable framework for international arbitration. Unfortunately, even where national law is superficially supportive of the international arbitral process, many national courts have displayed a readiness to hold arbitration agreements or awards invalid, particularly when requested to do so by local individuals, companies, or state entities.

Despite the hostility to international arbitration in some parts of the world, most states in Europe, North America, and parts of Asia have adopted legislation that provides effective and stable support for the arbitral process. In particular, England, Switzerland, the United States, Canada, France, Sweden, Belgium, the Netherlands, Austria, Germany, and Italy have enacted arbitration statutes that ensure the basic enforceability of arbitration agreements and awards with minimal judicial interference in the arbitral process.

**Choice of Arbitration Law and Procedural Rules**

Parties frequently agree to arbitration to avoid the jurisdictional and choice of law uncertainties that arise when international disputes are litigated in national courts. Unfortunately, international arbitration can produce its own set of complex, often unpredictable choice of law issues. Choice of law issues play an important role in international commercial arbitration. It is necessary at the outset to distinguish between four separate choices of law issues that can arise in connection with an international arbitration:
1. The substantive law governing the merits of the parties' underlying contract and other claims.

2. The substantive law governing the parties' arbitration agreement.

3. The procedural law applicable to the arbitration proceedings (also called the "curial law" or the "lex arbitri").

4. The conflict of law rules applicable to select each of the foregoing laws. Although not common, it is possible for each of these four issues to be governed by a different national (or other) law.

Each of the foregoing choice of law issues can have a vital influence on international arbitral proceedings. Different national laws provide different sometimes dramatically different rules applicable at different stages of the arbitral process. Understanding which national rules will potentially be applicable can therefore be critical. The parties' underlying dispute will ordinarily be resolved under the rules of substantive law of a particular national legal system. In the first instance, it will usually be the arbitrators who determine the substantive law applicable to the parties' dispute. International arbitrators typically give effect to the parties' agreements concerning applicable substantive law ("choice-of-law clauses"). The principal exception is where mandatory national laws or public policies purport to override private contractual arrangements.

Where the parties have not agreed upon the substantive law governing their dispute, the arbitral tribunal must select such a law. In so doing, the tribunal will usually refer to some set of national conflict of laws rules. Although the historical practice was to apply the national conflict of laws rules of the arbitral situs, more recent practice is diverse. Some tribunals and commentators adhere to the traditional approach, while others look to the conflicts rules of all states having a connection with the dispute. Additionally, some authorities appear to be moving towards recognition of an international
body of conflict of laws rules. There is also authority supporting an arbitral tribunal's "direct" application of substantive rules of law, purportedly without prior recourse to any set of conflict of laws rules. The development of bodies of international substantive rules dealing with commercial matters has facilitated this development.

Arbitration agreements are regarded under most national laws and institutional arbitration rules as "separable" from the underlying contract in which they appear. One consequence of this is that the parties' arbitration agreement may be governed by a different national law than that applicable to the underlying contract. This can occur either by the parties' express choice of law or by the application of conflict of laws rules i.e. theoretically different substantive laws may be applied for the parties' arbitration agreement and their underlying contract.

The following four alternatives of law governing an arbitration agreement are of particular importance, they are as follows:

1. The law chosen by the parties to govern the arbitration agreement itself.
2. The law of the arbitral situs.
3. The law governing the parties' underlying contract.
4. The law of the forum in which judicial enforcement of the agreement is sought (for example, the FAA in a U.S. court and the IACA in India). In the absence of a choice by the parties, arbitral tribunals and national courts tend to apply the law of the arbitral situs.

The arbitration proceedings themselves are also subject to legal rules. The law governing the arbitral proceedings is variously referred to as the procedural law of the arbitration, the curial law, the lex arbitri, or the loi de l'arbitrage.
Among other things, the procedural law applicable to an arbitration typically deals with such issues as the appointment and qualifications of arbitrators, the qualifications and professional responsibilities of parties’ legal representatives, the extent of judicial intervention in the arbitral process, the procedural conduct of the arbitration, and the form of any award. Different national laws take significantly different approaches to these various issues. In some countries, national law imposes significant limits or requirements on the conduct of the arbitration and local courts have broad powers to supervise arbitral proceedings. Elsewhere, and in most developed jurisdictions, local law affords international arbitrators virtually unfettered freedom to conduct the arbitral process subject only to basic requirements of procedural regularity ("due process" or "natural justice").

In most cases, the procedural law applicable to the arbitral proceedings will be the law of the arbitral situs, the place where the parties have agreed that the arbitration will be seated and that arbitral hearings are conducted. Parties nonetheless have the power, under many developed legal systems, to agree to the application of a different procedural law than that of the arbitral situs. This seldom occurs in practice, and the effects of such an agreement are uncertain.

Selecting each of the bodies of law identified above, the laws applicable to the merits of the underlying dispute, to the arbitration agreement, and to the arbitration proceedings, ordinarily requires application of conflict of laws rules. In order to select the substantive law governing the parties' dispute, for example, the arbitral tribunal must often apply a conflict of laws system. And, just as different states have different rules of substantive law, they also have different conflict of laws rules. An international arbitral tribunal must therefore decide at the outset what set of conflicts rules to apply. The actual practice of arbitral tribunals in selecting the law applicable to each of the foregoing issues varies significantly. It includes the following approaches
1. Application of the arbitral situs' conflict of laws rules.

2. Application of the "international" conflict of laws rules.

3. Successive application of the conflict of laws rules of all interested states.

4. Direct application of substantive law without any express conflicts analysis.

**Following are the procedural laws dealing with International Arbitration:**

1. UNCITRAL Model Law on International Commercial Arbitration: A leading effort towards harmonization in the field of international commercial arbitration is the United Nations Commission on International Trade Law ("UNCITRAL") Model Law on International Commercial Arbitration. The UNCITRAL Model Law was adopted by a resolution of UNCITRAL in Vienna in 1985 and by a U.N. General Assembly resolution later the same year. The Model Law is designed to be implemented by national legislatures, with the objective of further harmonizing the treatment of international commercial arbitration in different countries.

2. UNCITRAL Arbitration Rules: As significant to the development of the international arbitral regime as the UNCITRAL Model Law are the UNCITRAL Arbitration Rules. The UNCITRAL Rules were promulgated by Resolution 31/98, adopted by the General Assembly of the United Nations on December 15, 1976. The UNCITRAL Arbitration Rules were designed for use in ad hoc international arbitrations. When they were adopted in 1976, the UNCITRAL Rules were the only set of rules available specifically for that purpose,
although alternatives now exist. Under the Rules, the Secretary General of the Permanent Court of Arbitration serves as appointing authority, unless the parties agree to the contrary.

The objective of the UNCITRAL Rules was to create a relatively predictable and stable procedural framework for international arbitrations without stifling the informal and flexible character of such dispute resolution mechanisms. The Rules aimed to satisfy common law, civil law, and other jurisdictions, as well as capital-importing and capital-exporting interests. Foreign states, which generally will have supported the Rules in the United Nations debates, often find it difficult to object to their use in an arbitration agreement or arbitral proceeding.

The UNCITRAL Rules have contributed significantly to the harmonization of international arbitration procedures. That is reflected in part by the readiness of the AAA and the IACAC to base the AAA International Rules and IACAC Rules substantially on the UNCITRAL Rules. Other institutional rules, including the LCIA Rules, have also drawn on the UNCITRAL Rules.

3. IBA Rules on the Taking of Evidence in International Commercial Arbitration: In 1983, the International Bar Association adopted the "Supplementary Rules Governing the Presentation and Reception of Evidence in International Commercial Arbitration." The Rules attempted to provide a blend of civil law and common law approaches to the subjects of discovery and evidentiary presentations in arbitration. The Rules were revised in 1999, and re-titled the IBA "Rules on the Taking of Evidence in International Commercial Arbitration." The Rules are intended principally for contractual incorporation into parties' arbitration agreements, but they are also sometimes the basis for an arbitral tribunal's procedural rulings.
4. ABA/AAA Code of Ethics and IBA Ethics in International Arbitration: In 1980, a joint committee of the American Bar Association and American Arbitration Association adopted the ABA/AAA Code of Ethics. The Code sought to provide ethical guidelines, focusing particularly on issues of bias and partiality, for arbitrators. Consistent with historic practice in the United States, the Code set different ethical standards for party-appointed and "neutral" arbitrators.

In 1990, however, the American Bar Association recommended amendment of the Code of Ethics to provide for the neutrality and impartiality of all members of the arbitral panel (unless otherwise agreed). The American Bar Association is presently considering revisions to the Code of Ethics. In 1987, the International Bar Association adopted "Ethics for International Arbitration," derived in substantial part from the ABA/AAA Code, the IBA effort sought to establish uniform ethical standards for application to international arbitrators. Unlike the original ABA/AAA Code, the IBA Ethics applied the same standards to party-appointed and neutral arbitrators. The IBA Ethics are influential guidelines in international arbitration practice.

5. UNCITRAL Notes on Organizing Arbitral Proceedings: In 1996, UNCITRAL published the "UNCITRAL Notes on Organizing Arbitral Proceedings." The UNCITRAL Notes are non-binding guidelines for arbitrators and parties designed to identify issues that frequently arise in the course of international arbitrations. Among other things, the UNCITRAL Notes briefly discuss procedural rules, communications, written submissions, evidence, witnesses, and hearings.
Fundamental importance of an arbitration agreement

Introduction to Arbitration Agreements
The foundation for almost every international arbitration is an international arbitration agreement. In the absence of a valid agreement to arbitrate, there is generally no basis for requiring arbitration or for enforcing an arbitral award against a party. International arbitration agreements can be drafted in countless different ways. Typically, an arbitration agreement will be a provision in an underlying commercial contract, calling for arbitration of any future disputes relating to the contract. Such a provision can be either short and standardised or longer and tailor-made for a particular transaction. As a model of brevity, if not prudence, European commentators cite a clause that provided "English law arbitration, in London according ICC Rules." A U.S. counterpart read: "Arbitration, if required in New York City."

At the opposite end of the spectrum are multi-paragraph arbitration provisions, recommended by assiduous practitioners for inclusion in commercial contracts, or specially-drafted for a particular transaction. It is also possible for entire agreements to be devoted exclusively to the arbitration of disputes under a related commercial contract or series of contracts. In between these extremes are model clauses promulgated by the ICC, LCIA, AAA, and other international arbitration institutions. Whatever form they may take, international arbitration agreements are vitally important to the international arbitral process. Properly drafted, they can pave the way for a relatively smooth and efficient arbitration; less carefully drafted they can give rise to a host of legal and practical issues.

Separability of the Arbitration Agreement
In the international context, arbitration clauses are generally deemed to be presumptively "separable" or "severable" from the underlying contract within
which they are found. The "separability doctrine" is specifically provided for by leading institutional arbitration rules, and by national arbitration legislation or judicial decisions from many jurisdictions, including the United States and India.

The separability doctrine provides that an arbitration agreement, even though included in and related closely to an underlying commercial contract, is a separate and autonomous agreement. According to a leading international arbitral award: "The principle ... of the autonomy or the independence of the arbitration clause ... has been upheld by several decisions of international case law." The analytical rationale for the separability doctrine is that the parties' agreement to arbitrate consists of promises that are distinct and independent from the underlying contract: "the mutual promise to arbitrate form the quid pro quo of one another and constitute a separable and enforceable part of the agreement."

The separability doctrine is regarded as having important consequences for the arbitral process: "Acceptance of autonomy of the international arbitration clause is a conceptual cornerstone of international arbitration." Among other things, the separability doctrine is generally understood as implying the continued validity of an arbitration clause (notwithstanding defects in the parties' underlying contract), and as permitting the application of different substantive laws to the parties' arbitration agreement and underlying contract.

The UNCITRAL Model Law, the Swiss Law on Private International Law, the English Arbitration Act, 1996, the Indian Arbitration and Conciliation Act, 1996 and the Federal Arbitration Act ("FAA"), as well as provisions from the UNCITRAL, ICC, and LCIA arbitration rules introduce the separability doctrine.

A Soviet arbitral tribunal in All-Union Export-Import Association v. JOC Oil Ltd, by its award dealt rigorously with the separability doctrine and other related issues. Sojuznefteexport (the "Association" or "SNE") was a foreign
trade organization established under the laws of the former Union of Soviet Socialist Republics ("USSR"). In 1976, SNE entered into various agreements to sell quantities of oil to JOC Oil Limited ("JOC"), a Bermuda company.

The purchase agreements incorporated SNE's standard conditions, which contained the following arbitration clause:

"All disputes or differences which may arise out of this contract or in connection with it are to be settled, without recourse to the general Courts of law, in the Commission of the U.S.S.R. Chamber of Commerce and Industry in Moscow ["FTAC"], in conformity with the rules of procedure of the above Commission."

JOC took delivery of 33 oil shipments (worth approximately $100 million) without paying for them. Following JOC's non-payment, SNE initiated arbitration under the arbitration clause set forth above. JOC replied, in part, by claiming that the purchase agreement had not been executed by two authorised representatives of SNE and accordingly was void under Soviet law. JOC also alleged that, as a consequence, the arbitral tribunal lacked competence to adjudicate the dispute because the arbitration clause was void. SNE claimed that the sales agreement was not void and that, even if it were, the arbitration clause was separable and the law applicable to that agreement did not require two signatures to be valid.

As a result the arbitral tribunal held that "the Commission has recognized that an arbitration agreement (arbitration clause) is a procedural contract, independent from the material-legal contract and that therefore the question as to the validity or invalidity of this contract does not affect the agreement of the parties about the submission of the existing dispute to the jurisdiction of the FTAC. The Commission has come to the conclusion that the arbitration clause contained in the contract is valid and therefore in accordance with the right assigned to it has recognized itself as competent to hear the dispute as to its essence and to rule upon it. The arbitral tribunal further held that, although
the underlying sales contract was void, Soviet principles of restitution applied. Under these principles, the tribunal awarded SNE the value of the oil shipped to JOC Oil, at the then-prevailing international oil prices. It also awarded SNE lost profits realized by JOC Oil (in an amount equal to market interest rates. This produced an award of approximately $200 million in SNE's favour.

After the arbitral award was made against JOC Oil, Sojuznefteexport sought to enforce it in Bermuda. The first instance court denied recognition on various grounds, including that the arbitral tribunal lacked jurisdiction. The court held that "based on the Tribunal's finding that the underlying contract was invalid ab initio, then under both Soviet and English law there never was any contract between the parties from the very onset as such there never was an arbitration clause or agreement which could be submitted to arbitration." This judgment was reversed on appeal.

Finally, the U.S. Supreme Court's decision in Prima Paint Co. v. Conklin Mfg Co., is one of the cases of seminal treatment of the separability doctrine by a national court, Justice FORTAS said "This case presents the question whether the federal court or an arbitrator is to resolve a claim of "fraud in the inducement," under a contract governed by the Federal Arbitration Act, 1925, where there is no evidence that the contracting parties intended to withhold that issue from arbitration...."

Flood & Conklin Manufacturing Company ("F&C") entered into a Consulting Agreement with Prima Paint Corporation ("Prima Paint"); at about the same time, Prima Paint also purchased F&C's paint business. The Consulting Agreement obligated F&C to assist Prima Paint's exploitation of the paint business, and forbid it from competing with that business.

The agreement contained what the Court termed "a broad arbitration clause," which provided:
"Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in the City of New York, in accordance with the rules then obtaining of the American Arbitration Association ..."

One week after the Consulting Agreement was executed, F&C filed a bankruptcy petition. Prima Paint thereafter withheld amounts payable under the agreement and notified F&C that it had breached the contract by fraudulently representing that it was solvent. F&C then served a notice of intention to arbitrate. Prima Paint responded by filing suit in federal district court, seeking to rescind the Consulting Agreement on grounds of fraudulent inducement. F&C moved to stay the judicial action pending arbitration.

The District Court granted F&C’s motion to stay the action pending arbitration, holding that a charge of fraud in the inducement of a contract containing an arbitration clause as broad as this one was a question for the arbitrators and not for the court. For this proposition it relied on Robert Lawrence Co. v. Devonshire Fabrics, Inc120. The Court of Appeals for the Second Circuit dismissed Prima Paint's appeal. It held that the contract in question evidenced a transaction involving interstate commerce; that under the controlling Robert Lawrence Co. decision a claim of fraud in the inducement of the contract generally as opposed to the arbitration clause itself, is for the arbitrators and not for the courts and that this rule of "national substantive law" governs even in the face of a contrary state rule. We agree, albeit for somewhat different reasons, and affirm the decision of the District Court.

**Interpretation and Enforceability of International Arbitration Agreements:**

Related to the separability doctrine is the allocation of authority between arbitrators and national courts to decide disputes over the interpretation and
enforceability of arbitration agreements. That is, "who decides" disputes over the formation, validity or interpretation of arbitration agreements.

Disputes over the enforceability or interpretation of an arbitration agreement can arise in a variety of different circumstances.

1. When an adverse party attempts to commence arbitration, a party may refuse by inaction to honour the arbitration clause, simply by not participating in the arbitral process. If this occurs, the meaning or enforceability of the clause may be raised by the party pursuing arbitration in a judicial action seeking an order to compel arbitration. Alternatively, the arbitral tribunal may proceed to a final default award (either expressly or impliedly confirming its own jurisdiction). The meaning and enforceability of the parties' arbitration agreement may thereafter be raised by the losing party in either a defense to judicial enforcement of the award brought by the prevailing party or in a judicial action to vacate or annul the award.

2. One party may commence litigation concerning the parties' underlying dispute in national courts in derogation of the arbitration agreement. It may do so either concurrently with the other party's effort to initiate arbitration or before any effort to invoke arbitration has occurred. In either event, the meaning or enforceability of the parties' arbitration agreement is likely to arise in a motion to suspend or stay judicial proceedings pending arbitration. The interpretation or validity of the parties' arbitration agreement may also be simultaneously presented to the arbitral tribunal, if one has been constituted.

3. Both parties may participate in the arbitration process and forego litigation in national courts. Nevertheless, one party may choose to argue to the arbitral tribunal that it lacks jurisdiction over some or all of
the claims before it. The tribunal will generally hear argument on that issue and render an interim jurisdictional award. Assuming that the tribunal upholds its jurisdiction, the unsuccessful party can then seek to vacate or annul the jurisdictional award (or a final award, dealing inter alia with jurisdiction) in a national court.

4. The parties can arbitrate the merits of their dispute, with one party attempting to reserve its rights as to jurisdiction. Once a final arbitral award is rendered, the losing party may seek to vacate or annul the award; alternatively, it may refuse to honor the award and the prevailing party will be required to seek judicial enforcement. Subject to claims that jurisdictional objections have been waived, the proceedings to vacate or enforce the final award may raise issues relating to the enforceability of the underlying arbitration agreement.

In First Options of Chicago, Inc. v. Kaplan, the case concerns several related disputes between, on one side, First Options of Chicago, Inc., a firm that clears stock trades on the Philadelphia Stock Exchange, and, on the other side, three parties: Manuel Kaplan; his wife Carol Kaplan; and his wholly owned investment company, MK Investments, Inc. (MKI), whose trading account First Options cleared. The disputes center around a "workout" agreement, embodied in four separate documents, which governs the "working out" of debts to First Options that MKI and the Kaplans incurred.

In 1989, after entering into the agreement, MKI lost an additional $1.5 million. First Options then took control of, and liquidated, certain MKI assets; demanded immediate payment of the entire MKI debt; and insisted that the Kaplans personally pay any deficiency. When its demands went unsatisfied, First Options sought arbitration. MKI, having signed the only workout document (out of four) that contained an arbitration clause, accepted arbitration. The Kaplans, however, who had not personally signed that
document, denied that their disagreement with First Options was arbitrable and filed written objections to that effect with the arbitration panel. The arbitrators decided that they had the power to rule on the merits of the parties' dispute, and did so in favour of First Options.

The Kaplans then asked the Federal District Court to vacate the arbitration award and First Options requested its confirmation. The court confirmed the award. Nonetheless, on appeal the Court of Appeals for the Third Circuit agreed with the Kaplans that their dispute was not arbitrable; and it reversed the District Court's confirmation of the award against them. The Court of Appeals for the Third Circuit further held that "a party who has not agreed to arbitrate will normally have a right to a court's decision about the merits of its dispute (say, as here, its obligation under a contract). But, where the party has agreed to arbitrate, he or she, in effect, has relinquished much of that right's practical value. The party still can ask a court to review the arbitrators' decision, but the court will set that decision aside only in very unusual circumstances."

In AT&T Technologies, Inc, v. Communications Workers and Steelworkers v. Warrior & Gulf Navigation Co it was well settled that the parties may agree to arbitrate arbitrability. That is to say, the court should give considerable leeway to the arbitrator, setting aside his or her decision only in certain narrow circumstances. This Court has added an important qualification, applicable when courts decide whether a party has agreed that arbitrators should decide arbitrability: Courts should not assume that the parties agreed to arbitrate arbitrability unless there is "clear and unmistakable" evidence that they did so.

The law treats silence or ambiguity about the question "who primarily should decide arbitrability" differently from the way it treats silence or ambiguity about the question "whether a particular merits-related dispute is arbitrable because it is within the scope of a valid arbitration agreement" incase of the
latter question the law reverses the presumption. Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.

In Christopher Brown Ltd v. Genossenschaft Österreichischer Waldbesitzer Holzwirtschaftsbetriebe, it was held that "Despite the arbitrators' power to rule on jurisdictional challenges, either party to the arbitration would be free to seek either immediate or subsequent judicial resolution of the jurisdictional challenge. (In the event of concurrent arbitral and judicial proceedings, each decision-maker (i.e., arbitrator and court) could consider the desirability of staying its own proceedings.) In the event of an arbitral award on the subject of jurisdiction (either interim or final), the arbitrator's ruling would be subject to judicial review under otherwise-applicable standards of review."

**Law Applicable to International Arbitration Agreements.**

Identifying the law applicable to an international arbitration agreement is a complex, but critically important subject. The topic has given rise to extensive commentary, and even more extensive confusion. This confusion does not comport with the ideals of international commercial arbitration, which seeks to simplify, expedite, and rationalize dispute resolution. Nonetheless, the intricacies of contemporary conflicts of law doctrine must be understood.

The law applicable to the parties' arbitration agreement may be different from both the law applicable to the substance of the parties' underlying contract and to the arbitral proceedings. There are four possible alternatives for the law governing an arbitration agreement, they are as follows:

1. The law expressly or impliedly chosen by the parties to govern the arbitration agreement itself.

2. The law of the arbitral situs.

3. The law governing the parties' underlying contract.
4. The law of the forum in which judicial enforcement of the agreement is sought (for example, the FAA in a U.S. court and the IACA in India). There is little uniformity among either arbitral tribunals or national courts in choosing between these alternatives.

The choice of law applicable to international arbitration agreements is affected by both the New York Convention and national law. Both sources arguably provide choice of law rules and/or substantive rules applicable to the formation, validity, and interpretation of international arbitration agreements. Determining the interplay between the Convention's choice of law and substantive rules, and those of national law, can be complex. The New York Convention, the Inter-American Convention, and the 1961 European Convention. And the provisions of the UNCITRAL Model Law, the Swiss Law on Private International Law, the FAA, and the IACA deal with the choice of law applicable to international arbitration agreements.

In Ledee v. Ceramiche Ragno, the defendants-appellees are Italian corporations that make and market ceramic tiles. The plaintiffs-appellants are two Puerto Rico corporations and an individual citizen of the Commonwealth. In 1964 the parties entered into a distributorship agreement giving the appellants exclusive rights to sell and distribute the appellees' ceramic tiles in the Antilles. The agreement contained the following paragraph 9:

"Any dispute related to the interpretation and application of this contract will be submitted to an Arbiter selected by the President of the Tribunal of Modena, Italy, who will judge as last resort and without procedural formalities".

In March, 1981, the appellants brought suit in the Superior Court of Puerto Rico, alleging that the appellees had breached the contract by unjustifiably terminating their distributorship. The complaint sought damages in accord with the provisions of the Puerto Rico Dealers Act. The appellees removed
the case to the United States District Court for the District of Puerto Rico. The district court ordered arbitration in accord with paragraph 9 and dismissed the complaint. This appeal ensued. Appellants contend first that, under the laws of the Commonwealth of Puerto Rico, paragraph 9 is void and unenforceable. They invoke the general principle that contracting parties may not agree to clauses or conditions "in contravention of law, morals, or public order." And to show that paragraph 9 is contrary to the public order, they direct attention to the Dealers Act, as amended. The Dealers Act was enacted to help protect Puerto Rico distributors from the allegedly exploitative practices of certain foreign suppliers. Substantively, it prohibited termination of dealership contracts except "for just cause." Moreover, it declared that its provisions were of a public order and that the dealers' rights under it could not be waived. It reads as follows

"Any stipulation that obligates a dealer to adjust, arbitrate or litigate any controversy that comes up regarding his dealer's contract outside of Puerto Rico, or under foreign law or rule of law, shall be likewise considered as violating the public policy set forth by this chapter and is therefore null and void".

Nothing in the record suggests that the arbitration agreement was "null and void, inoperative or incapable of being performed" within the terms of Art. II (3) of the Convention.

In Rhone Mediterranee Compagnia Francese di Assicurazioni e Riassicurazioni v. Achille Lauro, Rhone Mediterranee Compagnia Francese di Assicurazioni E Riassicurazioni ("Rhone"), a casualty insurer, appeals from an order of the District Court of the Virgin Islands staying Rhone's action pending arbitration. The action results from a fire loss, which occurred when the vessel Angelina Lauro burned at the dock of the East Indian Co. Ltd in Charlotte Amalie, St. Thomas. At the time of the fire the vessel was under time charter to Costa Armatori SpA ("Costa"), an Italian Corporation. Rhone
insured Costa, and reimbursed it for property and fuel losses totaling over one million dollars. Rhone, as subrogee of Costa, sued the owner of the vessel, Achille Lauro, ("Lauro") and its master, Antonio Scotto di Carlo, alleging breach of the Lauro-Costa time charter, unseaworthiness, and negligence of the crew.

The district court granted defendants' motion for a stay of the action pending arbitration, and Rhone appeals. As subrogee, Rhone stands in place of its insured, the time charterer Costa. In the time charter contract there is a clause:

"23. Arbitration. Any dispute arising under the Charter to be referred to arbitration in London (or such other place as may be agreed according to box 24) one arbitrator to be nominated by the Owners and the other by the Charterers, and in case the Arbitrators shall not agree then to the decision of an Umpire to be appointed by them, the award of the Arbitrators or the Umpire to be final and binding upon both parties. Box 24 Place of arbitration (only to be filled in if place other than London agreed (cl. 23) NAPOLI.

All the parties to the time charter agreement and the lawsuit are Italian. Italy and the United States are parties to the New York Convention. The FAA, implements the United States' accession on September 1, 1970 to the Convention by providing that it "shall be enforced in United States courts in accordance with this chapter." Rhone does not dispute that the Convention is applicable. What Rhone does contend is that under the terms of the Convention the arbitration clause in issue is unenforceable. Rhone's argument proceeds from a somewhat ambiguous provision in Art. II (3) of the Convention.

Rhone contends that when the arbitration clause refers to a place of arbitration, here Naples, Italy, the law of that place is determinative. It then relies on the affidavit of an expert on Italian law, which states that in Italy an arbitration clause calling for an even number of arbitrators is null and void,
even if, as in this case there is a provision for their designation of a tie
breaker.

The ambiguity in Art. II (3) of the Convention with respect to governing law
contrasts with Art. V, dealing with enforcement of awards. Art. V (1)(a)
permits refusal of recognition and enforcement of an award if the "agreement
is not valid under the law to which the parties have subjected it or, failing any
indication thereon, under the law of the country where the award was made."
Art. V (1)(c) permits refusal of recognition and enforcement if "the award has
not yet become binding on the parties, or has been set aside or suspended by
a competent authority of the country in which, or under the law of which,
that award was made." Art. V (1)(d) permits refusal of enforcement if "the
composition of the arbitral authority or the arbitral procedure was not in
accordance with the agreement of the parties, or, failing such agreement, was
not in accordance with the law of the country where the arbitration took
place." Thus Art. V unambiguously refers the forum in which enforcement of
an award is sought to the law chosen by the parties, or the law of the place of
the award.

Rhone and the defendants suggest different conclusions that should be drawn
from the differences between Art. II and Art. V. Rhone suggests that the
choice of law rule of Art. V should be read into Art. II. The defendants urge
that in the absence of a specific reference Art. II should be read so as to
permit the forum, when asked to refer a dispute to arbitration, to apply its
own law respecting validity of the arbitration clause. However, we conclude
that the meaning of Art. II(3) which is most consistent with the overall
purposes of the Convention is that an agreement to arbitrate is "null and
void" only when

1. It is subject to an internationally recognized defense such as duress,
   mistake, fraud, or waiver.

2. It contravenes fundamental policies of the forum state.
The court therefore held that "an action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States." Since no federal law imposes an odd number of arbitrators rule - the only defect relied upon by Rhone, the district court did not err in staying the suit for breach of the time charter agreement pending arbitration...."

In ICC Case No. 6149 (names of the parties not disclosed due to confidentiality), A Korean manufacturer entered into three contracts to supply an Iraqi buyer with various goods. The goods were to be delivered in Iraq. The contracts contained the following arbitration clause:

"Any dispute with regards to this contract will be solved cordially; otherwise by two arbitrators appointed by each side. In an eventual non agreement it will be governed by the laws and regulations of the International Chamber of Commerce in Paris whose ruling should be final."

Disputes arose under the contract, which led to various revisions to the parties' original contracts. These revisions failed to preserve relations. In due course, the Korean seller commenced an arbitration under ICC Rules. The Iraqi purchaser raised jurisdictional objections to the tribunal's jurisdiction, citing Sect. 2 of Jordanian Law No. 35 of 1983.

The tribunal rendered the following interim award:
"Sect. 2 of the Jordanian Law No. 35 of 1983 called "Amendment Law to the Merchandise Maritime Law" is not applicable to the arbitration agreements contained in the three contracts of sale. The arbitration agreements therefore have not been voided by said Sect. 2. But they are still valid and binding upon the parties thus being susceptible of serving as a legitimate basis for the exercise of the arbitral tribunal's jurisdiction over the subject-matter of this arbitration...."
Applicability of International Conventions and National Legislation

An important preliminary issue in disputes over the enforcement or interpretation of international arbitration agreements is determining the applicability of the New York Convention (or other international arbitration conventions or treaties) and national arbitration legislation to a particular agreement. Both international arbitration conventions and national arbitration statutes contain "jurisdictional requirements" which define what arbitration agreements are (and are not) subject to those instruments' substantive rules. These jurisdictional requirements can have important practical consequences, because the substantive terms of the Convention and most contemporary international arbitration statutes (such as the UNCITRAL Model Law) are "pro-arbitration."

Despite its importance, there are numerous international arbitration agreements to which the New York Convention does not apply: "there is a vast area not covered by the Convention. " Defining precisely those arbitration agreements that are subject to the New York Convention is not always straightforward. In contrast to Art. I's definition of the arbitral awards which are subject to the Convention, nothing in Art. II (or otherwise) details which arbitration agreements fall within Art. II's "recognition" requirement. In the words of one commentator, "the Convention does not give a definition as to which arbitration agreements fall under" Art. II. Five jurisdictional requirements of the New York Convention warrant attention (and parallel similar requirements under the Inter-American Convention). They are as follows:

1. Art. II(1) limits the Convention's coverage to "agreements in writing."

2. The Convention is applicable in many national courts only on the basis of reciprocity (i.e., vis-Ã±vis other nations that also have ratified the Convention).
3. The Convention only applies to agreements concerning "foreign" or "non-domestic" awards.

4. The Convention is generally applicable only to differences arising out of "commercial" relationships.

5. Again pursuant to Art. II (1), the parties' agreement must provide for arbitration of "differences which have arisen or which may arise ... in respect of a defined legal relationship, whether contractual or not."

Like the New York Convention, contemporary international arbitration statutes in most states contain either express or implied jurisdictional limitations. These jurisdictional requirements have substantial practical importance, because they determine when the generally "pro-arbitration" substantive provisions of contemporary arbitration legislation apply. The jurisdictional requirements of national arbitration statutes vary from state to state. In general, however, these jurisdictional limits are broadly similar to those contained in the New York Convention:

1. A "writing" requirement.

2. A possible reciprocity requirement.

3. A "foreign" or "international" connection requirement.

4. A "commercial relationship" requirement.

5. A "defined relationship" requirement.

The New York Convention and most contemporary national arbitration statutes that regulate international arbitration apply only to arbitration agreements that have some sort of "foreign" or "international" connection. This is consistent with the purpose of both types of instruments, which is to facilitate the international arbitral process, without disturbing local legal rules.
for domestic arbitration matters. The New York Convention is applicable only to arbitral awards:

1. That are "made" in a state other than the one where recognition or enforcement is sought, or

2. That are "not considered as domestic awards" under the law of the enforcing state.

These provisions have generally been held applicable by analogy to arbitration agreements (as well as awards), extending the Convention only to those agreements that have a "foreign" or "international" connection. Similarly, the Inter-American Convention is applicable (according to its title and preamble) to "international commercial arbitration." The Conventions' limitation to international arbitration agreements is paralleled by similar jurisdictional requirements in many national arbitration statutes. For example, Art 1(1) of the UNCITRAL Model Law provides that the Law applies only to "international commercial arbitration," as defined in Art 1(3). Similarly, Art 176 of the Swiss Law on Private International Law provides that the Act's international arbitration provisions are limited to cases where, "when the arbitration agreement was concluded, at least one of the parties had neither its domicile nor its habitual residence in Switzerland." These jurisdictional limits serve the general purpose of permitting separate legal regimes for international and domestic arbitration agreements (in light of the differing policies implicated in each case).

In Brier v. Northstar Marine Inc, on or about October 21, 1990, plaintiff John H. Brier, Jr., the owner of the vessel and three other individuals were traveling from Connecticut to Maryland aboard a fifty-three (53) foot yacht titled the M/Y Joanie Bee.... As plaintiff was entering the Hereford Inlet in New Jersey, the vessel ran aground.... Plaintiff (contacted defendant) Northstar Marine, Inc. to ascertain whether the company could provide the necessary assistance to plaintiff in refloating his vessel. Captain Risko, the owner and operator of
Northstar Marine, Inc. informed plaintiff that he could provide the necessary assistance.... Captain Risko informed Mr. Brier that he would be conducting a salvage operation. He then read from a document known as the "Miranda Act for Salvors" which basically states that the Lloyd's of London Form will be used. This form also states that the terms are "No Cure, No Pay," which allows the company to conduct the salvage operation without a prearranged price and at the completion of the operation the company will submit a claim. If the master or his insured do not agree with the claim, it must be arbitrated by the Lloyd's of London Arbitration Panel.

Somewhere between 8:25 a.m. and 9:00 am on October 22, 1990, Mr. Cassidy, the owner and operator of the Cape May Marine Services, arrived at plaintiff's motel room with an initial set of documents for plaintiff to sign prior to defendants attempting to refloat the boat. Among the documents was the Lloyd's Standard Form of Salvage Agreement (hereinafter, "LOF Agreement"), which was approximately three pages long. Mr. Cassidy then proceeded to scan the document with the plaintiff, highlighting each paragraph. The document provided that all disputes between the parties be arbitrated at Lloyd's of London in England and that English law will govern the resolution of the dispute.

Plaintiff signed the documentation including the LOF Agreement and his vessel was thereafter refloated and towed to the Canyon Club Marina in New Jersey.... On or about October 24, 1990, plaintiff was informed that the costs of the refloating and towing his vessel amounted to $38,250.00. Plaintiff refused to pay this amount and on February 11, 1991 instituted the instant action, for a declaratory judgment that the LOF Agreement was an invalid adhesion contract. The defendants invoked the arbitration clause and the New York Convention. Plaintiff replied that the Convention did not apply. ...
It is plaintiff's contention that the provisions of the Lloyd's Standard Form of Salvage Agreement requiring the contractor and the owner to arbitrate their dispute concerning compensation in London pursuant to English law, when both are U.S. citizens and their relationship is not reasonably related to England, falls outside the New York Convention as enacted in the United States and therefore this court is precluded from requiring arbitration in accordance with the agreement.

In the present case the parties are in agreement that all are citizens of the United States.... However, my inquiry cannot end here since 202 ... carves out certain exceptions even where all parties to the relationship are citizens of United States.... The legislative history of 202 makes it clear that where the matter is solely between citizens of the United States it will fall outside the Convention unless there is a reasonable relation with a foreign state.

Therefore, unless the facts allow this case to fit within one of the four jurisdictional requirements noted above, it will fall outside the Convention and render the arbitral agreement between these parties unenforceable. The only property involved in the case at bar is the vessel, the M/Y Joanie Bee, which is registered in the State of Connecticut and at all times material hereto has been located off the Coast of New Jersey. The performance in the instant case involved the refloating of the vessel and the towing of it to Canyon Club Marina, in New Jersey. All performance, which occurred in this case, occurred within the coastal waters of New Jersey. The Defendants argue that the LOF Agreement clearly satisfies the third condition in that the language of the contract envisons that English law would apply to the arbitration, and more importantly, the arbitration and any appeal there from, would be before the Committee of Lloyd's in London, England.

The Defendants relied on Fuller Co. v. Compagne Des Bauxites De Guinea, to support their assertion that the present case is the type of enforcement Congress envisioned when it carved out the exceptions found in Title 9,
United States Cide. Sect 202. However, Fuller is easily distinguishable from the case at bar. While it is true that both parties were considered United States citizens in Fuller, the court in Fuller found the "reasonable relationship" to exist under the performance exception not the enforcement exception. In Fuller, the contract envisaged that plaintiff would provide extensive technical services in Guinea. An affidavit submitted to the court stated that the total cost of Fuller's technical representatives in Guinea was $269,562.08. Consequently, the court held that the case fell within the exception due to the "substantial amount of performance of this contract in Guinea." As stated above performance of the contract in dispute was performed solely in New Jersey.

In contrast, plaintiff asserts that the enforcement of this agreement bears no reasonable relation to London, England. The fact that the parties are currently before this court to determine the enforceability of the arbitration agreement is of itself significant. Moreover, plaintiff asserts that the vessel upon which the contractor claimed a maritime lien was located in New Jersey and therefore the security posted to obtain the release of the vessel would have remained in this district subject to enforcement of a subsequent arbitration award. I agree. Accordingly, I find this district to be the proper place to enforce an arbitral award, not London, England. Additionally, unlike the facts in Fuller, where the contract provided for the design, manufacture and sale of equipment to be used at the buyer's plant in Guinea and for extensive technical services to be provided in Guinea, in the instant case, the only visible tie with the foreign nation is found in the language of the LOF Agreement itself.

Defendants argue that the current facts set forth a reasonable relation with the foreign nation. Their contention is that the parties willingly entered into the LOF Agreement, which clearly compelled arbitration in London, England, and that the Committee of Lloyd's is the only internationally recognized body, which deals with salvage arbitrations, and no other body is so recognised.
Furthermore, defendants assert that it is undisputed that Lloyd's sits in London, England and that English law controls their arbitrations and any appeal thereof. Consequently, defendants contend that the situs and law found in the LOF Agreement was selected with care and that of itself encompasses the reasonable relation with London, England.

Defendants' argument however, is circular. If I were to agree with defendants' analysis that the reasonable relation with the foreign forum is created by the document itself, I would be allowing "the exception to swallow the rule." The only avenue, which would bring this particular issue before the court, is where a document has been signed by the parties, compelling foreign arbitration, and all the parties are United States citizens. Consequently, following defendants reasoning, in every case the parties would fall within the fourth jurisdictional exception, since the document itself would always name a foreign nation for arbitration.

Taking into consideration the purpose of the agreement and the motivation for the exception created by Congress I find based on the narrow facts before me that this case falls outside the Convention.

**International arbitration proceedings**

Procedural Issues in International Arbitration

The heart of most international arbitrations are the arbitral proceedings themselves. In international matters, arbitral proceedings can take a wide variety of forms, depending on a host of legal, practical, commercial, cultural, and other considerations. Many parties agree to international arbitration, in substantial part, because of the procedural flexibility, neutrality, and expertise, which it promises. In many cases, this promise is realized, with the arbitrators adopting efficient, fair, and transparent procedures, without rigidly adhering to any particular domestic approach to national court litigation. In some cases, however, a combination of obstructionist parties and inexperienced
Arbitrators can produce chaotic, arbitrary, or inappropriately parochial arbitral proceedings.

The arbitration proceedings themselves, as distinguished from the parties' underlying contract or arbitration agreement, are subject to a set (or sets) of legal rules. The law governing the arbitration proceedings is variously referred to as the "curial law," "lex arbitri," "procedural law," or "loi de l'arbitrage." The concept of the procedural law governing the arbitral proceedings plays a vital role in international arbitration.

The procedural law that applies to an international arbitration has a potentially significant impact on the procedures used in the arbitration. In particular, the procedural law may either require that certain arbitral procedures be adopted or forbid arbitrators from taking other procedural steps. The procedural law also has important consequences for actions to vacate or enforce an arbitral award.

Firstly, the procedural law of an arbitration may directly govern various procedural issues that arise in the arbitral proceedings. The issues that are governed by the procedural law of an arbitration are defined differently in different states. The issues potentially governed by the procedural law include matters such as:

1. The parties' autonomy to agree on substantive and procedural issues in the arbitration.
2. The arbitrators' liability, ethical standards, appointment, and removal.
3. The extent of judicial supervision of, or interference in, the arbitration proceedings (such as reviewing the arbitrator's rulings and ordering provisional relief or discovery in aid of arbitration).
4. The rights of lawyers to appear, and their ethical obligations, in the arbitration; pleading rules.

5. Evidentiary rules.

6. The permissibility and administration of oaths.

7. The conduct of hearings.


9. The arbitrators' remedial powers, including to grant provisional measures.

10. The form and making of the award.

In addition, and less clearly, the procedural law sometimes governs:

1. Interpretation and enforceability of the parties' arbitration agreement (including issues of non-arbitrability).

2. Conflict of laws rules applicable to the substance of the dispute.

3. Quasi-substantive issues, such as rules concerning interest and costs of legal representation.

Secondly, the procedural law governing the arbitration also has a decisive effect on the nation in which an action to vacate an arbitral award can properly be brought under the New York Convention. Arts V(1)(e) and VI of the Convention permit awards to be vacated by courts of the nation "under the law of which the award was made." Most commentators and courts generally agree that this reference is to the procedural law of the arbitration.
Finally, several of the exceptions to enforceability of arbitral awards under Art. V of the Convention require determination and application of the procedural law. That is, the standards set forth in the nation's law, which provides the procedural law of an arbitration must be ascertained and applied to decide whether an arbitral award can be denied recognition.

In most cases, the procedural law governing an international arbitration will be that of the arbitral seat or situs. That is the place where the arbitration proceedings will usually be conducted, the place whose law the parties intended to govern their proceedings, and the place where any arbitral award will be made. In the overwhelming majority of cases, this intention will prevail often. Nevertheless, in some cases, choice of law complexities relating to the applicable procedural law in an arbitration may arise. One party may argue that some law other than that of the arbitral situs must be applied as the applicable procedural law. In most such cases, the law governing the parties' arbitration agreement or underlying contract will be said to provide the procedural law of the arbitration. Alternatively, the arbitral tribunal may hold hearings in more than one country, provoking disputes over what the applicable procedural law is.

In Sapphire International Petroleum Limited v. National Iranian Oil Company, Art 39 of the parties' agreement provides that ... the only way of settling any difference concerning the interpretation or performance of the agreement is arbitration of the kind set out in Art. 41 of the agreement. The parties have thus unequivocally shown their mutual desire to use arbitration in order to obtain a decision which will settle once and for all their possible differences concerning the interpretation and performance of the agreement, including claims for damages.

Among other things, the parties' arbitration clause provides for the determination of a seat for the arbitration, which is a necessary element in the activity of any judicial authority. The judicial authority thus conferred upon
the arbitrator necessarily implies that the arbitration should be governed by a law of procedure and that it should be subject to the supervision of a State authority, such as the judicial sovereignty of a State.

Authority is to be found, in doctrine and case law, which gives the parties the right to make a free choice of the law of procedure to be applied to the arbitration, as for example, the State to whose judicial sovereignty the arbitration is submitted, or in other words "the location" of the arbitration. In the present case the parties agreed to leave the arbitrator free to determine the seat of the arbitration, if they failed to agree it themselves. Thus by agreeing beforehand to whatever seat was fixed by the arbitrator, who would make his choice under express delegation from the parties, they committed themselves to accept the law of procedure, which results from his choice. In this case it is the law of the Swiss canton of Vaud, since the seat of the arbitration has been fixed at Lausanne located in Vaud.

Even if this interpretation of the parties' intention is wrong, the rule is that, in default of agreement by the parties, the arbitration is submitted to the judicial sovereignty of the seat of the arbitration at the place where the case is heard. Resolution of the Institute of International Law, Arts 8, 9, 10, 12; Geneva Protocol concerning Arbitral Clauses of September 24, 1923, Art. 2. Thus, in the present case, Lausanne is at the same time the headquarters of the judicial authority, which has jurisdiction to appoint the arbitrator, the seat of the arbitration, the domicile of the sole arbitrator, and the place where all the arbitration procedure up to and including judgment has taken place.

The present arbitration, then, is governed by the law of procedure of Vaud and is subject to the judicial sovereignty of Vaud. Therefore, as far as procedure is concerned, it is subject to the binding rules of the Code of Civil Procedure of Vaud of November 20, 1911, and in particular to the 8th Title of this Code. The case has been heard in accordance with the rules prescribed by the Order of June 13, 1961, in which the arbitrator laid down the arbitral
procedure, as he was entitled to do under Art. 41, para. 7, of the agreement if the parties failed to agree upon the procedure to follow, and in accordance with Art. 511 of the Code of Civil Procedure of Vaud. Art. I of the above Order laid down that the Federal Law of Civil Procedure of December 4, 1947, was applicable where there was no contrary provision in the Order. The defendant NIOC has refused to co-operate in the procedure and has deliberately made default. Art. 41, para. 8, of the agreement lays down that the absence or default of one party should not be an obstacle to the arbitral proceedings in any of their stages. Accordingly, despite the default of the defendant, the arbitrator has proceeded to hear the case and to give judgment on the merits.

According to Art. 15 of the arbitrator's Order, which is in accordance with Art. 12 of the Federal Law of Civil Procedure, the default of one party and the omission of a procedural step simply means that the case proceeds without the step, which had been omitted. By virtue of Art. 3 of the Federal Law of Civil Procedure, the judge cannot base his judgment on facts other than those, which have been alleged during the case. As a result, the present award is based upon the facts pleaded by the plaintiff, who alone has taken part in the procedure. But in applying these rules, the arbitrator has accepted only those facts, which have been satisfactorily proved to him during the procedure ...

In ICC Case No. 5029, two French companies entered into a joint venture with two Egyptian companies. The joint venture thereafter entered into a contract to construct certain civil works in Egypt. Art. 5 (1)(b) of the Contract provided: "The Contract shall be deemed to be an Egyptian Contract and shall be governed by and construed according to the laws in force in Egypt." Art. 67 of the agreement contained an arbitration clause, providing for arbitration under ICC Rules. The agreement did not specify an arbitral situs. Disputes arose and the French companies filed a request for arbitration under the ICC Arbitration Rules against the Egyptian employer. Pursuant to Art. 12
of the ICC Arbitration Rules, the ICC International Court of Arbitration selected the Netherlands as the arbitral forum.

The defendant argued that Egyptian law of civil procedure governed the arbitration proceedings. It reasoned that the choice-of-law clause in Art. 5 covered both substantive and procedural subjects, including issues relating to the arbitration. According to defendant, the text of Art. 67 of the agreement "clearly expressed the intention of the parties that the arbitration is a local arbitration and not international" and "that it is internal and not external."

The claimant agreed with the defendant that Egyptian law rules of interpretation should be applied to the parties' contract, but distinguished between substantive and procedural law. According to the claimant substantive law is governed by the law chosen by the parties (i.e., Egyptian law), but procedural law is governed by the mandatory provisions of the place of arbitration (i.e. Dutch arbitration law).

The choice-of-law clause contained in Art. 5(1)(b) of the Contract must be interpreted in accordance with the rules of contract interpretation of Egyptian law, in particular Arts 150 et seq. of the Egyptian Civil Code. The Arbitral Tribunal will follow these rules of interpretation in respect of all the jurisdictional issues. The Arbitral Tribunal holds that the law governing the arbitration is the arbitration law of the Netherlands. The Arbitral Tribunal notes at the outset that the Contract is a truly international contract involving parties of different nationalities (i.e. French and Egyptian), the movement of equipment and services across national frontiers, and the payment in different currencies (i.e., Egyptian Pounds and U.S. Dollars).

The international character of the Contract is inconsistent with the defendant's allegation that the parties intended to provide for domestic, internal (i.e. Egyptian) arbitration. Such intent cannot be derived from the choice-of-law clause contained in Art. 5(1)(b) of the Contract, providing for the applicability of Egyptian law, whilst Art. 67, providing for arbitration...
under the Rules of the ICC, clearly expresses the contrary. As it is recognized in virtually all legal systems around the world, a basic distinction must be made between the law governing the substance and the law governing the procedure. That distinction is also recognized in Egyptian conflict of laws; whereas Art. 19 of the Egyptian Civil Code provides for the law governing the substance of the dispute, Art. 22 is concerned with the law governing the procedure. Accordingly, if the parties had wished that the arbitration be governed by Egyptian procedural law, they should have made a specific agreement thereon. Art. 5(1)(b) of the Contract is not such a provision as it does not mention specifically that arbitration is governed by Egyptian law. Failing such agreement, the arbitration law of the place governs the arbitration. This principle is in accordance with Art. V(1)(a), (d) and (e) of the New York Convention of 1958 to which Egypt and the Netherlands have adhered.

The agreement of the parties in arbitration under the Rules of the International Chamber of Commerce in Clause 67 meant that, failing their agreement on the place of arbitration, they gave, under Art. 12 of the Rules, a mandate to the Court of Arbitration to fix the place of arbitration on their behalf. It is to be noted that defendant itself proposed in the alternative The Hague as the place of arbitration. The prevailing interpretation of the Rules of the ICC nowadays, is also that the mandatory provisions of the arbitration law of the place of arbitration govern the arbitration, irrespective of the law governing the substance. Whereas Art. 13(3) of the Rules contains the contractual conflict of laws rules for determining the law governing the substance of the dispute, Art. 11 is concerned with the rules governing the proceedings and specifically requires observance of the mandatory procedural requirements of the situs.

The Arbitral Tribunal emphasizes that the applicability of Dutch arbitration law in the present case by no means implies that the Dutch rules concerning proceeding before Dutch State Courts are applicable. According to Dutch
arbitration law, parties are free to agree on the rules of procedure and, failing such agreement, the arbitrator determines the conduct of the proceedings, subject to a few necessary mandatory provisions.

In Union of India v. Mc Donnell Douglas Corporation, by a written agreement dated July 30, 1987 the plaintiffs contracted with the defendants for the latter to undertake services for the former in and about the launch of a space satellite. Art. 11 of the agreement provided that the agreement was to be governed by, interpreted and construed in accordance with the laws of India. The agreement also contained an arbitration clause (Art. 8) in the following terms:

In the event of a dispute or difference arising out of or in connection with this Agreement, which cannot be resolved by amicable settlement, the same shall be referred to an Arbitration Tribunal consisting of three members. Either Party shall give notice to the other regarding its decision to refer the matter to arbitration. Within 30 days of such notice, one Arbitrator shall be nominated by each Party and the third Arbitrator shall be nominated by agreement between the Parties to this Agreement. If no such agreement is reached within 60 days of the mentioned notice, the President of the International Chamber of Commerce shall be requested to nominate the third Arbitrator.

The third Arbitrator shall not be a citizen of the country of either Party to this Agreement. The arbitration shall be conducted in accordance with the procedure provided in the Indian Arbitration Act of 1940 or any reenactment or modification thereof. The arbitration shall be conducted in the English language. The award of the Arbitrators shall be made by majority decision and shall be final and binding on the Parties hereto. The seat of the arbitration proceedings shall be London, United Kingdom. Each Party shall bear its own cost of preparing and presenting cases. The cost of arbitration including the
fees payable to Arbitrators, shall be shared equally by the Parties to this Agreement....

The parties' dispute or difference has been referred to arbitration under the provisions of art. 8. The hearing before the arbitrators is presently fixed to begin in London on Jan. 11, 1993. The question before me is as to the law governing the arbitration proceedings. The parties are, as I understand it, agreed that this Court should decide this question, and should do so on the basis that there is no difference on this issue between English and Indian law.

In essence the plaintiffs contend that the words: "The arbitration shall be conducted in accordance with the procedure provided in the Indian Arbitration Act 1940" make clear that the parties have chosen Indian law, or at least those parts of Indian law found in the 1940 Act, to govern any arbitration proceedings arising under Art. 8. The defendants, on the other hand, contend that by stipulating London as the "seat" of any arbitration proceedings under Art. 8, the parties have made clear not merely that any arbitration will take place in London, but that English law will govern the arbitration proceedings.

An arbitration clause in a commercial contract like the present one is an agreement inside an agreement. The parties make their commercial bargain, i.e. exchange promises in relation to the subject matter of the transaction, but in addition agree on a private tribunal to resolve any issues that may arise between them. The parties may make an express choice of the law to govern their commercial bargain and that choice may also be made of the law to govern their agreement to arbitrate. In the present case it is my view that by Art. 11 the parties have chosen the law of India not only to govern the rights and obligations arising out of their agreement to arbitrate.
In legal terms, therefore, the proper law of both the commercial bargain and the arbitration agreement is the law of India. The fact that the law of India is the proper law of the arbitration agreement does not, however, necessarily entail that the law governing the arbitration proceedings themselves is also the law of India, unless there is in that agreement some effective express or implied term to that effect. In other words, it is, subject to one proviso, open to the parties to agree that their agreement to arbitrate disputes will be governed by one law, but that the procedures to be adopted in any arbitration under that agreement will be governed by another law.

The U.S. Supreme Court in Scherk v. Alberto-Culver Company, "stated that uncertainty will almost inevitably exist with respect to any contract touching two or more countries, each with its own substantive laws and conflict-of-laws rules. A contractual provision specifying in advance the forum in which disputes shall be litigated and the law to be applied is, therefore, an almost indispensable precondition to achievement of the orderliness and predictability essential to any international business transaction. Absent such agreements, one enters the dicey atmosphere of ... a legal no-man's-land, which would surely damage the fabric of international commerce and trade, and imperil the willingness and ability of businessmen to enter into international commercial agreements.

**Place of Arbitration (Arbitration Situs)**

The location of the arbitral situs is a critical issue in any international arbitration. The location of the arbitral situs can have profound legal and tactical consequences, and can materially alter the course of dispute resolution. The significance of the arbitral situs includes relatively mundane issues of convenience and cost. Although such factors are often given undue weight, they can be important to the conduct and outcome of an arbitration. An expensive arbitral forum can effectively preclude some parties from pursuing their claims, while an inconvenient forum without a developed local legal system or infrastructure can impact on the viability of the arbitration.
process. Moreover, factors such as visa requirements, availability of air or other transportation, hotel and meeting room accommodations, support staff (such as interpreters, stenographers, secretaries), and the like can bear heavily on the smooth progress of an arbitration. Much more significant than convenience is the effect of the local law of the arbitral situs on the arbitration. This requirement encompasses a number of distinct factors.

First, national courts in the arbitral situs have the potential to interfere in the ongoing arbitral proceedings. Examples of such interference include mandatory requirements for interlocutory judicial resolution of issues of law or possibilities for judicial intervention in matters such as procedural rules or selection of arbitral situs. The possibility of judicial interference may create an incentive for dilatory tactics and expensive, confusing procedural disputes.

Second, some courts, while not interfering in arbitral proceedings, will nonetheless be prepared to assist if necessary in local arbitral proceedings. Examples of desirable judicial assistance can include enforcing discovery orders made by the tribunal and enforcing orders for provisional relief, such as prejudgment attachment.

Third, the location of the arbitral situs affects the law applicable to the arbitration agreement. Arts II(3) and V(1)(a) of the New York Convention contemplate that the validity of the parties' arbitration agreement will be determined under "the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made." National law requirements on subjects such as arbitrability, number or qualifications of arbitrators, contract formation, validity and illegality, and the like vary significantly.
Fourth, the national courts in the arbitral situs are usually competent (and exclusively competent) to entertain actions to vacate or set aside the arbitral award. The scope of judicial review of an arbitral award is a matter of national law that varies from country to country. Under many developed national laws, an arbitral award is subject to little or no review of the merits of the tribunal's decision; other states permit no review of the merits of arbitral awards, and little or no review of the arbitral process. Some nations, however, permit more thorough-going review of the merits of arbitral awards, which can result in costly appellate proceedings and duplicative litigation.

Fifth, some nations restrict the right of non-nationals to appear as counsel in international arbitration proceedings conducted on local territory. If a company wishes to have its regular outside international arbitration counsel participate in the arbitral proceedings, selecting such nations as an arbitral situs should be avoided. Other nations impose restrictions on the nationality of arbitrators.

Sixth, the arbitral situs is usually (but not always) the place where the arbitral award will be "made" for purposes of the New York Convention. This has significant legal consequences for the enforceability of arbitral awards outside the country where they are rendered. The best general indicator of the enforceability of a nation's arbitral awards is whether or not the country is a party to the New York Convention or, to a lesser extent, certain other international arbitration conventions. If a state is party to the New York Convention, awards made within its territory will generally be subject to the Convention's pro-enforcement rules in other Convention parties; conversely, if a state is not party to the Convention, its awards often will not enjoy the benefits of the Convention. Before selecting an arbitral forum, counsel should examine U.S. law (and the law of other
forums where enforcement would likely be required) to ensure that an award rendered in that forum can be enforced.

Finally, the location of the arbitral situs can both directly and indirectly affect the identity of the arbitrators (absent other agreement by the parties). That is because many institutional appointing authorities will be inclined to select an arbitrator qualified to practice law in the arbitral situs. Moreover, local procedural rules and practices may influence the tribunal's procedural decisions, and local conflicts rules may be applied with respect to choice of law issues.

Despite the wisdom of selecting an arbitral situs, parties not infrequently fail to designate either the arbitral situs or a means of selecting a situs in their arbitration agreement. Worse, they may enter into agreements that are ambiguous or internally contradictory as to the situs of the arbitration. If no unambiguous prior agreement exists regarding an arbitral situs, or its means of selection, parties will often be unable to settle on an arbitral forum after disputes have arisen. Alternatively, even where an agreement as to arbitral situs exists, one party occasionally may regret its decision and seek to arbitrate in a different place. In either case, national courts can be drawn into disputes over the appropriate arbitral situs, with one or both parties seeking injunctive or declaratory relief designating the arbitral situs.

In Econo-Car International, Inc. v. Antilles Car Rentals, Inc., the controversy prompting this appeal centers upon a franchise agreement between Econo-Car International, Inc., the franchisor, and Antilles Car Rentals, Inc., the franchisee. On February 25, 1972, Antilles notified Econo-Car that it intended to terminate the franchise agreement.... Econo-Car advised Antilles that it desired to submit the parties' various disagreements to the process of arbitral resolution pursuant to paragraph 15 of the franchise agreement. Antilles refused to submit the disputes to arbitration, and Econo-Car...
thereupon filed petition in the district court for the Virgin Islands to compel arbitration.
Chapter 62

LAY TIME

The time during which a ship is lying, for the purpose of loading or discharging is Laytime, as distinct from moving with the object of carrying her cargo from one place to another.

"There must be a stipulation as to the time to be occupied in the loading and in the unloading of the cargo. There must be a time, either expressly stipulated, or implied. If it is not expressly stipulated, then it is a reasonable time which is implied by the law; but either the law or the parties fix a time. Now, when they do fix a time, how do they fix it Why, they allow a certain number of days, during which, although the ship is at the disposal of the charterer to load or to unload the cargo, he does not pay for the use of the ship. That is the meaning of 'lay days.'

It is the duty of the shipowners to make their ship available to the charterers at the agreed place; it is the duty of the charterers to make the cargo available and to bring it to the ship. The charterers' duty may be expressed in terms of time, in that the charterparty states how long shall be allotted for this purpose or provides a method by which the time may be calculated; alternatively the charterers must bring or take the cargo within a reasonable time. Where that time, which is called the "lay time", is exceeded, the charterers may be called upon under the charterparty to pay liquidated damages known as demurrage. In the absence of any provision for demurrage they become liable to pay damages for detention. Where the work is completed within the lay time the shipowners may be called upon under the charterparty to pay dispatch money.

The total time allowed for the lay days is the result of an assessment by the parties of the characteristics of the cargo, the ship and the loading and discharging facilities of the ports. The rate allowed for demurrage usually
bears some relation to the amount which the ship can earn. On one view, both freight and demurrage can be regarded as payments for the detention of the ship. The detention for the anticipated period of the voyage is recompensed by freight. The sum agreed for freight in a charter covers the use of the ship for an agreed time for loading and discharging, known as the lay days, and for the voyage.

The lay time provision contained in a charterparty, or, in some cases, in a bill of lading, is usually in the form of an undertaking by the charterers for the benefit of the shipowners. It limits the time allowed to the charterers for the performance of their share of the loading or discharging, by providing a fixed period or a method of calculating the time, or alternatively by allowing a reasonable time. For any time beyond that period the charterers are liable in demurrage, and this liability is absolute unless the delay arises through the fault of the shipowners or is covered by an exception in the charterparty or arises because working the ship becomes illegal by the law of the place of performance.

It is possible, though unusual, for circumstances to arise in which the undertaking is regarded as having been given for the benefit of the charterers. In Dabell v. Watts, Ward & Ca. there was such a situation. The charterparty, for the carriage of timber from Quebec to London, stated: "Cargo to be furnished and received by ship at port of loading as fast as vessel can receive in ordinary working hours, and to be received from alongside ship at port of discharge as customary as fast as steamer can deliver in ordinary working hours, Sundays always excepted, loading or discharging. Not less than 100 standards a day loading or discharging and ten days on demurrage over and above the said laying days at £70 per day." By custom of the port of London the ship had to engage stevedores, but the men struck. The charterers claimed damages for delay in the delivery of the cargo and for detention of barges. The shipowners contended that on the true construction of the charterparty the lay days were fixed, and that there was an absolute obligation
on the charterers to take delivery of at least 100 standards a day. Wills J. held that the clause was a provision in favour of charterers, and that its effect was to oblige the ship to deliver not less than 100 standards a day; the interests of the shipowners were protected by the terms imposing on the charterers a duty to receive as fast as the ship could deliver. In the Court of Appeal, dismissing the shipowners' appeal, Lindley L.J. is reported as follows:

"... he agreed with Mr. Justice Wills in thinking that the provision as to the 100 standards a day was inserted for the protection of the charterers, and that, according to the true interpretation of these words, the shipowners were bound to discharge the cargo at least at that rate."

The charterers are entitled to use the whole of the lay time for loading or discharging. They are therefore not in breach of contract if, notwithstanding that they could work the ship faster, they keep the ship for the whole of the lay time. Even if the ship is not being worked, she must remain at the loading port throughout the lay time unless the charterers have refused to provide a cargo. Their refusal constitutes a final breach which the shipowners may accept as a repudiation of the contract.

The decision of the High Court in Petersen v. Dunn & Ca has been cited as an authority for the proposition that the charterers are not in breach of the charterparty if they retain the ship for the whole of the lay time, even though they could work the ship faster. In the reports of the case itself the proposition was not so stated, but it seems that the judge must have considered it to be correct.

A ship had been chartered to carry coal from Ardrossan, the charterparty providing for loading "in the customary manner, say, in twelve colliery working days. She was "to be loaded according to the custom of the port”; "strikes and lock-outs of pitmen and others" were excepted perils. The charterparty further provided: "It is understood that vessel is to be loaded at once, and lay days to count when vessel ready and notice given." A strike
occurred seven colliery days after notice of readiness. The coal was not loaded (the loading taking two days) until the expiry of the 12 colliery working days. The shipowners argued that the ship could and should have been "loaded at once," and that the charterers, having waited for several days without loading till the strike broke out, were liable for demurrage. The charterers said that there were no working days between the outbreak of the strike and the day on which coal was first sent down to Ardrossan, just before loading began. The High Court held that the charterers were not liable, the loading having been completed within the permitted lay days. "if the cargo was ready the ship might have been loaded in two days. The charterparty allowed twelve days for the loading, and the plaintiff in effect says that it only allowed seven.

A question thus arises as to whether this decision is an authority for the proposition that the charterers are entitled to keep the ship for the whole lay days though they could have loaded in less time.

The charterers are not bound either to work, or to maintain an average loading or discharging rate, on each of the lay days allowed, and are not liable for demurrage or damages for any wasted time, provided that the lay time has not expired and the work has not been completed.

" .. where the charterers have been guilty of a breach causing delay, they are entitled to apply their lay time so as to diminish or extinguish any claim for the delay, leaving the shipowners to claim for demurrage at the agreed rate for any extra delay over and above the lay time. The reason is because they have bought their lay time and paid for it in the freight, and are entitled to use it in the way which suits them best, and in particular to use it so as to wipe out or lessen any delay for which they would otherwise be responsible."
If they complete the work within the lay time, they will be rewarded under the dispatch provision, if there is one in the charterparty; if they fail to do so, they must compensate the shipowners.

Lay time can only be occupied by the charterers if it is being employed for loading or discharging, or if some loading or discharging remains to be done. When loading has ended, the charterers must release the ship and present the bills of lading for signature within a reasonable time. This duty arises whether or not lay time has ended. Charterers who are in breach of this duty are liable not for demurrage at the charterparty rate but for damages for detention of the ship, because demurrage is due only where the ship is detained for the purpose of working her. The measure of damages is the amount which the parties can reasonably be presumed to have had in mind when they concluded the charterparty. This will usually be the amount which the ship can earn per day in that area or in areas reasonably accessible at that time, less any amounts saved by the detention. As with other breaches of contract, this prima facie rule as to damages does not apply where the parties had in contemplation at the time of the conclusion of the charterparty some special measure of damages, if that measure formed the basis of their contract.

However expeditious the charterers are, they may therefore be liable for wrongful detention of the ship if she is not released when loading or discharging has finished; if accounts have to be settled, bills of lading signed, or some other task completed, a reasonable additional time is allowed for completion of such work.

In Nolisement (Owners) v. Bunge & Born a charterparty for the carriage of grain from the River Plate provided for loading at the rate of a certain number of tons per day "otherwise demurrage shall be paid by the charterers." The master was "to sign bills of lading in the form indorsed hereon at any rate of freight that the charterers or their agents require." The ship loaded in 8 days, 19 days before expiry of the lay days. Bills of lading and orders as to the port
of discharge were not forthcoming until three days after loading ended, as the charterers had not decided upon a discharging port. It was agreed that the charterers had a right to keep the ship for 24 hours after completion to settle accounts. The shipowners claimed damages for detention for the two extra days. The Court of Appeal held that the charterers were not entitled to detain the ship further, although lay time had not expired. They were obliged to present bills of lading for signature within a reasonable time, which had been agreed to be 24 hours; thereafter they were in breach of contract. But they were entitled to dispatch money for the 19 days saved, which included the two days for which they had to pay damages.

During the lay time, provided that work has not been completed, they can load or not; but if work has been completed they must release the ship even if lay time has not ended.

After loading or discharging has finished, the charterers are not liable for any delay unless it arises from some fault on their part. A delay in naming a discharging port with a consequent delay in issuing the bills of lading, may be attributable to the charterers. But delays resulting from failure by the shipowners to secure clearances, or from ice, or even from a breach of contract by the charterers if the shipowners could have avoided the consequences, have all been held to fall upon the shipowners.

In Jamieson & Co. v. Lawrie a ship loaded at Cronstadt. After the ship was ready to sail bad weather delayed her and she was frozen up for six months. The House of Lords, sitting as an appeal court from a Scottish court, held that the shipowners could recover demurrage up to the moment at which the ship was ready to sail, but neither demurrage nor damages for detention for any time thereafter.

In Pringle v. Molleu a ship loading a general cargo at Odessa in December was frozen in and unable to leave for London until the end of February. The shipowners claimed demurrage for the 10 days fixed by the charterparty and
damages for detention for the rest of the delay. The charterers denied liability for any part of the delay caused by ice after loading had ended. The shipowners argued that the general rule of law was that detention was to be paid by the charterers and that the authorities showed that they were not excused from the performance of their covenant by an unavoidable detention. It was held that the shipowners must fail. The court is reported as saying: "The detention by the ice was not occasioned by any fault of the defendant. In order to render him liable, the detention must have been for the purpose of loading."

Where the charterers delay the ship after the end of loading or discharging, and by doing so are in breach of contract, the shipowners are not entitled to demurrage or detention damages if they could have avoided the delay. The payment of harbour dues, for example, even where there is some doubt as to whether the shipowners are liable for them, should be made by them if this will reduce the delay.

In Moller v. Jecks a ship carried timber from Finland to Lowestoft. After the cargo had been discharged, and the freight paid to the master, the charterers objected to paying harbour dues payable for landing the cargo. The master could have paid them and departed but instead he refused. As a result, the ship was detained. The shipowners' claim for demurrage was rejected. Willes J. said:

"The master might and ought to have paid those charges and sailed out of the harbour, resorting to his remedy against the merchant afterwards. A man has no right to aggravate damages against another by the course of proceeding adopted by the plaintiff here."

Time ceases to count against the charterers when the ship is no longer detained by the physical problems involved in loading and discharging, and is ready to leave, subject to clearances and other obstacles not the responsibility of the charterers.
The duties of the charterers, so far as they relate to the task of loading, are often said, incorrectly, to come to an end as the cargo passed across the ship's rail.

It is true that in Harris v. Best, Ryley & Co Lord Esher M.R. said: "By universal practice the shipper has to bring the cargo alongside so as to enable the shipowner to load the ship within the time stipulated by the charterparty, and to lift that cargo to the rail of the ship. It is then the duty of the shipowner to be ready to take such cargo on board and to stow it in the vessel.". Loading was a joint operation; it was "a joint act of the shipper or charterer and of the shipowner, neither of them is to do it alone, but it is to be the joint act of both. What is the obligation of each of them in that matter? Each is to do his own part of the work, and to do whatever is reasonable to enable the other to do his part.". "The shipowner has performed the principal part of his obligation when he has put the goods over the rail of his ship; but I think he must do something more - he must put the goods in such a position that the consignee can take delivery of them. He must put them so far over the side as that the consignee can begin to act upon them; but the moment the goods are put within the reach of the consignee he must take his part in the operation."

The ship's rail is often mentioned in connection with the question of responsibility for the care of the cargo. The Carriage of Goods by Sea Act 1971 states in its Schedule: 'Carriage of goods' covers the period from the time when the goods are loaded on to the time they are discharged from the ship."
Chapter 63

CLAIMS PAYABLE IN FOREIGN CURRENCY

In Renusagar Power Co. Ltd. v. General Electric Co., the Supreme Court has discussed all these principles at page 905 in para 120. After referring to the practice which ought to be followed in suits in which a sum of money expressed in a foreign currency can legitimately be claimed by the plaintiff and decreed by the court, has been thus indicated:

...the plaintiff, who has not received the amount due to him in a foreign currency and, therefore, desires to seek the assistance of the court to recover that amount, has two courses open to him. He can either claim the amount due to him in Indian currency or in the foreign currency in which it was payable. If he chooses the first alternative, he can only sue for that amount as converted into Indian rupees and his prayer in the plaint can only be for a sum in Indian currency. For this purpose, the plaintiff would have to convert the foreign currency amount due to him into Indian rupees. He can do so either at the rate of exchange prevailing on the date when the amount became payable for he was entitled to receive the amount on that date or, at his option, at the rate of exchange prevailing on the date of the filing of the suit because that is the date on which he is seeking the assistance of the court for recovering the amount to him. In either event, the valuation of the suit for the purposes of court-fees and the pecuniary limit of the jurisdiction of the court will be the amount in Indian currency claimed in the suit. The plaint may, however, choose the second course open to him and claim in foreign currency the amount due to him. In such a suit, the proper prayer for the plaintiff to make in his plaint would be for a decree that the defendant do pay to him the foreign currency cum claimed in the plaint.
For the purposes of court-fees and a jurisdiction, the plaintiff should, however, value his claim in the suit by converting the foreign currency sum claimed by him into Indian rupees at the rate of exchange prevailing on the date of the filing of the suit or the date nearest or most nearly preceding such date, stating in his plaint what such rate of exchange is.

In those cases where there are several claims payable in a foreign currency, usually United States dollars, the court may accede to a request in that behalf and order that the sale be restricted to persons who are able to bid for the ship in free foreign currency and that, in the event that there is no bid in free foreign currency equivalent to the appraised value, the ship be sold for Indian rupees. In order not to expose the claimants in foreign currencies to the hazards of fluctuations in the rate of exchange between the time from the filing of their suits and the payment out of their claims after adjudication, the court may be persuaded to direct that the sale proceeds in foreign currency, subject to prior approval of the Reserve Bank of India, be held by the registry in the same currency without conversion into Indian rupees. The Bombay High Court has so directed in the cases of The East Hampton, The St. Nicolas, and in both cases the Reserve Bank of India accorded approval to the sale proceeds, when received in the registry, being held in United States dollars without being converted into Indian rupees. The writer has mentioned the two cases within his experience which serve as precedents, as the Reserve Bank of India has not acted consistently in the matter of according such approval. In the cases of ships sold for Indian rupees, foreign claimants have experienced inexorable difficulty and delay in obtaining exchange control permission for repatriation out of India of the amounts recovered by them and wages claimants, especially, have had to suffer great hardship and privation.
Chapter 64

INTEREST

The question of interest on a claim in an Admiralty suit is dealt with in accordance with the provisions of Section 34 of the Code of Civil Procedure, 1908, which provides as follows:

"(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

Provided that where the liability is in relation to a sum so adjudged which had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I - In this sub-section, 'nationalised bank' means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

Explanation II - For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.
(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie."
Chapter 65

LIMITATION PERIODS, TIME BAR

The (Indian) Limitation Act 1963 applies to all claims within the Admiralty jurisdiction of the High Courts. The Act provides a three-year limitation period but for the claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf, the limitation period for filing of the admiralty suit shall be two years from the date on which the wage, sum, cost of repatriation or social insurance contribution, falls due or becomes payable.

In case of claims for loss or damage to cargo brought under bills of lading incorporating the Hague Rules, the one year period under rule 6 of Article III, providing for an extinguishments of the cause of action, itself may apply.

The limitation period under the Limitation Act 1963 is absolute and cannot be extended by agreement nor can the court enlarge the same. The Act does contain provisions for extension of time, exclusion of time for filing suit in certain cases, acknowledgement of liability and/or payment on account before expiry of the initial limitation period, so as to afford a fresh limitation period, and the Act may be referred to for ascertaining the operation of the said provisions.

There is no provision in the Act equivalent to section 8 of the repealed Maritime Conventions Act 1911, supra, and in view of the precise limitation periods specified in the Limitation Act, 1963, the doctrine of laches may not prevail.
SECURITY FOR COSTS AND DAMAGES

Security for costs and damages is not a condition for the arrest, but while applying for the arrest an undertaking is required to be given in writing to pay such sum by way of damages as the court may award compensation in the event of a party affected sustains prejudice by the arrest. There is however little risk of being condemned to pay damages to the owners of an arrested ship, even if the claim fails unless the arrest was manifestly a gross abuse of the court's process which was instituted with malafide intention.

The undertaking from the Plaintiff securing cost and damages should be given to the court when an application for arrest of the Defendant vessel is made before the trial court.

A person who, maliciously and without reasonable and probable cause procures the arrest of a ship by Admiralty proceedings is liable to pay damages to the person aggrieved. A separate suit has to be filed for wrongful arrest proving malicious cause. Wrongful arrest may result in a condemnation of the claimant for damages only where the court is satisfied that the arrest was motivated by mala fides (bad faith) or crassa negligentia (gross negligence). Merely unjustified (i.e. erroneous) arrest would not normally entitle the defendant to claim damages, although he might then be able to recover costs.
Chapter 67

COUNTER SECURITY

The High court having admiralty jurisdiction has discretionary power to pass order for counter security if required.
COSTS

The court has the discretionary power to accept or reject the costs and does not exceed or overlook the limitations placed by the Code of Civil Procedure, 1908 with reference to costs in civil litigation.
There was a similar provision in the Bombay Rules, which has been omitted in the new Rules which came into effect from 1 January 1980 and the warrant of arrest now being issued by the court does not contain a citation to the owners and other parties interested in the ship. The Bombay Rules currently applicable enjoin the service of the writ of summons on the ship in the same manner as the warrant of arrest. The writ of summons is in the same form as applicable to suits filed in the ordinary original civil jurisdiction of the High Court with such variations as the circumstances of the case may require. The prescribed form requires the filing of an appearance and a written statement of the defence to the suit and delivery of a copy thereof to the plaintiffs within 30 days from the service thereof. Unless otherwise directed, the returnable date of the writ of summons is 16 weeks after the date of filing of the suit and on that date the suit will be placed before the judge in chambers for directions. If on that date no appearance has been filed, the judge may order the suit to be set down on the board to be proceeded with as undefended.

This difference in the Bombay Rules is liable to put a plaintiff, particularly in a suit for wages, who has arrested a ship for his claim, to inconvenience and hardship as it precludes him from having the suit set down on board for judgment for default of appearance before the returnable date. To overcome this problem, in the writer's view, a direction will have to be obtained from the judge ordering the arrest, for variation of the form of the writ of summons by abridging the time for entry of appearance to 12 days of the service thereof and fixing the returnable date to say two weeks after such service.
When the warrant of arrest is citatory in form as under the Calcutta and Madras Rules, it may not be necessary for a separate writ of summons to be served on the ship. (It has been so held by the Bombay High Court when the Bombay Rules were similar to the Calcutta and Madras Court Rules.) Nevertheless, in the writer’s view it is advisable to ensure that the Writ of Summons is issued by the registry and served at the same time as the warrant of arrest. A writ of summons on the vessel may not be required if warrant of arrest is properly served on the vessel.

The Rules of all the admiralty courts provide that in a suit in rem no service of warrant of arrest shall be required when the advocate for the defendant ship agrees to accept service and to give security or to pay money into court.
CARRIER’S IDENTITY

Identification of the carrier may be problematic where goods are carried on a chartered vessel and the bill of lading is in the hands of a shipper or receiver who is not himself party to the charterparty. In this situation, a contract of carriage will exist between the shipowner and the charterer in the form of a charterparty, and between the cargo interest and the ‘carrier’ in the form of a bill of lading. In the former, one may clearly identify the parties to the contract as being the shipowner and the charterer. In the latter, however, the position may not be as clear because the 'carrier' could be either the shipowner or the charterer, or perhaps even a sub-charterer, as commercial reality often results in the vessel being sub-chartered. Therefore, a vital issue for a cargo claimant often relates to identifying the 'carrier' and thus establishing whom to look to as regards performance of the contract and whom to sue if the cargo is lost or damaged.

The normal rule in English law is that only one party can be liable as a 'carrier' under any individual carriage contract. In contrast, the recent trend in some American courts is to impose 'carrier' status under the Carriage of Goods by Sea Act 1936 (COGSA 1936) on more than one party. Nevertheless, liability for loss or damage under COGSA 1936, as well as for breach of contract, can only be assessed against those defined as a 'carrier' under that Act.

It is therefore important for a claimant in either jurisdiction to decide whether an action should be taken against the charterer or the shipowner (or both under American law) as time and expense may be wasted if the wrong party is pursued or, where applicable, the advantage of suing more than one is ignored. The severity of the problem, in both jurisdictions, will become more acute if the contract is governed by the Hague or Hague Visby Rules because
the passage of time may result in the claimant being time barred due to the one year limitation period provided by Art.III r.6 of the Rules.

Ironically, it may be in the interest of the shipowner or the charterer to be deemed a 'carrier' as it might affect matters such as their right to exercise a lien over the cargo or their ability to maintain a claim as a bailee. Moreover, in the absence of 'carrier' status, such a party will lack any contractual privity between itself and the cargo claimant. Faced with an action in tort or bailment, a subcontractor will be unable to rely on the exemption and limitation clauses in its contract of carriage with the head contractor, or those afforded by the mandatory application of the Hague and Hague Visby Rules. It is therefore important for both the shipowner and the charterer to correctly determine their legal status at an early stage and, if necessary, anticipate an action framed in tort or bailment by including certain terms in their contract of carriage with the head contractor.

Of course, the rights of all the parties may also be affected by the identity of the 'carrier' where the charterer (or indeed the owner himself) becomes insolvent before the goods reach their destination.

However, due to the ambiguous definition of a 'carrier' in the Hague and Hague Visby Rules, the complicated and often misleading documents used by the parties, and the conflicting case law that has derived therefrom, one may only describe English and American law regarding the identity of the 'carrier' as being incomprehensible and, to a certain extent, unpredictable.

In Samuel v. West Hartlepool. It was stated obiter that while the authorities in this area appear conflicting, the apparent conflict is a result of the carriers identity being essentially "a question of fact depending upon the documents and circumstances in each case". (Emphasis added)

Justice Walton then clearly defined the parameters of the problem by illustrating an example at each end of the legal spectrum and where the
carrier's identity is virtually free of doubt. At one end lies a demise charter and at the other - a charterparty where it is agreed that the charterer shall do no more than undertake that a full cargo shall be shipped, guarantee payment of a certain freight and, upon fulfillment of these obligations, the charterer's liability is to cease. In the former, it is reasonably clear that the contract of carriage is between the charterer and the shipper; whereas in the latter, the shipper would ordinarily have a contract of carriage with the shipowner. However, between the two extremes lie a great variety of 'intermediate cases', of which this particular case was said to be an example.

By applying Walton J's analysis, the case law relevant to this area can be divided into two categories. In the first category are cases where the identity of the carrier is unclear (the intermediate cases) and in the second, are cases that provide examples of the situations in which the carrier can be clearly identified.

In The Rewia, Justice Legatt doubted whether the analysis made by Walton J was relevant today and stated that the case law in this area, rather than being conflicting, illustrates a clear pattern. The court concluded that the identity of the contractual carrier depended upon the 'construction' of the bill of lading only and rejected an argument that further investigation into the circumstances of its issue might yield different results.

It is submitted, however, that the case law (in the intermediate category) does not illustrate a clear pattern and will continue to appear conflicting. Thus, while the issue as to the carriers identity is primarily one of construction, a case may warrant (in certain circumstances) a departure from the 'ordinary' principles applied by the court when construing bills of lading. As a result, one should not infer from The Rewia that the carriers identity will never be affected by the circumstances of a case, which in turn suggests that some conflict is inevitable because a decision reached by the court may ultimately depend upon the case's own individual facts and not the 'ordinary' principles
of construction. One must therefore doubt any commercial certainty that may be derived from the application of The Rewia in this area.

Furthermore, it is argued that the ambiguous definition of a 'carrier' in the Hague Visby Rules and the confused state of the case law in this area has been, and will continue to be, manipulated by the court in certain circumstances so that a fair result can be achieved. In this respect, an analysis of the case law suggests that in the event of there being more than one possible carrier, and where suing one of them is unrealistic, the English courts are likely to find that the party sued by the claimant is the 'carrier' as long as one can point to a recognisable link connecting the claimant to that defendant.

It is therefore important to establish the connecting factors which have been recognised by the courts as legitimate in identifying the actual defendant as the carrier. Thus, in the case of voyage or time charterparties, one should start with the presumption that the claimant contracts with the shipowner as he is the employer of the master and crew that actually performed the voyage (Sandeman v. Scurr). However, such a presumption can be rebutted by the following considerations:

1 Even where the master signs the bill of lading, the charterer may still be identified as the 'carrier'.

A master is generally deemed to have the implied authority to enter into contracts of carriage on behalf of the shipowner. Thus, without evidence to the contrary, a master who signs the bill of lading does so as agent for, and on behalf of, his employer.

However the courts, while normally attaching considerable weight to the 'construction' of the document, have in appropriate cases taken into consideration the conduct and the role of the charterer in determining whether he can be identified as the 'carrier'. Thesiger L.J. stated that "It is
open to the [cargo claimant] to negative the presumption of the liability of the [shipowner]....by showing that [the charterers] had so conducted themselves or so contracted with the shippers of the goods as to make themselves personally liable".

This is further illustrated by Elder Dempster v. Paterson Zochonis in which the defendant, a well known shipping line, time chartered a vessel in order to supplement its fleet. The shipper had no idea that the vessel was chartered and naturally believed that he was shipping with the charterer. It was held that as the charterer's bill of lading had been used and the masters signature had not been qualified, the contract of carriage, unless clearly indicating otherwise, should be regarded as being with the defendant charterer.

Nevertheless, in the majority of cases where the master has signed bills of lading in his own name, such a signature is likely to result in a contract of carriage existing between the cargo interest and the shipowner. Moreover, Paterson Zochonis must be treated with some care, particularly in light of Justice Legatt's judgement in The Rewia.

2 Where the charterer's form of bill of lading is used.

Samuel v. West Hartlepool illustrates that the court will examine the relevant documents applicable to each case. Therefore, if the bill of lading is on a form commonly used by and associated with the charterer, such evidence will be a factor in the determination of the 'carrier' under that bill of lading.

However, it is clear that the above evidence is not always conclusive and just because the name of the charterer or shipowner is at the top of the document, it does not necessarily mean that the court will find them to be the carrier. In fact banner headings are given little weight in decisions where other factors, such as mode of signature, indicate something different.
3 Where the charterer or his agent signs the bill of lading.

Unlike the master, the charterer will have no authority to sign a bill of lading on behalf of the owner unless he has actual or ostensible authority to do so. As a result, when a charterer or his agent signs the bill of lading it may be unclear as to whether he is signing for himself or the owner and much may depend upon the form of his signature.

In The Okehampton the Court of Appeal questioned whether the charterer, in signing the bill of lading, was acting as the agent of the shipowner or on his own behalf acting as principal under the contract of carriage. The court acknowledged that a bill of lading signed by the charterer may be on behalf of the shipowner despite the fact that it was signed in the charterers name. However, by examining the documents and the circumstances of the case, it was held that the charterer was in fact signing on his own behalf. In reaching that decision the court made reference to the fact that the goods were in the hands of the charterer until the vessel arrived and were subsequently placed on board by the charterer's stevedores. Furthermore, the fact that the charterers were well known carrying contractors and were just supplementing their fleet on this occasion also influenced the conclusion that the charterer, and not the unknown owners of the foreign vessel, was the carrier.

Nevertheless, the mere signature of the charterer without any qualifications as to whether it was signed in a representative capacity will not always render the charterer as the 'carrier'. In The Nea Tyhi for example, a cargo claimant sued the shipowner for damage that resulted from the cargo being carried on deck when, under the bill of lading, it should have been carried under deck. The shipowner denied liability by arguing that the charterer's agent had no authority to sign bills of lading claused "shipped under deck" when in fact the goods were not so carried.

In identifying the shipowner as the 'carrier', the court concluded that although the charterer and their agents had no actual authority to make such statements
on behalf of the shipowners, they had ostensible authority to do so because the shipowner had represented or permitted it to be represented that they had.

However, it is submitted that while the decisions in The Okehampton and The Nea Tyhi appear conflicting, the apparent inconsistency is merely a result of a common underlying theme, i.e. a desire to provide an innocent claimant with some form of compensation. Thus, one may argue that the main determinant in The Nea Tyhi was the fact that the charterer had gone into liquidation. In deciding who should bear the loss resulting from the charterers' insolvency, Sheen J stated that it should be the shipowner and not the innocent third party as the former had contracted with the charterer and put trust and confidence in him to the extent of authorising the charterer's agents to issue and sign bills of lading. In The Okehampton, the charterer was in fact the claimant in the action, and the defendant was the owner of the vessel which had collided with that chartered by the charterer. As a result, had the charterer not been identified as the 'carrier', it would have lacked sufficient possessory interest in the ship and the goods to mount a claim as bailee for the bill of lading freight lost due to the collision. By contrasting the decisions and the facts of these two cases, it would appear therefore that the court has, in a given set of circumstances, indicated a clear bias towards the innocent claimant.

4 Where the charterer or his agent signs the bill of lading "for the master".

If the charterer qualifies his signature by signing the bill of lading "for the master" (or words similar to that effect) the court would ordinarily find the shipowner to be the carrier. In Tillmans v. Knutsford it was held that by including the words "for captain and owners" the charterers had effectively issued a bill of lading as if it had been signed by the master himself and, in so doing, had rendered the shipowner liable as the 'carrier'.
However, according to The Venezuela, the charterer's signature may bind him as the carrier despite the qualification "for the master". The court held that just because the sub-charterparty contemplated that the charterers agents may issue and sign bills of lading for the master, it would not prevent the defendant charterer from making a contract of carriage on its own behalf. From the facts it was clear that the bill had been signed by the defendants agents and that the definition of 'carrier' within the bill 'suggested' that the contract of carriage was with the defendant. Furthermore, Sheen J stated that there was no indication that the vessel had been chartered and if the defendant did not wish to contract as the carrier, he should have made it clear in the bill of lading. The court concluded that until the shipper or holder of the bill of lading knew that the vessel had been chartered there was nothing indicating that the defendant was not the contracting carrier despite the fact that the signatory was expressed to be "as agents for the master".

In particular, Sheen J emphasized that the cargo claimant would otherwise face many difficulties in pursuing a Venezuelan action against a Panamanian one ship company, especially if the ship did not enter the jurisdiction of the Venezuelan court. It is therefore apparent that the court took into consideration the fact that suing the shipowner would be an unrealistic option for the cargo claimant.

While the decision in Tillmans v. Knuttsford would appear to offer a more practical and logical explanation as to the effect of the charterer signing the bill "for the master", it would seem to conflict with that in The Venezuela. One can only reconcile the conflict by distinguishing the cases on their facts and concluding, perhaps, that the facts of The Venezuela provide an exception to an otherwise sensible rule.

The Court of Appeal decision in The Rewia 1991 suggests that the correct principle to apply is that illustrated in Tillmans. The cargo claimant in the former sought to obtain English jurisdiction to hear his claim by applying the
EU Convention on Jurisdiction and Judgements 1968. If he was successful in identifying the charterer as the 'carrier' the English court would have jurisdiction by virtue of an article 17 agreement and the claimant would be able to join the shipowner in the English action by applying article 6. The bills of lading were signed "for the master" by the charterer's agents.

The claimant argued that as the bills were issued by and were in the name of a container line operated by the defendant, there was nothing in those documents to qualify the assumption that it made, i.e. - that the charterer's were the proper defendants. By applying The Venezuela it would seem that, despite the charterer signing for the master, the claimants argument might succeed if the documents and circumstances of the case warranted such a conclusion. In fact Sheen J at first instance held, for those reasons, that the contract of carriage was with the charterers and not the shipowners.

However the Court of Appeal did not take that view. Rejecting the claimants request for further investigation into the circumstances in which the bills were issued; the court doubted the proposition in Scrutton, except in so far as it was illustrated by Harrison v. Huddersfield Steamship Co, that a masters signature "may in some cases bind the charterer and not the owner". In the latter however, it was specifically agreed that the master was to be the agent of the charterer and would not have any authority to sign on behalf of the shipowner. Furthermore, the words "as Master" had been struck out and were substituted with "as agent for time charterers". Thus, the master in Harrison v. Huddersfield was clearly not signing for the shipowner and had no authority to do so.

In doubting whether Walton J's analysis of the problem could be applied today; Legatt LJ stated that the cases since Samuel v. West Hartlepool, instead of being conflicting, illustrate a clear pattern. He concluded:
"A bill signed for the master cannot be a charterer's bill unless the contract was made with the charterer's alone, and the person signing has authority to sign, and does sign, on behalf of the charterer and not the shipowner". (Emphasis added)

One may therefore imply from Legatt J's judgement that the court's ability to exercise a discretion with regard to the documents and circumstances of each case, and thus consider the merits of the action, has been removed. However, it is submitted that while the actual decision in The Rewia is correct on its facts, the reasoning provided to substantiate it cannot be described as an accurate analysis of the case law in this area. As a result, Justice Legatt's conclusion should be treated with care as it fails to take into consideration the influence which the circumstances of a case might have on the principles applied by the court when construing bills of lading.

In the writer's opinion, the Court of Appeal was correct to ignore the circumstances in which the bills were issued (ie. prior negotiations) because the claimant in The Rewia was an indorsee. Thus a bill of lading, in the hands of a consignee or indorsee, should be treated as conclusive in regards to the contract of carriage as such a party is unlikely to have access to that type of information and may be unfairly prejudiced by it. However, one should not infer from this decision that the circumstances of a case will never have a bearing on the carrier's identity. For example, had the claimant in The Rewia been a shipper, one might have argued that they should have been allowed to provide evidence of a contract of carriage existing before the bill of lading was issued. Authority for this proposition can be found in The Ardennes 1951, where Lord Goddard CJ stated that a bill of lading, in the hands of the shipper, is not conclusive as to the contract of carriage but only excellent evidence of its terms. In holding the carrier bound by an oral promise made by its agent to a shipper, the court confirmed that a contract of carriage may be partly oral and partly written. On this basis, had the claimant in The Rewia been a shipper, any prior negotiations between itself and the charterer should
not have been ignored as it may have constituted sufficient circumstances to warrant a departure from the 'ordinary' principles applied by the court in construing bills of lading. Nevertheless, the extent to which the court will allow such evidence to be used in identifying the carrier, when it may only serve to complicate matters, remains unclear.

One must also note that the Court of Appeal did not overrule nor doubt the decision in The Venezuela and, for those reasons, The Rewia and The Venezuela would appear to be in conflict with each other. However, the facts of The Rewia, unlike those in The Venezuela did not concern an innocent third party faced with an unrealistic claim. On the contrary, the claimant was trying to use the lack of clarity in the case law to its own advantage. Furthermore, neither of the potential 'carriers' in The Rewia were single ship companies based in jurisdictions where it may have proven difficult to bring an action. In fact, both the charterer and the shipowner were domiciled within the European Union and, as a result, the enforcement or recognition of a judgement could have easily been established. One may therefore draw a distinction between the two cases by highlighting the potential difficulties faced by the claimant in The Venezuela and concluding that, in those circumstances, a departure from the 'ordinary' principles of construction was justified - but not, however, in The Rewia.

Thus if one accepts, contrary to the view expressed in The Rewia, that the authorities are conflicting and then contrast the decisions in Paterson Zochonis, The Okehampton, The Nea Tyhi and The Venezuela; one may argue that the court will, in certain circumstances, do its utmost to ensure that a fair result is achieved. Nevertheless, it would appear that the courts discretion may only be applied in circumstances which merit its indulgence. However this begs the question of whether there are any circumstances involving an innocent claimant faced with an unrealistic claim that would not be considered meritorious?
If Justice Walton's analysis is dissected and then applied to the case law discussed above it would appear that, in the 'intermediate cases', there are two main factors which the court will take into consideration when identifying the contractual 'carrier'. The first factor concerns the documents used and will therefore include; banner headings; clauses defining the 'carrier' or specifying who the contract of carriage is with; and finally, who signed the bill of lading and how (ie qualifications to the signature). However, with the exception of clauses identifying the contractual carrier, the above indicators will not be conclusive individually nor as a group when pointing to a particular party because they may all be defeated by the second factor. This second factor concerns the circumstances of the case and the commercial background to the issue of the bill of lading, it appears to be based upon fairness and represents the underlying consideration of the innocent third party's need for a remedy.

Irrespective of whether the above analysis is accepted, The Ines 1995 illustrates that the court will still need, in certain circumstances, to consider both the documents and the circumstances as a whole. While stating obiter that a bill of lading signed "for the Master" would ordinarily be a shipowners bill, Clarke J held that the signature "as agents for carrier Maras Linja" was ambiguous and failed to clearly identify the contractual carrier.

Below the signature was the following: "p.p. Eimskip [the charterer's agents] - Rotterdam", and underneath that, "as agents only". On both sides of the documents the words Maras Linja appeared in large capital letters. The shipowner argued that the signature should be interpreted to mean that the carrier was Maras Linja, namely the charterer, and that the person who signed did so on behalf of Eimskip as agents for Maras Linja the carrier. The charterer's on the other hand contended that the signature was on behalf of Eimskip as agents of Maras Linja, who were in turn, agents for the carrier.
Clarke J stated that both constructions were arguable and, on balance, if it were only a matter of construing the words in the signature box, the charterer would have been identified as the carrier. However, by examining the 'whole document' and considering the 'whole context' in which it came into existence, the court imposed 'carrier' liability on the shipowner.

In relation to the documents, the court found three pointers which indicated that the shipowner was the contractual carrier. The first was an indemnity clause in the charterparty which was interpreted as giving the charterer and their agents implicit authority to sign bills of lading on behalf of the shipowner. The second pointer was the words "In witness whereof the Master or agent of the said vessel has signed...", which were on the face of each bill and the natural meaning of "agent of the vessel" was interpreted by the court to be "agent of the owners of the vessel". The third pointer was a similar indication found in Clause 19 which contained the following: "the contract evidenced by this bill of lading is between the shipper and the owner of the vessel".

In relation to the context in which the bills came into existence, the court emphasised two factors which reinforced the conclusion that the shipowner was the carrier. Firstly, it was clear that the draft bills of lading and the three copies marked "not negotiable" did not pose any such problems as the signature box contained the printed words "Signed (for the master) by"; and secondly, it was only due to the threat of the carrying vessel being late that the received for shipment bills containing the ambiguous wording were issued.

One may therefore draw two clear points from the decision in The Ines. The first is that evidence of prior negotiations can, when the bill of lading is in the hands of a shipper, play an important role in the identification of the carrier. The second point is that even if one follows Justice Legatt's conclusion in The Rewia as to the decisive effect of signing "for the master", it is clear that other
modes of signature may, at the very least, need to be assessed in the light of the whole document and the context in which it came into existence.

5. Charterparty Terms

As between the charterer and the owner, one might be able to establish their intentions as to who would be the contractual carrier, and thus resolve the uncertainty in the 'intermediate cases', by examining the terms of the charterparty. For example, a clause authorising the charterer to sign bills of lading on behalf of the master without prejudice to the charterparty may suggest that it was intended that the shipowner should be the 'carrier'. Furthermore, if the relevant charterparty clauses are expressly incorporated into, and are consistent with, the remaining terms of the bill of lading they will be regarded as part of that contract and therefore legitimate indicators as to the identity of the contractual carrier. This will apply irrespective of whether the bill of lading holder has seen a copy of the charterparty.

However, where the relevant charterparty terms are not expressly incorporated into the bill of lading the position remains unclear. Obiter dicta by Lord Esher in Baumwoll v. Furness and the decision in Manchester Trust v. Furness would suggest that, irrespective of whether the bill of lading holder had notice of the charterparty, the terms of that agreement would be irrelevant if the holder of the bill was unaware of their content. Nevertheless, if it can be shown that the holder was fully aware of those terms, the court may take them into account in identifying the intentions of the parties especially where the bill of lading is itself ambiguous.

Where the identity of the carrier is clear

The second category of cases are those which are illustrative of the circumstances in which the carrier can be clearly identified. Thus, the following situations are likely to give rise to carrier liability:-
1 Where a 'demise charterparty' exists, the charterer is the carrier.

In determining whether or not the shipowner is the carrier one must examine the charterparty and consider the relationship it creates between the parties. It is clear that the charterparty need not be strictly speaking a 'demise charterparty' in order to relieve the shipowner of 'carrier' liability provided that "the agreement places the vessel altogether out of the power and control of the shipowners and vests it in the charterer's".

In Baumwoll v. Furness the court distinguished between a shipowner being the registered owner and thus having an absolute right to the ship and a charterer who is given, for a limited time, all the rights of ownership from which he may equally be spoken of as the owner. Furthermore, the court acknowledged that while a charterparty may provide the charterer with full power to deal with the vessel and determine its voyage etc, the master and crew may nevertheless remain the true servants of the shipowner who would therefore be open to 'carrier' liability.

However in Baumwoll, the charterer had employed and paid the master and crew, gave them orders, and dealt with the vessel in the adventure. As a result, all the rights and obligations of the real owner were transferred to the charterer who therefore became liable, during that period, as the 'carrier' under the bill of lading.

2 Estoppel by silence

Where the 'actual' defendant has held himself out as the carrier and thus cheated the cargo owner of success against the 'proper' defendant, the 'actual' defendant will be deemed the carrier. This is illustrated by The Henrik Sif 1982 in which bills of lading issued by the charterer to the claimant contained a demise clause, the effect of which, rendered
the shipowner as the carrier and thus the 'proper' defendant. The
claimant, however, brought an action against the charterers through the
charterer's agents who, aware that a demise clause was in the bill of
lading, continued to deal with the claim as if the charterer was the
correct defendant and arranged various extensions of time. The
claimant eventually issued proceedings against both the shipowner and
the charterer, and while the shipowner was successful in claiming that
the proceedings against him were time barred, the charterer's claim
(that they were not the carrier) was denied.

It was held that as the agents knew the effect of the demise clause, they
were under a duty to alert the claimant of their mistake instead of
arranging extensions of time from the wrong party. By holding out the
charterer as the proper defendant they had represented that the
charterers would not enforce their strict legal rights against the
claimants and thus prevented the charterer, on the basis of estoppel,
from denying that they were the 'carrier' under the bill of lading.

3 Where there is a 'demise clause' in the bill of lading the shipowner
will be the carrier.

A 'demise clause' may be inserted in the bill of lading, the effect of
which is to clearly identify the shipowner or demise charterer as the
carrier under that particular contract of carriage. It should be
distinguished from an identity of the carrier clause which may name
either the shipowner or charterer as the carrier. The latter, however, has
the same purpose as a demise clause and therefore the same arguments
may be used against it.

There are two ways of looking at demise clauses. One is that they
merely clarify the carriers identity and are therefore extended definition
clauses which offer a positive attempt to fix the shipowner with
liability. The other, is that they are really a form of exception clause which seek to remove the potential liability of the charterer.

Some jurisdictions have taken the second view and consider the demise clause as a derogation from the Hague/Hague Visby Rules because it seeks to reduce or remove the liability of a charterer who, but for the clause, might be considered a 'carrier'. Professor Tetley has described them as "misleading, anomalous and invalid" and other writers consider them to be a trap for the unwary as they are often on the back of a form which otherwise indicates that the shipowner is not the carrier. However, in England and Australia the demise clause has been warmly received as a provision eradicating any uncertainty as to the carriers identity.

In The Berkshire, a bill of lading on the charterers agents form signed by the charterers sub agents without the qualification "for the master", was found to be a shipowners bill due to the existence of a demise clause. The validity of the demise clause was also upheld in both The Vikfrost and The Jalamohan, and one may assume from the decision in The Henrik Sif that such a clause would have been effective in transferring carrier liability to the shipowner. Hirst J in The Jalamohan confirmed what had been assumed to be the English position and specifically rejected an argument based on Professor Tetley's views by concluding that there was nothing anomalous about demise clauses, they merely "spell out in unequivocal terms that the bill of lading is intended to be a shipowners bill". Furthermore, an identity of the carrier clause was found to be a contributing factor which rendered the shipowner in The Ines liable as the carrier.

Nevertheless, although there is no authority to indicate otherwise, a word of caution about the use of demise clauses must be raised. In this respect one may argue that, despite the above authority, it remains open in the English courts to challenge the validity of such clauses where they are used by a party, at the detriment of the claimant, to avoid the liability which it would
otherwise have. In each of the cases cited above, the validity of the clause was upheld to the advantage of the cargo interest and did not therefore result in the prevention of a remedy. Thus, the cargo owner in The Berkshire was seeking to make the shipowner liable and the question as to the charterer's liability did not arise. The carrier in The Vikfrost would have been liable even in the absence of the demise clause and there was no issue as to whether the charterer could have been the carrier. If the shipowner was not found to be the carrier in The Jalamohan, the shipper would have had to pay the same amount of freight twice; and the identity of the carrier clause in The Ines was only used as one of the indicators that pointed to a decision which probably would have been reached in its absence. Furthermore, although Webster J in The Henrick Sif assumed that a demise clause in a charterers bill of lading would be effective to transfer carrier liability to the shipowner, its detrimental effect to the cargo interest was avoided because the court estopped the defendant from relying on it and, as a result, the question as to the validity of the demise clause did not arise.

An objection to demise clauses could be made on the basis of Interfoto Picture Library Ltd v. Stiletto Visual Programmes Ltd by arguing that the bill of lading provides inadequate notice of an unreasonable and extortionate clause. The question which should then be asked is, "whether it would in all the circumstances be fair (or reasonable) to hold a party bound by any conditions or by a particular condition of an unusual or stringent nature". The same quaere was also raised by Scrutton to which Roskill has replied that "the very purpose of the words in brackets was to put the bill of lading holder on express notice of the possibility that the ship concerned was chartered". Nevertheless whether such a clause, predominantly on the back of a bill of lading, complies with the requirements of sufficiency of notice is a question yet to be decided by an English court. F.M.B. Reynolds concludes that "room must...remain for argument as to whether the clause should always be effective".
On the other hand, if a shipowner wished to ensure that the charterer was clearly identified as the carrier in the bill of lading he could insert a clause in the charterparty placing an obligation on the charterer to clearly identify himself as such. Furthermore, by the use of an incorporation clause in the bill of lading, a term in the charterparty identifying the charterer as the carrier could be expressly incorporated. However, such a clause is likely to conflict and therefore fail to be consistent with the remaining parts of the document if a demise clause has also been included in the bill of lading, which in turn, would render the conflicting part of the incorporation clause ineffective. Nevertheless it is theoretically possible that one could insert a 'hierarchy' clause into the bill of lading stating that, in the event of conflict between an incorporated term from the charterparty and a provision in the bill of lading, the term in the charterparty is to take precedence.

1. Apart from the three situations described above, the carrier cannot be identified with any degree of certainty under English law and one may only look for indications. In practice, a cargo claimant should sue all the possible defendants and although the court will only find one of these parties to be the true carrier, it will not be clear at the initial stage who is solvent and who is not, who’s got assets and where. Upon acquisition of these facts one can fine tune and focus on a particular defendant. Once a defendant has been chosen it will still be necessary to identify that party as the carrier; one must therefore apply the above indicators to the particular circumstances of the case and for this purpose the case law can be used to highlight those links which best suit the claimants cause.

2. A demise clause is valid under English law. However it is arguable that, despite cases such as The Berkshire and The Jalamohan, one may challenge the validity of a demise clause when it is used by a charterer to avoid a liability which it would otherwise have.
3. It is advisable to sue all parties in contract and the Tort of negligence and, whenever possible, take an action in rem against a vessel in order to provide security. However, the ability to arrest a vessel under English law is dependent upon the owner or demise charterer of that vessel being held liable in personam.

The effect of the UCP 500

The vast majority of documentary credits incorporate the terms of the Uniform Customs and Practice for Documentary Credits published by the ICC. The latest edition of these terms are contained in the UCP 500 which, under Art. 23, provide specific requirements relating to the identification of the carrier in 'non-charterparty bills of lading'. If the bill of lading issued does not comply with these requirements, the shipper may be unable to tender it under the credit and, as a result, will not be entitled to payment.

However, the UCP is not an international convention, nor is it given force of law by any legislation in England and will not therefore directly affect the legal principles discussed above. Nevertheless, it is likely to affect the appearance of bills of lading and the way in which they are signed in cases where the shipper needs to tender them against a documentary credit. This may in turn affect how the legal principles from the above cases are to be applied to any such document in the future.

The requirements of Art.23 have been listed as follows:-

(a) The bill of lading must appear on its face to indicate the name of the carrier; and

(b) The bill of lading must have been signed by any of the following:-

(i) the carrier, identified as such; or

(ii) a named agent for the named carrier, identified as such; or
(iii) the master, identified as such; or

(iv) a named agent for the named master, identified as such.

In relation to condition (a), it would appear that a banner heading bearing the carriers name would be sufficient to satisfy this requirement. However such a method would not, in itself, render that party liable as the contractual carrier under the bill of lading as it will be given little weight where other factors pointing to the carriers identity indicate something different.

In the absence of a banner heading or something similar to that effect, the bill of lading will need to have the name of the carrier indicated "on its face" elsewhere. This could be achieved by the inclusion of a clause identifying a particular party to be the carrier which, under the principles discussed above, is likely to render that party liable as the contractual carrier. In this sense, compliance with the UCP 500 will encourage the use of such clauses which may in turn increase the certainty with which the contractual 'carrier' can be correctly identified. Nevertheless, there is an argument that the validity of such clauses should not always be upheld and, as a result, the certainty of the carriers identity may not always be guaranteed. Moreover, banner headings and demise or identity of the carrier clauses are not the only means in which condition (a) can be satisfied, and of course condition (b) must also be fulfilled in order to comply with Art.23.

It would appear, however, that both conditions would be satisfied through either (b)(i) or (b)(ii). In this respect, the bill of lading would bear either the signature of the carrier who would also be identified as such (b(i)), or the signature of his agent who would not only have to name himself but also identify the carrier as the principal (b(ii)). Nevertheless, as most carriers are likely to be companies and therefore incapable of signing documents other than through agents, the type of signature described in (b)(i) is unlikely to be relevant. Furthermore, while the type of signature in (b)(ii) may clearly satisfy the requirements of Art.23 and perhaps enhance the likelihood of the carrier
being correctly identified, it will not always render the identity of the carrier free from doubt. Thus, the signature:

"as agents for carrier Maras Linja
p.p. Eimskip - Rotterdam
as agents only"

is likely to be passed by the opening bank as complying with Art.23 but yet fail to clearly identify the contractual carrier (The Ines).

It is also unclear as to what action the bank will take when faced with such a signature indicating the name of one party as the carrier and additional factors, such as banner headings or clauses for example, indicating otherwise. In this context, C. Debattista suggests that these provisions will need to be relaxed in practice if unnecessary rejections are to be avoided. Further to this, Debattista argues, that Art.20(d) "may well be a convenient counterfoil, stating as it does that any condition as to signature will be satisfied if on its face it appears to be so satisfied".

While the type of signature in either (b)(i) or (b)(ii) will, in themselves, satisfy both conditions under Art.23; a signature under (b)(iii) or (b)(iv) will not. In the latter, the carrier will remain unidentified on the face of the bill which would therefore need to contain either a banner heading or a clause indicating "on its face" the name of the carrier for the said requirements to be fulfilled. Again however, mere compliance with Art.23 will not necessarily enable the 'carrier' to be identified in a legal sense. Thus, while the signature of the master or an agent signing on his behalf will ordinarily render the shipowner liable as the carrier, there is authority for the proposition that this will not always be the case.

One must also note that despite the bill of lading appearing "on its face" to indicate the name of the carrier, confusion as to the carrier's identity may
result by the inclusion of a clause in the bill of lading incorporating a term or terms from a charterparty which indicate something different.

It would appear therefore that Art.23 will have a very limited effect on the interpretation of the case law relating to the identity of the carrier and the way in which it is applied to bills of lading conforming with the UCP 500
Chapter 71

CREW ON BOARD AFTER ARREST OF SHIP

The Sheriff or the Marshal owes no duty to the crew on board as such. The relationship of the Sheriff or the Marshal to the crew will depend upon the circumstances as they affect the discharge of the Sheriff or the Marshals duty to retain custody of, and to preserve the ship.

The arrest of a ship does not operate to determine the employer/employee relationship between the owners or demise charterers and the master and crew. Nor does it follow that the issue of a writ/warrant against the ship by the master or crew to recover outstanding wages automatically determines the employment relationship. It will be a question of fact in each case whether or not there is conduct on the part of the owner amounting to repudiation of the employment contract, for example, failure to pay wages and allowances which are owing, which is accepted by the crew as terminating the relationship.

If the employment relationship is terminated, then crew members may seek to recover wages up until the termination and thereafter damages for breach of contract calculated by reference to the wages lost, the cost of sustenance for a reasonable time at the place of termination pending repatriation to their home port, and the cost of repatriation. Such a claim ranks after the Sheriff or the Marshals claim against the ship, substitute security, or proceeds of sale for the Sheriff or the Marshals charges and expenses, the plaintiffs costs of the action, and other claims having priority.

If the crew continue in employment after arrest, the ongoing liability for wages reduces the value of the ship or proceeds of sale to satisfy claims which have lesser priority than the claims of the master and crew. Although the continued engagement by the owner of the crew will give them a right to wages and entitlements, accommodation on board and the right to
sustenance, those rights are not enforceable against the Sheriff/ Marshal. However, the Sheriff or the Marshal may, if the Sheriff or the Marshal considers it is necessary to the safety of the ship or to preserve it, pay wages and provide accommodation and sustenance to the crew on board for such time following arrest of the ship as the Sheriff or the Marshal considers is necessary. With leave of the court the Sheriff or the Marshal may also provide minimal sustenance in order to avoid hardship to the crew.

The presence of the crew on board is justifiable only for so long as it does not interfere with the ship or the Sheriff or the Marshals custody of it and does not increase the Sheriff or the Marshals costs of maintaining custody of the ship and preserving it. For example, if a ship can conveniently be laid up as a dead ship pending trial or the provision of security, a crew will not be permitted to remain on board where that would involve unnecessary expense in providing power or access to the ship to enable the crew to live on board.

What happens if the crew refuse to leave or prevent the Sheriff or the Marshal from laying up the ship if that is the appropriate course to follow in the circumstances? Such conduct is prima facie contempt of court for interfering with the Sheriff or the Marshals custody of the ship. However, the cases do not suggest that crew members are lightly dealt with for contempt.

A refusal by the master or crew to leave a ship is not uncommon. This is particularly so when a ship needs to be moved within the port or to another port or where the ship is to be sold pendente lite. In both cases, there is an attempt to force the Sheriff or the Marshal or some other party to pay the outstanding claims for the master and crew and their costs of repatriation. In the case of a sale pendente lite, there is often the hope that a purchaser will re-engage the crew and thus will provide them with continuity of employment. How the issue of an obdurate crew is resolved can have significant consequences upon the fund ultimately available to satisfy the plaintiff’s costs and claim and the claims of others against the ship.
CLAIMS RELATING TO CARGO

The Admiralty jurisdiction of the High Court in respect of cargo claims and contracts of affreightment is statutory. Section 4 (1) (d), (f), (g), (i) and (q) of the Admiralty Act (2017) deals with the above subject maritime claims.

The High Court has Admiralty jurisdiction over any claim arising out of loss or damage caused by the operation of a vessel; loss or damage to or in connection with any goods; agreement relating to the carriage of goods or passengers on board a vessel, whether contained in a charter party or otherwise; salvage services, including, if applicable, special compensation relating to salvage services in respect of a vessel which by itself or its cargo threatens damage to the environment; particular average or general average.

The maritime law of India relating to the carriage of goods by sea is governed primarily by the Carriage of Goods by Sea Act, 1925 as amended in 1993, the Indian Bills of Lading Act, 1856 and the Multimodal Transportation of Goods Act, 1993.

The statutes and legislations which apply by force of Indian law govern goods loaded in India. Other legislations that could be applicable in India in relation to cargo include (Indian) Merchant Shipping Act, 1958, Major Port Trusts Act, 1963, Indian Ports Act, 1908, Marine Insurance Act, 1963, Contract Act, 1872, Sale of Goods Act, 1930, The Indian Ports Act, 1908 and the Major Port Trusts Act, 1963 deal with the administration of the ports and the jurisdiction over ships in ports. The Customs Act, 1962, contains various regulatory measures in relation to ships, goods and persons, in connection with importation or exportation. It also applies to clearance of goods for home consumption, exports, duty due on goods, prohibitions, etc.
Procedural aspects of claims are covered in the Civil Procedure Code, 1908 and the Evidence Act, 1872.

Apart from these legislations, judgements of various courts in India lay down general principles of maritime law for dealing with cargo claims and other matters.

The Indian Carriage of Goods by Sea Act, 1925 (was amended in 1993) or COGSA is based on the Hague Rules 1924 was enacted to recognise and give effect to the Hague Rules 1924 as they would apply in India, and it substantially follows the Hague Rules. The Act applies to carriage of goods by sea under bills of lading or similar documents of title issued in India, from a port in India, to any other port whether in or outside India (Section 2). The Act is similar to the Hague Rules, and as in the Hague Rules’ Articles, it imposes responsibilities and liabilities, and confers rights and immunities, upon the carrier. The Act applies equally to foreign merchant ships as well as to Indian merchant ships. COGSA is the substantive law in India on the subject of carriage of goods by sea and would apply compulsorily when the carrier is sued by his shipper based in India. For inbound cargo, the rights, liabilities and obligations of the carrier and the cargo interests are governed by the relevant contract of affreightment. This relates to the applicable law of the relevant contract (if the contract provides for application of a foreign law and/or convention), the general principles of law as applicable in India and Judge-made precedents.

The Schedule to COGSA, referred to in Article IV provides for certain rights and immunities to the carrier and the ship from liabilities for loss or damage to the cargo. If the ship or carrier is able to set up any of these defences and offer evidence concerning the same, then such defences would be complete answers to cargo claims. The carrier may also rely on statutory defences such
as the right of the plaintiff to bring the claim, privity of contract and jurisdiction. Factual defences such as short loading, weight, quality or quantity loaded unknown or not matching the description in the clausled bill of lading are available. Cargo pilfered or missing post-discharge, or where the loss has occurred in spite of the carrier having complied fully with the customs or practice at the port also applies.

The Multimodal Transportation of Goods Act was introduced in India in 1993. This Act applies to all cases where two or more modes of transport are used in the course of transportation. The Act recognises multimodal transportation of goods under a single transport document, which covers all the modes of transport. The multimodal transport operator remains liable and responsible to the cargo owner. The MTOG Act provides for the multimodal transport operator to be liable when the goods are damaged while they are in his charge.

The package limitation under Indian law is 666.67 SDR per package or unit or 2 SDR per kilogram of gross weight of the goods lost or damaged, whichever is higher. If the Claimant can prove that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly with knowledge that damage would probably result, then this package limitation defense will not be available.

Some of the important changes and amendments to COGSA were brought about by the MTOG Act:

a. It allows parties to agree an extension of the one-year period to bring suit for cargo claims.

b. It increased the per package limitation in India to 666.67 SDRs per package or unit or 2 SDRs per kilogram of gross weight of the goods lost or damaged, whichever is higher.
Indian law now expressly provides that neither the carrier nor the ship shall be entitled to benefit from the package limitation. That is, if it is proven that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

Article III, rule 6 of COGSA lays down that the limitation period for filing a suit under COGSA in India is one year from the date on which the goods were delivered (or ought to have been delivered.) The one year time period can be extended by agreement between the parties after the cause of action has arisen.

Rule 6, however, also contains the following provision:

“Provided that a suit may be brought after the expiry of the period of one year referred to in this sub-paragraph within a further period of not more than three months as allowed by the court.”

This means that a suit may be brought after the expiry of the one year period referred to above, but within a further period of no more than three months (“time specified”), if allowed by the court. Therefore, after the 1993 amendment, the period of limitation for filing a suit under Indian COGSA may be up to a maximum of one year and three months. But only if permission is granted by the court or for a period agreed between the parties after the cause of action has arisen.

Indian law on cargo claims matters recognises that the quoted provision in Article III rule 6 above is not that a suit shall be brought within one year from a specified date or that no suit shall be brought after the expiry of one year, but that if the suit is not brought within the time specified, the carrier and the ship would be discharged from all liability.
This is in respect of loss or damage, i.e. that there will be no cause of action surviving against the ship or carrier.

The limitation period for claims by carrier or lines for indemnity, recovery of dues, etc. against the cargo interests or merchant is three years from the date of accrual of the cause of action.

Under the MTOG Act, however, a Multimodal Transport Operator will not be liable unless action is brought within nine months of the date of delivery of the goods, the date when the goods should have been delivered, or the date on and from which the party entitled to delivery of the goods has the right to treat the goods as lost.

For claims by the carrier (or lines for indemnity, recovery of dues, etc.) against cargo interests or merchant, the limitation period is three years from the date of accrual of the cause of action. Procedures and Burden of Proof To bring a cargo claim in India, all that the Claimant has to establish is that goods of a certain quantity in good and sound condition were handed over to the ship or carrier for carriage. Also that the same was discharged and received by the consignee not in the like quantity or order and condition. It would then be for the ship or carrier to establish beyond reasonable doubt with evidence that the loss and damage complained of was not caused by the ship or carrier or that the ship or carrier is exempt from any liability on account of the statutory defences available. Depending upon the facts of each case, the burden of proof required could be onerous and the defence expensive to run. This is especially so due to the time it takes for litigations to come for trial in India.

Due to the backlogs in court, suits take anywhere between eight to ten years to come up for trial at the first instance. Then there are appeals to the Division Bench of the same court, and then to the Supreme Court, all of which make litigation in India a long, expensive process.
It is advisable that appropriate investigations into any damage and loss are conducted thoroughly, reports obtained, and relevant documents retained for future use to defend claims.

Also, the Indian Evidence Act requires originals of all documents to be produced and marked as evidence. Consequently, whenever it is expected that claims may have to be made and defended, it has to be ensured that all original documents are collected and filed away safely, to be used in any trial in due course.

Indian law recognises and gives full effect to the terms of contracts between parties and acknowledges exclusive jurisdiction clauses in bills of lading, providing they give full effect to the terms of the relevant bills. If the contract of affreightment provides for a particular law or for a particular jurisdiction to apply to claims and disputes arising from the contract, Indian courts give full effect to such clauses, subject to expert evidence of the foreign law being provided. Of course, it should be absolutely clear from the wordings of such clauses that the law and jurisdiction of a particular place or country shall apply to the exclusion of all other courts or jurisdictions.

More often than not the ship or its owner is not the contractual carrier, and does not have a contract with the actual shipper or merchant. Instead, the ship or its owner contracts with the actual shipper or merchant. Instead, the ship and its owner contracts with a multimodal transport operator, a non vessel operating common carrier ("NVOCC"), a freight forwarder or a cargo consolidator or such other parties with whom the ship enters into contracts of affreightment. The shipper or merchant is not a party to this contract of affreightment. The multimodal transport operator, the NVOCC, the freight forwarder, the cargo consolidator or such parties, enter into separate contracts of affreightment with the shipper or merchant and issue their own documents. As far as the merchant is concerned, this party would be his
contractual carrier and contractual claims, if any, in relation to the said contract and the cargo ought to be directed against this party only.

There is an increasing trend by Indian traders also to bring contractual claims against the carrying ship and to seek the ship’s arrest. Actions including criminal complaints are often filed against agents of the carrying ship in relation to contractual claims, in spite of the law being clear that an agent of a disclosed principal is not liable for any act, omission or breach of contract by his principal. Therefore, in relation to the issues being discussed, not only is an agent not liable for its principals’ contracts or breach of the same, but when the principals themselves do not even have a contract with the merchant, the agent is definitely not liable or responsible. Such criminal actions are only being resorted to by the trade to put pressure on a local party to pay up and for obtaining security for the claim from the carrying ship or her sister ship. Such actions lead to the ship interests suffering prejudice: i.e. their ships being arrested for claims not of their concern and also having to furnish and maintain securities until the suits are disposed of which could be many years. There are no real protective measures that carriers can adopt against such tactics other than ensure that all proper precautionary steps are taken. This will ensure they eventually succeed in these non-meritorious actions and suits.

The Claimants fail to appreciate that by resorting to such actions, they may be prejudicing their own rights. By failing or omitting to sue the proper party, their claim may thereafter become barred by limitation. They may be unable to disclose any cause of action against the ship, be unable to sustain the claim against the ship because of no privity of contract, improper jurisdiction for bringing the claim or other similar issues. Eventually, they may be unable to recover anything in relation to their contractual claim, even in cases where their contractual carrier would definitely have been liable for the claim had they focused their action on him instead.
Criminal cases for offences under sections 407, 420, 424 and 120B of the Indian Penal Code are often sought to be filed against the carrier, its agents, its directors and principle officers. This is to put pressure on the earner in relation to cargo claims. You will see from below that these sections of the Indian Penal Code would only apply to a carrier on very exceptional sets of facts.
CLAIMS FOR UNPAID BUNKER DUES

Bunker fuel is technically any type of fuel oil used aboard ships. It gets its name from the containers on ships and in ports that it is stored in, called bunkers. Unpaid dues of Bunker Suppliers are secured by a maritime claim and/or a right to arrest the vessel in rem to which the bunkers were supplied or her sister ship.

Bunker fuel oil is used mainly in powering ships. Bunker fuel is also known by other names: heavy oil, #6 oil, resid, Bunker C, blended fuel oil, furnace oil and other often locally used names.

A common feature of bunker supply contracts is that bunker suppliers frequently allow all or part of the purchase price to fall due some time after delivery of the bunkers. One reason why a bunker supplier may be willing to grant such credit is that the amount owing may be secured by a maritime claim and/or a right to arrest the vessel in rem to which the bunkers were supplied or her sister ship.

Owners trading vessels in the spot market will purchase bunkers on their own account. In such circumstances, fulfilment of the payment obligations under the bunker supply contract will be within owners control. If, however, the vessel is chartered out on a time or bareboat charter, bunkers will normally be purchased by the charterer. In such cases, owners have no control over the purchasers fulfilment (or not) of the payment obligations under the bunker supply contract. And if the purchaser defaults, this may lead to actions against the vessel by the bunker supplier.
In many other jurisdictions, while the bunker suppliers claim will not be secured by a maritime lien, it may qualify as a maritime claim, which may entitle the bunker supplier to arrest the vessel to which the bunkers were supplied (in some cases also sister vessels).

A large number of countries have ratified the 1952 Arrest Convention, which defines claims related to bunker supplies as maritime claims.

Although the Brussel convention has not been adopted by legislation, the principles incorporated in the International Convention relating to the Arrest of Seagoing Ships, Brussels, 10 May 1952 are part of the common law of India and applicable for the enforcement of maritime claims against foreign ships as is held in m.v Elisabeth-v- Harwan Investment & Trading Pvt Ltd., Goa.

The Supreme Court of India in the matter of m.v. Sea Success I has also held that the principles underlying the 1999 Geneva Arrest Convention were applicable for ship arrest in India.

Countries that have ratified the 1952 Arrest Convention, such as the Scandinavian countries, an arrest by a bunker supplier will only be accepted if the debtor for the unpaid claim is also the owner of the vessel. In time- and bareboat-charter situations this will not normally be the case and the bunker supplier will not be entitled to arrest the vessel.

Certain countries, such as Holland, India as well as at least some court districts in France, apply a less strict interpretation of the Arrest Convention and allow arrest even in cases where the debtor is not the owner of the vessel.

Owners should be aware that if charterers start defaulting under the charterparty, they are also likely to be defaulting on payments to suppliers of bunkers and other services, exposing the vessel to enforcement actions as a result.
Appeal Court of the Bombay High Court in Chemoil Adani Pvt Ltd versus m.v. Hansa Sonderburg & Ors confirmed the order of arrest of the vessel 'Hansa Sonderburg' where the bunker supply was requisitioned by time charterer of the vessel and supply of bunker oil was made by the bunker supplier on the vessel although there was no privity of contract with the vessel owner and bunker supplier. In this case the bunkers requisition was signed by time charterer and it was delivered on the vessel and the vessel acknowledged receipt of the supply.

Section 4 (1) (l) of the Admiralty Act (2017) deals with the above subject maritime claims, goods, materials, perishable or non-perishable provisions, bunker fuel, equipment (including containers), supplied or services rendered to the vessel for its operation, management, preservation or maintenance including any fee payable or leviable.

Bunker supplies are necessaries for a ship or necessaries for its voyage.

The arrest procedure in India is not difficult to instigate and pursue. Applications for arrest of a ship can be made to the Admiralty judge of the High Court having Admiralty jurisdiction where the vessel is to be arrested. It is necessary that the ship should be in Indian waters for filing of an Admiralty Suit but it is not necessary that the vessel should take berth, the vessel can be anywhere in the Indian territorial waters.

Bunker oil supplied to the ship for sale to other ships could not be conceived as goods supplied for her operation. The phrase 'operation of the ship' should not be equated with the business activities of the shipowner and the section as enacted could not cover goods which are loaded onto two ship only to be unloaded or disposed of soon thereafter by sale.

Division Bench of the Bombay High Court allowed the appeal filed by bunker supplier, Chemoil Adani Pvt Ltd for unpaid bunker dues, the order of arrest of the vessel m.v. Hansa Sonderburg was upheld, the order passed by
the single judge vacating the order of arrest of the vessel was reversed in appeal on April 27, 2010 confirming the order of arrest of the vessel as prima-facie case was made out and the arrest was justified.

Although the appeal court was of the view that the appellant bunker supplier cannot be shut out at prima facie stage and the single judge vacating the order of arrest proceeded to analyse the case and rendering conclusive findings at the interim stage was not permissible at an interlocutory stage.

Chemoil Adani Pvt Ltd filed an admiralty suit in the Bombay High Court against the vessel m.v. Hansa Sonderburg, the owner of the vessel Hansa Sonderburg Shipping Corp and the time charterer of the vessel Hull & Hatch Logistics LLC. The suit was filed for unpaid bunker dues. Bunkers were supplied at the request of the master of the vessel m.v. Hansa Sondersburg, further, the supply was made in terms of the agreement between the bunker supplier and the time charterer of the said vessel.

During the charter, the vessel was in need of bunker.

Time Charterer of the vessel enquired from the bunker supplier as to whether they are ready to supply bunkers. After negotiation, the terms of supply were agreed in an exchange of emails between the bunker supplier and time charterer, the terms were agreed on June 26, 2009. The master of the said vessel had made a request to the bunker supplier on July 5, 2009 for supply of 800MT of bunker to the vessel for the purpose of its onward journey to Eden.

The bunker came to be supplied under a bunker delivery note dated July 5, 2009. The bunker receipts were duly acknowledged by the master of the vessel on the bunker delivery note and also by a landing certificate dated July 5, 2009 thereafter a detailed invoice dated July 5, 2009 was delivered. There was a default in payment; suit was filed on October 19, 2009 and an exparte order of arrest of the vessel was passed by the single judge.
The vessel owner made an application for vacating the order of arrest before
the single judge on the ground that the bunker requisition was made at the
behest of the time charterer and it is the responsibility of the time charterer to
arrange and pay for the bunkers. The ship owner urged that the bunker
supplier has no privity of contract with the vessel and the owner of the vessel.
The contract of the bunker is only with the time charterer and in the absence
of any privity of contract the bunker supplier cannot have any right to
proceed against the vessel in rem and the owner of the vessel in personam.
The order of arrest was accordingly vacated by the single judge and vessel was
ordered to be released but the order of release of the vessel was reversed in
appeal.

The bunker supplier the appellant in appeal urged that whether the terms and
conditions of the contract between the bunker supplier and time charterer
would bind the ship and the ship owner or not, what are the legal
repercussions of the stipulations in the bunkers delivery note and what is the
legal consequence of the acknowledgment of the supplies by signing bunkers
delivery note are matters which cannot be decided at an interlocutory stage.
Bunker supplier further urged in appeal that at this interlocutory stage, they
need not prove that supply was on the credit of the vessel. In any event, the
documentary evidence was produced which would demonstrate that the
bunkers were supplied against the Master’s requisition for the benefit of the
vessel and the supply of bunkers to the vessel is acknowledged and evidenced
by the bunker delivery note also signed by Master/Chief Engineer of the
vessel. As to whether the Master’s signature was necessary and whether the
Chief Engineer had the authority to sign the same or not are matters which
cannot be gone into and decided at an interlocutory stage. The appellant
bunker supplier’s case was clear. The requisition was made by the Master but
the acknowledgment /delivery note was signed by the Master/Chief
Engineer. In such circumstances, whose signature binds the vessel is
something which the learned Judge could not have conclusively decided at
interlocutory stage.
In m.v.Eco matter Mr. Justice Chayya ordered that the Plaintiff, the bunker supplier, when supply was made at the behest of the time charterer has made a prima facie case that it has a maritime lien over the defendant vessel and therefore, even if the test as provided in Order 38 as well as Order 39 of the Code of Civil Procedure is applied, the plaintiff has a prima facie case and the balance of convenience is also in favour of the plaintiff and therefore, there is no consideration for vacating of the order of arrest that too without any proper security is made out by the defendant. Plaintiff, the bunker supplier has a reasonably arguable case on merits and therefore, the suit cannot be dismissed at the threshold. In prima facie opinion of this Court, in view of the claim raised by the plaintiff and contradicted by the defendant, such an issue is a triable and arguable issue. It is not the case that of the defendant that the bunkers were not supplied to the defendant vessel and that the Master/Chief Engineer has not accepted the supply. It is also not the case of the defendant that the bunkers supplied were not utilized by the defendant vessel. The material on record prima facie shows that the charterer of the defendant vessel, had agreed to the terms and conditions, which also binds the charterer. The question whether the same was binding on defendant vessel cannot be decided at this stage. It was rightly contended by the learned counsel for the plaintiff that a private arrangement between the owner and the charterer cannot deprive the bunker supplier from taking action in rem for supply of goods which were received and consumed by the vessel for its operation which constitute maritime claim and which was duly acknowledged by the Master/Chief Engineer. Therefore, the contention raised that the Master had not specifically confirmed the liability to pay for the bunkers on behalf of the owners would not take the case of the defendant any further.

A change in approach by the Western Australia Federal Court has opened up the possibility for claimants including unpaid bunker suppliers having a maritime lien under foreign law to arrest ships in Australia. In Australia, it has
been unclear whether foreign maritime liens are enforceable through ship arrest, when the underlying claim would not give rise to a maritime lien under Australian substantive law. On 11 September 2015, the Western Australia Federal Court (the FCA) made a groundbreaking decision in the SAM HAWK [2015] FCA 1005 allowing the vessel to be arrested for a claim for unpaid bunkers. In the given case, the vessel was time-chartered to Egyptian Bulk Carriers (EBC), which was required to provide bunkers to the vessel. EBC was not authorised to contract for necessaries on behalf of the owners nor to bind the vessel with a maritime lien for necessaries. EBC contracted with Reiter Petroleum (RP) for bunkers to be stemmed at Istanbul. RP arranged with KPI Bridge Oil for Socar Marine to supply the bunkers. The supply contract was subject to Canadian law and provided that RP was entitled to a lien wherever it finds the vessel and US law to determine the existence of a maritime lien. The vessel owners were not involved in the negotiations for the supply and delivery of bunkers and were not aware of RP’s role. They had advised Socar Marine that neither they nor the vessel accepted any liability to pay for bunkers and EBC were responsible. On 5 November 2014, RP filed an in rem claim for unpaid bunkers and arrested the vessel in Albany, Western Australia. The owners applied for the writ to be set aside for lack of jurisdiction on the ground that the supply of bunkers was not a recognisable maritime lien under Australian law. They relied on the (controversial) majority decision set out in the Privy Council case of the Halycon Isle [1981] AC 221, which held that the existence of a maritime lien was a matter of procedure and therefore subject to the domestic law of the place of arrest. RP argued that under the contract with EBC, RP had a maritime lien under Canadian or US law, which was sufficient to constitute a proceeding on a maritime lien. The FCA rejected the Halycon Isle case, finding that a lien will operate independently of the fortuitous choice of venue in which a ship is arrested. The court followed the reasoning in John Pfeiffer Pty Ltd v Rogerson (2000) 203 CLR 503 (Pfeiffer), where the High Court of Australia found that matters affecting the existence, extent or enforceability of
the rights or duties of the parties are substantive not procedural issues. It remains to be seen whether courts in other common law jurisdictions will adopt the Sam Hawk approach.

Why it matters:

Bunker supplier’s legal position is unclear as regards their claims under admiralty law when supplies are made at the behest of time charterer while legal position is different when supplies are requisitioned by master of the vessel or by the vessel owner.

Certain countries, such as Holland, India as well as at least some court districts in France, apply a less strict interpretation of the Arrest Convention and allow arrest even in cases where the debtor is not the owner of the vessel. English law does not recognise the concept of a maritime lien for necessaries (charges for goods and services rendered to the vessel). Therefore, an unpaid bunker supplier would not enjoy a maritime lien as a matter of English law. However, under US maritime law, such a bunker supplier does have a maritime lien.

Ship owners should be aware that if charterers start defaulting under the charterparty, they are also likely to be defaulting on payments to suppliers of bunkers and other services, exposing the vessel to enforcement actions as a result. Bunker suppliers have experienced the impact of defaulting charterers but the tide has turned in some jurisdiction.

Unpaid bunker dues requisitioned by master of a ship that is time chartered, is a maritime claim and can be arrested as the master is first and foremost the ship owner’s representative, he has more or less the same authorities as a ship owner himself but he is obliged to contact the ship owner if possible before making a major decision.
It is the master’s responsibility to make the vessel ready for sailing before the commencement of a voyage. This for example means that sufficient supplies of adequate food and water are brought onboard, the master is also responsible for the seaworthiness of the vessel when the voyage commences and that the vessel continues to be seaworthy during the voyage. Whether the vessel is seaworthy or not is decided by the master. The duty of the master to supervise the seaworthiness of the vessel also means that he is obligated to refuse to carry out the orders of the charterer or shipowner, in case their assessment of the seaworthiness is not compatible with his. If the charterer or the shipowner does not respect this it is possible to prosecute each of them as an instigator or accessory.

The master also shall supervise the loading and the discharging of the vessel. (The actual supervision is often carried out by the first officer.) It is also his responsibility to make sure the voyage is performed as swiftly as possible without time loss. The charterer can have a great influence on the circumstances surrounding the voyage but the master is the person who is primarily responsible for the performance of the voyage.

The Master need not obey orders given by Charterers of his vessel if it is, or at the material time he reasonably believes that it is, unsafe for him to obey them; or they call upon him to perpetrate or to facilitate a fraud upon, or commit a tort in relation to, or break a contract with, a third party; or they are manifestly inconsistent with the express or implied terms of the charterparty. The master has got several assignments on board. He is principally responsible for the seaworthiness of the vessel, both at the time of the departure and during the voyage. The master has got the legal right to refuse to obey orders that will jeopardize the seaworthiness and sometimes he is even obligated to refuse to obey such orders.

The master is responsible for the day-to-day operation of the vessel while the shipping company has the ultimate responsibility.
Section 4 of the ISM-Code “Designated Person(s)” reads as:

To ensure the safe operation of each ship and to provide a link between the company and those on board, every company, as appropriate, should designate a person or persons ashore having direct access to the highest level of management. The responsibility and authority of the designated person or persons should include monitoring the safety and pollution prevention aspects of the operation of each ship and to ensure that adequate resources and shore based support are applied, as required

Bunker oil is ‘necessary’ goods and supplies for ship. If it is conclusively shown that necessaries supplied or services rendered to any ship are prima facie 'necessaries' and are within the section 4 (1) (l) of the Admiralty Act (2017), proving supply and services rendered admiralty action will lie. The concept of "necessaries" goods and materials supplied or services rendered to a ship for her operation and maintenance. The operation of the ship would necessarily include operation of ship ‘necessary’ for voyage and seaworthy necessarily include necessaries including bunkers, for the vessel to be seaworthy from commencement and continues to be seaworthy during the voyage. Bunker fuel oil is used mainly in powering ships.

A common feature of bunker supply contracts is that bunker suppliers frequently allow all or part of the purchase price to fall due some time after delivery of the bunkers. One reason why a bunker supplier may be willing to grant such credit is that the amount owing may be secured by a maritime claim and/or a right to arrest the vessel in rem to which the bunkers were supplied or her sister ship.

Owners trading vessels in the spot market purchase bunkers on their own account. In such circumstances, fulfilment of the payment obligations under the bunker supply contract will be within owners control. If, however, the vessel is chartered out on a time or bareboat charter, bunkers will normally be purchased by the charterer. In such cases, owners have no control over the
purchasers fulfilment (or not) of the payment obligations under the bunker supply contract. And if the purchaser defaults, this may lead to actions against the vessel by the bunker supplier.

In many other jurisdictions, while the bunker suppliers claim will not be secured by a maritime lien, it may qualify as a maritime claim, which may entitle the bunker supplier to arrest the vessel to which the bunkers were supplied.
Chapter 74

COLLISION ACTIONS

The maritime claim in respect of which the power of arrest is recognised in law includes section 4 (1) (d) of the Admiralty Act (2017) deals with loss or damage caused by the operation of a vessel.

There is a provision under section 443 and 445 of the Merchant Shipping Act to detain ship that has occasioned damage also Part X deals with collisions, accidents at sea and liability.
RESTRICTIONS TO Invoke ADMIRALTY JURISDICTION

There are restrictions to invoke Admiralty Jurisdiction in following cases

a. When the matter can be adjudicated in arbitration and there is a specific arbitration clause, the matter should be proceeded in arbitration (although a ship can be arrested as security in arbitration);

b. 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;

c. Action in rem against the Government of India in respect of claims against the Government or arrest, detention or sale of ships or cargo or other property belonging to the Government unless notice under section 80 (1) of the Code of Civil Procedure is complied with;

d. Personam actions are not allowed in case of collision until a proceedings previously brought by the Plaintiff in any foreign court against the same defendant in respect of the same cause of action have been discontinued or otherwise come to an end.
Chapter 76

APPEALS

Admiralty Suit is filed in the High Court having admiralty jurisdiction and is heard by the single judge of the trial court. Any party aggrieved by the order passed by the single judge of the trial court have an option to file an appeal before the Appeal Court (Division Bench) in the same High Court and any order passed by the Appeal Court of the High Court, the aggrieved party may file an Special Leave Petition (SLP) in the Supreme Court of India being the Apex Court of India.
EXECUTION OF FOREIGN DECREES

A Person who has obtained a decree from a court in a foreign country can approach an Indian court for enforcement of the said decree under the Civil Procedure Code, the Supreme Court has ruled in November 2000 in m.v. A.L. Quamar -vs- Tsavlis Salvage (International) Ltd.

"Section 44A of the code enables a foreign decree holder to execute a foreign decree in this country," a division bench comprising Justices S B Majmudar and Umesh C Banerjee said dismissing an appeal of Merchant Vessel A L Quamar against an Andhra Pradesh High Court order.

The High Court had held that it was competent to issue attachment orders against the merchant vessel on the basis of a decree against it issued by the High Court of Justice Queen's Bench Division Admiralty Court in an action by Tsavlis Salvage (International) Ltd.

Relying on decision by a New Zealand Supreme Court and an Australian judgement, Justice Banerjee, writing the judgement for the bench, said a foreign decree holder could invoke the jurisdiction of an Indian court under Section 44A of the code.

Justice Banerjee said "One can conclude that whereas the domestic law, execution scheme is available under Sections 37, 38, 39, 41 and 42, Section 44A depicts an altogether different scheme for enforcement of foreign judgements through Indian Courts."

The court said that when a decree is obtained from an Indian court to enforce in the country two years after it was obtained, "there exists a mandatory obligation to serve a notice to show cause against the execution."
However, the court said in case of Section 44A, which enabled a foreign decree holder to approach an Indian court for execution, requirement of show cause notice was not mentioned even if the decree was over two-years old.

"In fine, the legal fiction created by Section 44A makes the Andhra Pradesh High Court, the court which passed the decree and as such competency of the High Court to entertain the execution proceeding cannot be doubted in any way," Justice Banerjee said.

The court said the dismissal of the appeal would not preclude m.v. A L Quamar to obtain release of the attached ship on furnishing a bank guarantee of a nationalised bank for suitable amount to the satisfaction of the Registrar of the Andhra Pradesh High Court, pending the execution proceedings.

"Once such Bank guarantee is furnished by the appellant and requisite undertakings as earlier ordered by the High Court are filed, the ship will be released from attachment and will be permitted to sail out of the Port of Vishakhapatnam," the court ordered.

The prime law of India is that where there is an express agreement to, submit to the jurisdiction of a foreign court, a judgment pronounced by such court binds the parties, and effect will be given to such a judgment in Indian courts. The governing legislation for judgments pronounced by foreign courts is the Code of Civil Procedure 1908.

Section 2(6) of the Code defines a "foreign judgment" to mean any judgment of a foreign court. Section 2(5) of the Code defines a 'foreign court' to mean a Court outside India and not established or continued by the authority of the Central Government (of India).

In other words, a foreign judgment means an adjudication by a foreign court on a matter before it. A judgment given by a foreign court does not cease to
be so when, as a consequence of political change, the territory where the court was situated at the time of the judgment becomes part of India.

Such a judgment, for the purposes of enforcement and execution, will be conclusive, that is, it will be recognised and will operate as res judicata (also fulfilling the conditions of it) save in certain exceptional cases. These are mentioned in section 13 of the Code, which reads as follows:

A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon, between the same parties or between parties under whom they or any of them claim litigating under the same title, except -

- where it has not been pronounced by a Court of competent jurisdiction;

- where it has not been given on the merits of the case;

- where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;

- where the proceedings in which the judgment was contained are opposed to natural justice;

- where it has been obtained by fraud; and

- where it sustains a claim founded on a breach of any law in force in India [an example of this would be a foreign judgment for a gambling debt]

The foreign court must be competent to try the suit, not only as regards pecuniary limits of its jurisdiction and the subject-matter of the suit, but also with reference to its territorial jurisdiction, and the competency of the foreign
court is to be judged not by the territorial law of the foreign state, but by the rules of private international law

Undoubtedly, the foreign court has jurisdiction to deliver a judgment in rem, which may be enforced or recognised in an Indian court, provided that the subject matter is within its jurisdiction. It cannot, however, sit in judgment on, say, immovable property situated outside the country of its jurisdiction.

In other words, as laid down by the Supreme Court of India in one of its judgments, the courts of a country generally impose a three-fold restriction on the exercise of their jurisdiction:

izr jurisdiction in rem (binding not only the parties but the world at large) by a court over res outside the jurisdiction will not be exercised, because it will not be recognised by other courts;

izr the court will not deal directly or indirectly with title to immovable property outside the jurisdiction of the state from which it derives its authority, and

izr the court will not assist in the enforcement within its jurisdiction of foreign penal or revenue laws.

The operation of section 13 would be better appreciated by the following illustration: A sues B in a foreign court. If the suit is dismissed, the decision will operate as a bar to a fresh suit by A in India on the original cause of action, unless the decision is inoperative by reason of one or more of the circumstances specified. If a decree is passed in favour of A in the foreign court and A sues B on the judgment in India, B will be precluded from putting in issue the same matters that were directly and substantially in issue in the suit in the foreign court, unless the decision is once again inoperative for the said exceptions.
Though a foreign judgment may be enforced by a suit in India, it must not be assumed that Indian courts are bound in all cases to take cognisance of the suit and they may refuse to entertain it on grounds of expediency.

It is also relevant to consider section 14 of the Code. It states -

The Court shall presume, upon production of any document purporting to be a certified copy of foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

Execution of Foreign Judgments

A judgment of an Indian court can only be enforced by proceedings in execution, against that, a foreign judgment may be enforced by proceedings in execution in certain cases only. These are mentioned in sections 44 and 44A of the Code. In all other cases, a foreign judgment can only be enforced by a suit on the judgment. If such a suit is dismissed, no subsequent application to execute that judgment will lie - for it has become merged in the decree dismissing the suit.

This stand is brought out through the Code distinguishing between foreign judgments of countries which are 'reciprocating territories' and those which are not. Section 44A of the Code reads as follows -

1. Where a certified copy of a decree of any of the superior court of any reciprocating territory has been filed in a District Court [of India], the decree may be executed in India as if it had been passed by the District Court.

2. Together with the certified copy of the decree shall be filed a certificate from such superior court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for
the purposes of proceedings under this section, be conclusive proof of
the extent of such satisfaction or adjustment

Reciprocating Territory means any country or territory outside India and so notified

Decree for this purpose means a decree or judgment under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment

From time to time, the Government has issued notifications recognising the following as reciprocating countries: Hong Kong, Singapore, New Zealand, Cook Islands, Trinidad & Tobago, United Kingdom, Northern Ireland, Trust Territory of Western Samoa, Papua New Guinea and Bangladesh.

When a suit emanates from any of these countries, the concerned Indian court will proceed forthwith to enforce the foreign judgment, provided it is not affected by any of the exceptions enumerated in section 13. If it emanates from any other country, the enforcement would have to be sought by filing a suit in India on the foreign judgment. Again, the Indian court would pass a judgment in terms of the foreign judgment, provided it is not affected by the said exceptions

The decree -

:-· would have to have all the attributes of finality, - would be for payment of a sum of money,

:-· (passed in a foreign currency) could provisionally be claimed in Indian rupees converted at the rate prevailing on the institution of the
proceedings, with a right to claim the amount due at the rate prevailing on the date of the court's eventual judgment;

would not proceed for enforcement, and, if proceeded with, such proceedings may be stayed if, in an appeal against it, the judgment-granting country stays its execution;

would be enforced even though against a state or a state-owned entity, so far as it relates to commercial activities;

could provide for interest on the money claim, in addition to the original amount. If it is silent, interest could be claimed on the decretal amount from the date of filing the suit in India. Costs could also be awarded in consonance with provisions of the Code.

A suit on a foreign judgment must be brought within three years from the date of judgment (Article 101 of the Limitation Act 1963). The pendency of an appeal in the foreign country will not bar a suit on a foreign judgment.

Enforcement of Foreign Arbitral Awards

There has been a phenomenal growth in international arbitration involving Indian parties - both the governing law and the venue of arbitration are foreign. An award in such a case would be meaningless, unless it can be enforced without hurdles and with the least inquiry and review by the courts where enforcement is sought.

An arbitration award can only be enforced when an order is made by the courts of the country where enforcement is sought. This principle is also reflected in the Indian system. In India, foreign arbitration awards, in terms of enforcement, were governed by the Foreign Awards (Recognition and Enforcement) Act 1961 ("the Act") which gave effect to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards.
1958. India had made two reservations while ratifying the Convention, namely:

:- that it would apply the Convention to the recognition and enforcement of an award only if it was made in the territory of another reciprocating contracting state; and

:- that it would apply the Convention only to differences arising out of legal relationships which were considered as commercial under Indian law.

There is also the Geneva Convention, adopted by India through the Arbitration (Protocol and Convention) Act 1937.

Article 1(i) of the New York Convention specifically states as follows:

This convention shall apply to the recognition and enforcement of arbitral awards made in the territory of the state other than the state where the recognition and enforcement of such awards is sought, and arising out of differences between persons, whether physical or legal.

Section 7 of the Act, which corresponds with the provisions of the New York Convention, specifies that a foreign award may not be enforced if the party against whom the award is sought to be enforced proves to the court enforcing the award any of the following:

(1) that the parties to the arbitration agreement were, under the law applicable to them, under some incapacity, or the arbitration agreement was not valid under the law to which the parties have subjected it (or, in the absence of any condition thereon) under the laws of the place of arbitration;

(2) that there was no due compliance with the rules of fair hearing.
(3) the award exceeded the scope of submission to arbitration;

(4) the composition of the arbitral authority or its procedure was not in accordance with the arbitration agreement of the parties or (failing such agreement) was not in accordance with the law of the place of arbitration;

(5) the award has not yet become binding on the parties, or has been set aside, or suspended by a competent authority of the country in which the award was made;

(6) if the court dealing with the award is satisfied that (a) the subject-matter of the difference is not capable of settlement by arbitration under the law in India; or (b) the enforcement of the award will be contrary to public policy.

An arbitration award made outside India is distinct from a foreign judgment (see definition of decree above). Identical with foreign judgments, the Act deals with the question of enforcement of awards of a foreign reciprocating territory as defined in it.

So far, the Government has notified the following countries for that purpose: United Kingdom, the Netherlands, United States of America, Sweden, Syria, Philippines, Thailand, Austria, Germany, Switzerland, Czechoslovakia, Russia, Finland, Greece, Ecuador, Bulgaria, Romania, Norway, Poland, Hungary, France, Germany, Japan, Tanzania, Nigeria, Tunisia, Ghana and Morocco.

Any person interested in enforcing a foreign award may apply in writing to any court having jurisdiction over the subject matter of the award. The application will be numbered and registered in the court as a suit between the applicant as the plaintiff and the other as defendants. The court will direct notice to be given to the parties requiring them to show cause why the award should not be filed. The court, on being satisfied that the foreign award is
enforceable under the Act, will pronounce judgment on it. A decree will follow. No appeal will lie from such a decree except insofar as the decree is in excess of or not in accordance with the award. Several High Courts of the land, including Bombay, have made detailed rules regarding the procedure and the forms to be used for applications for enforcement of foreign awards

The new Arbitration and Conciliation Ordinance 1996 (which follows the UNCITRAL Model Law), while repealing both the 1937 and 1961 Acts, retains the existing law. India continues to be a party to the Conventions. It deletes, however, the old irritant, which provided that the 1961 Act will not apply to an award arising from an arbitration agreement governed by the law of India. This will rectify the alarm generated by the Supreme Court of India decision in National Thermal Power Corp. v Singer Co. in which it was held that an award made outside India will still be an award on an arbitration agreement governed by the law of India, if the substantive law of the contract is Indian law.

The emerging legal issues on "jurisdiction" as regards transactions over the internet can hardly ignore the legal aspects involved in the execution/enforcement of foreign decrees. Even after exercise of jurisdiction, the Courts may be unable to help the plaintiff in getting relief in case the local laws of the country concerned have certain restrictions for the execution/enforcement of foreign judgements or decrees in the country.

Under Indian Law, execution of decrees, whether foreign or domestic, is governed by the provisions of the Code of Civil Procedure, 1908 (CPC) (as amended from time to time).

Under the Indian law there are two ways of getting a foreign judgement enforced. Firstly by filing an Execution Petition under Section 44A of the CPC (in case the conditions specified therein are fulfilled). Secondly by filing a suit upon the foreign judgement/decree.
Under S. 44A of the CPC, a decree of any of the Superior Courts of any reciprocating territory are executable as a decree passed by the domestic Court. Therefore in case the decree does not pertain to a reciprocating territory or a superior Court of a reciprocating territory, as notified by the Central Government in the Official Gazette, the decree is not directly executable in India. In case the decree pertains to a country which is not a reciprocating territory then a fresh suit will have to be filed in India on the basis of such a decree or judgement, which may be construed as a cause of action for the said suit. In the fresh suit, the said decree will be treated as another piece of evidence against the defendant.

However in both the cases the decree has to pass the test of S. 13 CPC which specifies certain exceptions under which the foreign judgement becomes inconclusive and is therefore not executable or enforceable in India.

In this chapter, various decisions of the Supreme Court of India, various High Courts and other Courts are discussed in order to bring the law on the point, in perspective. In order to show a comprehensive view of the law, along with the ratio decidendi a short averment of the facts of the case are also given so that the decisions can be rightly appreciated. Each of the aforesaid exceptions, under S. 13 have been dealt with separately and at the end of each discussion, a broad proposition culled out from the decisions of the Courts is laid down so that it is easier to remember the law on the point. However, the proposition may not be exhaustive to cover all circumstances.

It will be seen from the above that even if a judgment or a decree is passed by a foreign Court against an Indian defendant, the judgment or decree may not be enforceable against him due to the operation of S. 13 of CPC. It can be seen that, the plaintiff has to come to the Indian courts to either get the foreign judgment executed under S. 44A or file a fresh suit upon the judgment for its enforcement. Therefore by getting a decree in the foreign Court, the plaintiff only avoids the inconvenience of leading evidence in the
Indian Courts but runs a much bigger risk under S. 13. Therefore it may be advisable for a foreign plaintiff to institute claims in India itself in case the defendant is in India. Since international transactions would involve more of documentary evidence and that comparatively leading of evidence may not be that inconvenient, it may be advisable to avoid the risk under S. 13 and file claims in India itself.

The Supreme Court held in Thyssen Stahlunion GMBH vs. Steel Authority of India Ltd. that,

"A foreign award given after the commencement of the new Act (i.e. Act of 1996) can be enforced only under the new Act. There is no vested right to have the foreign award enforced under the Foreign Awards Act [i.e. Foreign Awards (Recognition and Enforcement) Act, 1961]".

In Fuerst Day Lawson Ltd. vs. Jindal Exports Ltd. the Supreme Court decided whether a "foreign award" given after the commencement of the Act of 1996, but where the arbitration proceedings started before the commencement of the Act of 1996, will be governed by the Act of 1996.

The learned Judges held that a foreign award passed on 13/8/1996 could be enforced with the same vigour under the Ordinance as it could be under the Act of 1996. The learned Judges held that although the Act of 1996 was brought into force w.e.f.22/8/1996 vide Notification No.GSR 375(E) dt.22/8/1996 published in the Gazette of India, for all practical and legal purposes it shall be deemed to have been effective from 25/1/1996, i.e. the date when the first Ordinance came into force, since the provisions of the said Act and Ordinance are similar and there is nothing in the Act to the contrary so as to make the Ordinance ineffective as to either its coming into force on 25-1-1996 or its continuation upto 22-8-1996. The learned Judges held that the object of the Act of 1996 is to minimise supervisory role of the court and to give speedy justice.
Under the Arbitration Act, 1940 the arbitral award had to be filed in a court to obtain a decree, which is dispensed with under the Act of 1996. In one proceeding there may be different stages. In the first stage, the court may have to decide about the enforceability of the award. Once the court decides that the foreign award is enforceable, there arises no question of making the foreign a rule of court/decree. If the object and purpose can be served in the same proceedings, there is no need to take two separate proceedings resulting in multiplicity of litigation.
BEACHING OF A SHIP FOR DEMOLITION

A vessel shall not be deemed to be a vessel, when it is broken up to such an extent that it cannot be put into use for navigation, as certified by a surveyor, is no longer considered as a ship and therefore Admiralty action cannot be initiated. The ship is no longer within the definition of a ship, the nature and category of the res is entirely altered, the court is without jurisdiction as there is no res, the ship has literally ceased to exist from the definition of a ship. A action in rem cannot be maintained in such situation.

“vessel” includes any ship, boat, sailing vessel or other description of vessel used or constructed for use in navigation by water, whether it is propelled or not, and includes a barge, lighter or other floating vessel, a hovercraft, an off-shore industry mobile unit, a vessel that has sunk or is stranded or abandoned and the remains of such a vessel.
INDIAN TERRITORIAL WATERS FOR SHIP ARREST

Subject to the provisions of sections 4 and 5, the jurisdiction in respect of all maritime claims under this Act shall vest in the respective High Courts and be exercisable over the waters up to and including the territorial waters of their respective jurisdictions in accordance with the provisions contained in this Act provided that the Central Government may, by notification, extend the jurisdiction of the High Court up to the limit as defined in section 2 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976).

Section 2 (k) of the Admiralty Act (2017) defines “territorial waters” that shall have the same meaning as assigned to it in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976).
Chapter 80

ONE SHIP COMPANY

It has long been the practice in the shipping business to arrange for several ships which are financed by a common source and managed or operated as a fleet, to be registered in the names of separate companies whose only asset is the particular ship registered in its name. Often such companies will be registered in a country where the identification of shareholders in companies is not a matter of public record. This arrangement has become known colloquially as the "one-ship- company" and has been a source of irritation to cargo interests and others who consider that they are thereby deprived of the benefit of the sister ship provisions. However, it is clear that the courts have recognised that the "one-ship company" is a legitimate business arrangement, and in the absence of evidence of fraud it is not permissible to lift the corporate veil in order to look behind the "one-ship company" structure for the purposes of identifying the beneficial owner of the company and say that the beneficial owner of the company is the beneficial owner of the ship. In law the beneficial owner of the ship is the company, which is a separate and distinct legal entity or person from the beneficial owner of the company."
Chapter 81

STATE-WISE SHIP ARREST

An order of arrest of a ship passed by the High Court having admiralty jurisdiction can be executed in that State having High Court that passed the order of arrest.
PIERCING THE CORPORATE VEIL

The arrest of the Chinese registered vessel, M.V. Tongli Yantai, at Chennai, India by the Bombay High Court in appeal filed by Great Pacific Navigation (Holdings) Corporation Ltd [(Great Pacific)] against M.V. Tongli Yantai, decided on 14th October 2011, highlighted the importance of

a. Admiralty jurisdiction can be acquired if the writ or if the warrant of arrest is executed on the ship when it arrives within the territorial jurisdiction of the court

b. Lifting the corporate veil to establish beneficial ownership for the purpose of arresting a sister vessel-ship

Great Pacific, a Hong Kong based company, filed a suit in the Bombay High Court against the vessel M.V. Tongli Yantai for security in respect of their claim pending arbitration. At the time of filing of the suit and application for arrest as well as at the time of passing of the order, the vessel was not within the territorial waters of India. The vessel was arrested later when she arrived Indian territorial waters at Chennai.

Great Pacific had chartered a vessel called M.V. Nasco Diamond from Da Sin Shipping Pte. Ltd. Da Sin had in turn time chartered the vessel from the head owners YDM Shipping Company Limited. Great Pacific thereafter sub-chartered the vessel M.V. Nasco Diamond to Tongli China acting through its agents/nominees/alter ego Tongli Samoa pursuant to a fixture recap for a time trip charter. The fixture recap was signed by Tongli Samoa. The ship sank. Da Sin raised the claim upon Great Pacific who in turn raised the claim upon its charterer, Tongli Samoa. Great Pacific sought recourse to arbitration. Tongli Samoa, against whom Great Pacific has raised a claim is the sister concern of one Tongli Shipping Co. Ltd., China who beneficially owned M.V.
Nasco Diamond as also the respondent, original defendant vessel, M.V. Tongli Yantai. Tongli China incorporated a number of shell companies including Tongli Samoa which is a sham and a facade for Tongli China. The arrested ship is of the registered ownership of Halcyon Ocean Shipping Companies Ltd.

The Single Judge refused to lift the veil of Halcyon; and refused to consider Halycon as being the alter ego of Tongli China nor had recorded any finding that there was a fraud involved, the defendant vessel M.V. Tongli Yantai was released from arrest, this decision was overturned on appeal.

In this case, the Appeal Court of Bombay High Court allowed that an order from Bombay High Court can be executed in any Indian territorial waters and is in agreement with the decision of the learned single judge answering the preliminary issue with regard to the jurisdiction of the court in Geetanjali Woollen Pvt. Ltd. Vs. M.V. X-Press Annapurna And Ors. dated 9th August, 2005 (2005 (6) BCR 31). It was also held by the single judge that the Court can acquire jurisdiction if the writ or if the warrant of arrest is executed on the ship when it arrives within the territorial jurisdiction of this Court. Although the question on jurisdiction was left unanswered by the appeal court in M.V. X-Press Annapurna And Ors. Vs. Geetanjali Woollen Pvt. Ltd, dated 11th March 2011, as it was in their opinion not necessary to decide that question in appeal. In an unreported appeal court judgment, dated 20th July 2001 in M.V. Umang, the Bombay High Court ruled that its admiralty jurisdiction extends throughout the territorial waters of India.

Great Pacific also urged in their appeal to raise the corporate veil to see the truth of the facts relating to all of the aforesaid parties hitherto concealed, suppressed, masked, screened or otherwise not shown by the simplicitor registration of Tongli Yantai with Halcyon in the shipping records. It may be rather myopic not to consider the true position of the parties behind legal and juristic facade. It is under such circumstances that in several cases the lifting
of the corporate veil is permitted as an equitable doctrine in general law relating to corporate management as also more specially in the case of shipping companies. The Counsel for the vessel owner argued in the Appeal Court that where there was no fraud made out, lifting the veil would not be possible.

The appeal court observed that it would certainly be applied to companies which are no longer autonomous having the identity and community of interest between companies in a group to look at the economic scenario to meet which the companies are incorporated. The test is to see whether they exist as autonomous units or as organs of each other. As the financial and economic situations become more and more complex in the commercial and business world, the ambit of the employment and application of the doctrine would grow commensurately. It would be required to be more frequently invoked upon present day considerations when such situations arise oftener enjoining courts to use their discretion to do complete justice upon equitable consideration.

Based on the above cited decision when the moment comes for decision as to which court of India one should approach for obtaining an order of arrest, Bombay High Court is preferred as order for arrest of a vessel obtained from the Bombay High Court can be executed anywhere in Indian territorial waters, wherever the vessel is found.

However, this pan-India admiralty arrest jurisdiction is only with the Bombay High Court while other High Courts with admiralty jurisdiction i.e. Calcutta, Madras and Gujarat High and other admiralty courts jurisdiction is within their State territorial waters.

Absent fraud, economic and commercial unity is no ground to lift the veil. However, the observation of the appeal court is extremely broad. This will ease untangling the complex cobweb behind one-ship company that mask the real owner, the concept that detaches ships from her sister-ship, making it
difficult to arrest the sister ship, as the real owner is not known. One-ship company concept is used to limit the financial liability of such individual company or the group of such companies. Such commercial position does prevail in the admiralty world. However, such one-ship companies are then expected to have their own corporate structure sufficient for their separate distinct presence. No Court can countenance that such a position would be allowed to prevail if it would cause injury, damage or injustice to creditors and other third parties dealing with such companies. It would, therefore, be allowed to prevail if within a group or by an individual who owns a fleet of ships various separate distinct legal entities by way of incorporation are created having their separate distinct liabilities with capability to meet them. If that is done and no connection with the group of reliance of one company upon another for the discharge of its liability is shown, the commercial position would certainly be allowed to prevail. This would be if each one-ship company thus incorporated would have its own place of business, shareholders and management distinct and separate from the group of companies so as to rely upon the assets or control of those companies for its survival. If however that is not the case, the one-ship company would not be a distinct incorporated person at all and merely a shadow of companies or the individual behind it.

All the orders passed by the single judge and the appeal court in the matter was set aside by the Supreme Court of India (the Apex Court) since they were passed at the interlocutory stage. The Supreme Court further directed that the High Court will dispose of the pending matters in accordance with law taking note of the fact that the Supreme Court have set aside the orders passed by the learned Single Judge and the Division Bench of the High Court.

The Bombay High Court division bench hearing appeal, in the matter of Lufeng Shipping Company Ltd -vs- m.v. Rainbow Ace & Anr has handed down a decision that lifting of corporate veil will arise if there is fraud and evidence thereof. A ship can be arrested under beneficial ownership for a
maritime claim under the 1999 arrest convention supported with evidence of
the beneficial ownership of the ship sought to be arrested is the same as the
one who is responsible and liable for the claim, and not merely on suspicion.

Corporate veil can be lifted if there is fraud and supported with evidence also
a ship can be arrested under beneficial ownership if supported with evidence.
ENFORCED SALE OF THE SHIP

Under the Admiralty Rules of the High courts having admiralty jurisdiction, the sale of ship whether pendente lite or after adjudication on the plaintiff’s suit, has to be carried out by the marshal/sheriff, just like a sale of movable property in an ordinary civil suit. There is no provision for a reserve price and there is no provision for appraisement as in English Admiralty practice. Nevertheless, the courts, in order to prevent the ship being sold at a price a great deal less than its real value, from recent times have invariably ordered that the ship be appraised at its real value by a ship's valuer and sold at not less than the appraised value thereof unless the court, on the Marshal's or the Sheriff's application, orders it to be sold for a lesser price when the bidding does not reach up to the appraised value.

The sale is normally by public auction after publication of the notice of sale in such newspapers as the court may direct. There have been no known instances of sales by private treaty, though there is nothing in the Rules preventing such a sale.

In any action a court has power to order the sale of property which is perishable, likely to deteriorate or in relation to which there is good reason for sale. Such a sale of itself would be subject to encumbrances existing prior to the sale. The sale of a ship includes all property on board other than that owned by someone other than the ship owner.

A sale is confined to property that must be under arrest. A court may order the discharge and sale of cargo not under arrest where a ship in which the cargo is loaded is under arrest and an order for sale is made in respect of it. The Admiralty Court may order the appraisement and sale of property under arrest on the application of a party to the action or by an application of the
Marshal or the Sheriff. A sale pending suit is normally ordered on the grounds that retention of the property will cause the plaintiff's security to diminish if for no other reason than the mounting costs of arrest. Application must be served on any person who has obtained judgment against the ship and all caveators.

The Sheriff or the Marshal may sell the property in foreign currency. The proceeds will be paid into court and will be invested only on application. The effect of sale of property under arrest in an action in rem is to give a title free of encumbrances to the purchaser.

A judicial sale of ship is effected for the enforcement of a judgment or an arbitral award prescribing certain payment obligations to be performed by the ship owner; while in some other cases it is effected for the purpose of enforcing a court order, such as an order for the appraisement and sale of a ship under arrest which is applied for by a maritime claimant before a judgment is issued on the merits of the claims giving rise to the arrest.
APPRAISEMENT AND JUDICIAL SALE

The usual order passed by the court is either on the judgment or pendente lite is that the property be appraised and sold by the admiralty Marshal or the Sheriff. Appraisement is the official valuation of the ship by a court appointed valuer in order to prevent the ship from being sold at too low a price. The Marshal or the Sheriff is not allowed to sell the ship for less than the appraised value without the order from the court. If there are no offers or if the offer is below the appraised value of the ship an order of the court will be necessary if it is established that the appraised value is no longer realistic, the court will consider the potential interest of all the claimants against the fund.

When the court orders that a ship be sold, the sale is of the ship together with all property which is on board the ship, including her bunkers, other than property which is owned by someone other than the owner of the ship.

The terms and conditions for auction sale of the ship are finalised by the marshal/sheriff and are made available to intended bidders. Advertisements/Notice for auction sale of the ship are published globally, normally in two international shipping newspaper and two newspaper in India.

Judicial sales of vessel usually occur in situations where the vessel has been arrested by a claimant.

The application of the court’s jurisdiction to order a judicial sale of vessels is best expressed in the principles laid down by Mr. Justice Brandon in The Myrto [1977] 2 Lloyd's Rep 243, where the learned judge said that an English court is usually asked to order a sale of a ship in circumstances where the respondent/shipowner does not appear in the proceedings or appears but does not defend the claim. If the claim is defended and the
respondent/shipowner oppose the making of a judicial sales order, the learned judge was of the view that the English court should not order the judicial sale of the vessel except if there is “good reason” for doing so. The learned judge went on to say that what would constitute a “good reason” would be the prospect of heavy and continuing costs of maintaining the vessel under arrest over a long period, with the consequence that there is reduction in the value of the plaintiff’s security for their claim.

“I accept that the Court should not make an order for the appraisement and sale of a ship pendente lite except for good reason, and this whether the action is defended or not. I accept further that, where the action is defended and the defendants oppose the making of such an order, the Court should examine more critically than it would normally do in a default action the question of whether good reason for the making of the an order exists or not. I do not accept, however, the contention put forward for the owners, that the circumstances that, unless a sale is ordered, heavy and continuing costs of maintaining the arrest will be incurred over a long period, with consequent substantial diminution in the value of the plaintiffs’ security for their claim, cannot, as a matter of law, constitute a good reason for ordering a sale. On the contrary I am of opinion that it can and often will do so.”. If, for example, a vessel was arrested as security for a claim and the respondent/shipowner does not maintain the vessel while she is under arrest, the court will view the vessel as security that is gradually reducing in value because of the falling value of a vessel that is not maintained. If the court is satisfied that it will take time before the court is able to give judgment on the claim and is satisfied that as a consequence, the gradual reduction in value of the vessel means that there is a significant reduction in the security for the claim, it can decide to order the judicial sale of the vessel.

The relevant central Act of Parliament empowering the High Court to sell property is Section 122 of the Indian, Code of Civil Procedure 1908 (the
“Code”), Order XXXIX rule 7 in The First Schedule and Section 94 of the Code.
CONDITION OF SALE

The terms and conditions for auction sale of the ship are finalised by the marshal/sheriff and are made available to intended bidders. Advertisements/Notice for auction sale of the ship are published globally, normally in two international shipping newspaper and two newspaper in India.

Under the terms and conditions of the sale, the successful bidder is required to pay a percentage, usually 15 per cent, of the purchase price forthwith and the balance of the price within a period fixed in the conditions of sale, usually 15 days from the date of the sale. The payment is to be made by means of bankers' draft or a certified cheque. Under the Rules, the sale is subject to sanction of the court. The sale is free and clear of all maritime or other liens and encumbrances.

Section 8 of the Admiralty Act (2017) deals with vesting of rights on sale of vessels.—On the sale of a vessel under this Act by the High Court in exercise of its admiralty jurisdiction, the vessel shall vest in the purchaser free from all encumbrances, liens, attachments, registered mortgages and charges of the same nature on the vessel.
Chapter 86

SHERIFFS POUNDAGE

Poundage is payable at 1 per cent of the amount received by the plaintiff in full or part satisfaction of a judgment or, in the event of the claim being satisfied, compromised or settled outside court, upon the amount of such satisfaction, compromise or settlement. The Plaintiff or his advocate on record of the suit who receives direct any instalment or other sum ordered to be paid by the judgment debtor in full or part satisfaction of a judgment or order is obliged to file a praecipe in the marshal/sheriff's office informing him of the payment made. The advocate on record shall be responsible for filing such praecipe if the payment has been made through his office or he is informed of it by his client.

The Indian perspective on admiralty law talks about the Sheriff of Mumbai being an apolitical titular authority. The Sheriff basically is an officer of the high court and the nominal head of that department of the high court which carries out functions like attaching, sealing properties and auctioning them if the need arises and also summoning people amongst other functions. Executive powers come along with this position.

Poundage is nothing but a fee or a charge and in admiralty matters the Sheriff is to be paid poundage of 1 percent. However there is a classic dispute arising in this regard. Does the Poundage have to be paid upon a service being rendered by the Sheriff or in all cases is a question which has yet not been concretely answered.

In the matter Ecohidrotechnika LLC v. Black Sea and Azov Sea Production & Operating Administration of Shipping & Anr, the Sheriff of Mumbai filed a report after the plaintiffs in an affidavit resisted the 1 percent claim of poundage. In this matter this was a major controversy and the rules regarding
the sheriff’s fee were studied. In this matter no ship/property was arrested or
seized by any specific court order but was the enforcement of a foreign award
and an injunction was granted in the matter. However the Sheriff’s claim was
that based upon the said injunction the Sheriff had issued certain letters based
on which the ship was detained and this entitles him to claim the poundage.

Rule 927(6) and (7) defines a Sheriff as meaning to be the Sheriff of Bombay
or the Deputy Sheriff or other officer appointed for executing the process of
the Court. Rules 445 to 486 of The Bombay High Court Original Side rules
deal with the liability of the Sheriffs Poundage

Rule 474 states that Liability for Sheriff’s poundage.

Liability for Sheriff’s poundage. - (1) In cases where a person is arrested or
property is attached, the party or the Advocate on record for the party at
whose instance the arrest was made or the attachment levied shall be liable to
the Sheriff for his fees or poundage, as the case may be.

(2) Any amount received by the judgment-creditor from the judgment-debtor
in full or part satisfaction of a decree or order in respect of which a warrant of
arrest or a warrant of attachment has been executed shall be presumed to
have been realised under the warrant, if the warrant is merely suspended and
not dead.

(3) Where the execution-creditor or his Advocate on record receives direct
any installment or other sum ordered to be paid by the Judgment-debtor in
full or part satisfaction of the decree or order, he shall file a precipe in the
Sheriff’s office informing him of the payment made.

(4) The Advocate on record shall be responsible for filing this precipe, if the
payment has been made through his office or he has been informed of it by
the execution-creditor.
Rule 476 further states that Satisfaction not to be entered without Sheriff’s certificate.- Where warrants in execution have been lodged with the Sheriff, no satisfaction in full or in part of any decree or order in any suit or matter shall be entered thereon without the production of a certificate of the Sheriff that no poundage, is due to him.

The table of fees payable to the Sheriff clearly states that Rs 30 is payable for serving every injunction, order or rule and every process not otherwise provided for and the poundage of 1 percent is on every debt levied by execution including an attachment before judgment or in the event of the claim being satisfied, compromise or settled upon the amount of such satisfaction, compromise or settlement.

It was stated in this judgment that the Sheriff is not entitled to the Poundage in this case taking into consideration the above mentioned table of fees and the facts and circumstances of the case wherein no order of arrest was made or property attached and the matter was settled by a consent term between the parties.

The Additional Report given by the Sheriff of Mumbai in the matter

“It is because of this act of Sheriff of Mumbai, that the dredger was detained and the petitioner was able to settle the matter and realized the amount in their Arbitration Petition which was for execution and enforcement of the Foreign Award dated 10.12.2008. As soon as the Order is communicated to the Port authorities, the said dredger is detained in view of the order of injunction. It is not necessary that only in Admiralty Suit, the Sheriff is entitled for poundage. In all types of Suit in which the machinery of the office of Sheriff of Mumbai is invoked for the purpose of executing and enforcing the decree/Award/Order and accordingly the amount is realized either by sale or settlement between the parties or otherwise the office of the Sheriff of Mumbai is entitled to the poundage at the rate prescribed by the Bombay High Court Original Side
The table of fees payable to the Sheriff of Mumbai High Court, Original Side will apply on every debt levied by execution including an attachment before judgment or in the event of the claim being satisfied, compromised or settled upon the amount of such satisfaction, compromise or settlement.”

In the given case, the court has held that the Sheriff is entitled for 1% of the poundage on the claimed, compromised or settled amount. The claim of 1% Poundage by the sheriff is well within the frame work of law and the record cannot be said to be without jurisdiction or authority.

On analyzing and assessing the above it appears that poundage becomes payable only when the machinery of the office of Sheriff of Mumbai is invoked and not otherwise. Therefore if and when there is direct service like that is practiced at Ahmedabad High Court effecting order of arrest or injunction of a vessel poundage payment liability does not arise. However this interpretation is absolutely technical till date and an appropriate legal interpretation of circumstances when poundage is payable to the Sheriff needs to be yet given.

In January 2018 it was decided by the Bombay High Court in Sinica Graeca Shipping Ltd -vs- m.t Chemroad Mega and in North Star Marine Limited -vs- m.v.Xing An Da, where the issue related to payment of poundage to the Sheriff of Mumbai under the table of fees which forms part of the Bombay High Court (Original Side) Rules was dealt with and is of the view that there can be no justification whatsoever for the purpose of demanding a commission over and above the fees and costs which the Sheriff's Office collects. However, the court is not in a position to strike off that part of the Rule which relates to poundage and hoped that the Rules Committee will seriously reconsider this part of the Rules, and delete the same.
DETAINING VESSEL UNDER MERCHANT SHIPPING ACT

The Merchant Shipping Act, 1958 contains various provisions to enforce territorial jurisdiction. The Act being essentially regulatory in character, the various authorities, tribunals and Courts entrusted with the administration and enforcement of its provisions are specifically stated. The High Court is defined under S.3 (15) as follows:

"3(15). "High Court", in relation to a vessel, means the High Court within the limits of whose appellate jurisdiction-

a. 
b. the port of registry of the vessel is situate;

c. the vessel is for the time being; or

d. the cause of action wholly or in part arises;"

Accordingly, a foreign ship falls within the jurisdiction of the High Court where the vessel happens to be at the relevant time i.e., at the time when the jurisdiction of the High Court is invoked, or, where the cause of action wholly or in part arises.

The detention of a foreign ship is authorised in terms of Ss. 443 and 444. In view of their vital significance in the enforcement of maritime jurisdiction, we shall read these two sections in full. Section 443 defines the character and scope of the power of detention:

"S.443. Power to detain foreign ship that has occasioned damage-
(1) Whenever any damage has in any part of the world been caused to property belonging to the Government or to any citizen of India or a company by a ship other than an Indian Ship and at any time thereafter that ship is found within Indian jurisdiction, the High Court may, upon the application of any person who alleges that the damage was caused by the misconduct or want of skill of the master or any member of the crew of the ship, issue an order directed to any proper officer or other officer named in the order requiring him to detain the ship until such time as the owner, master or consignee thereof has satisfied any claim in respect of the damage or has given security to the satisfaction of the High Court to pay all costs and damages that may be awarded in any legal proceedings that may be instituted in respect of the damage, and any officer to whom the order is directed shall detain the ship accordingly.

(2) Whenever it appears that before an application can be made under this section, the ship in respect of which the application is to be made will have departed from India or the territorial waters of India, any proper officer may detain the ship for such time as to allow the application to be made and the result thereof to be communicated to the officer detaining the ship, and that officer shall not be liable for any costs or damages in respect of the detention unless the same is proved to have been made without reasonable grounds.

(3) In any legal proceedings in relation to any such damage aforesaid, the person giving security shall be made a defendant and shall for the purpose of such proceedings be deemed to be the owner of the ship that has occasioned the damage."

The power of enforcement of an order of detention of a foreign ship is dealt with by S.444.

"S.444. Power to enforce detention of ship."
1.

2. Where under this Act a ship is authorised or ordered to be detained, any commissioned officer of the Indian Navy or any port officer, pilot, harbour master, conservation of port or customs collector may detain the ship.

3. If any ship after detention, or after service on the master of any notice of, or order for, such detention proceeds to sea before she is released by competent authority, the master of the ship shall be guilty of an offence under this sub-section.

4. When a ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty any person authorised under this Act to detain or survey the ship, the owner, master or agent of such ship shall each be liable to pay all expenses of, and incidental to, such person being so taken to sea and shall also be guilty of an offence under this sub-section.

5. When any owner, or master or agent is convicted of an offence under sub-sec (3), the convicting Magistrate may inquire into and determine the amount payable on account of expenses by such owner, master or agent under that sub-section and may direct that the same shall be recovered from him in the manner provided for the recovery of fines.

These provisions relate to detention by reason of damage caused in any part of the world by a foreign ship to property belonging to the Government of India or to an Indian citizen or company. The sections are wide in terms and the expansion "damage" is not necessarily confined to physical damage. Ordinarily damage is caused by physical damage. Damage is caused by physical contact of the ship; such as in collision. But damage can also be caused to property by breach of contract or acts of commission or omission.
on the part of the carrier or his agents or servants by reason of the negligent operation and management of the vessel, as, for example, when cargo is damaged by exposure to weather or by negligent stowage; or, by the misconduct of those in charge of the ship, like when cargo is disposed of contrary to the instructions of the owner or by reason of theft and other misdeeds. In all these cases, damage arises by reason of loss caused by what is done by the ship or by the breach, negligence or misdeeds of those in charge of the ship. It must however be noticed that the expression "damage done by any ship" has been construed by the English Courts as not to apply to claims against the carrying ship for damage done to cargo. It has been held to apply only to physical damage done by a ship by reason of its coming into contact with something. See The Vera Cruz, (1884) 9 PD 96; Currie -v- M. Knight, (1897) AC 97 and the Jade, (1976) 1 All ER 920.

The Indian Carriage of Goods by Sea Act, 1925 applies to carriage of goods by sea under bills of lading or similar documents of title from a port in India to any other port whether in or outside India. The Act imposes certain responsibilities and liabilities and confers certain rights and immunities upon the carrier (Arts. III & IV). In respect of a claim relating to an outward cargo, the cargo owner has a right to bring a suit against a ship owner subject to the period of limitation specified under the Act, namely one year (Art.III (6)). The substantial rights recognised by the statute are of equal application to foreign merchant ships as they are to Indian merchant ships. The Carriage of Goods by Sea Act does not, however, contain any provision for the enforcement of the right by arresting the foreign vessel found in Indian waters. In the absence of arrest, no effective remedy against a foreign owner may be available to the cargo owner. The same is the position with regard to claims relating to cargo carried under a charter party. It is, therefore, necessary that he should have recourse to the remedy available to him under the Merchant Shipping Act. That Act, as stated earlier, confers a right to arrest a vessel in respect of any damage caused by a ship. If that expression, in the absence of any other more appropriate statute, is understood sufficiently broadly as an enabling provision.
to effectively assume jurisdiction over a foreign ship for the enforcement of a substantive right recognised by law, there would be no difficulty in finding a remedy for the right the law has conferred on the cargo owner.

The Merchant Shipping Act empowers the concerned High Court to arrest a ship in respect of a substantive right. A right conferred by the Indian Carriage of Goods by Sea Act, 1925 in respect of outward cargo is one of those rights which can be enforced by arrest and detention of the foreign ship in order to ascertain jurisdiction over the vessel and its owners, just as it can be done in respect of inward cargo by reason of substantive rights conferred by the Admiralty Act (2017) and other rules of law. The same principle must hold good for carriage under a charter party. These and other laws, such as the law of contract, tort, crime, mortgage, marine insurance, customs, port operations, etc., and the Civil and Criminal Procedure Codes as well as the relevant rules of court regulating procedure and practice together constitute the body of substantive and procedural laws governing claims relating to inward and outward cargo, and such claims are enforceable against foreign ships by recourse to arrest and detention when located within the courts jurisdiction. Viewed in this light, and by this reasoning, the Andhra Pradesh High Court, as a successor to the Madras High Court, does not lack admiralty jurisdiction in respect of claims relating to outward cargo.

The admiralty jurisdiction of the High Court is dependent on the presence of the foreign ship in Indian waters and founded on the arrest of that ship. This jurisdiction can be assumed by the concerned High Court, whether or not the defendant resides or carries on business, or the cause of action arose wholly or in part, within the local limits of its jurisdiction. Once a foreign ship is arrested within the local limits of the jurisdiction of the High Court, and the owner of the ship has entered his appearance and furnished security to the satisfaction of the High Court for the release of his ship, the proceedings than continue as a personal action.
The Merchant Shipping Act, 1958 provides a detailed Code of substantive and procedural rules regulating shipping as an industry and the control exercised over it by the competent authorities in conformity with various international conventions which have, under the auspices of International Organisations such as the IMO or the ILO, unified and developed various aspects of shipping laws. Conventions regulating sea traffic, safety of life at sea, employment of seamen, wages, hours of work, social security, etc. are cases in point. Likewise, the substantive rules concerning transport of goods are contained in the Indian Bills of Lading Act, 1856 and the Indian Carriage of Goods Act, 1925. But the jurisdictional questions concerning arrest of foreign ships for enforcement of claims against the ship owner as a transporter of goods, which in England are regulated by the Supreme Court Act, 1981, are in many respects left unregulated by the Indian legislation. While the provisions of various international conventions concerning arrest of ships, civil and penal jurisdiction in matters of collision, maritime liens and mortgage etc. have been incorporated into the municipal laws of many maritime States, India, as stated above, lags behind in adopting these unified rules. By reason of this void, doubts about jurisdiction often arise, as in the present case, when substantive rights, such as those recognised by the Carriage of Goods by Sea Act, are sought to be enforced. The remedy lies, apart from enlightened judicial construction, in prompt legislative action to codify and clarify the admiralty laws of this country. This requires thorough research and investigation by a team of experts in admiralty law, comparative law, and public and private international law. Any attempt to codify without such investigation is bound to be futile.

No Indian statute defines a maritime claim. The Supreme Court Act, 1981 of England has catalogued maritime claims with reference to the unified rules adopted by the Brussels Convention of 1952 on the Arrest of Seagoing Ships. Although India has not adopted the various Brussels Conventions, the provisions of these Conventions are the result of international unification and development of the maritime laws of the world, and can, therefore, be
regarded as the international common law or transnational law rooted in and evolved out of the general principles of national laws, which, in the absence of specific statutory provisions, can be adopted and adapted by courts to supplement and complement national statutes on the subject. In the absence of a general maritime code, these principles aid the Courts in filling up the lacunae in the Merchant Shipping Act and other enactments concerning shipping. "Procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities."

There have been a few occasions in Bombay that the provisions for temporary detention of a foreign ship under sub-section (2) of the said section having been availed of and the ship owners having quickly settled the claim. However, the reason why attention is drawn to this section here is because the term "High Court" therein in relation to a vessel is defined by the Act to mean the High Court within the limits of whose appellate jurisdiction the vessel is for the time being. This would have the effect of conferring on the High Courts of the littoral states of India jurisdiction in respect of claims covered by the said section. As already stated, the provisions of this section as a whole have not been widely invoked perhaps because the existence of that section in the said Act may have been missed by those connected with maritime litigation.
INDIAN SHIPS, REGISTRATION

A ship entitled to fly the flag of a country needs to be registered in that country. The object of registration is to ensure that persons who are entitled to the privilege and protection of the Indian flag get them. The registration affords evidence of title off the ship to those who deal with the property in question. It also gives protection to the members of the crew in case of casualties involving injuries and/or loss of life to claim compensation under the provisions of the Indian Acts in Indian courts.

Indian Merchant Shipping Act of 1958, for the first time, dealt with registration of ships. Earlier acts had lacked this aspect totally. Part V of this Act deals with exclusively with the registration of Indian ships, while Part XV deals with registration of sailing vessels and Part XVA deals with the registration of fishing boats. Ships which qualify to be registered are required to be registered only at ports designated as ports of registry. At present Mumbai, Calcutta, Madras, Cochin and Mormugao have been notified as ports of registry and principal officers of Mumbai, Calcutta & Madras and Surveyor in charge of Cochin and Mormugao have been notified as Registrar of Indian ships. In their capacity as registrar of Indian ships, the principal officers are required to maintain a complete record of Ships on register indicating status of the ship on a particular date. A central register is maintained by the Director General of Shipping, which contains all the entries recorded in the register books kept by the registrar at the port of registry in India. The Director General of Shipping, at the request of owners of Indian ships, desiring to be known at sea, allots signal letter & controls the series that may be so issued. Certain formalities are required to be complied with before a ship is registered as an Indian ship and these are laid down in the Merchant Shipping (Registration of ships) rules 1960 as amended from time to time.
Part V of the Merchant Shipping Act, 1958 and Registration of ships rules, 1960 as amended from time to time, are concerned with the Registration of Indian ships.

Status of Indian Ships

The conferment of status of Indian ships is restricted to:

i) Ships owned by a citizen of India.

ii) Ships owned by a company or body established by or under any central or state Act which has its principle place of business in India.

iii) Ships owned by a co-operative society which is registered or deemed to be registered under the Co-operative Society Act, 1912, or any other law relating to Co-operative Societies for the time being in force in any state.

Qualification required for registration as Indian ships:

Sea going ships fitted with mechanical means of propulsion of 15 tons net and above howsoever employed and those of less than 15 tons net employed otherwise than solely on the coasts of Indian qualify for registration under Part V of the Merchant Shipping Act, 1958. Ships so registerable are required to be registered only at ports designated as ports of registry.

In their capacity as Registrar of ships, the Principal officers and concerned Surveyors In-charge are required to maintain a complete record of ships on register indicating as on a particular date the person/persons, either in their individual capacity or as joint owners or as a corporate body, who have a stake in the ownership of ships. Not more than 10 individuals are entitled to be registered as a owner of a fractional part of a share in a ship, but a maximum of 5 persons could be registered as joint owners of a ship or of any
share and shares therein. Joint owners by reason of the position as such
cannot, however, dispose off in severalty, any share or interest therein.

Formalities to be observed for registration as Indian ship:

The owner of a ship wishing to have it registered at a port in India has to submit to the concerned Register:

a) A declaration of ownership - in one or the other prescribe forms, as may be applicable, depending upon whether he is a sole proprietor, joint owner or a company made before a Registrar, Justice of the peace or an Indian Consular Officer.

b) A certificate signed by the builder (builder's certificate) of the ship containing a true account of the proper denomination and of the tonnage of the ship as estimated by him and the time, when and the place where the ship was built, (for new ship).

c) The instrument of sale under which the property of the ship was transferred to the applicant who requires it to be registered in his name, (for secondhand ships).

d) To give a minimum of 14 days notice to the Registrar of the name proposed for the ship. The Registrar before registering the vessel in the name of the applicant shall obtain prior approval of the name from the Director General of Shipping who will also allot an official number for the ship.

On being satisfied that the ship, on the strength of the evidence placed before him, is entitled to be Indian ship, the Registrar arranges for survey of the ship by a surveyor for the determination of her tonnage in accordance with the Merchant Shipping (Tonnage Measurement) Rules, 1987 as amended from time to time, for the purpose of issue of a Certificate of Survey.
After the formalities enumerated above have been gone through, the Registrar issues a carving and marking note. This note is to be returned to the Registrar after carving and marking have been duly carried out on the ship in the prescribed manner and certified by a Surveyor. The carving and marking involves the carving of the name of the ship conspicuously on each side of her bows as well as insertion permanently on her stern the name of the intended port of registry.

On completion of the preliminaries to registry as described in the preceding paragraphs, the Registrar enters the particulars of the ship such as:

a) Name of the ship and the port to which she belongs.

b) Details contained in the Surveyors Certificate.

c) Particulars respecting her origin as revealed in the declaration of ownership.

d) the name and description of her registered owner and, if there are more owners than one, the number of shares owned by each of them; and

e) Name of the Master, in the Registry Book. The Registrar issues thereafter to the owners a certificate of registry retaining the Surveyor's certificate, builders certificate, instrument of sale by which the ship was sold, and the declaration of ownership.

Formalities connected with registration of an Indian ship when acquired abroad.

When a ship is built or acquired out of India and becomes the property of a person qualified to own an Indian ship, the owner or the Master of the ship will have to apply to the Indian Consular Officer at the nearest port for the issue of a provisional certificate of Indian registry and such officer, on production of satisfactory proof of ownership, grant the same to the owner or the Master. Such a certificate has all the force of a certificate of registry. It is,
however, valid for a period of 6 months from its date of issue or until the
arrival of the ship at a port where there is a Registrar whichever first happens
and on either of these events happening would cease to have effect. The
provisional certificate so issued will have to be exchanged by the owner for a
certificate of registry from the concerned Registrar.

Quite often a ship has to set sail from a port where she is built in India to a
port where she has to be registered. The owner in such cases or where he has
applied to the Registrar for registration but delay in the issue of certificate of
registry is anticipated, the Registrar may, on the strength of the authority
issued by the Director General of Shipping, issue a temporary pass to enable
the ship to ply between the ports in India.

The Certificate of Registry has to be used only for the lawful navigation of the
ship and is not to be detained by reason of any lien, mortgage of interest
whatever claimed by any party.

Anybody having possession of the certificate of registry has to make it over to
the person entitled to its custody as otherwise he becomes liable for being
summoned before a Magistrate and examined on the issue touching his
refusal to surrender the certificate to the one entitled to it.

No change in the name already in the registry is permitted except in
accordance with the procedure laid down in the M.S.(Registration of Ships)
Rules, as amended from time to time.

Application for the registry of alterations to a ship will have to be made to the
Registrar within one month of the alterations.

Where the alterations are material so as to affect the principal dimensions of a
ship or the means of propulsion, a ship will have to be registered as new and,
in that event, rules applicable for first registry will come into force.
Where a ship is registered under circumstances envisaged in paragraph immediately above this, the original certificate of registry stands cancelled and the existing entries in the registry, remain closed. The original official number allotted to ship, is however, retained.

Where transfer of a port of registry is desired by all the parties having a stake in the ownership or otherwise of the ship, they shall apply to the Registrar of her port of registry, who may, with the prior approval of the Director General of Shipping have no objection to such transfer subject to such formalities as has been laid down in the M.S. (Registration of Ships) Rules and on payment of the requisite fees prescribed thereof.

Whenever there is any change in the Master of an Indian ship, in whatever the way the change has come about, a memorandum of change has to be endorsed and signed on the Certificate of Registry by the Presiding Officer of a Marine Board or a Court if the change of Master is brought about as a result of the findings of the Marine Board of Inquiry or the Registrar or any other officer authorized by the Central Government or the Indian Consular Officer depending upon whether the change has occurred in India or abroad.

In the event of an Indian Ship being either actually or constructively lost, taken by the enemy, burnt or broken up or ceasing for any reason to be an Indian ship, every owner of the ship or any share in the ship is required to give a notice thereof to the Registrar and thereupon the Registrar will make an appropriate entry in the Register Book and the entry of the ship in that book would then be deemed mortgage that lies unsatisfied on that date will, continue to remain in force. The Master of such a ship, if the event accrues in India, will immediately make over the Certificate of Registry to the Registrar or within a period of 10 days after his arrival in India if the event occurs elsewhere.

Transfer or acquisition of an Indian ship or interest therein:
As per amendment to Section 42 of the M. S. Act no prior permission from the Director General of Shipping is required for creation of any mortgage on a ship except during the period when the security of India or any part of the territory thereof is threatened by war or external aggression. Similarly the Director General of Shipping's prior approval for the sale of the ship is not required provided:

a) all wages and other amounts due to seamen in connection with their employment on that ship have been paid in accordance with the provisions of this Act.

b) the owner of the ship has given notice of such transfer or acquisition of the ship to the Director General.

Any such transfer can be effected only by an instrument in writing in the prescribed form and the instrument, as may be so drawn up, has to contain a full description of the ship as is generally contained in the Surveyors' certificate sufficiency to identify the ship by the Registrar and be in the form (Registration Form No.9) prescribed in the M.S. (Registration of Ship's) Rules, 1960, as amended from time to time. The owner of an Indian ship or a share therein wishing to transfer it in favour of somebody else will have to apply to do so with full particulars of the transferee. Where the instrument of sale refers to a consideration other than money, and if the Registrar has any doubt as to whether that constitutes a good condition, a decision therein will lie on the Director General of Shipping to whom the matter may have to be referred.

If the transaction has been concluded in India, the instrument of Sale referred to above accompanied by a Declaration of Ownership and the prescribed fee thereof has to be produced by the transferee to the Registrar of the port where the ship has been registered who will make appropriate entries in the Register Book and also suitably endorse on the instrument the date and hour of the entry. The Registrar has also to make as soon as possible suitably
endorsement on the Ship's Certificate of Registry. Every such transaction has to be reported to the Director General of Shipping.

Transmission of an Indian ship or interest therein:

Where the property in an Indian ship or share therein is transmitted to a person on the death or insolvency of the registered owner or by any lawful means other than a transfer described as above, it would be effected by an application made to the Registrar of the ship's port of registry accompanied by a declaration in the prescribed form identifying the ship and also a statement of the manner in which and the person to whom the property has been transmitted. In the case of transmission consequent on insolvency, a declaration of transmission has to be accompanied by proof of such claim. In the case of transmission as a result of death, the declaration of transmission shall be accompanied by a Succession certificate, probate or letters of Administration, under the Indian Succession Act, 1925 or a duly certified copy thereof. The Registrar on receipt of the declaration of transmission will make appropriate entry in the register book to give effect to the change in the ownership.

Where as a result of the transmission of property in a ship or share thereon death or insolvency or otherwise a ship ceases to be an Indian ship, the Registrar of Port of her registry will have to submit a report to the Central Government through the Director General of Shipping setting out the circumstances in which the ship has ceased to be an Indian ship. On receipt of such a report, Central Government can make an application to the High Court for a direction for the sale of such Ship to any Indian citizen or any Indian company. Such an application may have to be made to the High Court by the Government within 60 days from the date of receipt of the report.

Registry of Government ships
A ship owned by Government is also registered in the same manner as other Indian ships subject to the following modifications:

a) the application for registry has to be made by the Secretary of the Ministry concerned or the Head of the Department to whom the management of the ship is entrusted or any other officer nominated by the Central /State Government with the particulars, as detailed below:

i) name and description of the ships

ii) a statement of the time and the place where the ship was built and, if these particulars are not known, a statement to that effect, and of the former name, if any known:

iii) a statement of the nature of the title to the said ship; and

iv) The name of the Master.

b) No declaration of ownership is necessary.

c) The Registrar on receiving the application and on compliance with the necessary formalities will enter the ship in the registry book as belonging to Government, State or Central.

d) The transfer of a registered Government ship has to be made by an instrument of sale in the prescribed form from which should be omitted the portion relating to the convenant. The instrument will have to be signed on behalf of the transferee by an officer authorised by Government, Central or State.

At the request of the owners of Indian ships desiring to be known at sea, signal letters are allotted by the Director General of Shipping, who will control the series that may be so issued. The allotment of such signal letters are required to be noted in the Register Book and endorsed suitably on the
Certificate of Registry. The allotment of signal letters will form subject matter of a communication by the Director General of Shipping to the Wireless Adviser, Ministry of Communication, New Delhi.

There is no bar to re-registration of an abandoned or wrecked ship. In such cases the owner may have to specify whether he desires to retain the ship's previous name or have a change. The formalities to be observed in such cases are the same as are applicable to a ship on first registry but subject to the condition that a ship so coming up for registration is required to be surveyed by a Surveyor and a certificate as to its seaworthiness obtained. All outstanding mortgage or other encumbrances on the ship will continue to be in force and may have to be brought forward in the new registry.

A certified copy of the entries appearing in the register book will be available to any interested party on application accompanied by prescribed fees laid down in the Registration of ships rules. The Registrar can entertain request accompanied by prescribed fees for issue of a new certificate on the plea that the original certificate has been defaced or mutilated. In that event, the certificate so issued will be marked "duplicate" in red ink.

The Director General of Shipping is required to:

(a) Maintain a Central Register which would contain not only the names of all ships but also entries relating to every Indian ship that stand recorded at the various ports of registry. Details of the Registry Of a ship as well as every subsequent entry relating to that ship recorded in the Register Book are required to be communicated to the Director General Of Shipping as and when the events occur. On or before the 15th January of each year, Registrars of each Port are required to submit to the Director General of Shipping a return showing the number of ships with their tonnage registered in the register book during the previous year.
(b) Executive Orders: The Director General of Shipping has assigned the work of maintaining the Central Register of Ships to the Nautical Adviser. All Principal Officers have been directed to send their returns, including the transcript of registry, to the Nautical Adviser so that he should be able to maintain the Central Register.

The following documents are admissible in evidence in respect of any proceedings that may come up in Court touching upon:

(a) Any registry on its production in custody of Registrar or any other person having the lawful custody thereof.

(b) A Certificate of Registry purporting to be signed by the Registrar or any other officer authorised in this behalf by the Central Government.

(c) an endorsement on the Certificate of Registry purporting to be signed by the Registrar or any other officer authorised in this behalf by the Central Government;

(d) Every declaration made in pursuance of provisions contained by Part V of M.S. Act 1958, in respect of an Indian ship.

(e) A certified copy of an entry in the Register book is admissible in evidence in any proceedings in a Court and have the same effect as the original entry in the Register book.
REARREST AND MULTIPLE ARREST

If a ship has been arrested and released there is no reason why it should not be rearrested for a valid claim.

The High Court may also order arrest of any other vessel for the purpose of providing security against a maritime claim, in lieu of the vessel against which a maritime claim has been made under this Act, subject to the provisions of sub-section (1) Provided that no vessel shall be arrested under this sub-section in respect of a maritime claim under clause (a) of sub-section (1) of section 4.
JURISDICTION AFTER THE SHIP HAS SAILED

If Admiralty action is initiated by filing a suit and an order of arrest is obtained and the ship sails out before the order of arrest is effected, the ship may be arrested if she returns back under the general rule of perpetuatio jurisdictionis.
JURISDICTION BEFORE THE ARRIVAL OF THE SHIP

At the time when the Admiralty suit is filed in the court the ship must already be within Indian territorial waters or jurisdiction of that state. The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding.
TRADING OF A SHIP UNDER ARREST

The decision whether further trading of the ship should be permitted or not is left to the discretion of the court. Some admiralty judges are of the view that trading of an arrested ship tantamount to diluting the order of arrest and the purpose of arrest is defeated.

A ship is arrested by the Sheriff or the Marshal acting as an officer of the court. The ship comes into the custody, but not the possession, of the Sheriff or the Marshal.

The position was described by Lord Atkin in Government of the Republic of Spain v SS “Arantzazu Mendi”

The ship arrested does not by the mere fact of arrest pass from the possession of its then possessors to a new possession of the Marshal. His right is not possession but custody. Any interference with his custody will be properly punished as a contempt of the Court which ordered arrest, but, subject to his complete control of the custody, all the possessory rights which previously existed continue to exist, including all remedies which are based on possession.

Once arrested, a ship cannot be moved from the place of arrest without the authority of the Marshal. To move the ship without such authority, whether to another place within the jurisdiction or to flee the jurisdiction, constitutes contempt of court. Similarly, any interference with the ship while under arrest, whether or not it involves any movement or attempted movement of the ship, will constitute contempt.

The difficulty with the concept of the ship trading whilst under arrest is that the duty of the Sheriff or the Marshal to keep the ship in safe custody and to
preserve it does not extend to managerial control and operation of the ship for the purpose of generating an operational profit for the ship owners and those interested in it. The operational control of a ship requires that the master and crew operate the ship in accordance with the owner’s or demise charterer’s instructions. It is impractical for the Marshal to exercise a veto in respect of those instructions and the on-board management of the ship unless the Sheriff or the Marshal or his nominee is presently on board the ship supervising its operation. In any event, are the Sheriff's or the Marshal’s costs of supervision in such circumstances costs of the arrest?

Where the ship is traded, the crew is not engaged by the Sheriff or the Marshal. The crew either continue in employment with the owner despite the arrest or are signed on by the owner specifically for the purpose of using the ship in trade. In that situation, the wages and entitlements of the master and crew are to the account of the owner or demise charterer and, in the event of non-payment, may be claimed against the ship. Obviously, where the benefits of the trading are not secured for claimants or where the continued trading is unprofitable, there is no practical benefit in other claimants allowing the crew’s claims, both real and potential, to further encumber the ship. Also, because the purpose of the arrest is to secure the ship as security for the claim which led to the arrest, to permit the ship to trade without substitute security is to significantly depreciate the worth of the ship as security. The degree of the depreciation will depend upon the nature of the trading, the risk of loss or damage from perils of the sea, or loss of the security by flight of the ship from the jurisdiction. Where the owner or demise charterer cannot secure acceptable security to procure release of the ship, to allow a ship to be crewed and traded involves questions which go to the heart of why arrest is available and why arrest should not lightly be rendered nugatory by relaxing the effective control of the Sheriff or the Marshal.

Trading the ship needs to be distinguished from moving the ship within the jurisdiction and offloading cargo, whether or not the discharge of cargo is to
enable the ship to be sold by the Marshal either pendente lite or to satisfy a final judgment of the court. The distinction is seen in the orders made by the court in respect of the ship Martha II.

On 14 February 1996, the Martha II was arrested in Melbourne on the application of the mortgagee. In expectation that the ship would be refinanced and released, the owner applied to the court to work the ship pending release. Specifically the owner sought permission to sail the ship to Sydney and there to load and unload cargo in accordance with its scheduled cargo operations. The application was opposed by the plaintiff/mortgagee. The Victorian Deputy Sheriff who arrested the ship on behalf of the Marshal would not consent to the movement without formal orders of the court.

Olney J granted the application subject to certain conditions being fulfilled and undertakings being given by the time charterer, ABC Container Lines (“ABC”). Essentially the entire cost of the movement, including the Marshal’s costs of supervising the movement, were to be paid by ABC. The costs to be paid included the costs of arrest up to the time of the order, which later costs and expenses were to be paid before the ship left Melbourne. To ensure that the ship proceeded without delay or deviation to Sydney and did not flee, the Marshal and two armed members of the Australian Protective Service were on board.
RECOGNITION AND ENFORCEMENT OF JUDGMENTS

Arrest means detention or restriction for removal of a vessel by order of a High Court to secure a maritime claim including seizure of a vessel in execution or satisfaction of a judgment or order.

A ship can be arrested for recognition and enforcement of judgments or order.
SAME CAUSE OF ACTION AND BETWEEN THE SAME PARTIES

If proceedings involving the same parties and same cause action are already initiated elsewhere when proceedings are commenced before it unless the jurisdiction of the other court is not established, the Admiralty court will dismiss the suit.
FORUM NON-CONVENIENS

Forum non-conveniens is a common law doctrine whereby courts may refuse to take jurisdiction over matters where there is a more appropriate forum available to the parties. As a matter of civil procedure, courts must decide whether and in what circumstances they will accept jurisdiction over parties and subject matter when a lawsuit begins.
FOREIGN GOVERNMENT SHIP

The property of a foreign government not in use or intended for use for commercial purpose cannot be arrested in an action in rem. The government may consent to the use of such process. 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.
SHIP FOR DEMOLITION

Section 2 (1) (l) of the Admiralty Act (2017) defines vessel which includes any ship, boat, sailing vessel or other description of vessel used or constructed for use in navigation by water, whether it is propelled or not, and includes a barge, lighter or other floating vessel, a hovercraft, an off-shore industry mobile unit, a vessel that has sunk or is stranded or abandoned and the remains of such a vessel.

Explanation.—A vessel shall not be deemed to be a vessel for the purposes of this clause, when it is broken up to such an extent that it cannot be put into use for navigation, as certified by a surveyor.

The ship is no longer within the definition of a ship, the nature and category of the res is entirely altered, the court is without jurisdiction as there is no res, the ship has literally ceased to exist from the definition of a ship. A action in rem cannot be maintained in such situation.

The ship should cease to exist as a ship only at the time when beaching of the ship is complete and the ship should be declared dead only thereafter. In almost all instances when ships arrive for demolition are kept waiting at anchorage for being beached, the agent or the new owner or ship breaker or their representative files the bill of entry with the customs, the ship continues to wait at anchorage for high tide or for a convenient date for being beached. The period between arrival of the ship, waiting at anchorage, filing of the bill of entry, ship continuing to wait at anchorage even after filing of bill of entry and actual beaching of the ship are crucial. The ship can still navigate in technical sense until the ship is actually beached for demolition.

If a ship is condemned and is unserviceable at the time of sale and under an agreement, it was sold for breaking and scraping purposes, the condemned
and unserviceable ship purchased by the dealer or cash buyer or the end buyer maybe a re-rollable scrap in the form of an 'old ship' for dismantling. In the course of breaking activity, the ship loses its identity but according to Customs Act the ship loses its identity at the time of filing of the Bill of Entry. Every importer is required to file in terms of the Section 46 of the Customs Act an entry which is called Bill of entry for home consumption or warehousing.

Any ships imported for breaking up are obviously old ships, purchased to retrieve the material, particularly steel plates, for disposal in the market for re-rolling or re-cycling purposes. A ship that is able to sail on its own upto the shore where it is to be demolished, it is still a ship in technical sense until it reaches the beach and cannot be pulled out from the beach and for the purpose of distinction cannot be said that such ship which is sold for demolition is a new ship. Remaining afloat is not a sure test for a ship to be called new, because a condemned ship is not always a sunk ship. An old ship sold for demolition that manages to remain afloat is still a ship. Old ships which are sold for demolition is a ship until the ship is beached for demolition.

The claim of the claimant having maritime claim or a lien gets frustrated completely if it is a one ship company more so when that ship does not have any sister ship.
INDIAN COURTS HAVING ADMIRALTY JURISDICTION

The three Indian Courts of Admiralty i.e. Bombay, Calcutta and Madras were courts of specific jurisdiction. In the course of time the jurisdiction of the High Courts of Calcutta, Bombay, Madras, Gujarat, Andhra Pradesh and Orissa have entertained Admiralty actions. Under the Admiralty Act (2017), the jurisdiction of the High Courts of Bombay, Calcutta, Madras, Gujarat, Hyderabad Telangana, Karnataka, Kerala, and Odisha have Admiralty actions.
RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

Once an award is found to be enforceable it may be enforced like a decree of that court.

 Arrest means detention or restriction for removal of a vessel by order of a High Court to secure a maritime claim including seizure of a vessel in execution or satisfaction of a judgment or order.

A ship can be arrested for recognition and enforcement of judgments or order.
BENEFICIAL OWNER

The Supreme Court of India in the matter of m.v. Sea Success I has stated that "...we do not intend to delve deep into the questions as to whether the two ships named hereinabove are the sister ships of the respondent No. 1 Vessel or whether the requirement of law as regard ownership of a ship in the Respondent No. 1 as beneficial owner has been fulfilled or not. Such issues must be considered at an appropriate stage".

Beneficial owner means, one recognized in equity as the owner of something because use and title belong to that person, even though legal title may belong to someone else; esp., one for whom property is held in trust.- also termed equitable owner. Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement. The defining characteristic of the beneficial owner of an asset is that he holds a degree of control over the asset that allows him to benefit from it. Whether he is the legal owner (that is, holds legal title to it) is irrelevant. The essence of beneficial ownership is precisely not ownership in the ordinary sense of the word—but rather control. Control and legal title often will lie in the same hands.

Beneficial ownership is a concept that is relatively straightforward in theory but difficult to apply in practice. The essence is to identify the person who ultimately controls a corporate vehicle. This identification always will be a highly context-dependent, beneficial ownership cannot be reduced to a legal definition.
The Bombay High Court division bench hearing appeal, in the matter of Lufeng Shipping Company Ltd -vs- m.v. Rainbow Ace & Anr has handed down a decision that lifting of corporate veil will arise if there is fraud and evidence thereof. A ship can be arrested under beneficial ownership for a maritime claim under the 1999 arrest convention supported with evidence of the beneficial ownership of the ship sought to be arrested is the same as the one who is responsible and liable for the claim, and not merely on suspicion.

Cloaking of Beneficial Owner, Ownership and Control of Ships

It is very easy, and comparatively cheap, to establish a complex web of corporate entities to provide very effective cover to the identities of beneficial owners who do not want to be known. While some ship registers actively facilitate and promote anonymity for reluctant owners, the principal mechanisms are not the registers themselves, but the corporate mechanisms that are available to owners to cloak their identity. These corporate mechanisms are freely available in many jurisdictions, they are quite legal, and will provide a properly incorporated International Business Corporation that can transact business almost everywhere in the world but generally not in the country of incorporation. From the perspective of the ship registering process, the most important single feature that facilitates anonymity of individuals is the ability (quite sensible from a commercial perspective) of corporations to be registered as owners of vessels. The most common and effective mechanisms that can provide anonymity for beneficial owners include bearer shares, nominee shareholders, nominee Directors, the use of Intermediaries to act on owners’ behalf and the failure of jurisdictions to provide for effective reporting requirements. The most common institutional devices used to create corporations are Private Limited Companies, and International Business Corporations (IBCs). Other devices such as Trusts, Foundations and Partnerships may also be used.
Open registers, which by definition do not have any nationality requirements, are the easiest jurisdictions in which to register vessels that are covered by complex legal and corporate arrangements. The arrangements will almost certainly cover a number of international jurisdictions which would be much more difficult to untangle. While open registers would be (by choice) the most obvious targets for beneficial owners wishing to avoid revealing their identities, traditional registers, may not be immune to being used by anonymous beneficial owners. The additional complexity and risk of registering vessels in traditional registers would be made up by the status and perhaps lesser attention directed towards vessels registered in these traditional registers. Some institutional arrangements involving dependencies, overseas territories and jurisdictions with special constitutional and/or administrative arrangements, (as exist, for example in the UK, France, the Netherlands and Australia), as well as some free trade arrangements (such as the EU) may also provide opportunities, albeit complex and perhaps risky ones, for beneficial owners seeking anonymity to achieve their objectives.

Beneficial (or ultimate) ownership and control of vessels can be cloaked by owners who for one reason or another wish to remain anonymous. Anonymity can be sought by owners for a variety of reasons. Some may be perfectly legitimate and even innocuous. Others may wish to remain anonymous to minimise legal and fiscal exposure (which may or may not be legal), or for reasons that are absolutely illegal, such as criminal activities or money laundering.

Secretive owners use corporate vehicles and vessel registrations procedures to ensure their anonymity, as well as the features of corporate and shipping register requirements that permit, or even facilitate, the cloaking of the true identities of the ultimate owners of vessels; that is those who exercise true control of what those vessels do, and the purposes to which the revenue they generate can be put to.
It is beneficial ship owners that decide how their vessels will be used, or at least remain responsible for the uses to which their vessels are put, even if this is done without their knowledge or consent. Owners are also the ultimate beneficiaries of the revenue generated by vessels they own, and can put these revenues to any use they wish, including activities that may be inimical to security interests. Of course, owners can delegate many of their responsibilities to ship managers, who may (with or without the beneficial owner’s knowledge and/or consent) themselves undertake illegal or undesirable activities. It is therefore also important to know the details of the managers of the day-to-day operations of those vessels.

The following questions were relevant. Who appoints the crew? Who fixes the use of the ship? Who signs the charterparty on behalf of the owner?

In order to operate internationally vessels must be registered in a recognised ship register, which will then permit the vessel to fly its flag. In effect the state of registration will then become the ship’s “Flag State”. The Flag State’s obligations and responsibilities towards ships carrying its flag are contained in the UN Law of the Sea Convention, the relevant parts of which are reproduced in Appendix A to this convention. While those provisions are relatively comprehensive in respect of technical, crewing and legal requirements that must be met by vessels before they can operate, apart from noting that there “must exist a genuine link between the State and the ship” (Article 91), the Law of the Sea Convention is silent on ownership requirements, which is a crucial factor from this paper’s perspective. The genuine link concept has been used a number of times in respect of linking the nationality of a ship to the state in which it is registered. This very loose interpretation has enabled the existence and rapid growth of “Open Registers” where the nationality of the owner/s has no relevance. From an operational or commercial point of view this lack of a direct link is probably unimportant, as long as the Flag State exercises adequate oversight and control over the shipowner and his vessel. However, this lack of a link also
facilitates the opportunities available to shipowners to hide their identities. This also extends to corporate ownership of ships, where the country of registration of the corporate entity is also of no relevance and this in turn enhances the opportunities for anonymity.

All ship registers require some information on ownership to be provided when application is made for the registration of a ship. As a general observation, most registers examined in the course of preparing this paper at least superficially attempt to establish the ownership of vessels on their register. At the very least they require some ownership details to be provided, even if their ability to unequivocally confirm the information provided may for a variety of reasons be inadequate. The principal difference between registers is that while some clearly make some effort to establish the true ownership (but may be thwarted by other mechanisms), others advertise anonymity as a desirable attribute of that register. For example an advertisement for the Anguillian ship register (but there are many others) notes that two key features of the register are the non disclosure of beneficial owners and the availability of bearer shares which greatly assist owners to ensure anonymity.

The means by which shipowners can ensure anonymity can be found not so much in the shipping registers themselves (although some seem very happy to facilitate this happening), but in international corporate arrangements that exist for reasons quite unrelated to shipping.

Anonymity can be achieved in two ways. First, through the use of various mechanisms that enable the identity of beneficial owners to remain cloaked, or at least known to very few people. The second is through institutional devices that govern the creation of corporate entities and which are also geared to minimising the exposure of beneficial owners when these seek anonymity. On most occasions beneficial owners who seek to remain hidden will use a combination of methods to achieve their intent.
Mechanisms to Achieve Anonymity

Bearer Shares

Bearer shares are perhaps the single most important (and perhaps the most widely used) mechanism to ensure total anonymity for beneficial owners. Bearer shares are negotiable instruments that accord ownership of corporations to the person (or persons) who physically possess the bearer share certificates. That is, mere possession accords ownership, so that they can be passed from person to person without money necessarily changing hands, nor having to meet any registration or transfer requirements. Unlike normal registered shares (such as those traded through a stock exchange) which are transferred by written or electronic means (thus creating a traceable trail) bearer shares are transferred by simple delivery of the share certificate to another person. Bearer shares do not contain the name of the shareholder, and with the possible exception of their serial numbers they are not registered. Because of their very nature bearer shares provide a high level of anonymity and are easily transferable in the event of an investigation. This is especially the case when these bearer shares are issued by private limited companies. While some jurisdiction are acting to reduce the potential misuse of bearer share (for example by registering them and requiring notification of transfer), many others are actively promoting them as ways of ensuring the anonymity of participants.

Nominee Shareholders

It is implicit that private companies must have at least one share, and at least one shareholder. Generally such companies are created with a structure that contains more than one share, but compared to public companies there are far fewer shares in private companies (counted in single digits rather than millions) so it is far easier for such private companies to be controlled by a small number of people, or perhaps only one person. Every registered private company that is structured around ordinary shares (that is, shares other than
bearer shares) needs to provide some details of shareholders at the time of registration. In these cases, where beneficial owners wish to hide their identity they are able to appoint “nominee shareholders”, that is shareholders nominated by the true owner of the shares to represent their interests in the company, including making decisions and issuing directions on their behalf.

Not all jurisdictions can compel nominee shareholders to reveal the identity of the actual beneficial owner(s), so this provides a legally robust means of owners avoiding their identities being known.

Nominee Directors

All corporate bodies require the appointment of at least one Director, who is nominally responsible for the operation of the company. In normal private companies such Director(s) will generally come from the owners themselves. However, many jurisdictions allow the appointment of Nominee Directors, whose names will appear on all company documents and official registrations, and may even exercise some functions within the company. While they will pass on all official duties (and ultimate decision making) to the beneficial owner(s), by acting as their legal intermediary they would shield their identities. Like nominee shareholders only some jurisdictions can legally compel Nominee Directors to disclose the true identity of the true owners.

Some jurisdictions further allow corporations to be nominee directors, thus creating a further level of complexity in the company structure.

Intermediaries

This category include company formation agents, trust companies, lawyers, trustees and other professionals that offer their services to those who wish to create and operate private companies in particular jurisdictions. Intermediaries are very prominent in offshore locations, and specifically design their services to ensure anonymity for those who desire it. Many of the intermediaries are
globalised off-shore activities themselves, and while they maintain branch offices in some jurisdictions they can frequently represent their clients’ interests without the necessity of a local presence in the jurisdiction chosen by those clients. The basic purpose of these intermediaries is to make it as simple as possible for individuals to establish and operate off-shore companies. Their services (obtained on simple payment of a fee) can include the provision of a local address (brass plaque), act as local agents (but with little or no actual functions) and provide nominee shareholders and directors for the company (again, with no real function except to provide a front and meet minimum legal requirements). In many cases the express purpose of these intermediary functions is to keep beneficial owners’ names from official records.

In some jurisdictions that specialise in ensuring anonymity, official institutions may not undertake due diligence checks if an intermediary vouches for an anonymous client. This is despite the fact than the intermediary may not have carried out due diligence checks on the facts that are purporting to be true.

In the case of trustees, these can hide identities by not disclosing the person for whom he is holding shares as trustee. In other words, to all but more serious checks the nominee appears to be the true owner of the shares. Lawyers and notaries can claim professional confidentiality to protect the identities of their clients. Some jurisdictions extend this privilege to management companies.

Institutional Devices to Cloak Identity

Private Limited Companies (and Public Limited Companies whose shares are not traded on a stock exchange).

Because these companies are not listed on public stock exchanges they generally operate in less stringent regulatory and supervisory regimes. Their private nature means that their operations can be more secretive, not subject to any public scrutiny (e.g. by securities commissions or shareholder
meetings), nor do they have to publish annual reports or financial accounts. Such companies are easily converted to “shell” companies, where the company has no assets, undertakes no activities, but remains as an active corporate body with legal standing that can be sold and utilised by a third party for any purpose consistent with its articles of association. These “shell companies” can be found virtually anywhere, but are particularly prevalent, and available off-the-shelf for very little cost, in jurisdictions where such entities can also use nominee shareholders and corporations as directors and officers of the company. This enables these companies to be put into operation cheaply (probably less than $US 1000), and with minimal involvement by the beneficial owner of the company. Limited liability Companies (LLCs) are also available in some jurisdictions. In these there is no requirement to publicly disclose the identities of members. Each of these types of companies can enhance the shield over the identities of beneficial owners by issuing bearer shares which, as noted earlier allow transfer of the ownership of the shares (and hence the proportion of the company that they represent) by simply handing them over to another person.

International Business Corporations (IBCs) and Exempt Companies

IBCs are the primary vehicles used in international business and finance to facilitate international transaction. These can be established virtually instantly (many on-line) and at relatively low cost, and are available in many jurisdictions that specialise in off-shore activities. A key feature of IBCs is that they are barred from doing business in the country of incorporation. This means that these companies are rarely required to lodge annual report to the authorities, nor do they pay any taxes. Consequently, as there is little incentive for rigorous monitoring they are rarely supervised. In almost all cases such companies can employ all of the mechanisms available to disguise ownership and control, such as bearer shares and nominee shareholders and directors. Some jurisdictions provide for different regimes for resident and non-resident
corporation, thereby further isolating those that are non-resident (and further enhancing their anonymity).

Trusts

These are common law bodies that have many legitimate and useful purposes, but some of their features also provide considerable anonymity. Essentially trusts are vehicles intended to separate legal ownership and beneficial ownership, and enjoy a greater degree of privacy and anonymity than other corporate vehicles. Trusts represent a contract between private persons, and as such many jurisdictions choose not to regulate them. The disclosure of the identities of either the beneficiary or the trust creator (the “settlor”) is rarely required. Amongst other things, trusts can be used to conceal the beneficial ownership of assets, and can provide an ideal vehicle for those who wish to control how assets are used (e.g. a vessel), while remaining out of the limelight and unidentified. Some jurisdictions (e.g. Cook Is, Nevis and Niue) allow names of the settlor and beneficiaries to be left out of trust deeds and other usual requirements can be avoided.

Foundations

Foundations are separate legal entities. They have no owners or shareholders, and are managed by a Board of Directors. They are the nearest civil law equivalent to trusts (which have their basis in common law). While they are essentially intended to fulfil private purposes in many jurisdictions these can also be created to engage in commercial activities. Because of their nature Foundations are usually highly regulated, but in some jurisdictions there are few requirements for disclosure, and they are inadequately supervised. Frequently founders can exert significant control over their activities, even though they are not on the Board of Directors. For example, in Panama government approval is not required for the establishment of Foundations, or for the amendment of their memoranda, and there is no government agency to supervise them. Also, the identity of beneficiaries (which can include the
founder) are not required to be publicly filed, and foundations do not have to submit annual reports or accounts. Foundations can also be formed by nominees, thus ensuring that identities are further protected. While trusts and foundations are comparatively clumsy vehicles to run shipping operations, they nevertheless offer a new layer of complexity and anonymity to potential terrorists, especially when their intention is not so much to use the vessels for direct terrorist act, but rather to use them to generate revenue and profits that can then be used to fund terrorist activities.

Partnerships

Because of their status of unlimited liability these vehicles are less regulated than corporations, even though in some cases corporations, as well as individuals are permitted to serve as partners. In some jurisdictions limited liability partnerships are required to only register general partners, while those who are limited need not be registered publicly. These limited liability (and frequently anonymous) partners can still act as officers of the partnership, and can influence management. While partnerships can be used effectively to hide activities or individuals (because of their relatively unregulated nature) their lack of corporate status means that they are not well suited to the ownership of vessels, where the partnership itself could not be the owner of a vessel, thus requiring the partners to reveal their identities in order to register the ship.
STOPPING THE JUDICIAL SALE OF A SHIP

Prior to the sale of a ship having been concluded by the Sheriff of Mumbai or the Marshal if the claimants claim is satisfied, the sale will not proceed if a written notice is given to this effect.
SALE PROCEEDS OF THE PROPERTY OR SHIP, SOLD BY COURT

An application concerning the sale of the property or ship that is under arrest or the application concerning the proceeds of sale of property or ship sold by the court is heard in open court and notice for hearing of the application is served on all parties to the claim; all parties that have filed caveat against the sale proceeds or all persons who have requested cautions against release with regard to the property or the proceeds of sale; and upon the Sheriff or the Marshal. Notice for hearing of the application shall also be served upon the owner or the vessel interest as the remainder of the sale proceeds, if any, shall be returned to the owner of the vessel/vessel interest.

An order for sale before judgment may only be made by the Admiralty judge. Unless the Admiralty judge orders otherwise, a determination of priorities may only be made by the Admiralty judge when the proceeds of sale are paid into court by the Sheriff or the Marshal.

On order for valuation and sale of the property or ship is passed by the court, the terms and conditions for sale of the ship is thereafter finalised by the Sheriff or the Marshal in consultation with the parties. The ship is sold as per terms and conditions. On ship being sold to the highest bidder, the Sheriff or the Marshal shall receive the full sale price from the buyer as per schedule and terms setout by the Sheriff or the Marshal. This sale proceeds is invested by the Sheriff or the Marshal in a nominated bank account and is later transferred to the designated bank account of the High Court in the said Admiralty suit whereby the ship is sold.

There is little jurisprudence on the issue of the distribution of the proceeds of sale of a vessel. However, the order of priority of payment in an admiralty sale should be as per 9 (1) of the Admiralty Act (2017).
The fund should be disbursed first to those that are responsible for the creation and the establishment of the fund from which all of the creditors will benefit. Thereafter, the other creditors will be entitled depending on the class of creditor or claim in which they fall. The manner in which competing interests within the same level of claim (i.e. two claims of the same level or class) is on a pro-rata basis.

It may be suggested that the general order of payment from the proceeds of the admiralty sale could be as follows:

1. Costs and expenses of the sale of the vessel to create the fund (i.e. the ship broker's commission, advertising costs and related expenses to facilitate the sale). It is submitted that this should come first in priority as it was necessary to incur these expenses to liquidate the asset into a fund that can be shared by all.

2. The costs of maintaining the vessel while under arrest as opposed to the costs of maintaining the vessel itself such as berthing expenses or the expenses for the maintenance of the arrest of the vessel from the period when the arrest began until it was sold. These are expenses that are incurred while the vessel is “in custodia legis” and serve to benefit all of the parties interested in the sale of the vessel.

3. The legal costs of the party arresting the vessel for their costs and expenses incurred in arresting the vessel. It is suggested that it would be inequitable that the party that expended money to affect the arrest should not be reimbursed for those expenses related to the arrest since they served to benefit all claimants.

4. Maritime Liens or the liens that survive changes in ownership of the vessel. These claims “run” with the vessel.

5. Possessory Liens existing at the time of the arrest.

7. Claims arising as a result of rights in rem, which run from the date of arrest.
TRAMP SHIP

A ship engaged in the tramp trade is one which does not have a fixed schedule or published ports of call. As opposed to freight liners, tramp ships trade on the spot market with no fixed schedule or itinerary/ports-of-call(s). A steamship engaged in the tramp trade is sometimes called a tramp steamer; the similar terms tramp freighter and tramper are also in use. Chartering is done globally but chiefly on London, New York, Singapore shipbroking exchanges. The Baltic Exchange serves as a type of stock market index for the trade. The term tramper is derived from the British meaning of "tramp" as itinerant beggar or vagrant; in this context it is first documented in the 1880s, along with "ocean tramp" at the time many sailing vessels engaged in irregular trade as well.

Tramp shipping are irregular shipping, mainly over nonstandard routes, with no definite schedule. Tramp ships are used to transport bulk cargoes and break-bulk cargoes of low value that do not require fast delivery. The transportation of cargoes that are picked up or dropped off along the way plays a large role in tramp shipping. Tramp ships are slow and can transport a variety of cargoes. Specialized types of dry-cargo, liquid-cargo, and mixed-cargo ships are also used in tramp shipping. Tramp shipping plays an important role in the foreign trade of the capitalist countries.

Today, the tramp trade includes all types of vessels, from bulk carriers to tankers. Each can be used for a specific market, or ships can be combined like the oil, bulk, ore carriers to accommodate many different markets depending where the ship is located and the supply and demand of the area. Tramp ships often carry with them their own gear (booms, cranes, derricks) in case the next port lacks the proper equipment for loading or discharging cargo.
Liner Service vs Tramp Service - Liner service is a service that operates within a schedule and has a fixed port rotation with published dates of calls at the advertised ports. A liner service generally fulfills the schedule unless in cases where a call at one of the ports has been unduly delayed due to natural or man-mad causes while a Tramp Service or tramper on the other hand is a ship that has no fixed routing or itinerary or schedule and is available at short notice or fixture to load any cargo from any port to any port.

Shipping industry can be divided into three broad segments, each of which handles a specific set of cargoes.

a. Bulk shipping; handles large cargo parcels in "bulk carriers" and oil tankers designed for the efficient transport of the very large parcels (10 to 450,000 tonnes) of homogeneous cargoes such as iron ore, coal, grain, oil etc.

b. Specialized shipping transports large quantities of "specialized" trades (e.g. chemicals, gas, motor vehicles, forest products), generally using ships built for the purpose. Although these ships are purpose built, they are often designed to allow the carriage of other cargoes. Specialized cargoes are often subject to competition from both the liner and bulk shipping segments.

c. Liner shipping; specializes in the transport of small cargo parcels, which do not fill the hold of a ship, on regular services. Today most liner cargo is carried in containerships, but some are still transported in multi-purpose vessels or ro-ros.

Tramp charters

The tramp ship is a contract carrier. Unlike a liner, often called a common carrier, which has a fixed schedule and a published tariff, the ideal tramp can carry anything anywhere, and freight rates are influenced by supply and
demand. To generate business, a contract to lease the vessel known as a charter party is drawn up between the ship owner and the charterer. There are three types of charters, voyage, time and demise.

Voyage charter

The voyage charter is the most common charter in tramp shipping, according to Schiels. The owner of the tramp is obligated to provide a seaworthy ship while the charterer is obligated to provide a full load of cargo. This type of charter is the most lucrative, but can be the riskiest due to lack of new charterers. During a voyage charter a part or all of a vessel is leased to the charterer for a voyage to a port or a set of different ports. There are two types of voyage charter – net form and gross form. Under the net form, the cargo a tramp ship carries is loaded, discharged, and trimmed at the charterer's expense. Under the gross form the expense of cargo loading, discharging and trimming is on the owner. The charterer is only responsible to provide the cargo at a specified port and to accept it at the destination port. Time becomes an issue in the voyage charter if the tramp ship is late in her schedule or loading or discharging are delayed. If a tramp ship is delayed the charterer pays demurrage, which is a penalty, to the ship owner. The number of days a tramp ship is chartered for is called lay days.

Time charter

In a time charter the owner provides a vessel that is fully manned and equipped. The owner provides the crew, but the crew takes orders from the charterer. The owner is also responsible for insuring the vessel, repairs the vessel may need, engine parts, and food for ships personnel. The charterer is responsible for everything else. The main advantage of the time charter is that it diverts the costs of running a ship to the charterer.

Demise charter
The demise charter is the least used in the tramp trade because it heavily favors the owner. The ship owner only provides a ship devoid of any crew, stores, or fuel. It is the Charterer's responsibility to provide everything the ship will need. The ship owner must provide a seaworthy vessel, but once the charterer accepts the vessel, the responsibility of seaworthiness is the charterer's. The charterer crews the vessel, but the owner can make recommendations. There are no standardized forms in a demise charter, contracts can vary greatly, and are written up to meet the needs of the charterer.

Brokerage

Tramp ship owners and tramp ship charterers rely on brokers to find cargoes for their ships to carry. A broker understands international trade conditions, the movements of goods, market prices, and the availability of the owner's ships. The Baltic Exchange, in London, is the physical headquarters for tramp ship brokerage. The Baltic Exchange works like an organized market, and provides a meeting place for ship owners, brokers, and charterers. It also provides easy access to information on market fluctuations, and commodity prices to all the parties involved. Brokers can use it to quickly match a cargo to a ship or ship to a cargo depending on whom they are working for. A committee of owners, brokers, and charterers are elected to manage the exchange to ensure everyone's interests are represented. With the speed of today's communications the floor of the Baltic Exchange is not nearly as populated as it once was, but the information and networking the exchange provides is still an asset to the tramp trade.

Tramp shipping has relatively few barriers to entry. New investors require equity, but commercial shipping banks will provide loans to acceptable credits against a first mortgage on the ship. There is a comprehensive network of support services to which new investors can subcontract most business functions.
subject to sound management controls. Ship management companies will manage the ships for a fee; chartering brokers arrange employment, collecting the revenues and dealing with claims; sale and purchase brokers will buy and sell ships; maritime lawyers and accountants undertake legal and administrative functions; classification societies and technical consultants provide technical support.

Fundamentally, the organization of a tramping company will be simpler than the organization of a liner company. The fact, that tramp ships are solely destined to transport bulk goods and that they are usually chartered as a whole in one harbour, allows the tramping company to operate without many departments and personnel. In the liner trade, a separate bill of lading has to be drawn up for each parcel. The number of bills of lading can be so great that the manifest that records them is often as thick as a book. Not only the paperwork requires a large number of personnel, but the carefully sorting, handling and stowage of encumbered general cargo parcels also needs many and competent staff members. This is superfluous for the tramping company or at least reduced to its minimum. In the tramping, the owner does not determine the freight but the fluctuations of the freight markets. More than in the liner trade, the tramp owner has to keep down expenses so as to ward off competition. Sometimes, the freight is so low that only the running costs are covered.

The organisation of a tramping company depends mainly on the number of ships it owns. The fewer ships, the simpler the organization. With only one ship, the company can be reduced to a one-man business.

Usually though, a tramping company with a reasonable number of ships, will have a similar organization as the one of a liner company. There will also be operating, technical, administrative and financial divisions, however with strongly reduced personnel. Some departments such as the "Research and Development Department" and the "Conference Department" are totally
absent in a tramping company. The operating department and in particular the department for inward and outward freights, cargo handling and stowage, insurance and claims, and agencies will be far less important. This is because the goods being carried are mainly homogeneous which are cheaper and are less prone to damage.

On the other hand, the chartering department will be much more extensive than in the liner trade because it is the main activity of tramping. The personnel of this department must consequently be much more qualified, with a number of experts for certain kinds of goods such as coal, ore, grain, and others. They must be in continuous communication – by telex, fax, telephone, data transmission, e-mail – with brokers and shipping exchanges and be well informed about the freight markets and freight prices.

In the smaller tramping companies, the business division is often left in the care of specialized firms such as shipping operators, shipping managers or managing companies.

 Often, tramping companies maintain a strong relationship with large industries to whom they will let part of their fleet or even their whole fleet for a long period of time. In that case, the organization of the company will be still more simplified.

In tramp shipping, tramp ships are being used. As the name indicates, this branch of the shipping industry is very irregular in its activities. Tramp ships are sent in where the most paying freights are available. Therefore, tamping is very unstable and very little organised.

Tramp ships are, in accordance with the demand, contractually put at the disposal of charterers, to carry, for one or more voyages, a quantity of goods between named harbours (in voyage charter) or to carry out a number of transport assignments in a certain period of time (in time charter). In the broadest sense of the word, tramp shipping is the activity that is done with.
ships in voyage charter. Usually, under a charter agreement, they have to perform only one voyage so that each voyage stands completely apart from the other. The vessel is an independent operating and competing unit and its operation is highly individual. The sailing schedule of a tramp ship is consequently very irregular. The ship operator must see to it that his ship is rarely idle and in the port of discharge – or in a harbour as close as possible to the port of discharge – he must always try to get a new charter for the ship.

Tramp ships vary considerably in size and are sometimes of lesser quality than the liner ships. Because the cargoes usually don't have to be transported at a high speed and the ship doesn't need highly sophisticated equipment, tramp ships are relatively slow and cheap. However, the present-day tramp fleet counts numerous modern bulk carriers suitable for different sorts of cargoes, including tankers and specialized ships. Owners of modern and cost-effective tramp ships have a better chance than their competitors who offer inferior and less flexibility in the freight market.

The cargo consist of unpackaged bulk goods (ore, coal, grain, phosphates, and others) or a massive amount of general cargo (e.g. saw wood) or seasonal products; with preferably a full cargo which belong to one shipper. No special care is given to manipulation and stowage; speed of delivery is not of primary importance.

Compared with the liner trade, the freight is low and is consequently in accordance with the relative low value of the goods. The freight is established on the international freight market, in the accordance with the rules of offer and demand. The Baltic Exchange in London is the main market. The freights are not fixed because they follow the feverish fluctuations of the freight markets.
SEAFARER'S RIGHTS ON UNPAID WAGES

A seafarer or a crew member can invoke admiralty jurisdiction and arrest a ship for unpaid wages. An order of arrest of the ship can be obtained from the court having admiralty jurisdiction, the seafarer may or may not be an Indian citizen to initiate action for arrest of a ship in India and also the ship may be registered anywhere in the world or maybe flying any flag.

Crew claim for unpaid wages should be initiated within the three year period from the due date and if the seaman has died while he was a serving seaman, the period from the date of his death to the date on which his next of kin were first informed of his death shall be excluded. The documents that needs to be produced in court are appointment letter and or the agreement or the employment contract; copy of the passport showing that sign on and the sign off dates; continuous discharge certificate (cdc) showing the capacity of the crew also the sign in and sign off dates; account of wages and or wage slips; correspondences exchanged demanding unpaid wages directly and or through the master of the ship; power of attorney/ letter of authority, this need to be notarised and apostilled at the location where the power of attorney is executed. Each crew claims are separate cause of action and should there be more than one crew wages that remains unpaid they cannot be clubbed and each crews will have to file separate suit under admiralty jurisdiction.

At the time of filing of the suit, there is a court fees payable depending on the total claim amount there are other expenses that are involved such as solicitors professional fees, photocopy charges and other misc expenses.

In most cases the owner of the ship or any person having ship interest settles the dispute out of court. If there is no out of court settlement the crew has a right to make an application to the court for auction sale of the ship pending
the suit but cannot withdraw or encash the sale proceeds at interim stage but would be entitled to withdraw or encash the sale proceeds of the ship after obtaining a decree from the court.

The crew has the following rights on unpaid wages

1. obtain order of arrest of the ship or a sister ship anywhere in the world subject to the ship being in territorial waters.

2. initiate a civil suit at appropriate jurisdiction

3. claim under section 19 of the Workmen’s Compensation Act 1923 at appropriate jurisdiction

4. claim before the Magistrates Court at appropriate jurisdiction

In Epoch Enterrepots v M.V. Won Fu the Supreme Court of India has held that right to a part of property in the res and a privileged claim upon a ship, aircraft or other maritime property which remains attached to the property travelling with it through changes of ownership. It is also acknowledged that it detracts from the absolute title of the 'res' owners. The Supreme Court of India in the case of O. Konavalov vs Commander, Coast Guard Region held that ‘the seamen's right to his wages have been put on a high pedestal. It is said that a seamen had a right to cling to the last plank of the ship in satisfaction of his wages or part of them as could be found. The right to wages for a seamen is the same as for any other wages of any employee is an integral part of the right to livelihood and is entitled to the protection under Article 21 of the Constitution of India.’.

A maritime lien for seafarers’ wages, like any other maritime lien or maritime claims, can be enforced by invoking admiralty jurisdiction and obtaining an order of arrest from a High Court having admiralty jurisdiction.
Claims can also be filed in the magistrates Court under section 145 of the Merchant Shipping Act 1958 that reads as:

145. Summary proceedings for wages.—

1. A seaman or apprentice or a person duly authorised on his behalf may, as soon as any wages due to him become payable, apply to 1[any Judicial Magistrate of the first class or any Metropolitan Magistrate, as the case may be,] exercising jurisdiction in or near the place at which his service has terminated or at which he has been discharged or at which any person upon whom the claim is made is or resides, and 2[such Magistrate] shall try the case in a summary way and the order made by 2[such Magistrate] in the matter shall be final.

2. An application under sub-section (1) may also be made by any officer authorised by the Central Government in this behalf by general or special order.

Seafarers or the crew member can also initiate proceedings in the Office of Commissioner of Workmen’s Compensation for compensation against an Indian manager and/or shipowner. Any amount deposited with the officer of the Workmen’s Commissioner can be remitted to the dependants of the seafarer who are located in a country other than in India.

The International Conventions on Maritime Liens and Mortgages 1993 and 1967 have the force of law in India and under these conventions a maritime lien for wages includes wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf.

Section 139 in The Merchant Shipping Act, 1958 provides the Right to recover wages and salvage not to be forfeited.—A seaman shall not by any
agreement forfeit his lien on the ship or be deprived of any remedy for the recovery of his wages to which, in the absence of the agreement, he would be entitled, and shall not by any agreement abandon his right to wages in case of loss of the ship or abandon any right that he may have or obtain in the nature of salvage, and every stipulation in any agreement inconsistent with any provisions of this Act shall be void.

A seaman making a claim for unpaid wages should have worked on the ship. The rationale is that wage lien arises from the service rendered to the ship. Further, the Indian Merchant Shipping Act 1958 provides that a seaman shall not be entitled to wages for any period during which he is absent without leave from his ship or from his duty.

Maritime Liens for wages take priority over other maritime liens such as loss of life and personal injury or damage caused by the ship as per section 9(1) of the Admiralty Act (2017). It appears that the maritime lien for salvage takes priority over the maritime liens for wages, albeit there is no precedent on this point. Maritime liens set out in article 4 shall take priority over registered mortgages, ‘hypothèques’ and charges. A seafarer would have a maritime lien over the ship on which he was working irrespective of his contractual counterparty in his contract of employment.

The Maritime Liens and Mortgage’s Convention 1993 provides that maritime liens may be extinguished after a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale. However, under the Indian Limitation Act 1963 the limitation period for a claim for wages is three years from the time of the end of the voyage during which the wages are earned. Indian courts have not dealt with a case in relation to the extinguishment of a maritime lien after a period of one year. It could be argued that a maritime lien for wages is recognized for a period of three years but under the Admiralty Act (2017) is two years.
A maritime lien is extinguished with the destruction of the vessel or property, or laches (undue delay in enforcement), or is discharged by payment or judicial act. A maritime lien would be extinguished when the intention of the owner of the vessel is no longer to deploy the vessel for navigation and the vessel has been imported into India for the purpose of demolition/ship recycling.
IS INDIA A BETTER FORUM FOR SHIP ARREST?

Admiralty jurisdiction can be invoked for any of the claims as set out in section 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 by filing a suit in the High Court in India having admiralty jurisdiction and obtaining an order of arrest of a ship. Admiralty suit can be filed when the ship is in Indian territorial waters being 12 nautical miles from the shore.

The key feature for ship arrest in India are:

- Low Legal cost and third party expenses
- Prompt response and immediate reliefs
- Extent of Admiralty jurisdiction on presence of a ship in Indian waters (12 nautical miles from shore)
- A ship can be arrested regardless of her flag, owner and registered address
- Ship can be arrested regardless of where the claim arose
- Admiralty court has admiralty jurisdiction to enforce maritime lien via an action in rem
- The jurisdiction of the High Courts of Bombay, Calcutta, Madras, Gujarat, Hyderabad Telangana, Karnataka, Kerala, and Odisha have Admiralty actions.
- Sister-ship arrests are allowed in India
- Ship arrests are allowed by High Courts having admiralty jurisdiction on establishing that there is a prima-facie case
• Ship arrests are allowed ex-parte without giving notice to the opponent or the opponent being heard

• Ship can be arrested under Admiralty jurisdiction only by filing Admiralty suit

• Claims can be in any currency

• Admiralty judges are available for arrest or release of ship even after court hours for extreme urgent cases

• Appeal can be filed to the Appeal court comprising of Division Bench of the High Court having Admiralty jurisdiction from the trial court (single Judge) and an Special Leave Petition (SLP) can be filed in the Supreme Court of India (Apex Court) from the order order of the Appeal court

• Scan copy of the Power of Attorney or Letter of Authority are accepted by High Court having Admiralty jurisdiction for filing of Admiralty suit and obtaining order of arrest of a ship

• No cash bond or security is required to be furnished to the court by the Plaintiff for arrest of a ship but an undertaking by way of an Affidavit for wrongful arrest is required to be filed

• Ship can be arrested as security in Arbitration

• Parties promptly arrive at an out of court settlement

• High number of case withdrawals and disposals

• User-friendly procedures & environment

• Specialised shipping law firms for ship arrest work are available

Ship arrest is dealt with under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.
There are effectively three ways to arrest or attach a ship: an arrest in rem, an arrest in personam, and a security arrest.

Arrest of a ship is part of the process by which an Admiralty Court gains jurisdiction over the subject matter in the suit and are known as "in rem" actions meaning that the action is against a "thing" rather than a person. Generally, the ship, itself, is responsible for payment of liens, mortgages or any other maritime lien that may arise. When the owner encumbers a vessel with a First Preferred Ship's Mortgage, it is the ship that guarantees payment rather than the owner. However, the owner may separately contract by a personal promise to pay or other type of guarantee to be personally liable.

An arrest of a ship is the prerequisite for the court to establish jurisdiction. If the ship cannot be arrested, the court may have no right over the ship. Arrest is the physical process by which, Sheriff or the Marshal goes aboard the ship and physically takes charge of it by serving the Warrant or the order of the court on the master of the ship or by pasting the Warrant or the order of the Court on the ship mast. The Warrant or the Order of the Court must be posted on the vessel, a copy given to the master or person in charge, as well as to the owner, the port and customs authority.

Once arrested, the ship is under custodia legis of the Court through the Marshal or the Sheriff and the owner loses all control. To avoid this situation and its effect on commerce, the court will allow the owner to furnish suitable security. Once the security is accepted, the ship is returned to the owner and the litigation continues with the security as the subject of execution of judgement.

Once the Sheriff or the marshal has seized a ship by arresting her, he is obligated to preserve the ship and its equipment. Generally, the custodian of a
A seized ship should not interfere with the conduct of cargo and other operations normal to a vessel in berth unless directed so by court order.

It is important to realise that the Sheriff or the Marshal does not put hull insurance on a seized vessel. It is necessary for the owner or the Plaintiff to place adequate Port Risk Insurance on the vessel to protect their interest against loss.

If a vessel is not released by furnishing of security, the court may order an interlocutory sale. An interlocutory sale, means a sale prior to the completion of the litigation and the entering of a judgment. As a general rule the sale will not be allowed for four months unless the ship is in a precarious condition. The Plaintiff can make an application to the court for sale of the ship if the arrested property is perishable, liable to deterioration, or if the cost of keeping it is excessive or disproportionate and is danger to the environment and the surroundings.

Regardless as whether the sale is interlocutory or a judgment sale, the purchaser at the auction does not have any right in the ship, until the sale is confirmed by the court. Once confirmation is received, the buyer receives title which extinguishes all other liens and provided him with a clear title. An "in rem" action resolves claims of all of the world against the vessel and no lien for past debts can be created or asserted.

The proceeds of the sale are paid into the court and are used to satisfy any expenses incurred by the keeping of the vessel and fees to the Sheriff or the Marshal. The balance is paid to the claimants on priority basis and any balance left over is paid to the owner. If the sums received are not sufficient to pay all claims, the claimants pay proportionately to the shortfall.
Maritime claims apply in relation to all ships, irrespective of the places of residence or domicile of their owners; and all maritime claims, wherever arising and does not have effect in relation to a cause of action if, at the time when the cause of action arose, the ship concerned was a foreign ship.

The list of maritime claims found in the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 are closed lists are all claims that are expressed to or impliedly concern or relate to ‘a ship’. They therefore contemplate some connection between the claim and a particular ship or ships. That being so, it is not sufficient for the pursuit of an action in rem that the intended claim be one against a ship owner either generally or in respect of its ships or operations generally. Nor is it sufficient that the person who is alleged to be liable for that claim happens to own a ship. It is therefore not possible to pursue as an action in rem against a ship a claim that is not related to or concerns that ship, or in the case of sister ship arrest, a maritime claim that is not related to or concerns some other ship that was at the time the cause of action arose owned or chartered by or in the possession or control of the owner of the sister ship.

Accordingly, in order to pursue a claim as an action in rem against a ship or other property, there must be some connection between that claim and either the ship that is intended to be the subject of the in rem proceeding or of which the ship the subject of the in rem proceeding is intended to be a sister ship.

There are two methods of enforcement of maritime claims, by action in rem and by an action in personam.

Claims enforceable by action in rem can be divided into the following:

a. claims attracting a maritime lien or other charge on the relevant property
b. claims enforceable by an action in rem against the relevant property

c. claims enforceable by an action in rem against the relevant ship or sister ship provided certain conditions in relation to liability in personam are met

d. claims not falling within the above.

In order to pursue a claim as an action in rem and to thereby arrest a ship or other property in support of that claim it is necessary to identify:

a. first, the particular ship or property which is to be the subject of the proposed in rem proceeding;

b. secondly, the nature of the claim that is sought to be pursued against that ship or other property. This is for the purposes of determining that the proposed claim is one that is capable of being pursued as an action in rem as described in Article 1 of the arrest conventions;

c. thirdly, the relationship between that claim and the ship or other property the subject of the proceeding or in the case of sister ship arrest the relationship between the claim and the ship in respect of which the claim is said to arise;

d. fourthly, in the context of in rem proceedings, the identity of the ‘relevant person’, that is the person who it is alleged would be liable for the plaintiff’s claim had it been commenced as an action in personam;

e. fifthly, the relationship of the relevant person to the ship or other property in respect of which the claim is made at the time the cause of action arose and in particular whether that person was the owner or charterer or person in possession or control of the ship at that time; and
f. finally, the relationship of the relevant person to the ship or other property at the time the proceedings are commenced, and in particular whether at that time the relevant person was the owner of that ship in the context of in rem proceedings brought or the demise charterer of that ship in the context of proceedings brought.

Maritime Claim is defined in section 4 the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.

In admiralty law, a maritime lien is a privileged claim upon sea-connected property, such as a ship, for services rendered to, or the injuries caused by that property. In common law, a lien is the right of the creditor to retain the properties of his debtor until the debt is paid.

It is a proprietary lien where interest is about the property. It should be understood that “res” may be the vessel including its appurtenances and equipment, the cargo, the freight or even the proceeds of sale. The rights include jus in re (right on the property) and jus in rem (right against the property). The doctrine of maritime lien is that a ship will be treated as a wrongdoer, not the owner, that the loss, damage or harm is caused by the maritime property, itself, and it has to make good for the loss. The attachment of maritime lien will start when the cause of action arises and will not be eliminated even by change of ownership in a good faith purchase.

Two significant differences between maritime liens, which only exist in admiralty law, and the right to keep that exist in general civil law are that in general civil law, "Prior in time is prior in right", i.e., the rights of the lien holder with the earliest lien are superior to those of later lien holders, whereas in maritime law the rights of the most recent lien holder are superior, and all maritime liens are superior to all non-maritime liens.
CHARTER PARTIES

A charter party is a highly standardized written document that provides the contractual arrangements for one party (the charterer) to hire the carrying capacity of a vessel, either in whole or in part, owned by another party. Generally, charter parties are subject to the rules and requirements of contract law. Charter party forms are used worldwide, and many of them have been drafted to take into consideration the specific needs of particular trades. Other charter parties are more general in form and are not adapted to a specific trade.

There are three basic types of charter parties: a voyage charter, a time charter, and a demise charter.

Under a voyage charter, the owner of the vessel agrees to carry cargo from one port to another on a particular voyage or voyages. The vessel is manned and navigated by the owner’s crew. A voyage charter may be used as a contract of affreightment—that is, for the shipper’s purpose of sending its goods from the port of origin to a port of destination. To the extent that a voyage charterer obtains only the carrying capacity of a particular vessel, the charterer is not responsible for maintenance, repairs to the vessel, or injuries to third parties arising from the crew’s operational negligence. A voyage charterer usually is not liable for expenses such as bunkers (fuel).

A time charter is a contract for the use of the carrying capacity of a particular vessel for a specified period of time (months, years, or a period of time between specified dates). As with a voyage charter, the vessel owner under a time charter is responsible for the navigation and management of the vessel, subject to conditions set out in the charter party. The vessel’s carrying capacity is leased to the charterer for the time period fixed by the charter.
party, allowing for unlimited voyages within the charter period. Therefore, the vessel is under the charterer’s orders as to ports of call, cargo carried, and other matters related to the charterer’s business. The master and crew remain employees of the owner and are subject to the owner’s orders with regard to the navigation and management of the vessel. Because a time charterer obtains only the carrying capacity of a particular vessel, the charterer is not responsible for maintenance, repairs to the vessel, or injuries to third parties arising from the crew’s operational negligence. Time charterers usually are responsible for expenses of operating the vessel.

In a demise charter, the charterer not only leases the carrying capacity of the vessel but, unlike a time or voyage charter, also obtains a degree of control over the management and navigation of the vessel. As such, the charterer becomes, in effect, the owner of the vessel pro hac vice for the duration of the charter. The test for whether a charter party is a demise charter is whether the owner has turned over to the charterer “the possession, command, and navigation” of the vessel during the period it is in effect. When a vessel with a preexisting master and crew is under a demise charter, the master and crew may remain on the vessel and operate the vessel for the charterer as a provision of such agreement. The master and crew are subject to the orders of the charterer and its agents, and they are considered its employees. Under a demise charter, an owner may also turn over the vessel to the charterer without a master and crew. A demise charter of this type is also referred to as a bareboat charter.

Under a demise charter, the legal relationship between the owner and the charterer is significantly different from that created by a time or voyage charter. Because a demise charter transfers the possession and control of the vessel to the charterer, one who takes a vessel on demise is responsible for maintenance, repairs, or damages caused to third parties by the crew’s
negligent navigation of the vessel. Thus, the owner who has demised its vessel will generally not be liable in personam for the fault or negligence of the crew—the charterer will be primarily liable. Demise charterers usually are responsible for the vessel’s operating expenses. In addition to these three types of charter parties, a number of variations have been created to accommodate containerisation and the changing nature of the shipping industry.

The Contract

Most charter party transactions use standardized printed forms. Some of the clauses contain blank spaces that require the parties to supply information. Typically the parties must specify the names of the owner and of the charterer and the amount of payment, referred to as “hire” or “charter hire.” Obviously, a voyage charter must specify the voyage to be undertaken, and a time charter must specify the length of time. In addition, a time charter requires information about the physical characteristics of the vessel and any restrictions on the use of the vessel. The charter form also sets out standard terms and conditions that apply under the contract. Charter parties typically are negotiated contracts and, in contrast to transport pursuant to bills of lading, are often marked up—that is, provisions are added, deleted, or modified. These changes reflect the market and the relative financial strength of the owner and the charterer.

Typical Areas of Dispute

Freedom of contract is the touchstone to the resolution of charter party disputes between owner and charterer. The rules applicable to charter party disputes derive from the terms of the charter party itself and generally do not implicate public policy concerns. These are contracts between businesspersons, negotiated at arm’s length, often through intermediaries (i.e.,
brokers who are experts in the field). It is often assumed that the contracting parties are sophisticated and that considerations of consumer protection are absent. Confirmation of this view is the fact that key terms, such as rate of charter hire and length of charter term, are often subject to hard bargaining. This does not mean that the parties negotiate from equal positions of strength. Like other areas of commercial transactions, supply and demand may strengthen an owner's hand when vessels are in short supply or may put charterers in a better position when there is a surplus of tonnage available in the charter market. The advantages that inhere in these circumstances are not the equivalent of overreaching.

Most terms used in standard charter parties are terms of art that have well-established and well-understood meaning within the industry. Old-fashioned as some may seem, the terms (including those described below) ought to be interpreted and applied in litigation as they are understood in the industry.

Misrepresentation

The term “misrepresentation” includes not only fraud or intentional misrepresentation but also any situation where a vessel does not conform to factual representations as stated by the owner in the charter party. Courts today take a pragmatic approach, and resolution of a dispute may hinge both on the materiality of the representation or undertaking and whether the charterer seeks damages or termination of the contract.

Warranties

Size and Speed—A breach of an express warranty as to size and speed may entitle a charterer to recover damages. At the election of the charterer, the breach of such an express warranty may provide a basis for rescission. Rescission of the charter party is available only under circumstances where the breach is material or where it is discovered before the vessel has been accepted by the charterer.
Seaworthiness—In general, a shipowner has a duty to ensure that his or her vessel is seaworthy and capable of transporting the cargo for which it has been chartered. A charter party that describes the vessel as “with hull, machinery, and equipment in a thoroughly efficient state” or “that on delivery the ship be tight, staunch, strong and in every way fitted for the service” gives rise to a warranty of seaworthiness. In the absence of an express and unambiguous stipulation or a controlling statute to the contrary, a warranty of seaworthiness will be implied by law.

The parties may stipulate that there is no warranty of seaworthiness, but such agreements are not favored and will be enforced only if they “clearly communicate that a particular risk falls on the [charterer].”

Breach of the warranty of seaworthiness does not by itself confer upon the charterer the right to repudiate. Repudiation by a charterer is permissible only where the breach of the owner’s undertaking of seaworthiness is so substantial as to defeat or frustrate the commercial purpose of the charter. This view is consistent with the modern approach that the undertaking of seaworthiness is to be treated like any other contractual undertaking. Thus, an insubstantial breach that does not defeat the object of the contract will not justify repudiation unless expressly made a condition precedent to a party’s performance of its obligations.

Likewise, the terms of the charter party must be examined carefully because the parties may have agreed to a lesser undertaking with respect to seaworthiness. For example, an owner may have expressly undertaken only to exercise “due diligence” to provide a seaworthy vessel.
Charter parties commonly provide for contingencies, short of frustration, that result from the inability of the charterer to use the ship as intended. This may occur in the case of a mechanical malfunction or illness of the crew or some other factor that renders a vessel temporarily unusable. A common provision in charter parties is an “off hire” or “breakdown” clause. Under an off hire clause, a charterer’s duty to pay hire ceases in the event that it is deprived of the use of the vessel, either in whole or in part, as a result of some deficiency of the vessel, its equipment, or the crew. There are many variations in the wording of an off hire clause, and sometimes there are disputes as to the applicability of the particular clause in question.

Sometimes the inability to use a vessel is unrelated to the physical condition of the vessel itself or its crew, such as where a strike by longshoremen or government intervention prevents a vessel from sailing or from loading or discharging cargo. Other clauses in the charter party may determine who bears the risk of such events. Under a “mutual exceptions” clause, for example, if a party is prevented from fulfilling its obligations because of the occurrence of a circumstance enumerated in the mutual exceptions clause, such non-performance is not considered to be a breach of the charter party contract. “Restraint of princes” (an embargo) is usually one of the circumstances enumerated in a standard mutual exceptions clause. Thus, the action of a government that prevents an owner from fulfilling its obligation to the charterer—for example, by placing the vessel in quarantine—will excuse the non-performance of the owner. Other circumstances commonly excepted are acts of God or of public enemies.

Safe Port and Safe Berth Provisions

In time and voyage charters there are express or implied obligations that the charterer will not require the vessel to call at an unsafe port or enter an unsafe berth to load, discharge, or take on bunkers. Time and voyage charter parties usually contain a provision referred to as a “safe port/safe berth” clause that
purports to place on the charterer the risks to the vessel posed by the particular ports at which the vessel will call and the berths where the vessel will lie. It is not clear whether this clause in a charter party obliges the charterer to “warrant” the safety of ports and berths entered. A safe berth clause does not impose strict liability upon a voyage charterer, and the charterer is not liable for damages arising from an unsafe berth where the charterer has exercised due diligence in the selection of the berth. Where a time charter party includes a safe port/berth clause, the charterer warrants the safety of the berth it selects. In any event, under a safe port/berth clause the master of a vessel may refuse to proceed to an unsafe port/berth nominated by the charterer without placing the owner in breach of the charter.

Notwithstanding a safe port/berth provision, negligence on the part of the master may relieve a charterer of its liability to the extent that such negligence permits the fact finder to conclude either that the port was safe because the peril could have been avoided by prudent seamanship or that, in the case of an unsafe port, the master’s conduct was an intervening, superseding cause of the resulting damages. Obviously, not every risk taken by a master will be considered a superseding cause. If the casualty results from the combined negligence of the charterer and the vessel’s master or other agent of the owner, damages are to be apportioned according to the respective fault of the parties.

Demurrage and Detention

In a time charter, the charterer has the vessel’s carrying capacity at its disposal for a specified period of time. As such, it makes no difference to the owner whether the charterer makes efficient use of the time chartered vessel. By contrast, in voyage charters, the time during which the voyage charterer may use the vessel is measured by the length of time it takes to complete the voyage. Obviously, it is to the owner’s advantage to have the voyage
completed as quickly as possible: The sooner an owner has the vessel at his
disposal, the sooner he can use it for his own purposes or charter it to another
person. Consequently, a frequent issue in voyage charter party disputes is the
shipowner’s claim for “demurrage.”

Voyage charter parties provide a time frame for loading and unloading the
vessel. Under such a provision, the charterer is allowed “laytime”—a specified
period (hours or days) during which it can perform its loading and unloading
operations without incurring charges in excess of the agreed rate of charter
hire. These clauses vary greatly. If a charterer takes longer to load or discharge
cargo than is provided in the charter party (i.e., it exceeds its laytime), it will be
charged an additional amount called “demurrage.” Thus, demurrage refers to
the sum that a charterer agrees to pay for detaining the chartered vessel for
that period of time that exceeds the laytime. It should be noted that where a
charterer completes loading or unloading in a period of time less than that
specified as laytime, the charterer has conferred a benefit on the owner and
may be entitled to financial allowance referred to as “dispatch.”

A typical demurrage clause in a charter party specifies the amount of
demurrage that must be paid and the maximum amount of time allowed for
demurrage. In this respect, demurrage should be distinguished from
detention. Whereas demurrage is a contractual charge imposed on the
charterer for exceeding laytime, detention is a legal remedy, in the form of
damages, available to the shipowner after the period during which demurrage
has expired.180 Nonetheless, detention is recoverable only where the owner
can demonstrate that it has sustained damages, such as an opportunity cost.

Withdrawal

A charter party may include a clause permitting the owner to withdraw the
vessel where hire payments are not made in accordance with the requirements
set out in the written agreement. A shipowner may insist on strict compliance
with these requirements; and where these requirements are not complied with,
courts are likely to uphold the owner’s right to withdraw its vessel. Owners may not withdraw a vessel while cargo is on board.

Subcharters

The right of a charterer to sublet or subcharter a vessel depends on the wording of the charter party. Charter parties often expressly authorize a charterer to subcharter the vessel and usually specify that a subcharter arrangement does not relieve the principal charterer of its obligations to the owner under the head or primary charter party. The owner is not in privity of contract with subcharterers who may not rely on the terms either expressed or implied in the head charter party. The head charter party may, in order to protect the owner’s right to hire, contain a provision giving the owner a lien on subfreights whereby the owner steps into the shoes of the charterer with respect to freight due the charterer from cargo interests.

Liability of the Owner for Damage or Loss of Goods

Charter parties, per se, are excluded from the terms of the Carriage of Goods by Sea Act (COGSA). Any disputes between the owner and charterer must be resolved according to the terms of the charter party. Courts generally apply the rule of freedom of contract in the interpretation and enforcement of charter parties. This approach enables the parties to bargain freely and to include in the contract any stipulation allowed by law. As such, the parties are free to incorporate the terms of COGSA by reference into the charter party, and they frequently do. Thus, various provisions of COGSA often become terms of a charter party through contractual stipulation. The parties are, of course, free to modify, or even exclude, COGSA provisions in the contract. Such modifications are permissible as long as COGSA does not apply by operation of law.
Even where a carrying vessel is under charter, however, there are circumstances in which COGSA is applicable as a matter of law. This occurs where the owner has issued a bill of lading to the charterer, who in turn has transferred the bill of lading to a third party, such as a consignee. These situations are discussed in the following section.

Arbitration Clauses

Most charter parties contain a clause whereby the parties agree to resolve by arbitration disputes that arise under the charter party. These provisions are enforceable and, under certain circumstances, may bind others, such as a consignee.
APPENDIX 1

BOMBAY HIGH COURT RULES

PART III of Bombay High Court (Original Side) Rules

ADmiralty Jurisdiction

Rules for regulating the procedure and practice in cases brought before the High Court under the Colonial Courts of Admiralty Act, 1890

(53-54 Victoria Ch.27)

927. Definitions - In this part, unless there is anything repugnant in the subject or context.

(1) "The Court" means the High Court of Judicature at Bombay;

(2) "Judge" means a Judge of the said Court;

(3) "Judge in Chambers" means the Judge hearing Admiralty matters in Chambers;

(4) "Prothonotary and Senior Master" means the Admiralty Registrar of the Court;

(5) "Registry" means the office of the Prothonotary and Senior Master;

(6) "Sheriff" means the Sheriff of Bombay or the Deputy Sheriff or other officer who may be appointed to execute the process of the Court;

(7) "Suit" means any suit, action or other proceeding instituted in the Court in its Admiralty Jurisdiction.
928. Institution of Suits - A suit shall be commenced by a plaint signed and verified according to the provisions of the Code of Civil Procedure, 1908.

929. Caveat against arrest of property - Any person desiring to prevent the arrest of any property shall file in the registry a praecipe, signed by himself or his advocate, who may be acting for him, requesting that a caveat be entered against the arrest of the said property and undertaking to enter an appearance in person or a Vakalatnama in any suit that may be instituted against the said property and to give security in such suit in a sum not exceeding the amount to be stated in the praecipe or to pay such sum into the registry. A caveat against the issue of a warrant for the arrest of the said property shall thereupon be entered in a book to be kept in the registry, called the "Caveat Warrant Book."

930. Caveat against release of arrest property - Any person desiring to prevent the release of any property under arrest shall file in the registry a praecipe, signed by himself or his advocate, who may be acting for him, requesting that a caveat be entered against the release of the said property. A caveat against the release of the said property shall thereupon be entered in a book to be kept in the registry, called the "Caveat Release Book."

931. Caveat against payment out of sale proceeds of property - Any person desiring to prevent the payment out of Court of any money in Court representing the proceeds of sale of any property shall file in the registry a praecipe signed by himself or his advocate who may be acting for him, requesting that a caveat be entered against payment out of Court of the said proceeds of sale. A caveat against the payment out of Court of such sale proceeds shall thereupon entered in a book to be kept in the registry, called the "Caveat Payment Book."

932. Duration of caveat - A caveat, whether against the issue of a warrant, the release of property, or the payment of money out of the registry, shall be valid for six months from the date of its entry.
The period of validity of a caveat shall not be extended, but this provision shall not be taken as preventing the entry of successive caveats.

933. Withdrawal of Caveat - A caveat may be withdrawn by the party on whose behalf it has been entered, but the praecipe to withdraw the caveat shall, unless otherwise permitted by the Prothonotary and Senior Master, be signed by the person who signed the praecipe for entering the caveat.

934. Application to set aside a caveat - An application to set aside a caveat shall be made by Chamber Summons supported by affidavit.

935. Copy of plaint in suit against property to be served before filing plaint, on party who has entered caveat - Any person instituting a suit against any person in respect of which a caveat has been entered in the "Caveat Warrant Book" shall, before filing the plaint, serve a copy thereof upon the party on whose behalf the caveat has been entered or upon his Advocate and annex to the plaint a statement of such service.

936. Party entering caveat to give security on filing of plaint - Within three days from the filing of the plaint, the party on whose behalf the caveat has been entered shall, if the sum in which the suit has been instituted does not exceed the amount for which he has given the undertaking, give security in such sum or pay the same into the registry, or if it exceeds the amount, give security in the sum in which the suit has been instituted or pay the same into the registry.

937. On default suit may proceed ex-parte - After the expiration of three days from the filing of the plaint, if the party on whose behalf the caveat has been entered shall not have give security in such sum or paid the same into the registry, the plaintiff may apply to the Prothonotary and Senior Master to set down the suit forthwith for hearing as an undefended suit: Provided that the Court may on good cause shown and on such terms as to payment of codes
as it may impose extend the time for giving security or paying the money into the registry.

938. Judgment or the claim and enforcement of payment - When the suit comes before the Court, if the Court is satisfied that the claim is well founded, it may pronounce judgment for the amount which appears to be due, and may enforce the payment thereof by order and attachment against the party on whose behalf the caveat has been entered, and by the arrest of the property if it then be or thereafter come within the jurisdiction of the Court.

939. Property may be arrested notwithstanding caveat - The fact that there is a caveat against arrest in force shall not prevent a party from getting a warrant of arrest issued and the property to which the caveat relates, arrested.

940. Remedy where property protected by caveat is arrested without good and sufficient cause - Where property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the Court by Notice of Motion for an order for release of the property. The Court, unless it is satisfied that the party procuring the arrest of the property had good and sufficient reason for doing so, may order the release of the property and may also order the last mentioned party to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

941. Application to arrest property in a suit in rem - If the suit is in rem an application for the arrest of the property proceeded against shall be made to the Judge in Chambers and shall be supported by affidavit. The affidavit shall state the nature of the claim and that it has not been satisfied. It shall also state the nature of the property to be arrested and if the property is a ship, the name and nationality of the ship. There shall be annexed to the affidavit a certificate of the Prothonotary and Senior Master certifying that search has been made in the Caveat Warrant Book and that no caveat has been filed against the issue of a warrant for the arrest of the said property.
A party applying under this rule shall give an undertaking in writing, or through his Advocate, to pay such sum by way of damages as the Court may award as compensation in the event of a party affected sustaining prejudice by such order.

Comments

This rule applies to any application for arrest in an Admiralty Suit, whether made expert or where the defendant is present. Bank of Maharashtra vs. M. V. River Ogbese AIR 1990 Bom, 107.

942. Nationality of the ship to be stated and notice to be given to Consul in suits for possession, wages or necessaries - In a suit for possession or for wages or in respect of necessaries supplied, the nationality of the ship proceeded against shall be stated in the plaint, and if the ship is a foreign ship, notice of institution of the suit shall be given to the Consul of the State to which the ship belongs, if there be one resident in Bombay. A statement of service of such notice or a statement that there is no such Consul shall be made in the affidavit in support of any application for arrest of the ship. If the notice is served on the Consul, a copy of such notice shall be annexed to the affidavit.

943. Warrant with Court's leave though particulars wanting - The Judge in Chamber may in any case allow the warrant of arrest to issue though the affidavit or plaint may not contain all the required particulars, and in a suit for wages may also waive the service of the notice.

944. Sheriff to serve process - The Sheriff shall serve the process of the Court and shall return the process to the Registry within four days from the service thereof.

945. Service of writ or warrant, when dispensed with in suit in rem - In a suit in rem no service of Writ of Summons or Warrant of arrest shall be required,
when the Advocate for the defendant agrees to accept service and to give security or to pay money into Court.

946. Service of writ of summons or warrant of arrest in a suit in rem. Service how effected -

(1) In a suit in rem the Writ of Summons or the Warrant of arrest shall be served on the property against which the suit is brought.

(2) Where the property is ship or cargo on board, service shall be effected by affixing the original Writ of Summons or the Warrant of arrest for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure, and leaving a duplicate thereof affixed in its place, when removing the original Writ of Summons or the Warrant of arrest.

(3-a) Where the property is cargo which has been landed or transshipped, service shall be effected by placing the original Writ of Summons or the warrant of arrest for a short time on the cargo and leaving a duplicate thereof upon the cargo, when removing the original Writ of Summons or the warrant of arrest.

(3-b) Where the cargo is in the custody of a person who will not permit access to it, service shall be made upon the custodian.

(4) Where the property is freight, service shall be effected by serving on the cargo in respect of which the freight is payable or on the ship in which the cargo was carried, in the manner hereinabove prescribed in this rule for service on a cargo or on a ship.

947. Sheriff may apply for directions - The Sheriff may at any time make a report to the Court and apply for directions with respect to property under
arrest in a suit. The Court may direct notice of the application to be given to any person concerned with the property before passing orders on the report.

948. Application for sale of arrested property - In a suit in rem if the property proceeded against has been arrested, the plaintiff may, at any time after service of the Writ of Summons upon the defendant, apply to the Court by Notice of Motion for an order that the arrested property be sold by the Sheriff and the sale proceeds be paid into the registry to the credit of the suit. The Court may made such order on the application as it may think fit.

949. Interveners -

(1) Where property against which a suit in rem is brought is under arrest or money representing the proceeds of sale of that property is in Court, a person who has interest in that property or money but who is not a defendant to the suit may, with the leave of the Judge, intervene in the suit.

(2) An application for the grant of leave under this rule may be made ex-parte by affidavit showing the interest of the applicant in the property against which the suit is brought or in the money in Court.

(3) A person to whom leave is granted to intervene in a suit shall file an appearance in person or a vakalatnama therein within the period specified in the order granting leave. On filing such appearance or vakalatnama, the intervener shall be treated as if he were a defendant in the suit.

(4) The Judge may order that a person to whom he grants leave to intervene in a suit, shall, within such period as may be specified in the order, serve on every other party to the suit such pleading as may be so specified.
950. Judgment for the plaintiff if claim well founded - When the suit comes up for hearing before the Court, if the Judge is satisfied that the plaintiff’s claim is well founded, he may pass a decree for the plaintiff and may order the property proceeded against to be sold with or without previous notice and the sale proceeds paid into the registry to the credit of the suit or make such other order in the premises as he may think just.

951. Order for sale of property and determination of priority of claims -

(1) Where in a suit in rem the Court has ordered the property proceeded against to be sold, any party who has obtained or obtains a decree or order against the said property or the proceeds of sale thereof may -

(a) In a case where the order for sale contains the further order referred to in sub-rule (2), after the expiration of the period specified in the order under sub-rule (2) (a), or

(b) in any other case, after obtaining judgment, apply to the Court by Notice of Motion for an order determining the order of priority of the claims against the proceeds of sale of the said property.

(2) Where in a suit in rem the Court orders the property proceeded against to be sold, it may further order -

(a) that the order of priority of the claims against the proceeds of sale of the property shall not be determined until after the expiration of ninety days or of such other period as the Court may specify, beginning with the day on which the proceeds of sale are paid into Court;
(b) that any party to the suit or to any other suit in rem against the property proceeded against or the sale proceeds thereof may apply to the Court to extend the period specified in the order;

(c) that within seven days after the date of payment into Court of the proceeds of sale, the Sheriff shall send for publication in such newspapers as the Court may direct a notice complying with the provisions of sub-rule (3).

(3) The notice referred to in sub-rule (2) shall state -

(a) that the property (particulars to be specified) has been sold by the order of the High Court in a suit in rem giving the number of the suit and the names of the parties to the suit;

(b) that the gross proceeds of the sale, specifying the amount thereof, have been paid into Court;

(c) that the order of priority of the claims against the said proceeds will not be determined after the expiration of the period (specifying it) specified in the order for sale;

(d) that any person having a claim against the property or the proceeds of sale thereof, should apply to the Court for leave to intervene and prove his claim before the Court and obtain a decree before the expiration of that period.

(4) The Sheriff shall lodge in the registry a copy of each newspaper in which the notice referred to in sub-rule (2) (c) has appeared.

(5) The expenses incurred by the Sheriff in complying with an order of the Court under this rule shall be included in his expenses relating to the sale of the property.
(6) An application to extend the period referred to in sub-rule (2) (a) shall be made by Notice of Motion, which shall be served on the parties to the suit and on all persons who have obtained leave to intervene in the suit.

952. Property not to be released unless notice is given to the Caveator - No property arrested under a warrant shall be ordered to be released, unless notice is given to the person who has filed a caveat against the release thereof and whose caveat is outstanding in the caveat Release Book.

953. Penalty for delaying release - A party delaying the release of any property by the entry of a caveat shall be liable to be condemned in costs and damages, unless he shall show, to the satisfaction of the Court or the Judge in Chambers, good and sufficient reason for having entered the caveat.

954. Release of arrested property - Subject to the provisions of Rule 952, property arrested under a warrant may be ordered to be released

(i) at the request of the plaintiff, before an appearance in person or a vakalatnama is filed by the defendant; or

(ii) on the defendant paying into Court the amount claimed in the suit; or

(iii) on the defendant giving such security for the amount claimed in the suit as the Court may direct; or

(iv) on any other ground that the Court may deem just.

955. Instrument of release - Property arrested under a warrant shall only be released under the authority of an instrument issued by the Prothonotary and Senior Master, to be called a release.
956. Release by Sheriff on lodging praecipe with release - The release when obtained shall be lodged with a praecipe in the office of the Sheriff by the party obtaining the same who shall also at the same time pay all costs, charges and expenses attending the care and custody of the property whilst under arrest, and the Sheriff shall thereupon release the property.

957. Sales by order of the Court - Every sale under the decree of the Court shall, unless the Judge shall otherwise order, be made by the Sheriff in like manner as a sale of movable property in execution of a decree in an ordinary civil suit, and the Sheriff shall be entitled to receive the same fees and poundage as he would be entitled to in such a case.

958. Procedure by Sheriff on sale of property - The Sheriff shall pay into Court the gross proceeds of sale of any property sold by him, and shall at the same time bring into the registry the account of sale, with vouchers in support thereof, for taxation by the Taxing Master of the Court, to whom the same shall be transmitted by the Prothonotary and Senior Master for that purpose.

959. Appearance before Taxing Master - Any person interested in the proceeds may be heard before the Taxing Master on the taxation of the account of expenses, and an objection to the taxation shall be heard in the same manner as an objection to accounts filed before the Commissioner for Taking Accounts.

960. Payment of moneys - All money to be paid into Court shall be paid to the Prothonotary and Senior Master.

961. Payment of money out of court - Money paid into Court shall not be paid out of Court, except in pursuance of an order of the Court or the Judge in Chambers.
962. Security for latent demands - Security for latent demands shall not, unless the Judge shall otherwise order be required on the payment of money out of Court.

963. Security - If security is to be given, it shall be given according to the rules and practice of the Court regarding the giving of security in suits filed on the Original Side of the Court.

964. Motions - Motions may be made either in Court or to a Judge in Chambers.

965. Fees of Officers, Sheriff and Advocates - The fees to be taken by the officers of the Court, by the Sheriff and by Advocates shall be as prescribed for proceedings under the Original Civil Jurisdiction of the High Court.

966. Rules and practice of the O.S. to apply, if not inconsistent with the rules in this part - The rules and practice of the Court in the manner of suits and proceedings on the Original Side of the Court shall, if not inconsistent with the rules in this part, apply to suits and proceedings on the Admiralty Side of the Court.

967. Forms of Admiralty Division may be followed - The forms used in the Admiralty Division of the Supreme Court in England under the Rules of the Supreme court, for the time being in force may be followed with such variations as the circumstances of each case may require.

968. Supersession of rules - The rules contained in this Part shall apply to suits brought in the Court in the exercise of its Admiralty and Vice-Admiralty Jurisdiction in supersession of all former rules.
MADRAS HIGH COURT RULES

ORDER XLII

RULES FOR REGULATING THE PROCEDURE AND PRACTICE IN CASES BROUGHT BEFORE THE HIGH COURT OF JUDICATURE AT MADRAS

IN THE EXERCISE OF ITS ADMIRALTY JURISDICTION

1. In the construction of these rules the following terms shall (if not inconsistent with the context or subject matter) have the respective meaning hereinafter assigned to them, that is to say:

"The Court" shall mean the High Court of Judicature at Madras.

"Judge" shall mean a Judge of the said High Court.

"Registrar" shall mean the Registrar of the said Court, on its Original Side, or other officer who may be authorized to perform the duties of such Registrar.

"Registry" shall mean the office of the Registrar.

"2[Nazir] shall mean the 2[Nazir] or the Deputy 2[Nazir] of Madras or other officer who may be appointed to execute the process of the said Court.

"Attorney" shall mean any 3[ ] advocate entitled to practice in the said Court, or the party himself if conducting his suit in person.

"Suit" shall mean any suit, action or other proceeding instituted in the said Court in its Admiralty Jurisdiction.
"Affidavit" shall in addition to its ordinary meaning, include a statement in writing on solemn affirmation wherever by law a person may make a solemn affirmation instead of an oath.

2. A suit shall be instituted by a plaint drawn up, subscribed and verifying according to the provisions of the Code save that if the suit is in rem, the defendants may subject to such variation as the circumstances may require, be described as "the owners and parties interested in" the vessel or other property proceeded against instead of by name.

3. In suits in rem a warrant for the arrest of property may be issued at the instance either of the plaintiff or of the defendant at any time after the suit has been instituted, but no warrant of arrest shall be issued until an affidavit by the party or his agent has been filed, and the following provisions complied with:

   (A) The affidavit shall state the name and description of the party at whose instance the warrant is to be issued, the nature of the claim or counter-claim, the name and nature of the property to be arrested, and that the claim or counter claim has not been satisfied.

   (B) In a suit of wages or of possession, the affidavit shall state the national character of the vessel proceeded against; and if against a foreign vessel, that notice of the institution of the suit has been given to the consul of the State to which the vessel belongs, if there be one resident in Madras and a copy of the notice shall be annexed to the affidavit.

   (C) In a suit of bottomry, the bottomry bond and if in a foreign language also a notarial transaction thereof, shall be produced for the inspection and perusal of the Registrar, and a copy of the bond, or of the translation thereof, certified to be correct shall be annexed to the affidavit.
(D) In a suit of distribution of salvage, the affidavit shall state the amount of salvage money awarded or agreed to be accepted, and the name and address and description of the party holding the same.

4. The Court or Judge may in any case, if they or he thinks fit, allow the warrant to issue, although the affidavit in Rule 3 mentioned may not certain all the required particulars and in a suit of wages, the Court or Judge may also waive the service of the notice, and in a suit of bottomry the production of the bond.

5. In suits in rem, no service of writ of warrant shall be required when the attorney of the defendant waives service and undertakes in writing to appear and to give security or to pay money in to Court in lieu of security.

6. An Attorney not entering appearance or giving security or paying money into Court in lieu of security in a suit in rem, in pursuance of his written undertaking so to do shall be liable to attachment.

7. Every writ, warrant and process shall be served by the 1[Nazir] or his bailiff. Every warrant shall be returned to the Registry within six days from the date thereof.

8. In suits in rem, service of summons or warrant against ship, freight or cargo on board is to be effected by nailing or affixing the original writ or warrant for a short time on the main mast or on the single mast of the vessel and by taking off the process leaving a true copy of it nailed or affixed in its place.

9. If the cargo had been landed or transhipped, service of the writ or warrant to arrest the cargo and freight shall be effected by placing the writ of summons or warrant for a short time on the cargo and by on taking off the process, leaving a true copy upon it.
10. If the cargo be in the custody of a person who will not permit access to it, service of the writ or warrant may be made upon the custodian.

11. In a suit in rem, any person not named in the writ may intervene and appear on filing an affidavit showing that he is interested in the property under arrest or in the fund in the Registry.

12. After the expiration of twelve days from the return of a warrant, if no appearance shall have been entered in the suit, the attorney for the plaintiff may cause the suit to be set down for hearing.

13. If when the suit comes before the Court, the judge is satisfied that the Plaintiff's claim is well founded, he may pronounce for the claim and may order the property to be sold with or without previous notice and the proceeds paid into the Registry or make such order in the premises as he shall think just.

14. An attorney desiring to enter an appearance in any suit, shall file in the Registry a praecipe a copy of which shall have been previously served on the adverse attorney.

15. The praecipe shall contain the name of the attorney and an address for service in Madras at which it shall be sufficient to leave all instruments and documents in the suit.

16. Where security is to be given in Registry, it shall be given according to these rules and practice of the Court as to security in the case of an attachment before judgment in an ordinary civil suit.

17. Property arrested by warrant shall only be released under the authority of an instrument issued by the Registrar, to be called "release."
18. An attorney at whose instance any property has been arrested may, before an appearance has been entered, obtain the release thereof by filing a praecipe to withdraw the warrant.

19. An Attorney may obtain the release of any property by paying into the Registry the sum in which the suit has been instituted.

20. Cargo arrested for the freight only may be released by an order of a Judge upon proof by affidavit of the value of the freight and by paying the amount of freight into the Registry.

21. In a suit of salvage the value of the property under arrest shall be agreed to or proved by affidavit to the satisfaction of a Judge before the property is released.

22. Where security shall have been given in the sum in which the suit has been instituted, or such sum shall have been paid into the registry and if the suit be one of salvage the value of the property arrested shall have been proved to the satisfaction of a Judge, an Attorney shall be entitled to a release of the same, unless there be a caveat against the release thereof.

23. The release, when obtained, shall be left with a praecipe in the office of the 1[Sheriff] by the attorney taking out the same, who shall also at the same time pay all the costs, charges and expenses attending the care and custody of the property whilst under arrest, and the 1[Sheriff] shall thereupon release the property.

24. An attorney in a suit desiring to prevent the release of any property under arrest, shall file in the Registry a praecipe, and thereupon a Caveat against the release of the property shall be entered in the register of Admiralty suits.

25. A party delaying the release of any property by the entry of a Caveat shall be liable to be condemned in costs and damages, unless he shall show to the
satisfaction of the Court or a Judge, good and sufficient reason for having so
done.

26. The party desiring to prevent the arrest of any property may cause a
Caveat against the issue of a warrant for the arrest thereof to be entered in the
Registry.

27. For this purpose he shall cause to be filed in the Registry a notice, signed
by himself or by his attorney undertaking to enter an appearance’ in any suit
that may be instituted against the said property and to give security in such
suit in a sum not exceeding an amount to be stated in the notice, or to pay
such sum into the Registry, and a Caveat against the issue of a warrant for the
arrest of the property shall thereupon be entered in the register of Admiralty
suits.

28. Before issuing a warrant for arrest of the property, the Registrar shall
ascertain whether or not any Caveat has been entered against the issue of a
warrant for the arrest thereof.

29. An attorney instituting a suit against any property in respect of which a
Caveat has been entered in the register of Admiralty Suits shall forthwith
serve a copy of the plaint upon the party on whose behalf the Caveat has
been entered or upon his attorney.

30. Within three days from the service of a copy of the plaint, the party on
whose behalf the Caveat has been entered shall, if the sum in which the suit
has been instituted does not exceed the amount for which he has undertaken,
give security in such sum or pay the same into the Registry, or if it exceeds
that amount give security in the sum in which the suit has been instituted or
pay the same into the Registry.
31. After the expiration of twelve days from the service of a copy of the plaint, if the party on whose behalf the Caveat has been entered shall not have given security in such sum, or paid the same into the Registry, the Plaintiff's attorney may proceed with the suit by default and have it heard: Provided that the Court may, on good cause shown and on such terms as to payment of costs as it may impose, extend the time for giving security or paying the money into the Registry.

32. If when the suit comes before the Court it is satisfied that the claim is well founded it may pronounce for the amount which appears to be due and may enforce the payment thereof by order and attachment against the party on whose behalf the Caveat has been entered and by the arrest of the property if it then be or thereafter come within the jurisdiction of the Court.

33. The preceding rules shall not prevent an attorney from taking out a warrant for the arrest of any property, notwithstanding the entry of caveat in the Register of Admiralty suits, but the party at whose instance any property in respect of which a Caveat is entered shall be arrested, shall be liable to be condemned in costs and damages, unless he shall show to the satisfaction of the Court good and sufficient reason for having so done.

34. Every sale under decree of the Court, shall, unless the Judge shall otherwise order, be made by the Registrar in like manner as a sale of movable property in execution of a decree in an ordinary civil suit.

35. [Deleted]

36. Any person interested in the proceeds may be heard before the taxing officer on the taxation of the account of expenses and an objection to the taxation shall be heard in the same manner as an objection to the taxation of a bill of costs.

37. All money paid into Court shall be paid to the Registrar.
38. Money into Court shall not be paid out of Court except in pursuance of an order of the Court or a Judge.

39. Security for latent demands shall not, unless the Judge shall otherwise order, be required on the payment of money out of Court.

40. An attorney desiring to prevent the payment of money out of the Registry shall file a notice and thereupon a Caveat shall be entered in the Register of Admiralty suits.

41. Applications may be made either in Court or to a Judge.

42. Form of praecipes required to be filed in Registry 1 may be obtained on application in the registry. They may be varied or altered by a Judge at his discretion.

43. Every praecipe shall be either by the party or by his attorney.

44. If a praecipe be not properly filled up, the Registrar may refuse to receive the same or to act thereon.

45. A Caveat, whether against the issue of warrant, the release of property, or the payment of money out of the Registry, shall not remain in force for more than six months from the day of the date thereof.

46. A Caveat may be withdrawn by the party on whose behalf it has been entered or by his attorney, but the praecipe to lead the withdrawal thereof shall, save by permission of the Registrar, be signed by the person who signed the praecipe to lead the entry of the Caveat.

47. Application may be made to the Court to overrule any Caveat.

48. The fees of Court and the fees to be allowed to the attorneys shall be those set out in the tables of fees sanctioned for proceedings under the
Original Civil Jurisdiction of the High Court. The fees to be paid into Court shall be those set forth in the schedule hereto.

49. The forms used in the Admiralty Division of the Supreme Court in England under the Rules of the Supreme Court shall be adopted and followed as nearly as the circumstances of each case will allow.

50. Where no other provision is made by these rules, proceedings in suits brought in the Court in the exercise of its Admiralty Jurisdiction shall be regulated by the Rules and practice of the Court in suits brought in it in the exercise of its Ordinary Original Civil Jurisdiction.

SPECIAL SUMMARY PROCEDURE.

51. A party to any suit may have the same dealt with, heard and determined in accordance with the following special rules upon filing in the Registry a consent signed by the parties or their attorneys duly authorized in that behalf in the form given below.

52. After such consent has been filed application may be made by any party to the Judge to appoint a day for the hearing and to give directions.

53. There shall be no pleading beyond a statement of claim verified by affidavit, but if there be a counter-claim notice thereof shall be given in writing before such consent as aforesaid is signed.

54. Lists of documents shall be exchanged and mutual inspection of documents granted at or before a time appointed by the Judge on the hearing of the application aforesaid.

55. At the hearing of the application aforesaid, unless it shall sufficiently appear from the statement of claim or otherwise in writing, the plaintiff shall specify the cause or causes of action in respect of which the suit is brought, and, if practicable, the amount actually claimed, and the defendant shall
specify the grounds of defence on which he relies and in salvage claims, the plaintiff and the defendant respectively shall at the same time, or within such time as the Judge shall direct, state the value of their property and if required by affidavit. In the case of a counter-claim the cause or causes of action and the claim therein and grounds of defence thereto shall be similarly stated.

56. The Judge shall be at liberty to receive, call for and act upon, such evidence documentary or otherwise, whether legally admissible or not, as he may think fit.

57. If in any suit, the sum awarded, or for which judgment is given exceeds the sum, if any, tendered, the Judge may nevertheless exercise his discretion as to how and by whom the costs shall be borne.

58. There shall be no appeal from any order or judgment of the judge except on a question of law, and then only by his leave.

59. In other respects the ordinary rules in practice shall apply so far as may be necessary. Notwithstanding anything in these special rules the Judge may, if he thinks fit, make such orders as he might make under the ordinary rules and practice.

60. The foregoing rules shall apply to suits brought in the court in the exercise of its Admiralty Jurisdiction in supersession of all former rules.
Form of consent to the application of Summary Procedure

In the High Court of Judicature at Madras
(As a Court of Admiralty)

Between

xxx ... Plaintiff.

and

yyy ... Defendant.

We, the undersigned respectively hereby agree that this cause shall be dealt with, heard and determined according to the Summary Procedure.

Dated this day of 19

... Plaintiff's Attorney.

... Defendant's Attorney

Note - As the abovementioned rules depart from the ordinary rules and practice it will be necessary for attorneys signing this consent to obtain their client's authority to do so.

TABLE OF FEES AND CHARGES 1[]

Rs. A. P.

1. For serving every writ of summons including Bailiff's charges for serving the same and Making affidavit .. .. 1000

2. For every search of service of summons or Other process .. .. 100

3. For every ordinary return .. .. 100

4. For every special return .. .. 200

5. For translation when necessary per folio .. 080

6. For arresting a vessel or goods or person or on the execution of other warrant including Bailiff's charge for executing the same.. .. 3200

7. For serving every notice and other judicial process not specified in this schedule for each person served including Bailiff's charge for serving same .. .. 500
8. On the execution of any decree, order, commission or other instrument not specifically mentioned in this schedule .. 1500
9. On delivering up a ship or goods to a purchaser agreeable to the inventory .. 1500
10. On delivering up a ship or goods to a Purchaser agreeable to the inventory .. 1500
11. On attending the delivery of cargo or sale or removal of a ship or goods per day .. 3200
12. On retaining possession of a ship with or without cargo, or to a ship cargo, without a ship, to include the cost of a ship-keeper if required, per day .. 480
13. If the 2[Nazir] or any of his substitutes is required to go a greater distance than five miles from his office to perform any of the above duties, he shall be entitled to his reasonable expenses for travelling, board, and maintenance in addition to the above fees
14. On the sale of any vessel or goods, sold pursuant to a decree or order of the Court or on money realized in execution for every Rs.750 or fraction of Rs.750 realized. .. 780
15. For release of a vessel, goods or person from arrest .. 580
16. For every certificate of seizure .. 500
17. For every other certificate .. 200

Form No.1

Writ of Summons in Admiralty Suits in rem (Rules 8 and 51)

Suit No of 19
IN THE HIGH COURT OF JUDICATURE AT MADRAS
Admiralty Jurisdiction
Between
xxx ... .... ... Plaintiff
And
yyy ... .... ... Defendant

To the owners and parties interested in the ship or vessel __________ of the ________________ port or (or cargo and freight, etc., as the case may be).
Whereas (enter the name, description and address of the plaintiff) has
instituted a suit -

in this Court against you (set out concise statement as appearing in the plaint)
you are hereby required to cause an appearance to be entered for you in the
Registry i.e. the office of the Registrar of this Court on its Original Side)
within _____ days from the service upon you of this summons, exclusive of
the day of such service; and are summoned to appear before this Court in
person or by an advocate duly instructed to answer the plaintiff’s claim on the
day the case is set down for hearing, upon which date you must be prepared
to produce all your witnesses and all documents in your possession or power
upon which you intend to rely in support of your case and you are hereby
required to take notice that in default of your causing an appearance to be so
entered, the suit will be liable to be heard and determined in your absence.

(Plaint filed 19 _ Summons issued 19 - The defendant is required by the
Court to file a written statement within ___ days from the service upon of
this writ.)

Witness Chief Justice at Madras the day of in the year of One thousand nine
hundred and Registrar.

Note 1 - An appearance in person or through attorney is to be entered in the
Registry, within the time limited. In default thereof, the suit will be liable to
the heard ex parte.

Note 2 - The written statement called for must be filed within the time
limited, the defendant having first entered an appearance. In default thereof
the suit will be liable to be heard ex parte.

Note 3 - This writ must be returned to the High Court immediately after the
service thereof, or, if not served and the time for the return thereof shall not
have been extended on the ___ day of _____ next.

Note 4 - Should your apprehend you witnesses will not attend of their own
accord you can have subpoenas from this Court to compel the attendance of
any witness and the production of any document that you have a right to call
upon the witness to produce, on applying to the Court at any time before the
trial, and on payment to them of the fees and expenses prescribed by the
Rules of the Court.

Note 5 - If you admit the demand you should pay the money into Court with
the costs of the suit to avoid sale of any property in respect of which the suit
is brought or execution of the decree which may be against your person or
property, or both.
Form No.2

PRAECIPE FOR WARRANT (RULE 4)

SUIT NO. OF 19

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Admiralty Jurisdiction

Between

xxx...... ........ ...... ...... .. Plaintiff

and

yyy...... .... ...... ...... .... ... Defendant

I, ________________________________, attorney for the (state whether plaintiff or defendant), pray a warrant to arrest (state name and nature of property).

Dated the ___ day of __________, 19

(To be signed by the attorney)

Form No. 3

WARRANT OF ARREST IN ADMIRALTY in rem. (RULE 4)

SUIT NO. OF 19

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Admiralty Jurisdiction

Between

xxx...... ........ ...... ...... .. Plaintiff

and

yyy...... .... ...... ...... .... ... Defendant

To,
The 1[ Sheriff of Madras]

You are hereby commanded to arrest the ship or vessel of the port of ________ (and the cargo and freight, etc., as the case may be) and to keep the same under safe arrest, until you shall receive further orders from us.

Witness, etc.


Form No.4

PRAECIPE FOR SERVICE BY THE 1[SHERIFF] OF ANY INSTRUMENT in rem, OTHER THAN A WARRANT (RULE 8)

SUIT NO. OF 19
IN THE HIGH COURT OF JUDICATURE AT MADRAS
Admiralty Jurisdiction
Between
xxx .... ...... .... ......Plaintiff
and
yyy .... ...... .... ......Defendant

I, __________________________, attorney for the (state whether plaintiff or defendant), pray that the (state nature of instrument) let herewith be duly executed.

Dated the _____ day of ________ 19
(To be signed by the attorney)
Form No.5

PRAECIPE FOR APPEARANCE (RULE 15)

SUIT NO. OF 19
IN THE HIGH COURT OF JUDICATURE AT MADRAS
Admiralty Jurisdiction
Between
xxx .... ...... ... Plaintiff
and
yyy .... .... .. ... Defendant

Enter an appearance for ________ in this suit.
Dated the _____ day of _______ 19
(signed)
Attorney for the said defendant
Whose address for service is

Form No.6

PRAECIPE FOR RELEASE (RULES 19 and 24)

SUIT NO. OF 19
IN THE HIGH COURT OF JUDICATURE AT MADRAS
Admiralty Jurisdiction
Between
xxx ... ..... ... Plaintiff
and
yyy .... .... .... .... ... Defendant
I, __________________________, attorney for the (state whether plaintiff or defendant), in a suit (state the nature of suit), commenced on behalf of _______ against the (state name and nature of property), now under arrest by virtue of a warrant issued from the Registry, pray a release of the said _______ (bail having been given, or the suit having been withdrawn by me before an appearance was entered therein, etc. as the case may be), and there being no caveat against the release thereof outstanding.

Dated the _____ day of _______ 19
(To be signed by the attorney)

Form No.7

Release (RULE 18)

SUIT NO. OF 19
IN THE HIGH COURT OF JUDICATURE AT MADRAS
Admiralty Jurisdiction
To
The 1[Sheriff],

Whereas in a suit of _____________ commenced in our said High Court on behalf of ________________ against ______________, you were commanded to arrest the said _______________ and to keep the same under safe arrest until you should receive further orders from us. Now you are hereby commanded to release the said _______ from the arrest effected by virtue of the warrant in the said suit, upon payment being made to you of all costs, charges and expenses attending the care and custody of the property whilst under arrest in that suit.

Witness etc.

Release

Taken out by on the day of 19, the ____ or vessel _______ (or cargo and freight, etc. as the case may be) released from arrest pursuant to his instrument of release.
Form No.8

PRAECIPE FOR CAVEAT RELEASE (RULE 24)

SUIT NO. OF 19
IN THE HIGH COURT OF JUDICATURE AT MADRAS
Admiralty Jurisdiction
Between
xxx ................................. .... .. ... Plaintiff
and
yyy .... .... .. .................... Defendant

I, __________________________, attorney for the plaintiff in this action, pray a caveat against the release of the (state name and nature of the property).

Dated the _____ day of _______ 19
(To be signed by the attorney)

Form No.9

PRAECIPE FOR CAVEAT WARRANT BY PLAINTIFF (RULE 27)

SUIT NO. OF 19
IN THE HIGH COURT OF JUDICATURE AT MADRAS
Admiralty Jurisdiction
Between
xxx ................................. .... .. ... Plaintiff
and
yyy .... .... .. .................... Defendant
I, (state name, address and description), hereby undertake to enter an appearance in any suit that may be commenced in this Honourable Court against (state name and nature of the property) and within three days after I shall have been served with a copy of the plaint in such suit to give bail therein for a sum not exceeding (state amount for which the undertaking is given) Rupees, or to pay such sum into the Registry. And I consent that all instruments and other documents in such suit may be left for me at __________

Dated the _____ day of _______ 19

(To be signed by the attorney)______________________________

Form No.10

PRAECIPE FOR CAVEAT WARRANT BY PLAINTIFF (RULE 27)

SUIT NO. OF 19

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Admiralty Jurisdiction

Between

xxx......................................... .... ...... .. ... Plaintiff

and

yyy............... ................................. .. ... Defendant

I, (state name, address and description), hereby undertake within three days after I shall have been served with a notice of any counter-claim herein in respect of which the defendant is entitled to arrest (state name and nature of property) to give bail to answer such counter claim in a sum not exceeding (state amount for which the undertaking is given) Rupees, or to pay such into the Registry.

Dated the _____ day of _______ 19

(To be signed by the attorney)______________________________
Form No.11

PRAECIPE TO WITHDRAW CAVEAT (RULE 46)

SUIT NO. OF 19
IN THE HIGH COURT OF JUDICATURE AT MADRAS
Admiralty Jurisdiction
Between
xxx............... ................................ ... Plaintiff
and
yyy............... ................................ ... Defendant

I, ________________________, attorney (state whether plaintiff or defendant), pray that the caveat against (state tenor of caveat) entered by me on the ____ day of _____ 19__ on behalf of (state name) may be withdrawn.

Dated the _____ day of _______ 19
(To be signed by the person by whom the Praecipe for the entry of the caveat was signed)

Order XLII

Rules for regulating the procedure and practice in cases brought

Before the High Court of Judicature at Madras
In the exercise of its admiralty jurisdiction
1 O.41, Rule 5 : The words 'Sheriff of Madras' substituted by word 'Nazir' by Roc.86/94, Part III, Sec.2, Page 40, Tamil Nadu Government Gazette issue No.39, dated 5.10.1994. As there is no Rule 34 in O.41, it is presumed that the amendment related to Rule 5.
2O.42, Rule 1 : The word 'sheriff' substituted by word 'Nazir' by ibid
30.42, Rule 1: Words 'attorney or' deleted by ibid.


20.42, Rule 35: Deleted by ibid.

10.42, Rule 42: Words 'or the Sheriff's office' deleted by ibid.

20.42, Rule 44: Words 'or the Sheriff as the case may be' deleted by Roc.86/94, Part III, Sec.2, Page 40, Tamil Nadu Government Gazette issued No.39, dated 5.10.1994.

30.42, Rule 48: Words 'taken by the Sheriff' substituted by the words 'paid into court' by ibid.


An Act to consolidate the laws relating to admiralty jurisdiction, legal proceedings in connection with vessels, their arrest, detention, sale and other matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, application and commencement.

1. (1) This Act may be called the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.

(2) It shall apply to every vessel, irrespective of the place of residence or domicile of the owner:

Provided that this Act shall not apply to an inland vessel defined in clause (a) of 1 of 1917, sub-section (1) of section 2 of the Inland Vessels Act, 1917, or a vessel under construction that has not been launched unless it is notified by the Central Government to be a vessel for the purposes of this Act:

Provided further that this Act shall not apply to a warship, naval auxiliary or other vessel owned or operated by the Central or a State Government and used for any non-commercial purpose, and, shall also not apply to a foreign
vessel which is used for any non-commercial purpose as may be notified by
the Central Government.

(3) It shall come into force on such date as the Central Government may, by
notification in the Official Gazette, appoint.

Definitions.

2.(1) In this Act,—

(a) "admiralty jurisdiction" means the jurisdiction exercisable by a High Court
under section 3, in respect of maritime claims specified under this Act;

(b) "admiralty proceeding" means any proceeding before a High Court,
exercising admiralty jurisdiction;

(c) "arrest" means detention or restriction for removal of a vessel by order of
a High Court to secure a maritime claim including seizure of a vessel in
execution or satisfaction of a judgment or order;

(d) "goods" means any property including live animals, containers, pallets or
such other articles of transport or packaging or luggage irrespective of the fact
whether such property is carried, on or under the deck of a vessel;

(e) "High Court", in relation to an admiralty proceeding, means any of the
High Court of Calcutta, High Court of Bombay, High Court of Madras, High
Court of Karnataka, High Court of Gujarat, High Court of Orissa, High
Court of Kerala, High Court of Judicature at Hyderabad for the State of
Telangana and the State of Andhra Pradesh or any other High Court, as may
be notified by the Central Government for the purposes of this Act;

(f) "maritime claim" means a claim referred to in section 4;
(g) "maritime lien" means a maritime claim against the owner, demise charterer, manager or operator of the vessel referred to in clauses (a) to (e) of sub-section (1) of section 9, which shall continue to exist under sub-section (2) of that section;

(h) "notification" means a notification published in the Official Gazette;

(i) "port" shall have the same meaning as assigned to it in the Indian Ports Act, 1908;

(j) "prescribed" means prescribed by rules made by the Central Government under this Act;

(k) "territorial waters" shall have the same meaning as assigned to it in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976; and

(l) "vessel" includes any ship, boat, sailing vessel or other description of vessel used or constructed for use in navigation by water, whether it is propelled or not, and includes a barge, lighter or other floating vessel, a hovercraft, an offshore industry mobile unit, a vessel that has sunk or is stranded or abandoned and the remains of such a vessel.

Explanation.—A vessel shall not be deemed to be a vessel for the purposes of this clause, when it is broken up to such an extent that it cannot be put into use for navigation, as certified by a surveyor.

(2) The words and expressions used herein but not defined and defined in the Merchant Shipping Act, 1958 shall have the meanings respectively assigned to them in that Act.
CHAPTER II

ADMIRalty JURISDICTION AND MARITIME CLAIMS

Admiralty jurisdiction.

3. Subject to the provisions of sections 4 and 5, the jurisdiction in respect of all maritime claims under this Act shall vest in the respective High Courts and be exercisable over the waters up to and including the territorial waters of their respective jurisdictions in accordance with the provisions contained in this Act:

Provided that the Central Government may, by notification, extend the jurisdiction of the High Court up to the limit as defined in section 2 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976.

Maritime claim.

4.(1) The High Court may exercise jurisdiction to hear and determine any question on a maritime claim, against any vessel, arising out of any—

(a) dispute regarding the possession or ownership of a vessel or the ownership of any share therein;

(b) dispute between the co-owners of a vessel as to the employment or earnings of the vessel;

(c) mortgage or a charge of the same nature on a vessel;

(d) loss or damage caused by the operation of a vessel;

(e) loss of life or personal injury occurring whether on land or on water, in direct connection with the operation of a vessel;

(f) loss or damage to or in connection with any goods;
(g) agreement relating to the carriage of goods or passengers on board a vessel, whether contained in a charter party or otherwise;

(h) agreement relating to the use or hire of the vessel, whether contained in a charter party or otherwise;

(i) salvage services, including, if applicable, special compensation relating to salvage services in respect of a vessel which by itself or its cargo threatens damage to the environment;

(j) towage;

(k) pilotage;

(l) goods, materials, perishable or non-perishable provisions, bunker fuel, equipment (including containers), supplied or services rendered to the vessel for its operation, management, preservation or maintenance including any fee payable or leviable;

(m) construction, reconstruction, repair, converting or equipping of the vessel;

(n) dues in connection with any port, harbour, canal, dock or light tolls, other tolls, waterway or any charges of similar kind chargeable under any law for the time being in force;

(o) claim by a master or member of the crew of a vessel or their heirs and dependents for wages or any sum due out of wages or adjudged to be due which may be recoverable as wages or cost of repatriation or social insurance contribution payable on their behalf or any amount an employer is under an obligation to pay to a person as an employee, whether the obligation arose out of a contract of employment or by operation of a law (including operation of a law of any country) for the time being in force, and includes any claim arising under a manning and crew agreement relating to a vessel, notwithstanding anything
contained in the provisions of sections 150 and 44 of 1958.151 of the Merchant Shipping Act, 1958;

(p) disbursements incurred on behalf of the vessel or its owners;

(q) particular average or general average;

(r) dispute arising out of a contract for the sale of the vessel;

(s) insurance premium (including mutual insurance calls) in respect of the vessel, payable by or on behalf of the vessel owners or demise charterers;

(t) commission, brokerage or agency fees payable in respect of the vessel by or on behalf of the vessel owner or demise charterer;

(u) damage or threat of damage caused by the vessel to the environment, coastline or related interests; measures taken to prevent, minimise, or remove such damage; compensation for such damage; costs of reasonable measures for the restoration of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; or any other damage, costs, or loss of a similar nature to those identified in this clause;

(v) costs or expenses relating to raising, removal, recovery, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel, and costs or expenses relating to the preservation of an abandoned vessel and maintenance of its crew; and

(w) maritime lien.

Explanation.—For the purposes of clause (q), the expressions "particular average" and "general average" shall have the same meanings as assigned to
them in sub-section (1) of section 64 and sub-section (2) of section 66 respectively of the Marine Insurance Act, 1963.

(2) While exercising jurisdiction under sub-section (1), the High Court may settle any account outstanding and unsettled between the parties in relation to a vessel, and direct that the vessel, or any share thereof, shall be sold, or make such other order as it may think fit.

(3) Where the High Court orders any vessel to be sold, it may hear and determine any question arising as to the title to the proceeds of the sale.

(4) Any vessel ordered to be arrested or any proceeds of a vessel on sale under this Act shall be held as security against any claim pending final outcome of the admiralty proceeding.

Arrest of vessel in rem.

5.(1) The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding, where the court has reason to believe that—

(a) the person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected; or

(b) the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected; or

(c) the claim is based on a mortgage or a charge of the similar nature on the vessel; or

(d) the claim relates to the ownership or possession of the vessel; or
(e) the claim is against the owner, demise charterer, manager or operator of the vessel and is secured by a maritime lien as provided in section 9.

(2) The High Court may also order arrest of any other vessel for the purpose of providing security against a maritime claim, in lieu of the vessel against which a maritime claim has been made under this Act, subject to the provisions of sub-section (1):

Provided that no vessel shall be arrested under this sub-section in respect of a maritime claim under clause (a) of sub-section (1) of section 4.

**Admiralty jurisdiction in personam.**

6. Subject to section 7, the High Court may exercise admiralty jurisdiction by action in personam in respect of any maritime claim referred to in clauses (a) to (w) of sub-section (1) of section 4.

**Restrictions on actions in personam in certain cases.**

7.(1) Where any maritime claim arising in respect of a damage or loss of life or personal injury arising out of any—

(i) collision between vessels,

(ii) the carrying out of or omission to carry out, a manoeuvre in the case of one or more vessels,

(iii) non-compliance, on the part of one or more vessels, with the collision regulations made in pursuance of section 285 of the Merchant Shipping Act, 1958, the High Court shall not entertain any action under this section against any defendant unless—

(a) the cause of action, wholly or in part, arises in India; or
(b) the defendant, at the time of commencement of the action by the High Court, actually and voluntarily resides or carries on business or personally works for gain in India:

Provided that an action may be entertained in a case, where there are more defendants than one and where one of the defendants who does not actually and voluntarily reside or carry on business or personally work for gain in India is made a party to such action either with the leave of the court, or each of the defendants acquiesces in such action.

(2) The High Court shall not entertain any action in personam to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside India against the same defendant in respect of the same incident or series of incidents have been discontinued or have otherwise come to an end.

(3) The provisions of sub-section (2) shall apply to counter-claims as they apply to actions except counter-claims in proceedings arising out of the same incident or series of incidents.

(4) A reference to the plaintiff and the defendant for the purpose of sub-section (3) shall be construed as reference to the plaintiff in the counter-claim and the defendant in the counter-claim respectively.

(5) The provisions of sub-sections (2) and (3) shall not apply to any action or counter-claim if the defendant submits or agrees to submit to the jurisdiction of the High Court.

(6) Subject to the provisions of sub-section (2), the High Court shall have jurisdiction to entertain an action in personam to enforce a claim to which this section applies whenever any of the conditions specified, in clauses (a) and (b) of sub-section (1) is satisfied and any law for the time being in force relating to the service of process outside the jurisdiction shall apply.
Vesting of rights on sale of vessels.

8. On the sale of a vessel under this Act by the High Court in exercise of its admiralty jurisdiction, the vessel shall vest in the purchaser free from all encumbrances, liens, attachments, registered mortgages and charges of the same nature on the vessel.

Inter se priority on maritime lien.

9. (1) Every maritime lien shall have the following order of inter se priority, namely:—

(a) claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;

(b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;

(c) claims for reward for salvage services including special compensation relating thereto;

(d) claims for port, canal, and other waterway dues and pilotage dues and any other statutory dues related to the vessel;

(e) claims based on tort arising out of loss or damage caused by the operation of the vessel other than loss or damage to cargo and containers carried on the vessel.

(2) The maritime lien specified in sub-section (1) shall continue to exist on the vessel notwithstanding any change of ownership or of registration or of flag and shall be extinguished after expiry of a period of one year unless, prior to
the expiry of such period, the vessel has been arrested or seized and such arrest or seizure has led to a forced sale by the High Court:

Provided that for a claim under clause (a) of sub-section (1), the period shall be two years from the date on which the wage, sum, cost of repatriation or social insurance contribution, falls due or becomes payable.

(3) The maritime lien referred to in this section shall commence—

(a) in relation to the maritime lien under clause (a) of sub-section (1), upon the claimant's discharge from the vessel;

(b) in relation to the maritime liens under clauses (b) to (e) of sub-section (1), when the claim arises,

and shall run continuously without any suspension or interruption:

Provided that the period during which the vessel was under arrest or seizure shall be excluded.

(4) No maritime lien shall attach to a vessel to secure a claim which arises out of or results from—

(a) damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which compensation is payable to the claimants pursuant to any law for the time being in force;

(b) the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive products or waste.

Order of priority of maritime claims.

10.(1) The order of maritime claims determining the inter se priority in an admiralty proceeding shall be as follows:—
(a) a claim on the vessel where there is a maritime lien;

(b) registered mortgages and charges of same nature on the vessel;

(c) all other claims.

(2) The following principles shall apply in determining the priority of claims inter se—

(a) if there are more claims than one in any single category of priority, they shall rank equally;

(b) claims for various salvages shall rank in inverse order of time when the claims thereto accrue.

Protection of owner, demise charterer, manager or operator or crew of vessel arrested.

11.(1) The High Court may, as a condition of arrest of a vessel, or for permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of the vessel, an obligation to provide an unconditional undertaking to pay such sums of money as damages or such security of a kind for an amount and upon such terms as may be determined by the High Court, for any loss or damage which may be incurred by the defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to the following, namely:

(a) the arrest having been wrongful or unjustified; or

(b) excessive security having been demanded and provided.

(2) Where pursuant to sub-section (1), the person providing the security may at any time, apply to the High Court to have the security reduced, modified or cancelled for sufficient reasons as may be stated in the application.
(3) If the owner or demise charterer abandons the vessel after its arrest, the High Court shall cause the vessel to be auctioned and the proceeds appropriated and dealt with in such manner as the court may deem fit within a period of forty-five days from the date of arrest or abandonment:

Provided that the High Court shall, for reasons to be recorded in writing, extend the period of auction of the vessel for a further period of thirty days.

CHAPTER III

PROCEDURE AND APPEALS


12. The provisions of the Code of Civil Procedure, 1908 shall apply in all the proceedings before the High Court in so far as they are not inconsistent with or contrary to the provisions of this Act or the rules made thereunder.

Assistance of assessors.

13. (1) Notwithstanding anything contained in any other law for the time being in force, the Central Government shall appoint by notification, a list of assessors with such qualifications and experience in admiralty and maritime matters, the nature of duties to be performed by them, the fees to be paid to them and other ancillary or incidental matters for the purposes of this Act, in the manner as may be prescribed.

(2) The appointment of assessors shall not be construed as a bar to the examination of expert witnesses by any of the parties in any admiralty proceeding.
Appeal.

14. Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from any judgment, decree or final order or interim order of a single Judge of the High Court under this Act to a Division Bench of the High Court.

Transfer of proceedings by Supreme Court.

15. The Supreme Court may on an application of any party, transfer, at any stage, any admiralty proceeding from one High Court to any other High Court and the latter High Court shall proceed to try, hear and determine the matter from the stage at which it stood at the time of transfer:

Provided that no such proceeding shall be transferred unless parties to the proceeding have been given an opportunity of being heard in the matter.

CHAPTER IV
MISCELLANEOUS

Power to make rules.

16. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the rules may provide for all or any of the following matters, namely:—

(a) the qualification, experience, nature of duties and fee to be paid to the assessors and other ancillary or incidental matters under sub-section (1) of section 13;
(b) the practice and procedure of admiralty jurisdiction under this Act including fees, costs and expenses in such proceedings; and

(c) any other matter which is required to be, or may be, prescribed.

(3) Until rules are made under sub-section (2) by the Central Government, all rules for the time being in force governing the exercise of admiralty jurisdiction in the High Courts shall be applicable.

(4) Every rule made under this Act shall be laid, as soon as may be after the rule is made, or notification issued before each House of Parliament while it is in session for a total period of thirty days comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made or issued, the rule or notification shall thereafter have effect, only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

Repeal and savings.

17.(1) The application in India of the following enactments are hereby repealed—

(a) the Admiralty Court Act, 1840;

(b) the Admiralty Court Act, 1861;

(c) the Colonial Courts of Admiralty Act, 1890;

(d) the Colonial Courts of Admiralty (India) Act, 1891; and
(e) the provisions of the Letters Patent, 1865 in so far as they apply to the admiralty jurisdiction of the Bombay, Calcutta and Madras High Courts.

(2) Notwithstanding the repeal, all admiralty proceedings pending in any High Court immediately before the commencement of this Act shall continue to be adjudicated by such court in accordance with the provisions of this Act.

(3) Anything done or any action taken, under the provisions of the repealed enactments, shall in so far as such thing or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of the Act as if the said provisions were in force when such thing was done or such action was taken and shall continue to be in force accordingly until superseded by anything done or any action taken under this Act or rules made thereunder.

(4) Any rule, regulation, bye-law made or order or notice issued under the repealed enactments, shall so far as it is not inconsistent with the provisions of this Act or rules made thereunder be deemed to have been done or taken under the corresponding provisions of this Act.

**Power to remove difficulties.**

18.(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.
Appendix 4

ADmiralty Court Act, 1861
24 Vict. c. 10

An Act to extend the Jurisdiction and Improve the Practice of the High Court of Admiralty

[17th May, 1861]

Whereas it is expedient to extend the Jurisdiction and improve the Practice of the High Court of Admiralty of England: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited for all Purposes as "The Admiralty Court Act, 1861." [/Short Title]

2. In the Interpretation and for the Purposes of this Act (if not inconsistent with the Context or subject) the following Terms shall have the respective Meanings herein-after assigned to them; that is to say; [Interpretation of Terms]

"Ship" shall include any Description of Vessel used in Navigation not propelled by Oars:

"Cause" shall include any Cause, Suit, Action or other Proceeding in the Court of Admiralty.

3. This Act shall come into operation on the First Day of June, One Thousand Eight Hundred and Sixty One. [Commencement of Act]
4. The High Court of Admiralty shall have Jurisdiction over any claim for the building, equipping, or repairing of any Ship, if at the Time of the Institution of the Cause the Ship or the Proceeds thereof are under Arrest of the Court. [As to Claims for building, equipping, and c. ships.]

5. The High Court of Admiralty shall have Jurisdiction over any Claim for Necessaries supplied to any Ship elsewhere than in the Port to which the Ship belongs, unless it is shown to the Satisfaction of the Court that at the Time of the Institution of the Cause any Owner or Part Owner of the Ship is domiciled in England or Wales: Provided always, that if is any such Causes the Plaintiff do not recover twenty pounds he shall not be entitled to any costs, charges or expenses incurred by him therein, unless the Judge shall certify that the Cause was a fit one to be tried in the said Court. [As to claims for necessaries].

6. The High Court of Admiralty shall have jurisdiction over any claim by the owner or consignee or assignee of any bill of lading of any goods carried into any port in England or Wales in any ship for damage done to the goods or any part thereof by the negligence or misconduct of or for any breach of duty or breach of contract on the part of the owner, master or crew of the ship, unless it is shown to the satisfaction of the Court that at the time of the institution of the cause any owner or part owner of the ship is domiciled in England or Wales: Provided always that if in any such cause the Plaintiff do not recover twenty pounds he shall not be entitled to any costs, charges or expenses incurred by him therein, unless the judge shall certify the cause was a fit one to be tried in the said Court. [As to the claims for damage to cargo Imported].

7. The High Court of Admiralty shall have jurisdiction over any claim for damage done by any ship. [As to claims for damage by any ship].
8. The High Court of Admiralty shall have jurisdiction to decide all questions arising between the co-owners, or any of them, touching the ownership, possession, employment, and earnings of any ship registered at any port in England or Wales, or any share thereof, and may settle all accounts outstanding and unsettled between the parties in relation thereto, and may direct the said ship or any share thereof to be sold, and may make such order in the premises as to it shall seem fit. [High Court of Admiralty to decide questions as to ownership & c. of ships].

9. All the provisions of "The Merchant Shipping Act, 1854", in regard to Salvage of Life from any Ship or Boat within the limits of the United Kingdom, shall be extended to the Salvage of Life from any British Ship or Boat, wheresoever the Services may have been rendered, and from any Foreign Ship or Boat, where the Services have been rendered either wholly or in part in British Waters. [Extending 17 & 18 Vict. c. 104, 25 to Claims for salvage of life].

10. The High Court of Admiralty shall have jurisdiction over any claim by a seaman of any ship for wages earned by him on board the ship, whether the same be due under a special contract or otherwise, and also over any claim by the master of any ship for wages earned by him on board the ship, and for disbursements made by him on account of the ship: Provided always that if in any such cause the plaintiff do not recover fifty pounds he shall not be entitled to any costs, charges or expenses incurred by him therein, unless the judge shall certify that the cause was a fit one to be tried in the said Court. [As to claims for wages and for disbursements by transfer of a ship].

11. The High Court of Admiralty shall have jurisdiction over any claim in respect of any mortgage duly registered according to the provisions of "The Merchant Shipping Act, 1854" whether the ship or the proceeds thereof be under arrest of the said Court or not. [In regard to mortgages extended to Court of Admiralty].
12. The High Court of Admiralty shall have the same powers over any British ship or any share therein, as are conferred upon the High Court of Chancery in England by the Sixty-Second, Sixty-third, Sixty-fourth and Sixty-fifth Sections of "The Merchant Shipping Act, 1854." [17 & 18 Vict. c. 104 extended].

13. Whenever any ship or vessel, or the proceeds thereof, are under arrest of the High Court of Admiralty, the said court shall have the same powers as are conferred upon the High Court of Chancery in England by the ninth party of "The Merchant Shipping Act, 1854." [Part 9 of 17 & 18 Vict. c. 104, extended to Court of Admiralty].

14. The High Court of Admiralty shall be a Court of Record for all Intents and purposes. [Court to be a Court of Record].

15. All Decrees and Orders of the High Court of Admiralty whereby any sum of Money or any costs, charges or expenses shall be payable to any Person, shall have the same Effect as Judgments in the Superior Courts of Common Law, and the persons to whom any such monies or costs, charges or expenses shall be payable, shall be deemed Judgment Creditors and all powers of enforcing Judgments possessed by the Superior Courts of Common Law, or any Judge thereof, with respect to matters depending in the same Courts as well against the Ships and Goods arrested as against the Person of the Judgment Debtor, shall be possessed by the said Court of Admiralty with respect to Matters therein depending; and all Remedies at Common Law possessed by Judgment Creditors shall be in like manner possessed by Persons to whom any monies, costs, charges or expenses are by such Orders or Decrees of the said Court of Admiralty directed to be paid. [Decrees & Orders of Court of Admiralty to have effect of Judgments at Common Law].

16. If any claim shall be made to any goods or chattels taken in execution under any process of the High Court of Admiralty, or in respect of the seizure thereof, or any act or matter connected therewith, or in respect of the proceeds or value of any such goods or chattels, by any landlord for rent, or
by any person not being the party against whom the process has issued, the
registrar of the said court may, upon application of the officer charged with
the execution of the process, whether before or after any action brought
against such officer, issue a summons calling before the said Court both the
party issuing such process and the party making the claim, and thereupon any
action which shall have been brought in any of Her Majesty’s superior Courts
of Record, or in any local or inferior court, in respect of such claim, seizure,
act or matter as aforesaid, shall be stayed and the court in which such action
shall have been brought or any judge thereof, on proof of the issue of such
summons, and that the goods and chattels were so taken in execution, may
order the party bringing the action to pay the costs of all proceedings had
upon the action after issue of the summons out of the said Admiralty Court,
and the judge of the said Admiralty Court shall adjudicate upon the claim, and
make such order between the parties in respect thereof and of the costs of the
proceedings, as to him shall seem fit, and such order shall be enforced in like
manner as any order made in any suit brought in the said Court. Where any
such claim shall be made as aforesaid the claimant may deposit with the
officer charged with the execution of the process either the amount or value
of the goods claimed, the value to be fixed by appraisement in case of dispute,
to be by the officer paid into court to abide the decision of the judge upon the
claim, or the sum which the officer shall be allowed to charge as costs for
keeping possession of the goods until such decision can be obtained, and in
default of the claimant so doing the officer may sell the goods as if no such
claim had been made, and shall pay into court the proceeds of the sale, to
abide the decision of the Judge. [as to claims to goods taken in execution].

17. The Judge of the High Court of Admiralty shall have all such powers as
are possessed by any of the Superior Courts of Common Law or any Judge
thereof to compri either party in any cause or matter to answer
interrogatories, and to enforce the Production, Inspection and Delivery of
Copies of any Document in his possession or power. [Powers of Superior
Courts extended to Court of Admiralty].

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18. Any party in a cause in the High Court of Admiralty shall be at liberty to apply to the said court for an order for the inspection by the Trinity Masters or others appointed for the trial of the said cause, or by the party himself or his witnesses, of any ship or other personal or real property, the inspection of which may be material to the issue of the cause, and the court may make such order in respect of the costs arising thereout as to it shall seem fit. [Party in Court of Admiralty may apply for an order for inspection by Trinity Masters].

19. Any party in a cause in the High Court of Admiralty may call on any other Party in the Cause by Notice in Writing to admit any Document, moving all just Exceptions, and in case of Refusal or Neglect to admit, the Costs of proving the document shall be paid by the Party so neglecting or refusing whatever the Result of the Cause may be, unless, at the Trial the Judge shall certify that the Refusal to admit was reasonable. [Admission of Documents].

20. Whenever it shall be made to appear to the Judge of the High Court of Admiralty that reasonable Efforts have been made to effect personal service of any Citation, Monition, or other Process issued under Seal of the said Court, and either that the same has come to the knowledge of the Party thereby cited or monished, or that he willfully evades service of the same, and has not appeared thereto, the said Judge may order that the Party on whose behalf the Citation, Monition or other Process was issued be at liberty to proceed as if personal service had been effected, subject to such conditions as to the Judge may seem fit and all proceedings thereon shall be as effectual as if personal service of such citation, monition, or other process had been effected. [Power to Court of Admiralty when personal service of Citation has not been effected to order parties to ______ ].

21. The service in any part of Court Britain or Ireland of my writ of subpouena ad testificandum or subpouena ducos tocum, issued under seal of the High Court of Admiralty, shall be as effectual as if the same had been served in England or Wales. [As to the service of subpouena out of England and Wales].
22. Any new writ or other process necessary or expedient for giving Effect to any of the Provisions of this Act may be issued from the High Court of Admiralty in such Form as the Judge of the said Court shall from time to time direct. [Power to issue new Writs or other process]

23. All the powers possessed by any of the Superior Courts of Common Law or any Judge thereof, under the Common Law Procedure Act, 1854, and otherwise, with regard to Reference to Arbitration, Proceedings thereon and the enforcing of awards of arbitrators, shall be possessed by the Judge of the High Court of Admiralty in all causes and matters depending in the said court, and the Registrar of the said Court of Admiralty shall possess as to such matters the same powers as are possessed by the masters of the said superior Courts of Common Law in relation thereto. [Judge and Registrar to have same power as to arbitration as Judges and masters at Common Law].

24. The Registrar of the High Courts of Admiralty shall have the same Powers under the Fifteenth Section of the Merchant Shipping Act, 1854, as are by the said Section conferred on the Masters of Her Majesty's Court of Queen's Bench in England and Ireland. [17 & 18 Vict. c. 104 s.15 extended to Registrar of Courts].

25. The Registrar of the High Court of Admiralty may exercise, with reference to causes and matters in the said court, the same powers as any surrogate of the judge of the said court sitting in chambers might or could have heretofore lawfully exercised; and all powers and authorities by this or any other Act conferred upon or vested in the registrar of the said High Court of Admiralty may be exercised by any deputy or assistant registrar of the said Court. [Powers of registrar and of deputy or assistant registrar].

26. The registrar of the said Court of Admiralty shall have power to administer Oaths in relation to any cause or matter depending in the said court; and all powers and authorities by this or any other Act conferred upon or vested in the registrar of the said High Court of Admiralty may be
exercised by any deputy or assistant registrar of the said Court, or before any
person authorised to administer oaths in the said Court, shall be deemed to be
guilty of perjury and shall be liable to all the pains and penalties attaching to
willful and corrupt perjury. [False oath or affirmation deemed perjury].

27. Any advocate, barrister-at-law, proctor, attorney, or solicitor of ten years
standing may be appointed registrar or assistant or deputy registrar of the said
court. [Appointment of Registrar and of deputy or assistant registrar].

28. Any advocate, barrister-at-law, proctor, attorney, or solicitor may be
appointed an examiner of the High Court of Admiralty. [Appointment of
Examiners].

29. Any person who shall have paid on his Admission in any Court as a
Proctor, Solicitor or Attorney, the full stamp duty of Twenty Five pounds,
and who has been or shall hereafter be admitted a Proctor, Solicitor or
Attorney (if in other respects entitled to be so admitted), shall be liable to no
further Stamp Duty in respect of such subsequent admission. [Stamp duty no
payable on subsequent admissions & c.]

30. Any Proctor of the High Court of Admiralty may act as Agent of any
Attorney or Solicitor, and allow him to participate in the profits of and
incident to any Cause or matter depending in or connected with the said
Court; and nothing contained in the Act of the fifty-fifth year of the Reign of
King George the Third, Chapter One hundred and sixty, shall be construed to
extend to prevent any Proctor from so doing, or to render him liable to any
Penalty in respect thereof. [Proctor may act as Agent of Solicitors].

31. The Act passed in the Second year of the Reign of King Henry the
Fourth, intituled A Itemedy for him who is wrongfully pursued in the Court
of Admiralty, is hereby repealed. [2 Hen. 4.c.11. repealed].
32. Any Party aggrieved by any order or decree of the Judge of the said Court of Admiralty, whether made ex parte or otherwise, may, with the Permission of the Judge, appeal thereupon to Her Majesty in Council, as fully and effectually as from any final Decree or Sentence of the said Court. [Power of Appeal interested in matter].

33. In any cause in the High Court of Admiralty bail may be taken to answer the judgment as well of the said court as of the Court of Appeal, and the said High Court of Admiralty may withhold the release of any property under its arrest until such bail has been given; and in any appeal from any decree or order of the High Court of Admiralty the Court of Appeal may make and enforce its order against the surety or sureties who may have signed any such bail bond in the same manner as if the bail had been given in the Court of Appeal. [Bail given in the Court of Admiralty good in the Court of Appeal].

34. The High Court of Admiralty may, on the application of the defendant in any cause of damage, and on his instituting a crew cause for the damage sustained by him in respect of the same collision, direct that the principal cause and the cross cause be heard at the same time and upon the same evidence; and if in the principal cause the ship of the defendant has been arrested or security given by him to answer judgment, and in the cross cause the ship of the plaintiff cannot be arrested, and security has not been given to answer judgment therein, the Court may, if it thinks fit, suspend the proceedings in the principal cause, until security has been given to answer judgment in the cross cause. [As to the hearing of cause and cross causes].

35. The jurisdiction conferred by this Act on the High Court of Admiralty may be exercised either by proceedings in rem or by proceedings in personam. [Jurisdiction of the Court].
An Act to amend the law respecting the exercise of Admiralty Jurisdiction in Her Majesty's Dominions and elsewhere out of the United Kingdom.

1. Short Title - This Act may be cited as The Colonial Courts of Admiralty Act, 1890.

2. Colonial Courts of Admiralty -

(1) Every Court of law in a British possession, which is for the time being declared in pursuance of this Act to be a Court of Admiralty, or which, if no such declaration is in force in the possession, has therein original unlimited civil jurisdiction, shall be a Court of Admiralty, with the jurisdiction in this Act mentioned, and may for the purpose of that jurisdiction, exercise all the powers which it possesses for the purpose of its other civil jurisdiction and such Court in reference to the jurisdiction conferred by this Act is in this Act referred to as a Colonial Court of Admiralty. Where in a British possession the Governor is the sole judicial authority the expression "Court of law" for the purpose of this section includes such Governor.

(2) The jurisdiction of a Colonial Court of Admiralty shall, subject to the provisions of this Act, be over the like places, persons, matters and things as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute of otherwise and the Colonial Courts of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High Court in England, and shall have the same regard as that Court to international law and the comity of nations.
(3) Subject to the provisions of this Act any enactment referring to a Vice-Admiralty Court, which is contained in an Act of the Imperial Parliament or in a Colonial law, shall apply to a Colonial Court of Admiralty, and be read as if the expression "Colonial Court of Admiralty" were therein, substituted for "Vice-Admiralty Court" or for other expressions respectively referring to such Vice-Admiralty Courts or the Judge thereof, and the Colonial Courts of Admiralty shall have jurisdiction accordingly:

Provided as follows:

(a) Any enactment in an Act of the Imperial Parliament referring to the Admiralty Jurisdiction of the High Court in England when applied to Colonial Courts of Admiralty in a British possession, shall be read as if the name of that possession were therein substituted for England and Wales and

(b) A Colonial Courts of Admiralty shall have under the Naval Prize Act, 1864, and under the Slave Trade Act, 1873 and any enactment relating to prize or the slave trade the jurisdiction thereby conferred on a Vice-Admiralty Court and not the jurisdiction thereby conferred exclusively on the High Court of Admiralty or the High Court of Justice; but unless for the time being duly authorised, shall not by virtue of this Act exercise any jurisdiction under the Naval Prize Act, 1864, or otherwise in relation to prize; and

(c) A Colonial Courts of Admiralty shall not have jurisdiction under this Act to try or punish a person for an offence which according to the law of England is punishable on indictment; and

(d) A Colonial Courts of Admiralty shall not have any greater jurisdiction in relation to the laws and regulations relating to Her Majesty's Navy at sea or under any Act providing for the discipline of Her Majesty's Navy than may be from time to time conferred on such Court by Order in Council.
(4) Where a Court in a British possession exercises in respect of matters arising outside the body of a country or other like part of a British possession any jurisdiction exercisable under this Act, that jurisdiction shall be deemed to be exercised under this Act and not otherwise.

3. Power of Colonial legislature as to Admiralty jurisdiction - The legislature of a British possession may by any Colonial law:

(a) declare any Court of unlimited civil jurisdiction, whether original or appellate, in that possession to be a Colonial Court of Admiralty, and provide for the exercise by such Court of its jurisdiction under this Act, and limit territorially or otherwise, the extent of such jurisdiction; and

(b) confer upon any inferior or subordinate Court in that possession such partial or limited Admiralty jurisdiction under such regulations and with such appeal (if any) as may seem fit:

Provided that any such Colonial law shall not confer any jurisdiction which is not by this Act conferred upon a Colonial Court of Admiralty.

4. Reservation of Colonial law for Her Majesty's assent - Every Colonial law which is made in pursuance of this Act, or affects the jurisdiction of or practice or procedure in any Court of such possession in respect of the jurisdiction conferred by this Act, or alters any such Colonial law as above in this section mentioned, which has been previously passed, shall unless previously approved by Her Majesty through a Secretary of State, either be reserved for the signification of Her Majesty's pleasure thereon, or contain a suspending clause providing that such law shall not come into operation until Her Majesty's pleasure thereon has been publicly signified in the British possession in which it has been passed.

a[This section shall not apply to Indian laws b[* *].]
[a] Inserted by A.O. (P).

[B] The words "or Burma laws" were repealed by the Burma Independence Act, 1947, S.5(3) and Sch.II Part I.

5. Local Admiralty appeal - Subject to rules of Court under this Act, judgments of a Court in a British possession given or made in the exercise of the jurisdiction conferred on it by this Act, shall be subject to the like local appeal, if any, as judgment of the Court in the exercise of its ordinary civil jurisdiction, and the Court having cognizance of such appeal shall for the purpose thereof possess all the jurisdiction by this Act conferred upon a Colonial Court of Admiralty.

6. Admiralty appeal to the Queen in Council -

(1) The appeal from a judgment of any Court in a British possession in the exercise of the jurisdiction conferred by this Act either where there is as of right no local appeal or after a decision on local appeal, lies to Her Majesty the Queen in Council.

(2) Save as may be otherwise specially allowed in a particular case by Her Majesty the Queen in Council, an appeal under this section shall not be allowed.

(a) from any judgment not having the effect of a definitive judgment unless the Court appealed from has given leave for such appeal, nor

(b) from any judgment unless the petition of appeal has been lodged within the time prescribed by rules, or if no time is prescribed within six months from the date of the judgment appealed against, or if leave to appeal has been given then from the date of such leave.

(3) For the purpose of appeals under this Act, Her Majesty the Queen in Council and the Judicial Committee of the Privy Council shall, subject to rules
under this section, have all such powers for making and enforcing judgments, whether interlocutory or final, for punishing contempts, for requiring the payment of money into Court, or for any other purpose, as may be necessary, or as were possessed by the High Court of Delegates before the passing of the Act transferring the powers of such Court to Her Majesty in Council, or as are for the time being possessed by the High Court in England or by the Court repealed from in relation to the like matters as those forming the subject of appeals under this Act.

(4) All orders of the Queen in Council or the Judicial Committee of the Privy Council for the purposes aforesaid or otherwise in relation to appeals under this Act shall have full effect throughout Her Majesty's dominions and in all places where Her Majesty has jurisdiction.

(5) This section shall be in addition to and not in derogation of the authority of Her Majesty in Council or the Judicial Committee of the Privy Council arising otherwise than under this Act, and all enactments relating to appeals to Her Majesty in Council or to the powers of Her Majesty in Council or the Judicial Committee of the Privy Council in relation to those appeals, whether for making rules and orders or otherwise, shall extend, save as otherwise directly by Her Majesty in Council, to appeals to Her Majesty in Council under this Act.

7. Rules of Court -

(1) Rules for regulating the procedure and practice (including fees and costs) in a Court in a British possession in the exercise of the jurisdiction conferred by this Act, whether original or appellate, may be made by the same authority and in the same manner as rules touching the practice, procedure, fees and costs in the said Court in the exercise of its ordinary civil jurisdiction respectively are made:
Provided that the rules under this section shall not, save as provided by this Act, extend to matters relating to the slave trade, and shall not (save as provided by this section) come into operation until they have been approved by Her Majesty in Council, but on coming into operation shall have full effect as if enacted in this Act, and any enactment inconsistent therewith shall, so far as it is so inconsistent, be repealed.

(2) It shall be lawful for Her Majesty in Council, in approving rules made under this section, to declare that the rules so made with respect to any matters which appear to Her Majesty to be matters of detail or of local concern may be revoked, varied, or added to without the approval required by this section.

(3) Such rules may provide for the exercise of any jurisdiction conferred by this Act by the full Court, or by any Judge or judges thereof, and subject to any rules, where the ordinary civil jurisdiction of the Court can in any case be exercised by a single judge, any jurisdiction conferred by this Act may in the like case be exercised by a Single Judge.

8. Droits of Admiralty and of the Crown -

(1) Subject to the provisions of this Section nothing in this Act shall alter the application of any droits of Admiralty or droits of or forfeitures to the Crown in a British possession; and such droits and forfeitures, when condemned by a Court of a British possession in the exercise of the jurisdiction conferred by this Act, shall, save as is otherwise provided by any other Act, be notified, accounted for and dealt with in such manner as the Treasury from time to time direct, and the officers of every Colonial Courts of Admiralty and of every other Court in a British possession exercising Admiralty Jurisdiction shall obey such directions in respect of the said droits and forfeitures as may be from time to time given by the Treasury.
(2) It shall be lawful for Her Majesty the Queen in Council by order to direct that, subject to any conditions, exceptions, reservations, and regulations contained in the Order, the said droits and forfeitures condemned by a Court in a British possession shall form part of the revenues of that possession either for ever or for such limited term or subject to such revocation as may be specified in the order.

(3) If and so long as any of such droits or forfeitures by virtue of this or any other Act for part of the revenues of the said possession the same shall subject to the provisions of any law for the time being applicable thereto, be notified, accounted for, and dealt with in manner directed by the Government of the possession and the Treasury shall not have any power in relation thereto.

9. Power to establish Vice-Admiralty Court -

(1) It shall be lawful for Her Majesty, by commission under the Great Seal, to empower the Admiralty to establish in a British possession and Vice-Admiralty Court or Courts.

(2) Upon the establishment of a Vice-Admiralty Court in a British possession, the Admiralty by writing under their hands and the seal of the office of Admiralty, in such form as the Admiralty direct, may appoint a Judge, registrar, marshal and other officers of the Court, and may cancel any such appointment: and in addition to any other jurisdiction of such Court may (subject to the limits imposed by this Act or the said commission from Her Majesty) vest in such Court the whole or any part of the jurisdiction by or by virtue of this Act conferred upon any courts of that British possession and may vary or revoke such vesting, and while such vesting is in force the power of such last mentioned Courts to exercise the jurisdiction so vested shall be suspended.
Provided that -

(a) nothing in this section shall authorise a Vice-Admiralty Court so established in India or in any other British possession having a representative legislature, to exercise any jurisdiction, except for such purpose relating to prize, to Her Majesty's Navy, to the slave trade, to the matters dealt with by the Foreign Enlistment Act, 1870, or the Pacific Islanders Protection Acts, 1872 and 1875, or to matters in which questions arise relating to treaties or conventions with foreign countries, or to international law: and

(b) in the event of a vacancy in the office of Judge, registrar, marshal, or other officer of any Vice-Admiralty Court in a British Possession, the Governor of that possession may appoint a fit person to fill the vacancy until an appointment to the office is made by the Admiralty.

(3) The provisions of this Act with respect to appeals to Her Majesty in Council from Courts in British possessions in the exercise of the jurisdiction conferred by this Act shall apply to appeals from Vice-Admiralty Courts but the rules and orders made in relation to appeals from Vice-Admiralty Courts may differ from the rules made in relation to appeals from the said Courts in British possessions.

(4) If Her Majesty at any time by commission under the Great Seal so directs, the Admiralty shall by writing under their hands and the seal of the office of Admiralty abolish a Vice-Admiralty Courts established in any British possession under this section, and upon such abolition the jurisdiction of any Colonial Court of Admiralty in that possession which was previously suspended shall be revived.

[a] Substituted by A.O. (P).

[B] The words "or in Burma" were repealed by the Burma Independence Act, 1947, S.5 and Sch.II Part I.
10. Power to appoint a Vice-Admiral - Nothing in this Act shall affect any power of appointing a vice-admiral in and for any British possession or any place therein; and whenever there is not a formally appointed vice-admiral in a British possession or any place therein, the Governor of the possession shall be ex officio vice-admiral thereof.

11. Exception of Channel Islands and other possessions.

(1) The provisions of this Act with respect to Colonial Courts of Admiralty shall not apply to the Channel Islands.

(2) It shall be lawful for the Queen in Council by order to declare, with respect to any British possession which has not a representative legislature, that the jurisdiction conferred by this Act on Colonial Courts of Admiralty shall not be vested in any Court of such possession, or shall be vested only to the partial or limited extent specified in the Order.

12. Application of Act to Courts under Foreign Jurisdiction Acts - It shall be lawful for Her Majesty by the Queen in Council by Order to direct that this Act shall, subject to the conditions, exceptions, and qualifications (if any) contained in the Order, apply to any court established by Her Majesty for the exercise of jurisdiction in any place out of Her Majesty's dominions which is named in the Order as if that Court were a Colonial Courts of Admiralty and to provide for carrying into effect such application.

13. Rules for procedure in slave trade matters -

(1) It shall be lawful for Her Majesty the Queen in Council by Order to make rules as to the practice and procedure (including fees and costs) to be observed in and the returns to be made from Colonial Courts of Admiralty and Vice-Admiralty Courts in the exercise of their jurisdiction in matters relating to the slave trade, and in and from East African Courts as defined by the Slave Trade (East African Courts) Acts, 1873 and 1879.
(2) Except when inconsistent with such Order in Council, the rules of Court for the time being in force in a Colonial Court of Admiralty or Vice-Admiralty Courts shall, so far as applicable, extend to proceedings in such Court in matters relating to the slave trade.

(3) The provisions of this Act with respect to appeals to Her Majesty in Council, from Courts in British possessions in the exercise of the jurisdiction conferred by this Act, shall apply with the necessary modifications, to appeals from judgments of any East African Court made or purporting to be made in exercise of the jurisdiction under the Slave Trade (East African Courts) Act, 1873 and 1879.

14. Orders in Council - It shall be lawful for Her Majesty in Council from time to time to make orders for the purposes authorised by this Act, and to revoke and vary such orders, and every such order while in operation shall have effect as if it were part of this Act.

15. Interpretation - In the construction of this Act, unless the context otherwise requires -

The expression "representative legislature" means, in relation to a British possession, a legislature comprising a legislative body of which at least one-half are elected by inhabitants of the British possession.

The expression "unlimited civil jurisdiction" means civil jurisdiction unlimited as to the value of the subject matter at issue, or as to the amount that may be claimed or recovered.

The expression "judgment" includes a decree, order and sentence.

The expression "appeal" means any appeal, rehearing or review, and the expression "local appeal" means an appeal to any Court inferior to Her Majesty in Council.
The expression "Colonial law" means any Act, ordinance, or other law having the force of legislative enactment in a British possession and made by any authority, other than the Imperial Parliament of Her Majesty in Council, competent to make laws for such possession.

16. Commencement of Act -

(1) This Act shall save as otherwise in this Act provided, come into force in every British possession on the first day of July, One thousand eight hundred and ninety one.

Provided that -

(a) This Act shall not come into force in any of the British possession named in the First Schedule to this Act until Her Majesty so directs by Order in Council and until the day named in that behalf in such Order, and

(b) If before any day above mentioned rules of Court for the Colonial Court of Admiralty in any British possession have been approved by Her Majesty in Council, this Act may be proclaimed in that possession by the Governor thereof, and on such proclamation shall come into force on the day named in the proclamation.

(2) The day upon which this Act comes into force in any British possession shall, as regards that British possession, be deemed to be the commencement of this Act.

(3) If, on the commencement of this Act in any British possession, rules of Court have not been approved by Her Majesty in pursuance of this Act, the rules in force at such commencement under the Vice-Admiralty Courts Act, 1863, and in India the rules in force at such commencement regulating the respective Vice-Admiralty Courts or Courts of Admiralty in India, including any rules made with reference to proceedings instituted on behalf of Her
Majesty's hips, shall, so far as applicable, have effect in the Colonial Courts or Courts of Admiralty of such possession, and in any Vice-Admiralty Court established under this Act in that possession, as rules of Court under this Act, and may be revoked and varied accordingly; and all fees payable under such rules may be taken in such manner as the Colonial Court may direct, so however that the amount of each such fee shall so nearly as practicable be paid to the same officer or person who but for the passing of this Act would have been entitled to receive the same in respect of like business. So far as any such rules are inapplicable or do not extend, the rules of Court for the exercise by a Court of its ordinary civil jurisdiction shall have effect as rules for the exercise by the same Court of the jurisdiction conferred by this Act.

(4) At any time after the passing of this Act any Colonial law may be passed, and any Vice-Admiralty Court may be established and jurisdiction vested in such Court but any such law, establishment, or vesting shall not come into effect until the commencement of this Act.

17. Abolition of Vice-Admiralty Courts - On the commencement of this Act in any British possession, but subject to the provisions of this Act, every Vice-Admiralty Court in that possession shall be abolished : subject as follows :

(1) All judgments of such Vice-Admiralty Court shall be executed and may be appealed from in like manner as if this Act had not been passed, and all appeals from any Vice-Admiralty Court pending at the commencement of this Act shall be heard and determined, and the judgment thereon executed as may be in like manner as if this Act had not been passed;

(2) All proceedings pending in the Vice-Admiralty Court in any British possession at the commencement of this Act shall, notwithstanding the repeal of any enactment by this Act, be continued in a Colonial Court of Admiralty of the possession in manner directed by rules of Court, and, so far as no such rule extends, in a like manner as nearly as may be, as if they had been originally begun in such Court;
(3) Where any person holding an office, whether that of Judge, Registrar or Marshal, or any other office in any such Vice-Admiralty Court in a British possession, suffers any pecuniary loss in consequence of the abolition of such Court, the Government of the British possession, on complaint of such person, shall provide that such person shall receive reasonable compensation (by way of an increase of salary or a capital sum, or otherwise) in respect of his loss, subject nevertheless to the performance, if required by the said Government of the like duties as before such abolition;

(4) All books, papers, documents, office furniture and other things at the commencement of this Act belonging or appertaining to any Vice-Admiralty Court shall be delivered over to the proper officer of the Colonial Court of Admiralty, or be otherwise dealt with in such manner as, subject to any directions from Her Majesty, the Governor may direct;

(5) Where, at the commencement of this Act in a British possession, any person holds a commission to act as advocate in any Vice-Admiralty Court abolished by this Act, either for Her Majesty or for the Admiralty, such commission shall be of the same avail in every Court of the same British possession exercising jurisdiction under this Act, as if such Court were the Court mentioned or referred to in such commission.

18. Repeal - The Acts specified in Second Schedule to this Act shall, to the extent mentioned in the third column of that schedule, be repealed as respects any British possession as from the commencement of this Act in that possession, and as respects any court out of Her Majesty's dominions as from the date of any Order applying this Act:

Provided that -

(a) Any appeal against a judgment made before the commencement of this Act may be brought and any such appeal and any proceedings or appeals
pending at the commencement of this Act may be carried on and completed and carried into effect as if such repeal had not been enacted; and

(b) All enactments and rules at the passing of this Act in force touching the practice, procedure, fees, costs, and returns in matters relating to the slave trade, in Vice-Admiralty Courts and in East African Courts shall have effect as rules made in pursuance of this Act, and shall apply to Colonial Courts of Admiralty, and may be altered and revoked accordingly.

SCHEDULES

FIRST SCHEDULE
SECTION 16, BRITISH POSSESSIONS IN WHICH OPERATION OF ACT IS DELAYED
New South Wales
Victoria
St. Helena
British Honduras

SECOND SCHEDULE
SECTION 18. ENACTMENTS REPEALED
Session and TITLE OF ACT Extent of Chapter Repeal

56 Geo.3,c.82 An Act to render valid the The Whole Act judicial Acts of Surrogates of Vice-Admiralty Courts abroad, during vacancies in office of Judges of such Courts.

2 & 3 Will.4,c.51 An Act to regulate the practice The Whole Act and the fees in the Vice Admiralty Courts abroad, and to obviate doubts as to their jurisdiction.
3 & 4 Will.r.c.41 An Act for the better administration of justice in His Majesty's Privy Council.

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6 & 7 Vict.c.38 An Act to make further In Section 2, the words regulations for facilitating "or from any Admiralty the hearing appeals and High Courts" and the other matters by the words "or the Lords Judicial Committee of Commissioners of the Privy Council. Appeals in prize causes or their surrogates."

In section 3, the words "and the High Court of Admiralty of England." and the words "and from any Admiralty or Vice-Admiralty Courts."

In Section 5, from the first "the High Court of Admiralty" to the end of the Section.

In Section 7, the words "and from Admiralty or Vice-Admiralty Court."

Section 9 and 10, so far as relate to maritime causes.

In section 12, the words "or maritime."

In Section 15, the words "and Admiralty and Vice-Admiralty."

7 & 8 Vict.c.69 An Act for amending In Section 12, the words an Act passed in the "and from the admiralty fourth year of the reign and vice-admiralty of His late Majesty, en-ti- Courts." and so much tled, "An Act for the of the rest of the better administration of section as relates to justice in His Majesty's maritime causes. Privy Council" and to extend its jurisdiction and powers.

26 Vict.,c.24 The Vice-Admiralty Courts The Whole Act Act, 1863.

30 & 31 Vict.c.45 The Vice-Admiralty Courts The Whole Act (Amendment) Act, 1867.
36 & 37 Vict.c.59 The Slave Trade (East Sections 4 and 5 African Courts) Act, 1867.

36 & 37 Vict.c.88 The Slave Trade Act, 1873. Section 20 as far as relates to the taxation of any costs, charges and expenses which can be taxed in pursuance of this Act.

Section 23 the words "under the vice-Admiralty Courts Act, 1863."

38 & 39 Vict.c.51 The Pacific Islanders Protection Act, 1875. authorises Her Majesty to confer Admiralty jurisdiction on any Court.

Preamble

(1) In any admiralty suit in rem, the High Court had no jurisdiction to order the arrest of any ship other than the ship in respect of which the cause of action had arise.


(2) Once a vessel is arrested by the Court in its Admiralty jurisdiction, the court in its inherent jurisdiction has always, the power to modify, reduce the amount of security and also to waive it altogether.

(1981) 2 Cal I J 129 (141, 142).

(3) With regard to admiralty Orissa High Court is a Court of prescribed jurisdiction. It cannot go beyond the instrumentalities of internal Municipal Law which has conferred upon it the admiralty jurisdiction.

(1) The jurisdiction of the High Court in India in relation to necessaries supplied to a ship rests on the provisions of this Act, which vests in it, inter alia, the power described in S.5 of the Admiralty Court Act, 1861 (24 & 25 Vict. c. 10). And under Section 5 of the latter statute the High Court in India, in the Admiralty Side, has jurisdiction over any claim for necessaries supplied to any ship elsewhere than in the port to which the ship Court belongs.

AIR 1951 Cal. 681 (683, 684)

(2) Claim for necessaries can be enforced in a Colonial Court of Admiralty by a suit in rem, and such a suit can presumably be instituted in any Admiralty Court within whose jurisdiction the ship happens to be at the time when the suit is instituted. Before there can be an action in rem there must be a personal liability on the part of the owner.

AIR 1923 Rang 163 (165).

(3) In order to render a ship liable for maritime lien for injury caused, the ship itself must be the instrument which caused the damage. The old law of arresting any other ship instead has now become obsolete even in England AIR 1937 Cal 122 (124).

(4) To establish a maritime lien for damage against a ship, the damage must be the direct result of some unskillful or negligent conduct or those in charge of the ship which does the mischief, the ship herself being the instrument of mischief


(6) The Admiralty Court exercises jurisdiction when a claim arises pertaining to the vessel and it cannot be said that every claim arising out of a charter party agreement can only be entertained by Admiralty Court even if the claim is for realisation of monetary claim


Section 3

(1) The High Court of jurisdiction of Bombay as a Colonial Court of Admiralty had the same jurisdiction as was then exercised by the High Court of England in its admiralty jurisdiction.

AIR 1973 Bom 18 (23).

(2) With regard to admiralty Orissa High Court is a Court of prescribed jurisdiction. It cannot go beyond the instrumentalities of Internal Municipal Law which has conferred upon it the admiralty jurisdiction.


Section 6

(1) Section 6 of the Act is confined to suits where damage is done to goods shipped and cannot be extended to cover where damages are claimed only on a breach of contract without any damages to goods. (1981) 1 Cal HN 373 (378).
Section 7

(1) The appeal filed without leave of the trial Court would not be maintainable in view of absolute bar to that effect under R.59 of the Rules made under S.7 of the Act for regulating the procedure in cases brought before the High Court of judicature of Madras under the Colonial Courts of Admiralty Act, 1890.


(2) Where there was breach of contract by the owner of the ship and no damage was done to goods shipped, the damage by breach of contract cannot be said to be damage done by any ship and therefore the suit for recovery of such damages would not fall under S.7 of the Act. However, the High Court has concurrent jurisdiction to try such a suit either in its Admiralty jurisdiction or in its ordinary original civil jurisdiction (1981) 1 Cal HN 373 (378).
An Act to declare certain Courts in [India] to be Colonial Courts of Admiralty.

Whereas it is provided by the Colonial Courts of Admiralty Act, 1890 that the Legislature of a British possession may by any colonial law declare any Court of unlimited civil jurisdiction in that possession to be a Colonial Court of Admiralty;

And whereas it is expedient, in pursuance of that provision, to declare certain Courts in [India] to be Colonial Courts of Admiralty;

It is hereby enacted as follows :-

[a] For Statement of Objects and Reasons, see Gazette of India, 1891, Part V, p. 140; for Proceedings in Council, see ibid; p.116.


1. Title and commencement - (1) This Act may be called The Colonial Courts of Admiralty (India) Act, 1891; and

(2) It shall come into effect -

(a) If Her Majesty's pleasure thereon has been signified, by notificationa in the b[Official Gazette], on or before the first day of July, 1891, then on that day, or
(b) If Her Majesty's pleasure thereon has been signified on or before that day, then on the date on which Her Majesty's pleasure shall be signified by such a notification as aforesaid.

[a] For notification publishing Her Britannic Majesty's Assent to this Act, see Gazette of India, 1891, Pt.I, p.371.


2. Appointment of Colonial Courts of Admiralty - The following Courts of unlimited civil jurisdiction are hereby declared to be Colonial Courts of Admiralty, namely:—

(1) the High Court of Judicature at Fort William in Bengal;

(2) the High Court of Judicature at Madras, [and]

(3) the High Court of Judicature at Bombay, [*]

[c][**]*

[a] Inserted by A.C.A.O., 1948.

[b] The word "and" was repealed by A.C.A.O., 1948.

[c] The words and figures "(4) the High Court of Judicature at Rangoon, (5) the Court of the Resident at Aden and" were repealed by A.O., 1937 and "(6) the District Court of Karachi" repealed by A.C.A.O., 1948.

3. Construction of Indian Acts referring to Admiralty and Vice-Admiralty Courts - The expressions "Court having Admiralty jurisdiction" and "Admiralty Court" and the expression "Admiralty or Vice-Admiralty cause" and other expressions referring to Admiralty or vice-Admiralty Courts or causes, shall, wherever any such expression occurs in any a[Indian law], be deemed to include a Colonial Court of Admiralty and a Colonial Court of
Admiralty cause, and to refer to a Colonial Court of Admiralty or a Colonial Court of Admiralty cause, respectively.

[a] Substituted by A.O. 1937 for "enactment of the Governor-General-in-Council or of a Governor-in-Council or Lieutenant-Governor-in-Council"


5. Repeal - [Repealed by the Repealing and Amending Act, 1914 (10 of 1914)].

THE SCHEDULE [ENACTMENTS REPEALED]. [Repealed by the Repealing and Amending Act, 1914 (10 of 1914)].

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Section 2

(1) A Suit for damages to the cargo can be entertained by the High Court in exercise of the admiralty jurisdiction of the High Court in view of S.6 of the Admiralty Courts Act, 1861 and S.2(2) of Colonial Courts of Admiralty Act, 1891.


(2) The suit relating to the mortgage of a foreign vessel and arising between foreigners, filed in the Bombay High Court by the consent of parties since the dispute arose when the vessel arrived at Bombay port. Held, that the Court had jurisdiction to entertain the suit.

AIR 1983 Bom 178 (185) : (1983) 85 Bom LR 250

(3) A suit for damage to the cargo imported from Indian Port to foreign country can be entertained by the Bombay High Court in exercise of the admiralty jurisdiction of the High Court.
AIR 1973 Bom 18 (24).

(4) Where the suit was filed by plaintiff under admiralty jurisdiction of Bombay High Court for recovery of certain amount in respect of various spare parts supplied and repairs carried out to the vessel of defendants of Hamburg and elsewhere and the defendant owner of vessel having their office, elsewhere filed a counter-claim in the suit claiming damages from plaintiff, for defective repairs to the suit ship, the counter-claim of the defendant directly relating to same repairs could be entertained by Bombay High Court under O.8, R.6 and it could not be strike off on grounds that it did not arose under admiralty jurisdiction of Bombay High Court.

THE MAJOR PORT TRUSTS ACT, 1963
[Act No. 38 of 1963 dated 16th. October, 1963]

An Act to make provision for the constitution of port authorities for certain major ports in India and to vest the administration, control and management of such ports in such authorities and for matters connected therewith.

Be it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:

CHAPTER I: PRELIMINARY

1. Short title commencement and application

(1) This Act may be called the Major Port Trusts Act, 1963.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(3) It applies in the first instance to the major ports of Cochin, Kandla and Visakhapatnam and the Central Government may, by notification in the Official Gazette, apply the provisions of this Act to such other major port as may be specified in the notification.

2. Definitions

In this Act, unless the context otherwise requires,-

(a) "appointed day", in relation to a port, means the date on which this Act is made applicable to that port;
4(aa) "Authority" means the Tariff Authority for Major Ports constituted under section 47A;

(b) "Board", in relation to a port, means the Board of Trustees constituted under this Act for that port;

(c) "Chairman" means the Chairman of a Board and includes the person appointed to act in his place under section 14;

(d) "Collector of Customs" has the same meaning as in the Customs Act, 1962;

(e) "Deputy Chairman" means the Deputy Chairman, or, as the case may be, a Deputy Chairman of a Board] and includes the person appointed to act in his place under section 14;

(f) "dock" includes all basins, locks, cuts, entrances, graving docks, graving blocks, inclined planes, slipways, gridirons, moorings, transit-sheds, warehouses, tramways, railways and other works and things appertaining to any dock, and also the portion of the sea enclosed or protected by the arms or groynes of a harbour;

(g) "foreshore", in relation to a port, means the area between the high-water mark and the low-water mark relating to that port;

(h) "goods" includes livestock and every kind of movable property;

(i) "high-water mark", in relation to a port, means a line drawn through the highest points reached by ordinary spring-tides at any season of the year at the port;

6[(ia) "immovable property" includes wharfage-rights an all other rights exercisable on, over, or in respect of, any land, wharf, dock or pier;]
(j) "Indian Ports Act" means the Indian Ports Act, 1908;

(k) "land" includes the bed of the sea or river below high-water mark, and also things attached to the earth or permanently fastened to anything attached to the earth;

(l) "low-water mark", in relation to a port, means a line drawn through the lowest points reached by ordinary spring-tides at any season of the year at that port;

(m) "major port" has the same meaning as in the Indian Ports Act;

(n) "master", in relation to any vessel or any aircraft making use of any port, means any person having for the time being the charge or control of such vessel or such aircraft, as the case may be, except a pilot, harbour master, assistant harbour master, dock master or berthing master of the port;

(o) "owner", (i) in relation to goods, includes any consignor, consignee, shipper or agent for the sale, custody, loading or unloading of such goods; and (ii) in relation to any vessel or any aircraft making use of any port, includes any part-owner, charterer, consignee, or mortgagee in possession thereof,

(p) "pier" includes any stage, stairs, landing place, hard, jetty, floating barge, 7[transhipper] or pontoon, and any bridges or other works connected therewith.

7[Explanation.-For the purposes of this clause, "transhipper" means a floating craft or vessel, whether dumb or self-propelled, on which gears are provided for discharging cargo from a barge or wharf and loading it into a ship;]

(q) "port" means any major port to which this Act applies within such limits as may, from time to time, be defined by the Central Government for the purposes of this Act by notification in the Official Gazette, and, until a
notification is so issued, within such limits as may have been defined by the Central Government under the provisions of the Indian Ports Act;

(r) "port approaches", in relation to a port, means those parts of the navigable rivers and channels leading to the port, in which the Indian Ports Act is in force;

(s) "Port Trust security" means debentures, bonds or stock certificates issued by a Board in respect of any loan contracted by it under the provisions of this Act or issued by any other authority for the payment of which the Board is liable under this Act;

(t) "prescribed" means prescribed by rules or regulations made under this Act;

(u) "public securities" means-

(i) promissory notes, debentures, stock or other securities of the Central Government or of any State Government.

Provided that securities, both the principal whereof and the interest whereon have been fully and unconditionally guaranteed by any such Government, shall be deemed, for the purposes of this clause, to be securities of such Government;

(ii) debentures or other securities for money issued by or on behalf of any municipal body, Improvement Trust or Port Trust under the authority of any law for the time being in force in India (including the Port Trust securities);

(v) "rate" includes any toll, due, rent, rate, fee, or charge leviable under this Act;

(w) "regulations" means regulations made under this Act;

(x) "rules" means rules made by the Central Government under this Act;
(y) "Trustee", in relation to a port, means a member of the Board constituted for the port;

8[(z) "vessel" includes anything made for the conveyance, mainly by water, of human beings or of goods and a caisson;]

(za) "wharf" includes any wall or stage and any part of the land or foreshore that may be used for loading or unloading goods, or for the embarkation or disembarkation of passengers and any wall enclosing or adjoining the same.

CHAPTER II : BOARD OF TRUSTEES AND COMMITTEES THEREOF

3. Constitution of Board of Trustees

(1) With effect from such date as may be specified by notification in the Official Gazette, the Central Government shall cause to be constituted in respect of any major port a Board of Trustees to be called the Board of Trustees of that port, which shall consist of the following Trustees, namely:-

(a) a Chairman to be appointed by the Central Government;

9[(b) one Deputy Chairman or more, as the Central Government may deem fit to appoint;]

10[(c) not more than nineteen persons in the case of each of the ports of Bombay, Calcutta and Madras and not more than seventeen persons in the case of any other port who shall consist of-

(i) such number of persons, as the Central Government may, from time to time, by notification in the Official Gazette, specify, to be appointed by that
Government from amongst persons who are in its opinion capable of representing any one or more of such of the following interests as may be specified in the notification, namely:-

(1) labour employed in the port;

(2) the Mercantile Marine Department;

(3) the Customs Department,

(4) the Government of the State in which the port is situated;

(5) the Defence Services;

(6) the Indian Railways; and

(7) such other interests as, in the opinion of the Central Government, ought to be represented on the Board.

Provided that before appointing any person to represent the labour employed in the port, the Central Government shall obtain the opinion of the trade unions, if any, composed of persons employed in the port and registered under the Trade Unions Act, 1926 (16 of 1926), and that the number of persons so appointed shall not be less than two;

(ii) such number of persons, as the Central Government may, from time to time, by notification in the Official Gazette, specify, to be elected by such bodies and representing any one or more of such of the following interests as may be specified in the notification from among themselves, namely:-

(1) ship owners;

(2) owners of sailing vessels;

(3) shippers; and
(4) such other interests as, in the opinion of the Central Government, ought to be represented on the Board:

Provided that in a case where any such body is an undertaking owned or controlled by the Government, the person to be elected by such body shall be appointed by the Central Government.

(2) A Trustee appointed by the Central Government under this Act may be appointed by name or by virtue of office.

(3) Every notification issued under sub-clause (ii) of clause (c) of subsection (1) may also specify the number of Trustees that each of the bodies referred to in that clause may elect.

(4) The election of Trustees under sub-clause (ii) of clause (c) of subsection (1) shall be held within such period as may, from time to time, be specified by the Central Government.

(5) The chief executive authority of every electing body shall communicate forthwith to the Central Government the result of any election held in pursuance of sub-section (4).

(6) The names of persons appointed or elected as Trustees shall be notified by the Central Government in the Official Gazette.

4. First Board of Trustees

(1) Notwithstanding anything contained in section 3, the Central Government may, by notification in the Official Gazette, constitute in respect of any major port the first Board of Trustees thereof consisting of:

(a) a Chairman to be appointed by the Central Government;
(b) a Deputy Chairman, if the Central Government deems fit to appoint one; and

(c) such number of other Trustees, 12[not exceeding seventeen], as that Government may deem expedient, to be appointed by that Government from amongst persons who are in its opinion capable of representing,

(i) labour employed in the port;

(ii) Government of the State in which the port is situated;

(iii) Government departments specified 13[in sub-clause (i) of clause (c)] of sub-section (1) of section 3; and

(iv) such other interests as, in the opinion of the Central Government, ought to be represented on the Board.

(2) Subject to the provisions of sub-section (3), the persons appointed as Trustees under sub-section (1) shall hold office during the pleasure of the Central Government.

(3) On the constitution of the Board under section 3, the first Board of Trustees shall cease to exist.

5. Board to be body corporate

Every Board constituted under this Act shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold or dispose of property and may by the name by which it is constituted, sue or be sued.

6. Disqualification for office of Trustee

A person shall be disqualified for being chosen as a Trustee, if he-
(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) holds any office of profit under the Board:

14[Provided that this disqualification shall not apply to the Chairman, Deputy Chairman or a Trustee who has been appointed to represent the labour employed in the port or appointed by virtue of office as officer or member of an association formed for the purpose of promoting the interests or welfare of any class of employees of the Board;]

(d) has, directly or indirectly, any share or interest in any work done by order of the Board, or in any contract or employment, with, by, or on behalf of the Board;]

Provided that no person shall be deemed to have a share or interest in such work, contract or employment by reason only of his-

(i) having a share in any company or firm which may contract with or be employed by or on behalf of the Board, or

(ii) having a share of interest in any newspaper in which any advertisement relating to the affairs of the Board may be inserted, or

(iii) being interested in any loan of money to the Board, or

(iv) having a share or interest in any lease, sale, exchange or purchase of immovable property or any agreement for the same, or

(v) having a share or interest in any licence by the Board, or right by agreement or otherwise, with the Board to the sole or preferential use of any railway siding or any berth for vessels in the docks belonging to the Board, or
(vi) having a share or interest in the occasional sale to the Board, to a value not exceeding ten thousand rupees in any one financial year, of any article in which he trades.

7. Term of office of Trustees

(1) The Chairman and the Deputy Chairman shall hold office during the pleasure of the Central Government.

(2) Subject to the provisions of this Act,-

(a) every person elected or appointed by name to be a Trustee shall hold office to which he is elected or so appointed, for a term of two years commencing on the 1st day of April next following his election or appointment, as the case may be:

Provided that the term of office of a member elected to represent any body of persons shall come to an end as soon as he ceases to be a member of that body;

(b) a person appointed by virtue of an office to be a Trustee shall, until the Central Government by notification in the official Gazette otherwise directs, continue to be a Trustee so long as he continues to hold that office.

8. Vacation of office of Trustees

(1) The Central Government shall remove a Trustee if he-

(a) becomes subject to any of the disqualified mentioned section 6; or

15[(aa) has, in the opinion of the Central Government, ceased to represent the interest by virtue of which he was appointed or elected; or]

(b) refuses to act or becomes incapable of acting; or
(c) is, without the permission of the Board previously obtained, absent from six consecutive ordinary meetings of the Board; or

(d) is absent from the meetings of the Board for a period exceeding six consecutive months; or

(e) acts in contravention of the provisions of section 19

2. A Trustee may resign his office by giving notice in writing to the Chairman who shall forward the same to the Central Government, and on such resignation being accepted by that Government he shall be deemed to have vacated his office.

9. Eligibility of Trustee for re-appointment or re-election

Any person ceasing to be a Trustee shall, unless disqualified under section 6, be eligible for re-appointment or re-election.

10. Filling of vacancies in office of Trustee

(1) In the case of a vacancy in the office of a Trustee appointed by name or an elective Trustee caused by the expiration of the term of office of such Trustee, the appointment to fill such vacancy shall be made or an election to fill such vacancy shall be completed, as the case may be, within two months immediately preceding the date of expiration of such term.

(2) In the case of a vacancy in the office of a Trustee appointed by the Central Government by virtue of an office, the appointment to fill such vacancy shall be made within one month of the occurrence of such vacancy.

(3) In the case of a casual vacancy in the office of a Trustee appointed by name or an elective Trustee caused by the death of such Trustee or by virtue of the provisions of section 8, such vacancy shall be filled within one month
of the occurrence thereof by appointment for election, as the case may be, in
the manner herein before specified:

Provided that the Trustee so appointed or elected shall retain his office so
long only as the vacating Trustee shall have retained the same if such vacancy
had not occurred:

Provided further that no such casual vacancy occurring within three months
of the date of expiry of the normal term of office of the vacating Trustee shall
be filled up under this sub-section.

11. Saying provision for appointment of Trustee by Central Government after
prescribed period

Nothing in the foregoing provisions shall prevent a person being appointed
by the Central Government to fill any vacancy in the office of a Trustee
appointed by the Central Government after the expiration of the period
specified in section 10, if for any reason it has not been possible for the
Central Government to make the appointment within the said period.

12. Power of Central Government to extend time for election or appoint
Trustees in default of election

(1) If the Central Government is satisfied that an electing body has failed to
elect a Trustee within the period specified therefor in sub-section (4) of
section 3 or section 10 for reasons beyond its control, the Central
Government may, by notification in the Official Gazette, direct that the
election shall be held on or before such date as may be specified in the
notification.

(2) In the event of default being made in electing any Trustee within the
period specified therefor under sub-section (4) of section 3 or under section
10, or as the case may be, on or before the date specified in the notification
issued under sub-section (1), it shall be lawful for the Central Government to appoint a person by notification in the Official Gazette and the person so appointed shall be deemed to be an elective Trustee.

13. Term of office In case of certain trustees

Where a Trustee is appointed under section 11 or under sub-section (2) of section 12 or elected in pursuance of a direction issued under sub-section (1) of section 12, the term of office of such Trustee shall commence on the date on which his appointment or election, as the case may be, is notified in the Official Gazette and shall expire on the date on which his term of office would have expired if his appointment or election had been made within the period specified under section 10, or, as the case may be, under sub-section (4) of section 3.

14. Absence of Chairman and Deputy Chairman

If the Chairman or the Deputy Chairman is, by infirmity or otherwise, rendered incapable of carrying out his duties or is absent on leave or otherwise, in circumstances not involving the vacation of his appointment, or is sent on deputation outside India for any of the purposes of this Act, the Central Government may appoint another person to act in his place during his absence:

Provided that the Chairman or the Deputy Chairman, while on deputation outside India may, if the Central Government by order so directs and subject to such conditions and restrictions as may be specified in that order, exercise such of the powers and perform such of the duties conferred or imposed on the Chairman or the Deputy Chairman, as the case may be, by or under this Act as he may deem necessary, and the Chairman or Deputy Chairman while exercising such powers and performing such duties shall be deemed to be a Trustee notwithstanding anything to the contrary contained in this Act.
14 A. Acting Chairman or Deputy Chairman

The Central Government may, pending the consideration of the question as to who may be appointed as Chairman or Deputy Chairman of a Board under section 3 or section 4, appoint a person to be the acting Chairman or Deputy Chairman thereof and notify his name in the Official Gazette and the person so appointed shall, until the Central Government by notification in the Official Gazette otherwise directs, be deemed for the purposes of this Act to be the Chairman or Deputy Chairman of such Board appointed under section 3 or section 4, as the case may be.

15. Conditions of service of Chairman and Deputy Chairman

The Chairman and the Deputy Chairman shall be paid such salary and be governed by such terms and conditions of service as may, from time to time, be determined by the Central Government.

16. Meetings of Board

(1) A Board shall meet at such times and places and shall, subject to the provisions of subject to the provision of sub-section (2), (3) and (4), observe such rules of procedure in regard to the transaction of business at its meetings as may be provided by rules made under this Act.

(2) The Chairman or, in his absence, the Deputy Chairman, and in the absence of both, any person chosen by the Trustees present from among themselves, shall preside at meetings of the Board.

(3) All questions at a meeting of the Board shall be decided by a majority of the votes of the Trustees present and voting and, in the case of an equality of votes, the person presiding shall have a second or casting vote.

(4) No business shall be transacted at any meeting of the Board unless not less than five Trustees are present throughout such meeting.
17. Committees of Board

(1) A Board may, from time to time, constitute from amongst the Trustees one or more committees, each consisting of such number as the Board may consider necessary, for the purpose of discharging such of its functions as may be delegated to such of its function as may be delegated to such committee or committees by the Board.

17[(1A) Notwithstanding anything contained in sub-section (1) or any other provision of this Act, the Board may appoint a person who is not a Trustee to be a member of any Committee constituted under that sub-section and a person so appointed shall, for the purpose of the discharge of his functions as such member, be deemed to be a Trustee.]

(2) A committee constituted under this section shall meet at such time and at such places and shall observe such rules of procedure in regard to the transaction of business its meeting (including the quorum) as may be provided by regulations made under this Act.

18. Fees and allowances payment Trustees

18[(1)] The Trustees shall be paid by the Board such fees and allowances for attending the meetings of the Board or of any of its committees and for attending to any other work of the Board as may be provided by rules made under this Act:

Provided that no fees shall be payable to the Chairman, Deputy Chairman or any other Trustee who is a servant of the Government.

18[(2) A member of a committee appointed under sub-section (1A) of section 17 shall be paid the same fees and allowances for attending the meetings of the committee and for attending to any other work of the Board as are payable to a Trustee under sub-section (1):]
Provided that the Board may, with the prior approval of the Central Government, pay to any such member fees and allowances at a rate higher than that provided in the case of Trustees.]

19. Restriction of power of Trustees to vote in certain cases

No Trustee shall vote or take part in the discussion of any matter coming up for consideration at a meeting of the Board or any of its committees if the matter is one in which he has any director indirect pecuniary interest by himself or his partner, or in which he is interested professionally on behalf of a client or as agent for any person other than the Government 20[or an undertaking owned or controlled by the Government] or a local authority or a trade union registered under 21[the Trade Unions Act, 1926 (16 of 1926), or other than as officer or member of an association formed for the purpose of promoting the interests or welfare of any class of employees of the Board].

20. Defects In appointments or election not to invalidate acts, etc

No act or proceeding of a Board or of any of its committees shall be invalid merely by reason of-

(a) any vacancy therein or any defect in the constitution thereof. or

(b) any defect in the election or appointment of a person as a member thereof, or

(c) any Trustee having acted or taken part in any proceedings in contravention of section 19, or

(d) any irregularity in its procedure not affecting the merits of the case.

21. Delegation of powers

A Board may, with the approval of the Central Government, specify-
(a) the powers and duties conferred or imposed upon the Board by or under this Act, which may also be exercised or performed by the Chairman; and

(b) the powers and duties conferred or imposed on the Chairman by or under this Act, which may also be exercised or performed by the Deputy Chairman or any officer of the Board and the conditions and restrictions, if any, subject to which such powers and duties may be exercised and performed:

Provided that any powers and duties conferred or imposed upon the Deputy Chairman or any officer of the Board under clause (b) shall be exercised and performed by him subject to the supervision and control of the Chairman.

22. Duties of Chairman and Deputy Chairman

(1) It shall be the duty of the Chairman and the Deputy Chairman to attend every meeting of the Board unless prevented by sickness or other reasonable cause.

(2) The Chairman shall, as soon as possible, transmit to the Central Government a copy of the minutes of every meeting of the Board and small furnish to that Government such reports, returns, documents or other information as it may, from time to time, call for.

(3) The Chairman shall exercise supervision and control over the acts of all employees of the Board in matters of executive administration and in matters concerning the accounts and records of the Board.

CHAPTER III : STAFF OF THE BOARD

23. Schedule of Board's staff

A Board shall, from time to time, prepare and sanction a Schedule of the employees of the Board whom it deems necessary and proper to maintain for the purposes of this Act and such Schedule shall indicate therein the
designations and grades of employees and the salaries, fees and allowances which are proposed to be paid to them:

22[Provided that the previous sanction of the Central Government shall be obtained for the inclusion in the said Schedule of those designations and grades of employees and the salaries, fees and allowances payable to them which the Central Government may, by order, specify, and where no such order is made, of such posts (including the salaries and allowances attached thereto) which are required to be created by the Central Government, or for the creation of which the previous sanction of the Central Government is required, under this Act.]

24. Power to make appointments:

(1) Subject to the provisions of the Schedule for the time being in force sanctioned by a Board under section 23, the power of appointing any person to any Post, whether temporary or permanent, shall—

(a) in the case of a post—

(i) the incumbent of which is to be regarded as the Head of a department; or

(ii) to which such incumbent is to be appointed; or

(iii) the maximum of the pay scale of which (exclusive of allowances) exceeds such amount as the Central Government may, by notification in the Official Gazette, fix,]

be exercisable by the Central Government after consultation with the Chairman;]

(b) in the case of any other post, be exercisable by the Chairman or by such authority as may be prescribed by regulations;]
Provided that no person shall be appointed as a pilot at any port, who is not for the time being authorised by the Central Government under the provisions of the Indian Ports Act to pilot vessels 26[at that or any other port].

(2) The Central Government may, by order, specify any post the incumbent of which shall, for the purposes of this Act, be regarded as the Head of a department.

25. Power to grant leave, etc.; to employees of Board

(1) Subject to any regulations made under section 28, the power of granting extension of service to, granting leave to, suspending, reducing, compulsorily retiring, removing or dismissing or of disposing of any other question relating to the services of, the employees of a Board, including the power of dispensing with the services of any such employee otherwise than by reason of the misconduct of such employee, shall be exercised-

29[(a) in the case of an employee holding a post referred to in clause (a) of sub-section (1) of section 24, by the Chairman;

(b) in any other case, by the Chairman or by such authority as may be prescribed by regulations:]

Provided that no such order, so far as the same involves extension of service, suspension, reduction in rank, compulsory retirement, removal or dismissal of an employee referred to in clause (a), shall have effect until it is approved by the Central Government.

(2) Any employee of a Board aggrieved by an order involving his reduction in rank, compulsory retirement, removal or dismissal may, within such time and in such manner as may be provided for by regulations, prefer an appeal-
33](a) to the Central Government, where such order is passed by the Chairman;

(b) to the Chairman, where such order is passed by any such authority as is prescribed by regulations under clause (b) of sub-section (1):

Provided that where the person who passed the order becomes, by virtue of his subsequent appointment as the Chairman, the appellate authority in respect of the appeal against the order such person shall forward the appeal to the Central Government and in relation to that appeal shall be deemed to be the appellate authority for the purposes of this section.

26. Consulting Engineer to Board

A Board may appoint any person as Consulting Engineer to the Board otherwise than on the basis of payment of a monthly salary, but every such appointment shall be subject to the sanction of the Central Government.

27. Power to create posts

Notwithstanding anything contained in section 23, the power to create any post, whether temporary or permanent, shall,

(a) in the case of a post the holder of which is to be regarded as the Head of a department or in the case of a post the maximum of the pay-scale of which (exclusive of allowances) exceeds such amount as the Central Government may, by notification in the Official Gazette, fix, be exercisable by that Government;

(b) in the case of a post [other than a post referred to in clause (a)], the maximum of the pay-scale of which exceeds such amount as the Central Government may, from time to time by order fix in this behalf, or where no such amount has been fixed, is not less than one thousand rupees, be
exercisable by the Board with the previous sanction of the Central Government;

(c) in the case of any other post, be exercisable by the Chairman.]

28 Power to make regulations

A Board may make regulations, not inconsistent with this Act, to provide for any one or more of the following matters, namely:-

(a) the appointment, promotion, suspension, reduction in rank, compulsory retirement, removal and dismissal of its employees;

(b) their leave, leave allowances, pensions, gratuities, compassionate allowances and travelling allowances and the establishment and maintenance of a Provident Fund or any other fund for their welfare;

(c) the terms and conditions of service of persons who become employees of the Board under clause (f) of sub-section (1) of section 29;

(d) the time and manner in which appeals may be preferred under sub-section (2) of section 25 and the procedure for deciding such appeals;

(e) any other matter which is incidental to, or necessary for, the purpose of regulating the appointment and conditions of service of its employees.

CHAPTER IV : PROPERTY AND CONTRACTS

29. Transfer of assets and liabilities of Central Government, etc., to Board

(1) As from the appointed day in relation to any port-

(a) all property, assets and funds and all rights to levy rates vested in the Central Government or, as the case may be, any other authority for the purposes of the port immediately before such day, shall vest in the Board;
(b) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done, by, with or for the Central Government or, as the case may be, the other authority immediately before such day, for or in connection with the purposes of the port, shall be deemed to have been incurred, entered into and engaged to be done by, with or for the Board;

(c) all non-recurring expenditure incurred by the Central Government or any State Government for or in connection with the purposes of the port up to such day and declared to be capital expenditure by the Central Government shall be treated as the capital provided by the Central Government or, as the case may be, the State Government to the Board;

(d) all rates, fees, rents and other sums of money due to the Central Government or, as the case may be, the other authority in relation to the port immediately before such day shall be deemed to be due to the Board;

(e) all suits and other legal proceedings instituted by or against the Central Government or, as the case may be, the other authority immediately before such day for any matter in relation to the port may be continued by or against the Board;

(f) every employee serving under the Central Government or, as the case may be, the other authority immediately before such day solely or mainly for or in connection with the affairs of the port shall become an employee of the Board, shall hold his office or service therein by the same tenure and upon the same terms and conditions of service as he would have held the same if the Board had not been established and shall continue to do so unless and until his employment in the Board is terminated or until his tenure, remuneration or terms and conditions of service are duly altered by the Board:
Provided that the tenure, remuneration and terms and conditions of service of any such employee shall not be altered to his disadvantage without the previous sanction of the Central Government.

(2) Notwithstanding anything contained in the Industrial Disputes Act 1947 (14 of 1947) or in any other law for the time being in force, the transfer of the services of any employees under this section to the Board shall not entitle such employee to any compensation under that Act or other law, and no such claim shall be entertained by any court, tribunal or other authority.

39(3) Notwithstanding anything contained in clause (a) of sub-section (1), the right to fix rates vested in the Board shall vest in the Authority as from the date it is constituted under sub-section (1) of section 47A.

30. Existing rates, etc., to continue until altered by board

As from the appointed day, all rates, fees and other charges in relation to any port, shall, unless and until they are varied by the competent authority in accordance with the provisions of this Act, continue to be levied and collected at the same rate at which they were being levied and collected by the Central Government or, as the case may be, any other authority immediately before such day.

31. Repayment of capital with interest

A Board shall repay, at such intervals and on such terms and conditions as the Central Government may determine, the amount of capital provided under clause (c) of sub-section (1) of section 29 with interest at such rate as may be fixed by that Government and such repayment of capital or payment of interest shall be deemed to be part of the expenditure of the Board.

32. Acquisition of immovable property for the Board
40) When any immovable property is required for the purposes of the Board, the Central Government may, at the request of the Board, procure the acquisition thereof under the provisions of the Land Acquisition Act, 1894 (1 of 1894), and the payment by the Board of the compensation awarded under that Act and of the charges incurred by the Government in connection with the proceedings, the land shall vest in the board.

33. Contracts by Board

Subject to the provisions of section 34, a Board shall be competent to enter into and perform any contract necessary for the performance of its functions under this Act.

34. Mode of executing contracts on behalf of Board

(i) Every contract shall, on behalf of a Board, be made by the Chairman 41[or by any such officer of the Board not below the rank of the Head of a department as the Chairman may, by general or special order, authorise in this behalf] and shall be scaled with the common seal of the Board:

Provided that no contract whereof the value or amount exceeds such value or amount as the Central Government may from time to time fix in this behalf shall be made unless it has been previously approved by the Board:

Provided further that no contract for the acquisition or sale of immovable property or for the lease of any such property for a term exceeding thirty years, and no other contract whereof the value or amount exceeds such value or amount as the Central Government may from time to time fix in this in this behalf, shall be made unless it has been previously approved by the Central Government.
(2) Subject to the provisions of sub-section (1), the form and manner in which any contract shall be made under this Act shall be such as may be prescribed by regulations made in this behalf.

(3) No contract which is not made in accordance with the provisions of this Act and the regulations made thereunder shall be binding on the Board.

CHAPTER V : WORKS AND SERVICES TO BE PROVIDED AT PORTS

35. Power of Board to execute works and provide appliances

(1) A Board may execute such works within or without the limits of the port and provide such appliances as it may deem necessary or expedient.

(2) Such works and appliances may include-

(a) wharves, quays, docks, stages, jetties, piers and other works within the port or port approaches or on the foreshore of the port or port approaches, with all such convenient arches, drains, landing places, stairs, fences, roads, railways, bridges, tunnels and approaches and buildings required for the residence of the employees of the Board as the Board may consider necessary;

(b) buses, railways, locomotives, rolling stock, sheds, hotels, warehouses and other accommodation for passengers and goods and other appliances for carrying passengers and for conveying, receiving and storing goods landed, or to be shipped or otherwise;

(c) moorings and cranes, scales and all other necessary means and appliances for loading and unloading vessels;

(d) reclaiming, excavating, enclosing and raising any part of the foreshore of the port or port approaches which may be necessary for the execution of the works authorised by this Act, or otherwise for the purposes of this Act;
(e) such breakwaters and other works as may be expedient for the protection of the port;

(f) dredgers and other machines for cleaning, deepening and improving any portion of the port or port approaches or of the foreshore of the port or port approaches;

(g) lighthouses, lightships, beacons, buoys, pilot boats and other appliances necessary for the safe navigation of the port and of the port approaches;

(h) vessels, tags or other boats for use within the limits of the port or beyond those limits, whether in territorial waters or otherwise, for the purpose of towing or rendering assistance to any vessel, whether entering or leaving the port or bound elsewhere, and for the purpose of saving or protecting life or property and for the purpose of landing, shipping or transshipping passengers or goods under section 42;

(i) sinking of tube-wells, and equipment, maintenance and use of boats, barges and other appliances for the purpose of the supply of water at the port;

(j) engines and other appliances necessary for the extinguishing of fires;

42[(k) construction of models and plans for carrying out hydraulic studies;

(l) dry docks, slipways, boat basins and workshops to carry out repairs or overhauling of vessels, tugs, boats, machinery or other appliances.]

35A. Power with respect to landing places and bathing ghats

Without prejudice to the powers exercisable under section 35, the Board of Trustees for the port of Calcutta may, if it considers it necessary so to do for the purposes of this Act,-
(i) provide for sufficient number of public landing places from and upon which the public shall be permitted to embark and to land free of charge;

(ii) occupy any bathing ghat, or remove any landing place, within the port and thereafter prohibit the public from resorting to or using the same:

Provided that the Board shall not exercise any power under this section unless it reserves, sets out, makes and provides for the use of the public, such number of bathing ghats within the port as the Central Government may direct.]

36. Power of Board to undertake certain works

44[(1)] A Board may undertake to carry out on behalf of any person any works or services or any class of works or services, on such terms and conditions as may be agreed upon between the Board and the person concerned.

45[(2) A Board may, if it considers it necessary or expedient in the public interest so to do, lend any of its vessels or appliances or the services of any of its employees to any person for such period not exceeding three months and on such terms and conditions as may be agreed upon between the Board and the person concerned.]

37. Power of Board to order sea-going vessels to use docks, wharves, etc

(1) When any dock, berth, wharf, quay, stage, jetty or pier erected at any port or port approaches under the provisions of this Act has been completed with sufficient warehouses, sheds and appliances for receiving, landing or shipping goods or passengers from and upon sea-going vessels, the Board may, after obtaining the approval of the Collector of Customs and by notification published in three consecutive issues of the Official Gazette, declare that such dock, berth, wharf, quay, stage, jetty or pier is ready for receiving, landing and
shipping or for landing or for shipping goods or passengers from and upon
sea-going vessels.

(2) As from the date of the publication of such notification for the third time,
it shall be lawful for the Board, from time to time, when there is room at such
dock, berth, wharf, quay, stage, jetty or pier, to order to come alongside of
such dock, berth, wharf, quay, stage, jetty or pier for the purpose of landing
and shipping goods or passengers or for landing or for shipping the same, any
sea-going vessel within the port or port approaches which has not
commenced to discharge goods or passengers, or which being about to take
in goods or passengers, has not commenced to do so:

Provided that before making such order, the Board shall have regard, as far as
possible, to the convenience of such vessel and of the shippers, in respect of
the use of any particular dock berth, wharf, quay, stage, jetty or pier:

Provided further that if the Board is not the conservator of the port, the
Board shall not itself make the order as aforesaid but shall require the
conservator of the port, or other person exercising the rights, powers, and
authorities of the conservator of the port, to make such order.

38. If accommodation sufficient, all sea-going vessels compelled to use docks,
wharves; etc

When a sufficient number of docks, berths, wharves, quays, stages, jetties or
piers have been provided at any port or port approaches as aforesaid, the
Board may, after obtaining the approval of the Collector of Customs and by
notification published in three consecutive issues of the official Gazette,
direct that no goods or passengers shall be landed or shipped from or upon
any sea-going vessel within the port or port approaches otherwise than at
such docks, berths, wharves, quays, stages, jetties or piers, except with the
sanction of the Board and in accordance with Such conditions as the Board
may specify.
39. Power to order vessels not to come alongside of, or to be removed from, docks, wharves, etc

Any officer appointed by the Board in this behalf may, in cases of emergency or for any reason which appears to him sufficient, by notice in writing, order the master or owner or agent of any sea-going vessel not to bring such vessel alongside of, or to remove such vessel from, any dock, berth, wharf, quay, stage, jetty or pier belonging to or under the control of the Board, and, if such notice is not complied with, the Board may charge, by way of penalty, in respect of such vessel such sum as it thinks fit, not exceeding ten thousand rupees for each day of twenty-four hours, or portion of such day, during which such vessel remains at such dock, berth, wharf, quay, stage, jetty or pier.

Provided that in the case of a vessel ordered to be removed, such charge shall not commence to be made till after the expiry of twelve hours from the service of such notice as aforesaid on the master or owner or agent of the vessel.

40. Power of Central Government to exempt from obligation to use docks, wharves, etc

Notwithstanding anything contained in sections 37 and 38, the Central Government may, if in its opinion it is necessary in the public interest so to do, by general or special order, from time to time, permit certain specified vessels or classes of vessels to discharge or ship goods or certain specified goods or classes of goods, at such place in a port or within the port approaches, in such manner, during such period and subject to such payments to the Board and on such conditions as the Central Government may think fit.

41. Board to declare when vessels other than sea-going vessels compelled to use docks, wharves, etc.
(1) When any dock, berth, wharf, quay, stage, jetty or pier for receiving, landing or shipment of goods or passengers from or upon vessels, not being sea-going vessels, has been made and completed with all proper appliances in that behalf, the Board may, after obtaining the approval of the Collector of Customs, by order published in three consecutive issues of the Official Gazette,—

(i) declare that such dock, berth, wharf, quay, stage, jetty or pier is ready for receiving, landing or shipment of goods or passengers from or on vessels, not being sea-going vessels, and

(ii) direct that within certain limits to be specified therein it shall not be lawful, without the express sanction of the Board, to land or ship any goods or passengers out of, or into, any vessel, not being a sea-going vessel, of any class specified in such order, except at such dock, berth, wharf, quay, stage, jetty or pier.

(2) As from the date of the publication of the order mentioned in sub-section (1) for the third time, it shall not be lawful, without the consent of the Board, for any vessel of such class—

(i) to land or ship any goods or passengers at any place within the limits so specified, except at such dock, berth, wharf, quay, stage, jetty or pier; or

(ii) while within such limits, to anchor, fasten or lie within fifty yards of the ordinary low-water mark.

(3) If after the publication of such order, any such vessel shall, while within the limits so specified, so anchor, fasten or lie, it shall be lawful for the Board to cause the same to be removed out of the sail limits at the expense of the master or owner or agent of the vessel.

42. Performance of services by Board or other person
(1) A Board shall have power to undertake the following services:

(a) landing, shipping or transhipping passengers and goods between vessels in the port and the wharves, piers, quays or docks belonging to or in the possession of the Board;

(b) receiving, removing, shifting, transporting, storing or delivering goods brought within the Board's premises;

(c) carrying passengers by rail or by other means within the limits of the port or port approaches, subject to such restrictions and conditions as the Central Government may think fit to impose; 47[***]

(d) receiving and delivering, transporting and booking and despatching goods originating in the vessels in the port and intended for carriage by the neighbouring railways, or vice versa, as a railway administration under the Indian Railways Act, 1890 (9 of 1890); 48[***] 49[(e) piloting, hauling, mooring, remooring, hooking, or measuring of vessels or any other service in respect of vessels. 49A[and]. 49B[(f) developing and providing, subject to the previous approval of the Central Government, infrastructure facilities for ports.]

(2) A Board may, if so requested by the owner, take charge of the goods for the purpose of performing the service or services and shall give a receipt in such form as the Board may specify.

(3) Notwithstanding anything contained in this section, the Board may, with the previous sanction of the Central Government, authorise any person to perform any of the services mentioned in sub-section (1) on such terms and conditions as may be agreed upon.
(3A) Without prejudice to the provisions of sub-section (3), a Board may, with the previous approval of the Central Government, enter into any agreement or other arrangement, whether by way of partnership, joint venture or in any other manner, with any body corporate or any other person to perform any of the services and functions assigned to the Board under this Act on such terms and conditions as may be agreed upon.

(4) No person authorised under sub-section (3) shall charge or recover for such service any sum in excess of the amount specified by the Authority, by notification in the Official Gazette.

(5) Any such person shall, if so required by the owner, perform in respect of goods any of the said services and for that purpose take charge of the goods and give a receipt in such form as the Board may specify.

(6) The responsibility of any such person for the loss, destruction or deterioration of goods of which he has taken charge shall, subject to the other provisions of this Act, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872.

(7) After any goods have been taken charge of and a receipt given for them under this section, no liability for any loss or damage which may occur to them shall attach to any person to whom a receipt has been given or to the master or owner of the vessel from which the goods have been landed or transhipped.

43. Responsibility of Board for loss, etc., of goods

(1) Subject to the provisions of this Act, the responsibility of any Board for the loss, destruction or deterioration of goods of which it has taken charge shall,
(i) in the case of goods received for carriage by railway, be governed by the provisions of the Indian Railways Act, 1890 (9 of 1890); and

(ii) in other cases, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872 (9 of 1872), omitting the words "in the absence of any special contract" in section 152 of that Act:

50[provided that no responsibility under this section shall attach to the Board-

(a) until a receipt mentioned in sub-section (2) of section 42 is given by the Board; and

(b) after the expiry of such period as may be prescribed by regulations from the date of taking charge of such goods by the Board.]

(2) A Board shall not be in the way responsible for the loss, destruction or deterioration of, or damage to, goods of which it has taken charge, unless notice of such loss or damage has been given within such period as may be prescribed by regulations made in this behalf 51[from the date of taking charge of such goods by the Board] under sub-section (2) of section 42.

44. Accommodation to be provided for customs officers in wharves, etc., appointed under Customs Act

Where the Collector of Customs has, under the provisions of any Act for the levy of duties of customs, appointed any dock, berth, wharf, quay, stage, jetty, pier, warehouse or shed or a portion of any warehouse or shed provided at any port under the provisions of this Act for the use of sea-going vessels to be an approved place for the landing or shipping of goods or a warehouse for the storing of dutiable goods on the first importation thereof without payment of duty, within the meaning of the first-mentioned Act, the Board shall set apart and maintain such place on or adjoining such dock, wharf,
quay, stage, jetty or pier, or in such warehouse or shed or portion thereof, for the use of officers of customs as may be necessary.

45. Dues at customs wharves, etc

Notwithstanding that any dock, berth, wharf, quay, stage, jetty, pier, warehouse or shed or portion thereof at any port has, under the provisions of section 44, been set apart for the use of the officers of customs at the port, all rates and other charges payable under this Act in respect thereof, or for the storage of goods therein, shall be payable to the Board, or to such person or persons as may be appointed by the Board to receive the same.

46. Power to permit erection of private wharves, etc., within a port subject to conditions

(1) No person shall make, erect or fix within the limits of a port or port approaches any wharf, dock, quay, stage, jetty, pier, erection or mooring or undertake any reclamation of foreshore within the said limits except with the previous permission in writing of the Board and subject to such conditions, if any, as the Board may specify.

(2) If any person makes, erects or fixes any wharf, dock, quay, stage, jetty, pier, erection or mooring or undertakes any reclamation of foreshore in contravention of sub-section (1), the Board may, by notice, require such person to remove it within such time as may be specified in the notice and if the person fails so to remove it, the Board may cause it to be removed at the expense of that person.

47. Compensation payable in certain cases where use of any private wharf, etc., rendered unlawful

(1) Where, as a result of an order published under section 38 or section 41, the use of any wharf, dock, berth, quay, stage, jetty or pier, made, fixed or
erected by any person is rendered unlawful, the Board may, after hearing the person concerned, by order, close, remove, fill up or destroy such wharf, dock, berth, quay, stage, jetty or pier, or permit the use thereof to such person on payment of such rates and charges as the Board may, with the previous sanction of the Central Government, determine.

(2) Save as otherwise provided under sub-section (3) no person shall be entitled to claim compensation for any injury, damage or loss caused or alleged to have been caused by an order made under sub-section (1).

(3) If it is proved to the satisfaction of the Board that any such wharf, dock, berth, quay, stage, jetty or pier, was made, fixed or erected by any person with the previous permission of the authority competent to grant such permission, he shall be paid by the Board compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say-

(a) in computing the compensation, there shall not be taken into account any rates or other charges which such person shall be liable to pay for using an wharf, dock, berth, quay, stage, jetty or pier provided by the Board;

(b) the amount of compensation shall be calculated with reference to the cost of construction of such wharf, dock, berth, quay, stage, jetty or pier;

(c) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

(d) where no such agreement can be reached, the Central Government shall appoint as arbitrator, a person who is, or has been, or is qualified for appointment as, a Judge of a High Court;

(e) the Central Government may, in any particular case, nominate a person possessing special knowledge of any matter relating to any case under inquiry
to assist the arbitrator in determining any question which has to be decided by him under this section, and where such nomination is made the person to be compensated may also nominate an assessor for the same purpose;

(f) at the commencement of the proceeding before the arbitrator, the Board and the person to be compensated shall state what in their respective opinion is a fair amount of compensation;

(g) the arbitrator shall, after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and specify the person or persons to whom such compensation shall be paid;

(h) where there is a dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof among such persons;

(i) nothing in [The Arbitration and Conciliation Act, 1996 (26 of 1996)] shall apply to arbitrations under this section;

(j) the arbitrator appointed under this section, while holding arbitration proceedings under this Act, shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:-

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) requiring the discovery and production of documents;

(iii) receiving evidence on affidavits;

(iv) issuing commissions for examination of witnesses or documents;
(k) every award shall also state the amount of costs incurred in the arbitration proceedings under this section and by what persons and in what proportions they are to be paid;

(l) any person aggrieved by an award of the arbitrator made under this section may, within thirty days from the date of the award, prefer an appeal to the High Court within whose jurisdiction the port is situated:

Provided that the High Court may entertain the appeal after the expiry of the said period of days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

CHAPTER VA : TARIFF AUTHORITY FOR MAJOR PORTS

47A. Constitution and incorporation of Tariff Authority for Major Ports

(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint there shall be constituted for the purposes of this Act an Authority to be called the Tariff Authority for Major Ports.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The head office of the Authority shall be at such place as the Central Government may decide from time to time.

(4) The Authority shall consist of the following Members to be appointed by the Central Government, namely:-

(a) a Chairperson from amongst persons who is or who has been a Secretary to the Government of India or has held any equivalent post in the Central
Government and who has experience in the management and knowledge of the functioning of the ports;

(b) a Member from amongst economists having experience of not less than fifteen years in the field of transport or foreign trade;

(c) a Member from amongst persons having experience of not less than fifteen years in the field of finance with special reference to investment or cost analysis in the Government or in any financial institution or industrial or services sector.

47B. Term of office, conditions of service, etc., of Chairperson and other Members

(1) The Chairperson or a Member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

(2) The salaries and allowances payable to and other conditions of service of the Chairperson and the other Members shall be such as may be prescribed by the Central Government.

(3) Notwithstanding anything contained in sub-section (1), the Chairperson or a Member may-

(a) relinquish his office by giving in writing to the Central Government a notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 47D.

(4) If a casual vacancy occurs in the office of the Chairperson or any Member, whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, such vacancy shall be filled up
by the Central Government by making a fresh appointment and the Chairperson or the Member so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed.

47C. Disqualification for the office of Chairperson and Member

A person shall be disqualified for being appointed as a Chairperson or as a Member of the Authority if he is disqualified for being chosen as a Trustee under section 6.

47D. Removal, etc., of Chairperson and Members

(1) The Central Government shall remove from the Authority the Chairperson or any Member, if he-

(a) becomes subject to any disqualification under section 47C;

(b) refuses to act or becomes incapable of acting;

(c) in the opinion of the Central Government has so abused his position as to render his continuance in office detrimental to the public interest, or

(d) is otherwise unsuitable to continue as the Chairperson or as a Member.

(2) The Central Government may suspend the Chairperson or any Member pending an inquiry against him.

(3) No order of removal under this section shall be made unless the Chairperson or the Member concerned, as the case may be, has been given an opportunity to submit his explanation to the Central Government and when such order is passed, the seat of the Chairperson or Member removed shall be declared vacant.
(4) The Chairperson or a Member who has been removed under this section shall not be eligible for re-appointment as a Chairperson or as a Member or in any other capacity under the Authority.

47E. Meetings

The Authority shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be specified by regulations.

47F. Authentication of all orders and decisions of the Authority

All orders and decisions of the Authority shall be authenticated by the signature of the Chairperson or any other Member authorised by the Authority in this behalf.

47G. Vacancy, etc., not to invalidate proceedings of the Authority

No act or proceeding of the Authority shall be invalidated merely by reason of-

(a) any vacancy in, or any defect in, the constitution of the Authority; or

(b) any defect in the appointment of a person acting as a Chairperson or a Member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

47H. Officers and employees of the Authority

(1) The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Act.
(2) The salary and allowances payable to and the other conditions of service of the officers and other employees of the Authority appointed under subsection (1) shall be such as may be specified by regulations.

CHAPTER VI: IMPOSITION AND RECOVERY OF RATES AT PORTS

48. Scales of rates for services performed by Board or other person

(1) The Authority shall from time to time, by notification in the Official Gazette, frame a scale of rates at which, and a statement of conditions under which, any of the services specified hereunder shall be performed by a Board or any other person authorised under section 42 at or in relation to the port or port approaches

(a) transhipping of passengers or goods between vessels in the port or port approaches;

(b) landing and shipping of passengers or goods from or to such vessels to or from any wharf, quay, jetty, pier, dock, berth, mooring, stage or erection, land or building in the possession or occupation of the Board or at any place within the limits of the port or port approaches;

(c) carnage or porterage of goods on any such place;

(d) wharfage, storage or demurrage of goods on any such place;

(e) any other service in respect of vessels, passengers or goods

(2) Different scales and conditions may be framed for different classes of goods and vessels.
49. Scale of rates and statement of conditions for use of property belonging to Board

55[(1) The Authority shall from time to time, by notification in the Official Gazette, also frame a scale of rates on payment of which, and a statement of conditions under which, any property belonging to, or in the possession or occupation of, the Board, or any place within the limits of the port or the port approaches may be used for the purposes specified hereunder]:

(a) approaching or lying at or alongside any buoy, mooring, wharf, quay, pier, dock, land, building or place as aforesaid by vessels;

(b) entering upon or plying for hire at or on any wharf, quay, pier, dock, land, building, road, bridge or place as aforesaid by animals or vehicles carrying passengers or goods;

(c) leasing of land or sheds by owners of goods imported or intended for export or by steamer agents;

(d) any other use of any land, building, works, vessels or appliances belonging to or provided by the Board.

(2) Different scales and conditions maybe framed for different classes of goods and vessels.

57[(3) Notwithstanding anything contained in sub-section (1), the Board may, by auction or by inviting tenders, lease any land or shed belonging to it or in its possession or occupation at a rate higher than that provided under sub-section (1).]

49A. Fees for pilotage and certain other services
(1) Within any port, fees may be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels, at such rates as the Authority may fix.

(2) The fees now chargeable for such services shall continue to be chargeable unless and until they are altered in exercise of the power conferred by sub-section (1).

(3) The Central Government may, in special cases, remit the whole or any portion of the fees chargeable under sub-section (1) or sub-section (2).

49B. Fixation of port-dues

(1) The Authority shall from time to time, by notification in the Official Gazette, fix port-dues on vessels entering the port.

(2) An order increasing or altering the fees for pilotage and certain other services or port-dues at every port shall not take effect until the expiration of thirty days from the day on which the order was published in the Official Gazette.

50. Consolidated rates for combination of services

The Authority may, from time to time, by notification in the Official Gazette, from a consolidated scale of rates for any combination of service specified in section 48 or for any combination of such service or services with any user or permission to use any property belonging to or in the possession or occupation of the Board, as specified in section 49 or the fees to be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels as specified in section 49A or the port dues to be fixed on vessels entering the port and for the duration of such dues as specified in section 49B.

50A. Port-dues on vessels in ballast
A vessel entering any port in ballast and not carrying passengers shall be charged with a port-due at a rate to be determined by the Authority and not exceeding three-fourths of the rate with which she would otherwise be chargeable.

50B. Port-due on vessels not discharging or taking in cargo

When a vessel enters a port but does not discharge or take in any cargo or passengers therein, with the exception of such unshipment and reshipment as may be necessary for purposes of repair, she shall be charged with a port-due at a rate to be determined by the Authority and not exceeding half the rate with which she would otherwise be chargeable.

50C. Publication of orders of Authority

Every notification, declaration, order and regulation of the Authority made in pursuance of this Act shall be published in the Official Gazette and a copy thereof shall be kept in the office of the conservator and at the custom-house, if any, of every port to which the declaration, order or rule relates, and shall there be open at all reasonable times to the inspection of any person without payment of any fee.]

51. Power to levy concessional rates in certain cases

In framing scales under any of the foregoing provisions of this Chapter, the Authority may prescribe a lower rate in respect of,-

(a) coastal goods, that is to say, goods, other than imported goods as defined in the Customs Act, 1962 (52 of 1962), carried in a vessel from one Indian port to another Indian port:

Provided that the Authority shall not make any discrimination between one Indian port and another such port in prescribing a lower rate under this section;
(b) other goods, in special cases.

52. [***]

53. Exemption from, and remission of, rates or charges

A Board may, in special cases and for reasons to be recorded in writing, exempt either wholly or partially any goods or vessels or class of goods or vessels from the payment of any rate or of any charge leviable in respect thereof according to any scale in force under this Act or remit the whole or any portion of such rate or charge so levied.

54. Power of Central Government, to require modification or cancellation of rates

(1) Whenever the Central Government considers it necessary in the public interest so to do, it may, by order in writing together with a statement of reasons therefore, to cancel any of the scales in force or modify the same, such period as that Government may specified in the order.

(2) If the Authority fails or neglects to comply with the direction under sub-section (1) within the specified period, the Central Government may cancel any of such scales or make such modification therein as it may think fit;

Provided that before so cancelling or modifying any scale the Central Government shall consider any objection or suggestion which may be made by the Authority during the specified period.

(3) When in pursuance of this section any of the scales has been cancelled or modified, such cancellation or modification, shall be published by the Central Government in the Official Gazette and shall thereupon have effect accordingly.
55. Refund of overcharges

No person shall be entitled to a refund of an overcharge made by a Board unless this claim to the refund has been preferred in writing by him or on his behalf to the Board within six months from the date of payment duly supported by all relevant documents:

Provided that a Board may of its own motion remit overcharges made in its bills at any time.

56. Notice of payment of charges short-levied or erroneously refunded

(1) When any Board is satisfied that any charge leviable under this Chapter has been short-levied or erroneously refunded, it may issue a notice to the person who is liable to pay such charge or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that no such notice shall be issued after the expiry of two years,

(a) when the charge is short-levied, from the date of the payment of the charge;

(b) where a charge has been erroneously refunded, from the date of the refund.

(2) The Board may, after considering the representation, if any, made by the person to whom notice is issued under sub-section (1), determine the amount due from such person and thereupon such person shall pay the amount so determined.

57. Board not to lease rates without sanction
66[The Authority shall not lease], farm, sell or alienate any power vested in it under this Act of levying rates without the prior sanction of the Central Government.

58. Time for payment of rates on goods

Rates in respect of goods to be landed shall be payable immediately on the landing of the goods and rates in respect of goods to be removed from the premises of a Board, or to be shipped for export, or to be transhipped, shall be payable before the goods are so removed or shipped or transhipped.

59. Board's lien for rates

(1) For the amount of all rates 67[leviable under this Act] in respect of any goods, and for the rent due to the Board for any buildings, plinths stacking areas, or other premises on or in which any goods may have been placed, the Board shall have a lien on such goods, and may seize and detain the same until such rates and rents are fully paid.

(2) Such lien shall have priority over all other liens and claims, except for general average and for ship-owner's lien upon the said goods for freight and other charges where such lien exists and has been preserved in the manner provided in sub-section (1) of section 60, and for money payable to the Central Government 68[under any law for the time being in force relating to customs, other than by way of penalty or fine].

60. Ship-owner's lien for freight and other charges

(1) if the master or owner of any vessel or his agent, at or before the time of landing from such vessel any goods at any dock, wharf, quay, stage, jetty, berth, mooring or pier belonging to or in the occupation of a Board, gives to the Board a notice in writing that such goods are to remain subject to a lien for freight or other charges payable to the ship-owner, to an amount to be
mentioned in such notice, such goods shall continue to be liable to such lien
to such amount.

(2) The goods shall be retained in the custody of the Board at the risk and
expense of the owners of the goods until such lien is discharged as hereinafter
mentioned; and godown or storage rent shall be payable by the party entitled
to such goods for the time during which they may be so retained.

(3) Upon the production before any officer appointed by the Board in that
behalf of a document purporting to be a receipt for, or release from, the
amount of such lien, executed by the person by whom or on whose behalf
such notice has been given, the Board may permit such goods to be removed
without regard to such lien, provided that the Board shall have used
reasonable care in respect to the authenticity of such document.

61. Sale of goods after two months if rates or rent are not paid or lien for;
freight is not discharged

(1) A Board may, after the expiry of two months from the time when any
goods have passed into its custody, or in the case of animals and perishable or
hazardous goods after the expiry of such shorter period not being less than
twenty-four hours after the landing of the animals or goods as the Board may
think fit, sell by public auction 69[or in such cases as the Board considers it
necessary so to do, for reasons to be recorded in writing, sell by tender,
private agreement or in any other manner] such goods or so much thereof as,
in the opinion of the Board, may be necessary-

(a) if any rates payable to the Board in respect of such goods have not been
paid, or

(b) if any rent payable to the Board in respect of any place on or in which
such goods have been stored has not been paid, or
(c) if any lien of any ship-owner for freight or other charges of which notice has been given has not been discharged and if the person claiming such lien for freight or other charge has made to the Board an application for such sale.

(2) Before making such sale, the Board shall give ten days' notice of the same by publication thereof in the Port Gazette, or where there is no Port Gazette, in the Official Gazette and also in at least one of the principal local daily newspapers:

Provided that in the case of animals and perishable or hazardous goods, the Board may give such shorter notice and in such manner as, in the opinion of the Board, the urgency, of the case admits of.

(3) if the address of the owner of the goods has been stated on the manifest of the goods or in any of the documents which have come into the hands of the Board, or is otherwise known notice shall also be given to him by letter delivered at such address, or sent post, but the title of a bona fide purchaser of such goods shall not be invalidated by reason of the omission to send such notice, nor shall any such purchaser be bound to inquire whether such notice has been sent.

(4) Notwithstanding anything contained in this section, arms and ammunition and controlled goods may be sold at such time and in such manner as the Central Government may direct.

Explanation.-In this section and section 62-

(a) "arms and ammunition" have the meanings respectively assigned to them in the Arms Act, 1959 (54 of 1959);

(b) "controlled goods" means goods the price or disposal of which is regulated under any law for the time being in force.

62. Disposal of goods not removed from premises of Board within time limit
(1) Notwithstanding anything contained in this Act, where any goods placed in the custody of the Board upon the landing thereof are not removed by the owner or other person entitled thereto from the premises of the Board within one month from the date on which such goods were placed in their custody, the Board may, if the address of such owner or person is known, cause a notice to be served upon him by letter delivered at such address or sent by post, or if the notice cannot be so served upon him or his address is not known, cause a notice to be published in 71[the Port Gazette or where there is no Port Gazette, in the Official Gazette] and also in at least one of the principal local daily newspapers, requiring him to remove the goods forthwith and stating that in default of compliance therewith the goods are liable to be sold by public auction 72[or by tender, private agreement or in any other manner] :

Provided that where all the rates and charges payable under this Act in, respect of any such goods have been paid, no notice of removal shall be so served or published under this sub-section unless two months have expired from the date on which the goods were placed in the custody of the Board.

(2) The notice referred to in subsection (1) may also be served agents of the vessel by which such goods were landed.

(3) If such owner or person does not comply with the requisition in the notice served upon him or published under sub-section (1), the Board may, at any time after the expiration of two months from the date on which such goods were placed in its custody sell the goods by public auction 73[or in such cases as the Board considers it necessary so to do, for reasons to be recorded in writing sell by tender, private agreement or in any other manner] after giving notice of the sale in the manner specified in sub-sections (2) and (3) of section 61.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (3)-
(a) the Board may, in the case of animals and perishable or hazardous goods, give notice of removal of such goods although the period of one month or, as the case may be, of two months specified in sub-section (1) has not expired or give such shorter notice of sale and in such manner as, in the opinion of the Board, the urgency of the case requires;

(b) arms and ammunition and controlled goods may be sold in accordance with the provisions of sub-section (4) of section 61.

(5) The Central Government may, if it deems necessary so to do in the public interest, by notification in the Official Gazette, exempt any goods or classes of goods from the operation of this section.

63. Application of sale proceeds

(1) The proceeds of every sale under section 61 or section 62 shall be applied in the following order-

(a) in payment of the expenses of the sale;

(b) in payment, according to their respective priorities, of the liens and claims excepted in sub-section (2) of section 59 from the priority of the lien of the Board;

(c) in payment of the rates and expenses of landing, removing, storing or warehousing the same, and of all other charges due to the Board in respect thereof [including demurrage (other than penal demurrage) payable in respect of such goods for a period of four months from the date of landing];

74[(d) in payment of any penalty or fine due to Central Government under any law for the time being in force relating to customs;]

(e) in payment of any other sum due to the Board.]
(2) The surplus, if any, shall be paid to the importer, owner or consignee of
the goods or to his agent, on an application made by him in this behalf within
six months from the date of the sale of the goods.

(3) Where no application has been made under sub-section (2), the surplus
shall be applied by the Board for the purposes of this Act.

64. Recovery of rates and charges by distraint of vessel

(1) if the master of any vessel in respect of which any rates or penalties are
payable under this Act, or under any regulations or orders made in pursuance
thereof, refuses or neglects to pay the same or any part thereof on demand,
the Board may distraint or arrest such vessel and the tackle, apparel and
furniture belonging thereto, or any part thereof, and detain the same until the
amount so due to the Board, together with such further amount as may
accrue for any period during with such further amount as may accrue for any
period during which the vessel is under distraint or arrest, is paid.

(2) In case any part of the said rates or penalties, or of the cost of the distress
or arrest, or of the keeping of the same, remains unpaid for the space of five
days next after any such distress or arrest has been so made, the Board may
cause the vessel or other thing so distraint or arrested to be sold, and, with
the proceeds of such sale, shall satisfy such rates or penalties and costs,
including the costs of sale remaining unpaid, rendering the surplus (if any) to
the master of such vessel on demand.

65. Grant of port-clearance after payment of rates and realisation of damages,
etc .

If a Board gives to the officer or the Central Government whose duty it is to
grant the port-clearance to pay to any vessel at the port, a notice stating,-
(i) that an amount specified therein is due in respect of rates, fines, penalties or expenses chargeable under this Act or under any regulations or orders made in pursuance thereof, against such vessel, or by the owner or master of such vessel in respect thereof, or against or in respect of any goods on board such vessel; or

(ii) that an amount specified therein is due in respect of any damage referred to in section 116 and such amount together with the cost of the proceedings for the recovery very thereof before a Magistrate under that section has not been realised,

such officer shall not grant such port-clearance until the amount so chargeable or due has been paid or, as the case may be, the damage and cost have been realised.

CHAPTER VII : BORROWING POWERS OF BOARD

66. Power to raise loans

(1) A Board may, with the previous sanction of the Central Government and after due notification in the Official Gazette, raise loans for the purposes of this Act:

Provided that no such notification shall be necessary if a loan is obtained from the Central Government or a State Government.

(2) Loans may be raised by a Board in the open market on Port Trust securities issued by it or may be obtained from the Central Government or a State Government.

(3) The terms of all loans shall be subject to the approval of the Central Government.

67. Port Trust securities
(1) A Board may, with the sanction of the Central Government, prescribe the form in which Port Trust securities shall be issued by it and the mode in which, and the conditions is subject to which, they may be transferred.

(2) The holder of any Port Trust security in any form may obtain in exchange therefore, upon such terms as the Board may from time to time determine, a Port Trust security in any other form proscribed by regulations.

(3) The right to sue in respect of moneys secured by Port Trust securities shall be exercisable by the holders thereof for the time being without preference in respect of priority of date.

68. Right of survivors of joint or several payees of securities

(1) Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872 (9 of 1872)-

(a) when any Port Trust security is payable to two or more persons jointly, and either or any of them dies, the Port Trust security shall be payable to the survivor or survivors of those persons, and

(b) when any such security is payable to two or more persons severally and either or any of them dies, the security shall be payable to the survivor or survivors of those persons, or to the representatives of the deceased, or to any of them.

(2) This section shall apply whether such death occurred or occurs before or after the appointed day.

(3) Nothing herein contained shall affect any claim which any representative of a deceased person may have against the survivor or survivors under or in respect of any security to which sub-section (1) applies.
(4) For the purpose of this section, it body incorporated or deemed to be incorporated under the Companies Act, 1956 (1 of 1956), or the co-operative Societies Act, 1912 (2 of 1912) or any other enactment for the time being in force, whether within or without India, shall be deemed to die when it is dissolved.

69. Power of one or two or more joint holders to grant receipts

Where two or more persons are joint holders of any Port Trust security, any one of those persons may give an effectual receipt for any interest payable in respect of such security unless notice to the contrary has been given to the Board by any other of the holders.

70. Indorsements to be made on security itself

Notwithstanding anything in section 15 of the Negotiable Instruments Act, 1881 (26 of 1881), no indorsement of a Trust security, which is transferable by indorsement, shall be valid unless made by the signature of the holder inscribed on the back of the security itself.

71. Indorser of security not liable for amount thereof

Notwithstanding anything in the Negotiable instruments Act, 1881 (26 of 1881), a person shall not by reason only of his having indorsed any Port Trust security be liable to pay any money due, either as principal or as interest, thereunder.

72. Impression of signature on securities

(1) The signature of the person authorised to sign port Trust security on behalf of the Board may be printed, engraved or lithographed or impressed by such other mechanical process, as the Board may direct, on such securities.
(2) A Signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if it had been inscribed in the proper handwriting of the person so authorised.

73. Issue of duplicate securities

(1) When any Port Trust security is alleged to have been lost, stolen or destroyed either wholly or in part, and a person claims to be the person to whom but for the loss, theft or destruction it could be payable, he may, on application to the Board and on producing proof to its satisfaction of the loss, theft or destruction and of the justice of the claim and on payment of such fee, if any, as may be prescribed by regulations, obtain from the Board an order for-

(a) the payment of interest in respect of the security said to be lost, stolen or destroyed, pending the issue of a duplicate security; and

(b) the issue of a duplicate security payable to the applicant.

(2) An order shall not be passed under sub-section (1) until after the issue by the Board of the prescribed notification of the loss, theft or destruction.

(3) A list of the securities in respect of which an order is passed under sub-section (1) shall be published in such manner as the Board may prescribe.

(4) if at any time before the board becomes discharged under the provisions of this Act from liability in respect of any security the whole of which is alleged to have been lost, stolen or destroyed, such security is found, any order passed in respect thereof under this section shall be cancelled.

74. Issue of converted, etc. securities

(1) A Board may, subject to such conditions as it may prescribe, on the application of a person claiming to be entitled to a Port Trust security or
securities issued by it, on being satisfied on the justice of the claim and on delivery of the security or securities receipted in such manner and on payment of such fee, if any, as it may prescribe convert, consolidate or sub-divide the security or securities, and issue to the applicant a new security securities accordingly.

(2) The conversion, consolidation or sub-division referred to in sub-section (1) may be into security or securities of the same or different classes or of the same or different loans.

74A. Recognition as holder of Port Trust securities in certain cases

The person to whom a duplicate security has been issued under section 73 or a new security or securities has or have been issued under section 74 shall be deemed for the purposes of section 74 B to have been recognised by the Board as the holder of the security or securities; and a duplicate security or a new security or securities so issued to any person shall be deemed to constitute a new contract between the Board and such person and all persons deriving title thereafter through him.

74B. Legal effect of recognition by the Board under section 74A

No recognition by the Board of a person as the holder of a Port Trust security or securities shall be called in question by any court so far as such recognition affects the relations of the Board with the person recognise by it as the holder of a Port Trust security or securities or with any person claiming an interest in such security or securities; and any such recognition by the Board of any person shall operate to confer on that person a title to the security or securities subject only to a personal liability to the rightful owner of the security or securities for money had and received on his account.

75. Discharge in certain cases
Notwithstanding anything contained in 78[the Limitation Act, 1963 (36 of 1963)]-

(i) on payment of the amount due on a Port Trust security on or after the date on which payment becomes due, or

(ii) when a duplicate security has been issued under section 73, or

(iii) when a new security or securities has or have been issued upon conversion, consolidation or sub-division under section 74,

the Board shall be discharged from all liability in respect of the security or securities so paid or in place of which a duplicate or new security or securities has or have been issued-

(a) in the case of payment-after the lapse of six years from the date on which payment was due;

(b) in the case of a duplicate security-after the lapse of six years from the date of the publication under sub-section (3) of section 73 of the list in which the security is first mentioned or from the date of the last payment of interest on the original security, whichever date is later;

(c) in the case of a new security issued upon conversion, consolidation or sub-division after the lapse of six years from the date of the issue thereof.

76. power of Board to make regulations

A Board may, from time to time, make regulations to provide for all or any of the following matters, namely:-

(a) the person, if any, authorised to sign, and the mode of affixing the corporate seal and of attestation of documents relating to Port Trust securities issued or to be issued by the Board;
(b) the manner in which payment of interest in respect of such Port Trust securities is to be made, recorded and acknowledged;

(c) the circumstances and the manner in which such Port Trust securities may be renewed;

(d) the circumstances in which such securities must be renewed before further payment of interest thereon can be claimed;

(e) the form in which such securities delivered for renewal, conversion, consolidation or sub-division are to be receipted;

(f) the proof which is to be produced by a person applying for duplicate securities;

(g) the form and manner of publication of the notification mentioned in sub-section of section 73 and the manner of publication of the list mentioned in sub-section (3) of that section;

(h) the nature and amount of indemnity to be given by a person applying for the payment of interest on Port Trust securities alleged to have been wholly or partly lost, stolen or destroyed, or for the issue of duplicate Port Trust securities;

(i) the conditions subject to which Port Trust securities may be converted, consolidated or sub-divided;

(j) the amounts for which stock certificate may be issued;

(k) generally, all matters connected with the grant of duplicate, renewed, converted, consolidated and sub-divided securities;

(l) the fees to be paid in respect of the issue of duplicate securities and of the renewal, conversion, consolidation and sub-division of Port Trust securities;
(m) the fees to be levied in respect of the issue of stock certificates.

77. Place and currency of loans raised by Board

All loans contracted by a Board under this Act shall be raised in India, and in Indian currency, unless the Central Government, by notification in the Official Gazette, otherwise directs.

78. Security for loans taken out by Board

All loans raised by a Board under this Act shall be a first charge on-

(a) the property vested, or which may hereafter during the currency of the loans become vested, in the Board 79[other than-

(i) any sum set apart by the Board-

(1) as the sinking fund for the purpose of paying off any loan; or

(2) for the payment of pension to its employees; or

(ii) the provident or pension fund established by the Board; and]

(b) the rates leviable by the Board under this Act.

79. Remedies of Government in respect of loans made to Boards

The Central Government or a State Government shall have in respect of loans made by it to a Board, or of loans made to any other authority for the repayment of which the Board is legally liable, the same remedies as holders of Port Trust securities issued by the Board; and such Government shall not be deemed to possess any prior or greater rights in respect of such loans than holders of such Port Trust securities:
Provided that where the terms of any such loan made before the appointed day expressly provide that the loan shall have priority over all other loans in the matter of repayment by the Board, such loan shall have priority.

80. Power of Board to repay loans before due date

A Board may, with the previous sanction of the Central Government, apply any sums, out of moneys which may come into its hands under the provisions of this Act and which can be so applied without prejudicing the security of the other holders of Port Trust securities, in repaying to the Government any sum which may remain due to it in respect of the principal of any loan although the time fixed for the repayment of the same may not have arrived:

Provided that no such repayment shall be made of any sum less than ten thousand rupees; and that, if such repayment is made, the amount of interest in each succeeding instalment shall be so adjusted as to represent exactly the interest due on the outstanding principal.

81. Establishment of sinking fund

(1) In respect of every loan raised by a Board under this Act, which is not repayable before the expiration of one year from the date of the loan, the Board shall set apart half-yearly out of its income as a sinking fund a sum sufficient to liquidate the loan within a period which shall not in any case, unless the previous consent of the Central Government has been obtained, exceed thirty years; but the maximum period shall not in any case exceed sixty years:

Provided that a sinking fund need not in the absence of any stipulation to that effect be established in the case of loans taken by the Board from the Central Government or any State Government.
(2) Where any sinking fund has, before the appointed day, been established by any authority in respect of a loan raised by it for which loan the Board is liable under this Act, the sinking fund so established by that authority shall be deemed to have been established by the Board under this section.

82. Investment and application of sinking fund

(1) The sums so set apart by a Board under sub-section (1) of section 81 and the sums forming part of any sinking fund referred to in sub. section (2) of that section shall be invested in public securities or in such other securities as the Central Government may approve in this behalf, and shall be held in trust for the purposes of this Act by the Board.

(2) A Board may apply the whole or any part of the sums accumulated in any sinking fund in or towards the discharge of the moneys for the repayment of which the fund has been established:

Provided that it pays into the fund in each year, and accumulates until the whole of the moneys borrowed are discharged a sum equivalent to the interest which would have been produced by the sinking fund, or the part of the sinking fund so applied.

83. Examination of sinking fund

(1) A sinking fund established for the liquidation of any loan shall be subject to annual examination by such person as may be appointed by the Central Government in this behalf, and the person so appointed shall ascertain whether the cash and the current market value of the securities at the credit of the, fund are actually equal to the amount which would have been accumulated had investment been regularly made and had the rate of interest as originally estimated been obtained thereon.
(2) A Board shall pay forthwith into the sinking fund any amount which the person appointed under sub-section (1) to conduct the annual examination of the fund may certify to be deficient, unless the Central Government specifically sanctions a gradual readjustment.

(3) if the cash and the current market value of the securities at the credit of a sinking fund are in excess of the amount which should be at its credit, the person appointed under subsection (1) shall certify the amount of this excess, and the Board may, with the previous sanction of the Central Government,--

(a) withdraw the whole or any part of the certified excess in which case the Trustees in whose names the sinking fund is invested under sub-section (1) of section 82, shall forthwith transfer securities of the requisite current market value, or cash and securities of the requisite current market value, to the Board, of

(b) reduce or discontinue the half-yearly contributions to the sinking fund required under section 81, or

(c) adopt a combination of these measures.

84. Power of Board to raise loans on short-term bills

Nothing contained in this Act shall be deemed to affect the power of the Board to raise loans under the Local Authorities Loans Act, 1914 (9 of 1914)

85. Power of Board to take temporary loans or overdrafts

Notwithstanding anything contained in this Act, a Board may borrow moneys by means of temporary overdraft or otherwise by pledging the securities hold by the Board in its reserve funds or on the security of the fixed deposits of the Board in its banks:

Provide that such temporary overdrafts or other loans-
(a) shall not at any time have a loner currency thin six months; and

(b) shall not be taken, without previous sanction of the Central Government, if at any time in any year the amount of such overdrafts or other loans exceeds 81[such amount as the Central Government may fix in this behalf and different amounts may be fixed with respect to different Boards]:

Provided further that all moneys so borrowed by temporary overdrafts or otherwise shall be expended for the purposes of this Act.

86. Powers of Board to borrow money from International Bank for Reconstruction and Development or other foreign institutions

Notwithstanding anything contained in this Act or any other law for the time being in force, a Board may, with the previous sanction of the Central Government and on such terms and conditions as may be approved by that Government, raise for the purposes of this Act loans in any currency or currencies from the International Bank for Reconstruction and Development or from any other bank or institution in any country outside India; and no other provisions of this Chapter shall apply to or in relation to any such loan unless the terms and conditions of the loan or the approval thereof by the Central Government otherwise provide.

CHAPTER VIII : REVENUE AND EXPENDITURE

87. General account of Port

All moneys received by or on behalf of a Board under the provisions of this Act, and all moneys received by it as the Conservator of the port and of the Port approaches or as the body appointed under sub-section (1) of section 36 of the Indian Ports Act 82[***] shall be credited to a fund called the general account of the Port.
88. Application of moneys in general account

(1) The moneys credited to the general account under section 87, shall, subject to the provisions of section 89 of this Act and of section 36 of the Indian Ports Act, be applied by the Board in payment of the following charges, namely:

(a) the interest and instalments of principal due in respect of any loan that may have been raised or obtained by the Board or for the repayment of which the Board may be liable, and payments to the sinking fund established for such loan;

(b) the salaries, fees, allowances, pensions, gratuities, compassionate allowances or other moneys due to-

(i) the Chairman, Deputy Chairman and other Trustees;

(ii) the employees of the Board; and

(iii) the surviving relatives, if any of such employees;

(c) the contributions, if any, payable to the Central Government or any State Government on account of the pension and leave allowance of any officer lent to the Board by such Government;

(d) the cost and expenses, if any, incurred by the Board in the conduct and administration of any provident or welfare fund or loan or special fund established by the Board;

(e) the contributions, if any, duly authorised to be made by regulations made under this Act to any such fund as is referred to in clause (d);

(f) any charges for which the Board may be liable under section 108 or section 109;
83(g) such sums as may, from time to time, be agreed upon by the Board and a State Government or the Central Government or any other authority, as a reasonable contribution payable by the Board towards the expenses in connection with the watch and ward functions of the police force or the Central Industrial Security Force or any other force which the State Government or the Central Government or the other authority, as the case may be, may establish and maintain for the protection of the port and the docks, warehouses and other property of the Board;

(h) the cost of repairs and maintenance of property belonging to or vested in Board and all charges upon the same and all working expenses;

(i) the cost of the execution and provision of any new work or appliance specified in section 35 which the Board may determine to charge to revenue;

(j) any expenditure incurred under section 36;

(k) any other expenditure which may be incurred by the Board generally for the purposes of this Act,

(l) any other charge which may on the application of the Board [or otherwise] be specially sanctioned by the Central Government or for which the Board may be legally liable.

Subject to such general or special directions as the Central Government may, for the purpose of maintenance or development of major ports in the country or generally for the development of shipping and navigation, give in this behalf, all moneys standing at the credit of the Board which cannot immediately be applied in the manner or for the purposes specified in subsection (1) shall-
(a) be deposited in the State Bank of India or in such corresponding new bank or banks and subject to such conditions as may, from time to time, be specified by the Central Government; or

(b) be invested in public securities or in such other securities as the Central Government may approve in this behalf, and the said securities shall be held in trust by the Board for the purpose of this Act;

(c) be given as a loan to the Board of another port for the development of that port.

(d) be invested, in any manner, in an arrangement referred to in sub-section (3A) of section 42;

(e) be invested, in any manner, in the development or management of any port including a port other than a major port on such terms and conditions as may be approved by the Central Government.

Explanation.- For the purposes of this sub-section, "corresponding new bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or the Banking Companies (Acquisition and Transfer Undertakings) Act, 1980 (40 of 1980).

(3) Every direction issued by the Central Government under sub-section (2) shall be complied with by the Board and shall not be called in question in any court on any ground.

(4) No suit or other legal proceeding shall lie against the Central Government, the Board or any officer or other employee of the Board authorised by it in this behalf for any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any direction issued under sub-section (2).
89. Repealed by the Indian Ports Amendment Act, 1992, w.e.f. 12th. August, 1992

90. Establishment of reserve funds

(1) A Board may, from time to time, set apart such sums out of its surplus income as it thinks fit, as a reserve fund or funds for the purpose of expanding existing facilities or creating new facilities at the port or for the purpose of providing against any temporary decrease of revenue or increase of expenditure from transient causes or for purposes of replacement or for meeting expenditure arising from loss or damage from fire, cyclones, shipwreck or other accident or for any other emergency arising in the ordinary conduct of its work under this Act:

Provided that the sums set apart annually in respect of, and the aggregate at any time of, any such reserve fund or funds shall not exceed such amounts as may, from time to time, be fixed in that behalf by the Central Government.

(2) Any such reserve fund or funds may be invested in public securities or in such other securities as the Central Government may approve in this behalf.

91. Power to reserve Port Trust securities for Board's own investments

(1) For the purposes of any investment which a Board is authorised to make by this Act, it shall be lawful for every Board to reserve and set apart any securities to be issued by it on account of any loan to which the consent of the Central Government has been given, provided that the intention to so reserve and set apart such securities has been notified as a condition to the issue of the loan.

(2) The issue by any Board of any such securities direct to and in the name of the Board shall not operate to extinguish or cancel such securities, but every
security so issued shall be valid in all respects as if issued to, and in the name of, any other person.

(3) The purchase by a Board, or the transfer, assignment or indorsement to a Board or to the Trustees of the sinking fund set up by a Board, of any security issued by the Board, shall not operate to extinguish or cancel any such security but the same shall be valid and negotiable in the same manner and to the same extent as if held by, or transferred or assigned or indorsed to, any other person.

92. Prior sanction of Central Government to charge expenditure to capital

(1) No expenditure shall be charged by a Board to capital without the previous sanction of the Central Government:

Provided that a Board may without such sanction charge to capital expenditure not exceeding such limit as may be specified, and subject to such conditions as may be imposed, by the Central Government.

(2) Nothing in sub-section (1) shall be deemed to require the further sanction of the Central Government in any case where the actual expenditure incurred as a charge to capital exceeds the expenditure sanctioned in this behalf by the Central Government unless the excess is more than ten per cent. of the expenditure so sanctioned.

93. Works requiring sanction of Board of Central Government

(1) No new work or appliance, the estimated cost of which exceeds such amount as may be fixed by the Central Government in this behalf, shall be commenced or provided by a Board, nor shall any contract be entered into by a Board in respect of any such new work or appliance until a plan of, and estimate for, such work or appliance has been submitted to, and approved by, the Board; and, in case the estimate cost of any such new work or appliance
exceeds such amount as may, from time to time, be fixed by the Central Government in this behalf, the sanction of the Central Government to the plan and estimate shall be obtained before such work is commenced or appliance provided.

(2) Nothing in sub-section (1) shall be deemed to require the further sanction of the Central Government in any case where the actual expenditure incurred does not exceed by more than ten per cent., the estimated cost so sanctioned.

94. Powers of Chairman as to execution of works

Notwithstanding anything contained in section 93, the Chairman may direct the execution of any work the cost of which does not exceed such maximum limit as may be fixed by the Central Government in this behalf, and may enter into contracts for the execution of such works but in every such case the Chairman shall, as soon as possible, make a report to the Board of any such directions given or contract entered into by him.

95. Power of Board to compound or compromise claims

Every Board may compound or compromise any claim or demand or any action or suit instituted by or against it for such sum of money or other compensation as it deems sufficient

Provided that no settlement shall be made under this section without the previous sanction of the Central Government if such settlement involves the payment by the Board of a sum exceeding such amount as may be specified by the Central Government in this behalf.

96. Writing off of losses

(1) Subject to such conditions as may be specified by the Central Government, where a Board is of opinion that any amount due to or any loss, whether of money or of property, incurred by, the Board is irrecoverable, the
Board may, with the previous approval of the Central Government, sanction the writing off finally of the said amount or loss:

Provided that no such approval of the Central Government shall be necessary where such irrecoverable amount or loss does not exceed, in any individual case and in the aggregate in any year, such amounts as the Central Government may, from time to time, by order, fix and different amounts may be fixed with respect to different Boards.

Notwithstanding anything contained in sub-section (1), where the Chairman is of opinion that any amount due to, or any loss, whether of money or of property, incurred by the Board is irrecoverable, the Chairman may sanction the writing off finally of such amount or loss provided that such amount or loss does not exceed, in any individual case and in the aggregate in any year, such amounts as the Central Government may, from time to time, by order, fix and different amounts may be fixed with respect to different Boards.

In every case in which the Chairman sanctions the writing off of any amount or loss under sub-section (2), he shall make a report to the Board giving reasons for such sanction.

Powers, etc., of Board as Conservator or body appointed under section 36 of Indian Ports Act

All the powers, authorities and restrictions contained in this Act in respect of the works by this Act authorised, shall apply to the works which may be executed by the Board as the Conservator of the port or as the body appointed under sub-section (1) of section 36 of the Indian Ports Act and also to the sanction of such works, the estimates therefor, and the expenditure thereunder.

Budget estimates
(1) A Board shall, on or before the thirty-first day of January in each year, hold a special meeting at which the Chairman of the Board shall submit an estimate of the income and expenditure of the Board for the next financial year, in such form as the Central Government may specify.

(2) A copy of such estimate shall be sent by post or otherwise to each Trustee so as to reach him not less than ten clear days prior to the date appointed for the special meeting referred to in sub-section (1).

(3) The Board shall consider the estimate at such meeting and may provisionally approve of it with or without modifications.

(4) The Board shall, on or before the tenth day of February, cause a copy of such estimate as provisionally approved by it, to be sent to the Central Government.

(5) The Central Government may sanction the estimate or may return it with remarks and may call for such additional information as it may deem necessary.

(6) When an estimate is returned under sub-section (5), the Board shall proceed to reconsider the estimate with reference to such remarks and shall furnish such additional information as the Central Government may call for and shall, if necessary, modify or alter the estimate and resubmit it to the Central Government.

(7) The Central Government shall sanction the estimate with or without modifications.

(8) Where any such estimate is not sanctioned by the Central Government before the commencement of the financial year to which it relates, the Central Government may authorise the Board to incur such expenditure as may be necessary in the opinion of the Central Government until such time as the
approval of the estimate by the Central Government is communicated to the Board.

99. Preparation of supplemental estimate

A Board may in the course of any year for which an estimate has been sanctioned by the Central Government cause one or more supplemental estimates for the residue of such year to be prepared, and the provisions of section 98 shall, so far as may be, apply to such estimate as if it were an original annual estimate.

100. Re-appropriation of amounts in estimate

Subject to any directions which the Central Government may give in this behalf, any sum of money or part thereof of which the expenditure has been authorised in an estimate for the time being in force sanctioned by the Central Government and which has not been so spent, may at any time be re-appropriated by the Board to meet any excess in any other expenditure authorised in the said estimate:

Provided that no such re-appropriation shall be made from one Major head of expenditure to another such head without the previous sanction of the Central Government.

101. Adherence to estimate except in emergency

(1) Subject to the provisions of section 100, no sum exceeding such amount as the Central Government may fix in this behalf shall, save in cases of pressing emergency, be expended by, or on behalf of, any Board unless such sum is included in some estimate of the Board at the time in force which has been finally sanctioned by the Central Government.

(2) If any sum exceeding such limit as may have been fixed in this behalf under sub-section (1) is so expended by any Board on a pressing emergency,
the circumstances shall be forthwith reported by the Chairman to the Central Government, together with an explanation of the way in which it is proposed by the Board to cover such extra expenditure.

102. Accounts and audit

(1) A Board shall maintain proper accounts and other relevant records and prepare the annual statement of accounts, including the balance-sheet in such form as may be specified by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Board shall be audited-

(i) once in every year; and

(ii) if so required by the Comptroller and Auditor-General of India, concurrently with the compilation of such accounts,

by the Comptroller and Auditor-General of India or such other persons as may be appointed by him in this behalf and any amount payable to him by the Board in respect of such audit shall be debitable to the general account of the Board.

(3) The Comptroller and Auditor-General of India or any person appointed by him in connection with the audit of the accounts of a Board shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of Government amounts and, in particular, shall have the right to demand the production of books of accounts, connected vouchers and other documents of the Board.

103. Publication of audit report
(1) Within fourteen days after the audit and examination of the accounts of a Board have been completed, the Comptroller and Auditor-General of India shall forward copies of the audit report to the Central Government and to the Board.

(2) The Central Government shall cause every audit report to be laid for not less than thirty days before each House of Parliament as soon as may be after such report is received by that Government.

104. Board to remedy defects and irregularities pointed out in audit report

Every Board shall forthwith take into consideration any defects or irregularities that may be pointed out by the Comptroller and Auditor-General of India in the audit report on the income and expenditure of the Board and shall take such action thereon as the Board may think fit and shall also send a report of the action so taken to the Central Government.

105. Central Government to decide difference between Board and auditors

If there is a difference of opinion between any Board and the Comptroller and Auditor-General of India on any point included in the audit report, and the Board is unable to accept and implement the recommendations, if any, made by him on such point, the matter shall forthwith be referred to the Central Government which shall pass final orders thereon and the Board shall be bound to give effect to such orders.

CHAPTER IX : SUPERVISION AND CONTROL OF CENTRAL GOVERNMENT

106. Administration report

As soon as may be after the first day of April in every year and not later than such date as may be fixed in this behalf by the Central Government, every Board shall submit to the Central Government a detailed report of the
administration of the port during the preceding year ending on the thirty-first day of March, in such form as the Central Government may direct.

107 Submission of statements of income and expenditure to Central Government

(1) Every Board shall annually, or oftener if directed by the Central Government so to do, submit statements of its income and expenditure in such form and at such time as that Government may direct.

(2) A copy of all such statements shall be open to the inspection of the public at the office of the Board during office hours on payment of such fee for each inspection as may from time to time be fixed by the Board.

108. Power of Central Government to order survey or examination of works of Board

The Central Government may, at any time, order a local survey or examination of any works of a Board, or the intended site thereof and the cost of such survey and examination shall be borne and paid by the Board from and out of the moneys credited to the general account of the port.

109. Power of Central Government to restore or complete works at the cost of Board

If, at any time, any Board -

(a) allows any work or appliance constructed or provided by, or vested in, the Board to fall into disrepair; or

(b) does not, within a reasonable time, complete any work commenced by the Board or included in any estimate sanctioned by the Central Government; or
(c) does not, after due notice in writing, proceed to carry out effectively any work or repair or to provide any appliance which is necessary in the opinion of the Central Government for the purposes of this Act,

the Central Government may cause such work to be restored or completed or carried out, or such repairs to be carried out or such appliance to be provided and the cost of any such restoration, completion, construction, repair or provision shall be paid by the Board from and out of the moneys credited to the general account of the port.

110. Power of Central Government to supersede Board

(1) if, at any time, the Central Government is of opinion-

(a) that on account of a grave emergency, any Board is unable to perform the duties imposed on it by or under the provisions of this Act or of any other law, or

(b) that the Board has persistently made default in the performance of the duties impose upon it by or under the provisions of this Act or of any other law and as a result of such default, the financial position of the Board or the administration of the port has greatly deteriorated the Central Government may, by notification in the Official Gazette, supersede the Board for such period, not exceeding six months at a time, as may be specifies in the notification:

Provided that before issuing a notification under this sub-section for the reasons mentioned in clause (b), the Central Government shall give a reasonable time of not less than three months to the Board to show cause why it could not be superseded and shall consider the explanations and objections, if any, of the Board.
(2) Upon the publication of a notification under sub-section (1) superseding the Board,—

(a) all the Trustees shall, as from the date of supersession, vacate their offices as such Trustees;

(b) all the powers and duties which may, by or under the provisions of this Act or of any other law, be exercised or performed by or on behalf of the Board, shall until the Board is reconstituted under clause (b) or clause (c) of sub-section (3) be exercised and performed by such person or persons as the Central Government may direct;

(c) all property vested in the Board shall, until the Board is reconstituted under clause (b) or clause (c) of sub-section (3), vest in the Central Government.

(3) on the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may—

(a) extend the period of supersession for such further term, not exceeding six months, as it may consider necessary, or

(b) reconstitute the Board by fresh appointment and fresh election, and in such case, any persons who vacated their offices under clause (a) of sub-section (2) shall not be deemed disqualified for appointment or election, as the case may be, or

(c) reconstitute the Board by appointment only for such period as it may consider necessary and in such a case, the persons who vacated their offices under clause (a) of sub-section (2) shall not be deemed disqualified for such appointment merely because they were Trustees when the Board was superseded
Provided that the Central Government may, at any time before the expiration of the period of supersession, whether as originally specified under subsection (1) or as extended under this sub-section, take action under clause (b) or clause (c) of this sub-section.

(4) The Central Government shall cause a notification issued under subsection (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest possible opportunity.

110A. Power of Central Government to supersede the Authority

(1) If the Central Government is of the opinion that the Authority is unable to perform, or has persistently made default in the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, or has wilfully or without sufficient cause, failed to comply with any direction issued by the Central Government under section 111, the Central Government may, by notification in the Official Gazette, supersede the Authority for such period as may be specified in the notification:

Provided that, before issuing a notification under this sub-section, the Central Government shall give reasonable opportunity to the Authority to show cause why it should not be superseded and shall consider the explanation and objections, if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the Authority,-

(a) the Chairperson and the Members of the Authority shall, notwithstanding that their term of office has not expired as from the date of supersession, vacate their offices as such Chairperson or Members as the case may be;
(b) all the powers and duties which may, by or under provisions of this Act, be exercised or performed by or on behalf of the Authority shall, during the period of supersession, be exercised and performed by such person or persons as the Central Government may direct.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may—

(a) extend the period of supersession for such further period as it may consider necessary; or

(b) reconstitute the Authority in the manner provided in section 47A.]

111. Power of Central Government to issue directions to Board

93[(1) Without prejudice to the foregoing provisions of this Chapter, the Authority and every Board shall, in the discharge of its functions under this Act be bound by such directions on questions of policy as the Central Government may give in writing from time to time:

Provided that the Authority or the Board, as the case may be, shall be given opportunity to express its views before any direction is given under this sub-section.]

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

CHAPTER X: PENALTIES

112. Every person employed by the Authority of this Act to be a public servant

Every person employed by the Authority or by a Board under this Act shall, for the purposes of sections 166 to 171 (both inclusive), 184, 185 and 409 of
Indian Penal Code and for the purposes of the Prevention of Corruption Act, 1988 be deemed to be a public servant within the meaning of section 21 of the said Code.]

113. Penalty for contravention of sections 37, 38, 40 and 41

Whoever contravenes the provisions of any order issued under section 37 or section 38 or section 41 or fails to comply with any condition imposed under section 40 shall be punishable with fine which may extend to 95[ten thousand rupees], and where the contravention or failure is a continuing one, with further fine which may extend to 96[one thousand rupees] for every day after the first during which such contravention or failure continues.

114. Penalty for setting up wharves, quays, etc., without permission

Any person, who contravenes the provisions of section 46 shall be punishable with fine which may extend to 97[ten thousand rupees] for the first contravention, and with a further fine which may extend to 97[one thousand rupees] for every day after the first during which the contravention continues.

115. Penalty for evading rates, etc

Any person who, with the intention of evading payment of the rates lawfully due, in respect of any goods or vessel carrying any goods, to the Board -

(a) understates or incorrectly gives the weight, quantity, value or description of such goods or the tonnage of such vessel in any document presented to any employee of the Board for the purpose of enabling him to determine such rates; or

(b) removes or attempts to remove or abets the removal of such goods or such vessel shall be punishable with fine which may extend to 1[ten times] the amount of rates so due subject to a minimum of 2[five hundred rupees].
116. Recovery of value of damage to property of Board. If, through the negligence of any person having the guidance or command of any vessel, or of any of the mariners or persons employed on such vessel, any damage is caused to any dock, wharf, quay, mooring, stage, jetty, pier or other work in the possession of any Board or any movable property belonging to any Board, the amount of such damage shall, on the application of the Board be recoverable, together with the cost of such recovery, by distress and sale, under a Magistrate’s warrant, of a sufficient portion of the boats, masts, spares, ropes, cables, anchors or stores belonging to such vessel: Provided that no Magistrate shall issue such a warrant until the master of the vessel has been duly summoned to appear before him and, if he appears, until he has been heard; and provided also that no such warrant shall issue if the vessel was at the time under the orders of a duly authorised employee of the Board and the damage caused was attributable to the order, act or improper omission of such employee.

117. Other offences. Any person who contravenes any of the provisions of this Act or of any rule, regulation or order made thereunder, for the contravention of which no penalty is expressly provided thereunder, shall be punishable with fine which may extend to 4[two thousand rupees].

117A. 5[Person interested in contracts, etc., with the Board to be deemed to have committed an offence under section 168 of the Indian Penal Code. Any person who, being a Trustee or an employee of the Board, acquires, directly or indirectly, any share or interest in any contract or employment with, by or on behalf of, any Board, shall be deemed to have committed an offence under section 168 of the Indian Penal Code: Provided that nothing in this section shall apply to a person who is deemed not to have a share or interest in any contract or employment under the proviso to clause (d) of section 6].
118. Cognizance of offences. No court inferior to that of a 6[Metropolitan Magistrate or Judicial Magistrate of the first class] shall try any offence punishable under this Act or any rule or regulation made thereunder.

119. Offences by companies.

(1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to such punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any negligence on the part of, any director, manager, secretary, or other officer of the company, such director, manager, secretary, or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.
120. Limitation of proceedings in respect of things done under the Act. No suit or other proceeding shall be commenced against a Board or any member or employee thereof for anything done, or purporting to have been done, in pursuance of this Act until the expiration of one month after notice in writing has been given to the Board or him stating the cause of action, or after six months after the accrual of the cause of action.

121. Protection of acts done in good faith. No suit or other legal proceeding shall lie against a Board or any member or employee thereof in respect of anything which is in good faith done or intended to be done under this Act or any rule or regulation made thereunder, or for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers or other things belonging to or under the control of the Board.

122. Power of Central Government to make rules.

(1) The Central Government may, by notification in the Official Gazette, make rules for all or any of the following purposes, namely:--

(a) the times and places of the meetings of a Board and the procedure to be followed for the transaction of business at such meetings;

(b) the fees and allowances payable to the members of a Board or of its committees;

(c) any other matter in respect of which rules may be made by the Central Government.

(2) The power to make rules under this section is subject to the condition of the rules being made after previous publication.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more
successive sessions, and if before the expiry of the session 1[ immediately following the session] or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

123. General power of Board to make regulations. Without prejudice to any power to make regulations contained elsewhere in this Act, a Board may make regulations consistent with this Act for all or any of the following purposes, namely:--

(a) for the times and places of the meetings of its committees and for the procedure to be followed for the transaction of business at such meetings;

(b) for the form and manner in which contracts shall be made by the Board;

(c) for the form of receipt to be given under sub- section (2) of section 42;

(d) for the period within which notice may be given under sub- section (2) of section 43;

(e) for the guidance of persons employed by the Board under this Act;

(f) 3[ for the safe, efficient and convenient use, management and control of the docks, wharves, quays, jetties, railways, tramways, buildings and other works constructed or acquired by, or vested in, the Board, or of any land or foreshore acquired by, or vested in, the Board under this Act];

(g) for the reception, porterage, storage and removal of goods brought within the premises of the Board, for the exclusive conduct of these operations by the Board or persons employed by the Board; and for declaring the procedure
to be followed for taking charge of goods which may have been damaged before landing, or may be alleged to have been so damaged;

(h) for keeping clean the port, river or basins or the bank of the river and the works of the Board, and for preventing filth or rubbish being thrown therein or thereon;

(i) for the mode of payment of rates leviable by the Board under this Act;

(j) for regulating, declaring and defining the docks, wharves, quays, jetties, stages and piers vested in the Board on which goods shall be landed from vessels and shipped on board vessels;

(k) for regulating the manner in which, and the conditions under which, the loading and unloading of all vessels within the port or port approaches shall be carried out;

(l) for regulating the lighterage of cargo between ships or between ships and shore or between shore and ships;

(m) for the exclusion from the premises of the Board of disorderly or other undesirable persons and of trespassers;

(n) for ensuring the safety of the port;

(o) generally, for the efficient and proper administration of the port.

124. Provisions with respect to regulations.

(1) No regulation made by the Board under this Act [other than a regulation made under sub- section (2) of section 17] shall have effect until it has been approved by the Central Government and until such approval has been published in the Official Gazette.
(2) No such regulation 2[ other than a regulation made under section 28,] shall be approved by the Central Government until the same has been published by the Board for two weeks successively in the Official Gazette and until fourteen days have expired from the date on which the same had been first published in that Gazette.

(3) Any regulation made under this Act other than a regulation made under section 28 may provide that a breach thereof shall be punishable with fine which may extend to 3[ two thousand rupees] and where the breach is a continuing one, with further fine which may extend to 4[ five hundred rupees] for every day after the first during which such breach continues.

(4) 2[ Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation].

125. Power of Central Government to direct regulations to be made or to make regulations.

(1) Whenever the Central Government considers necessary in the public interest so to do, it may, by order in writing together with a statement of reasons therefor, direct any Board to make any regulations for all or any of the matters specified in section 28 or section 76 or section 123 or to amend any regulations, within such period as the Central Government may specify in this behalf: Provided that the Central Government may extend the period specified by it by such period or periods as it may consider necessary.
(2) If any Board, against whom a direction is issued by the Central Government under sub-section (1), fails or neglects to comply with such direction within the period allowed under sub-section (1), that Government may make the regulations or amend the regulations, as the case may be, either in the form specified in the direction or with such modifications thereof as the Central Government may think fit: Provided that before so making or amending the regulations the Central Government shall consider any objection or suggestion made by the Board within the said period.

(3) Where in pursuance of sub-section (2), any regulations have been made or amended, the regulations so made or amended shall be published by the Central Government in the Official Gazette and shall thereupon have effect accordingly.

126. Power of Central Government to make first regulations. Notwithstanding anything contained in this Act, the first regulations under this Act shall be made by the Central Government and shall have effect on being published in the Official Gazette.

127. Posting of certain regulations, etc. The text of the regulations made under clauses (e) to (n) of section 123 and the scale of rates together with a statement of conditions framed by any Board under Chapter VI shall be prominently posted by the Board in English, in Hindi and in the regional language on special boards to be maintained for the purpose at the wharves, docks, piers and other convenient places on the premises of the Board.

128. Saving of right of Central Government and Municipalities to use wharves, etc., for collecting duties and of power of Customs Officers. Nothing in this Act shall affect--

(1) the right of the Central Government to collect customs duties or of any municipality to collect town duties at any dock, berth, wharf, quay, stage, jetty or pier in the possession of a Board, or
(2) any power or authority vested in the customs authorities under any law for
the time being in force.

129. Application of certain provisions of the Act to aircraft. The provisions of
sections 35, 37, 38, 39, 40, 41, 42, 48, 49, 50, 64, 65, 115, 121, 123 and 124
shall apply in relation to all aircraft making use of any port while on water as
they apply in relation to vessels.

130. Power to evict certain persons from the premises of Board.

(1) Notwithstanding anything contained in any other law for the time being in
force, if a Board in exercise of the powers conferred on it by regulations made
under this Act cancel the allotment of any premises made to any employee of
the Board, the Board may, by notice in writing, order such allottee or any
other person who may be in occupation of the whole or any part of the
premises to surrender or deliver possession thereof to the Board or a person
appointed by the Board in that behalf within such period as may be specified
in the notice. Explanation.-- For the purposes of this section," premises"
means any building or part of a building and includes--

(i) the gardens, grounds and out- houses, if any, appertaining to such building
or part of a building;

(ii) any fittings affixed to such building or part of a building for the more
beneficial enjoyment thereof; and

(iii) any furniture, books or other things belonging to the Board and found in
such building or part of a building.

(2) If any allottee or other person refuses or fails to comply with an order
made under sub- section (1), any magistrate of the first class may, on
application made by or on behalf of the Board, order any police officer, with
proper assistance, to enter into the premises and evict any person from, and
take possession of, the premises and to deliver the same to the Board or a person appointed by the Board in that behalf and the police officer may, for the purpose, use such force as may be necessary.

(3) Any such notice as is referred to in sub-section (1) may be served--

(a) by delivering or tendering it to the allottee or any other person who may be in occupation of the whole or any part of the premises, or

(b) if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the premises, or

(c) by registered post.

131. Alternative remedy by suit. Without prejudice to any other action that may be taken under this Act, a Board may recover by suit any rates, damages, expenses, costs, or in the case of sale the balance thereof, when the proceeds of sale are insufficient, or any penalties payable to, or recoverable by, the Board under this Act or under any regulations made in pursuance thereof.

132. Requirements as to publication of notifications, orders, etc., in the Official Gazette.

(1) Any requirement in this Act that a notification, order, rule or regulation issued or made by a Board or by the Central Government shall be published in the Official Gazette, shall, unless otherwise expressly provided in this Act, be construed as a requirement that the notification, order, rule or regulation shall--

(a) where it is issued or made by the Board, be published in the Official Gazette of the State in which the port is situated, and

(b) where it is issued or made by the Central Government, be published in the Gazette of India.
(2) Any notification, order, rule or regulation issued or made by the Central Government shall, for general information, be also republished in the Official Gazette of the State in which the port is situated.

133. Repeal.

(1) On the application of this Act to the port of Kandla, the Bombay Landing and Wharfage Fees Act, 1882[ Bombay Act of 1882 ] shall cease to have force in relation to that port.

(2) On the application of this Act to the ports of Cochin and Vishakhapatnam, the Madras Outputs Landing and Shipping Fees Act, 1885 (Madras Act 3 of 1885 ) shall cease to have force in relation to those ports.

(2A) On the application of this Act to the port of Bombay, the Bombay Port Trust Act, 1879 , (Bombay Act 6 of 1879 ) except the provisions thereof relating to municipal assessment of the properties of the port of Bombay and matters connected therewith, shall cease to have force in relation to that port.

(2B) On the application of this Act to the port of Calcutta, the Calcutta Port Act, 1890 , (Bengal Act 3 of 1890 ) except the provisions thereof relating to municipal assessment of the properties of the port of Calcutta and matters connected therewith, shall cease to have force in relation to that port.

(2C) On the application of this Act to the port of Madras, the Madras Port Trust Act, 1905 , (Madras Act 2 of 1905 ) shall cease to have force in relation to that port.

(2D) Notwithstanding anything contained in sub- sections (2A), (2B) and (2C),

(a) every Trustee of the Board of Trustees of the port of Bombay or Madras holding office as such immediately before the application of this Act to the port of Bombay or Madras, as the case may be, shall be deemed to have been
appointed or elected as such under this Act and shall continue to hold such office after such application until a Board of Trustees in respect of that port is constituted under the provisions of this Act;

(b) every Commissioner of the port of Calcutta holding office as such immediately before the application of this Act to that port shall be deemed to have been appointed or elected as a Trustee under the provisions of this Act and shall continue to hold such office after such application until a Board of Trustees in respect of that port is constituted under the provisions of this Act;

(c) anything done or any action taken or purported to have been done or taken (including any rule, regulation, bye-law, notification, order or notice made or issued or any resolution passed or any appointment or declaration made or any licence, permission or exemption granted or any rates, charges or duties levied or any penalty or fine imposed) under the Acts referred to in sub-sections (2A), (2B) and (2C) shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(2E) Upon the cesser of operation of the provisions of the Acts referred to in sub-section (2A), (2B) and (2C), the provisions of section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply as if the provisions first-mentioned were provisions contained in a Central Act and such cesser of operation were a repeal; and the mention of particular matters in sub-section (2D) shall not be held to prejudice or affect the general application of the said section 6 with regard to the effect of repeals]."
134. Power to remove difficulties. If any difficulty arises in giving effect to the provisions of this Act, particularly in relation to the transition from the enactments repealed by this Act to the provisions of this Act, the Central Government may, by general or special order, do anything not inconsistent with such provisions which appears to it to be necessary or expedient for the purpose of removing the difficulty: Provided that no such order shall be made in respect of a port after the expiry of a period of two years from the appointed day.]
THE INDIAN PORTS ACT, 1908
(Act No. 15 of 1908)

An Act to consolidate the Enactments relating to Ports and Port-charges.

Whereas it is expedient to consolidate the enactments relating to ports and port-charges;

It is hereby enacted as follows:

CHAPTER I: PRELIMINARY

1. Title and extent

(1) This Act may be called the Indian Ports Act, 1908.

(2) It shall extend, save as otherwise appears from its subject or context,

(a) to the ports mentioned in the first schedule, and to such parts of the navigable rivers and channels leading to such ports respectively as have been declared, to be subject to Act XXII of 1855 (for the Regulation of Ports and Port-dues) or to the Indian Ports Act, 1875 (12 of 1875), or to the Indian Ports Act, 1889 (10 of 1889);

(b) to the other ports or parts of navigable rivers or channels to which the Government in exercise of the power hereinafter conferred, extends this Act.

(3) But nothing in section 31 or section 32 shall apply to any port, river or channel to which the section has not been specially extended by the Government.
2. Saving

Nothing in this Act shall-

(i) apply to any vessel belonging to, or in the service of, 3[the Central Government or a State Government] 4[***] or to any vessel of war belonging to any Foreign Prince or State, or

(ii) deprive any person of any right of property or other private right, except as hereinafter expressly provided, or

(iii) affect any law or rule relating to the customs or any order or direction lawfully made or given pursuant thereto.

3. Definitions

In this Act, unless there is anything repugnant in the subject or context,-

5[(1) "Magistrate" means a person exercising powers under the Code of Criminal Procedure, 1973]

(2) "master", when used in relation to any vessel 6[or any aircraft making use of any port], means, subject to the provisions of any other enactment for the time being in force, any person (except a pilot or harbour-master 6[of the port]) having for the time being the charge or control of the vessel 6[or the aircraft, as the case may be] ;

(3) "pilot" means a person for the time being authorised by the 2[Government] to pilot vessels.

(4) "port" includes also any part of a river or channel in which this Act is for the time being in force;

(5) "port-officer" is synonymous with master-attendant;
(6) "ton" means a ton as determined or determinable by the rules for the time being in force for regulating the measurement of the net tonnage of British ships; and

(7) "vessel" includes anything made for the conveyance mainly by water of human beings or of property;

7[(8) "major port" means any port which the Central Government may by notification in the Official Gazette declare, or may under any law for the time being in force have declared, to be a major port;

(9) "Government", as respects major ports, for all purposes, and, as respects other ports for the purposes of making rules under clause (p) of section 6(1) and of the appointment and control of port health officers under section 17, means the Central Government, and save as aforesaid, means the State Government.]

8[***]

4. Power to extend or withdraw the Act or certain portions thereof

(1) 9[***] 2[Government] may, by notification in the Official Gazette,-

(a) extend this Act to any port in which this Act is not in force or to any part of any navigable river or channel which leads to a port and in which this Act is not in force;

(b) specially extend the provisions of section 31 or section 32 to any port to which they have not been so extended;

(c) withdraw this Act or section 31 or section 32 from any port or any part thereof in which it is for the time being in force.
(2) A notification under clause (a) or clause (b) of sub-section (1) shall define the limits of the area to which it refers.

(3) Limits defined under sub-section (2) may include any piers, jetties, landing-places, wharves, quays, docks and other works made on behalf of the public for convenience of traffic, for safety of vessels or for the improvement, maintenance or good government of the port and its approaches whether within or without high-water-mark, and, subject to any rights of private property therein, any portion of the shore or bank within fifty yards of high-water-mark.

(4) In sub-section (3) the expression "high-water-mark" means the highest point reached by ordinary spring tides at any season of the year.

5. Alteration of limits of ports

(1) The 2[Government] may,subject to any rights of private property, alter the limits of any port in which this Act is in force.

11[Explanation.- For the removal of doubts, it is hereby declared that the power conferred on the Government by this sub-section includes the power to alter the limits of any port by uniting with that port any other port or any part of any other port.]

(2) When the 2[Government] alters the limits of a port under sub-section (1), it shall declare or describe, by notification in the Official Gazette, and by such other means, if any, as it thinks fit, the precise extend of such limits.

6. Power to make part-rules

(1) The 2[Government] may, in addition to any rules which it may make under any other enactment for the time being in force, make such rules, consistent with this Act, as it thinks necessary for any of the following purposes, namely :-
(a) for regulating the time and hours at and during which, the speed at which, and the manner and conditions in and on which, vessels generally or vessels of any class defined in the rules, may enter, leave or be moved in any port subject to this Act;

(b) for regulating the berths, stations and anchorages to be occupied by vessels in any such port;

(c) for striking the yards and top masts, and for rigging-in the booms and yards, of vessels in any such port, and for swining or taking-in davits, boats and other things projecting from such vessels;

(d) for the removal or proper hanging or placing of anchors, spars and other things being in or attached to vessels in any such port;

(e) for regulating vessels whilst taking-in or discharging passengers, ballast or cargo, or any particular kind of cargo, in any such port, and the stations to be occupied by vessels whilst so engaged;

12[(ee) for regulating the manner in which oil or water mixed with oil shall be discharged in any such port and for the disposal of the same;]

13[(eee) for regulating the bunkering of vessels with liquid fuel in any such port and the description of barges, pipe lines or tank vehicles to be employed in such bunkering;]

(f) for keeping free passages of such width as may be deemed necessary within any such port and along or near to the piers, jetties, landing-places, wharves, quays, docks moorings and other works in or adjoining to the same, and for marking out the spaces so to be kept free;

(g) for regulating the anchoring, fastening, mooring and un-mooring of vessels in any such port;
(h) for regulating the moving and warping of all vessels within any such port and the use of warps therein;

(i) for regulating the use of the mooring buoys, chains and other moorings in any such port;

(j) for finding the rates to be paid in a port other than a major port for the use of such moorings when belonging to the Government, or of any boat, hawser or other thing belonging to the Government;

(jj) for regulating the use of piers, jetties, landing places, wharves, quays, warehouses and sheds when belonging to the Government;

(jj) for fixing the rates to be paid for the use of piers, jetties, landing places, wharves, quays, warehouse and sheds of any port, other than a major port, when belonging to the Government;

(k) for licensing and regulation catamarans plying for hire, and flats and cargo, passenger and other boats plying, whether for hire or not, and whether regularly or only occasionally, in or partly within and partly without any such port, and for licensing and regulating the crews of any such vessels; and for determining the quantity of cargo or number of passengers or of the crews to be carried by any such vessels and the conditions under which such vessels shall be compelled to ply for hire and further for conditions under which any licence may be revoked;

(kk) for providing for the fees payable in respect of the services specified in clause (k) for any port, other than a major port;

(l) for regulating the use of fires and lights within any such port;

(m) for enforcing and regulating the use of signals or signal-lights by vessels by day or by night in any such port;
(n) for regulating the number of the crew which must be, on board any vessel afloat within the limits of any such port;

(o) for regulating the employment of persons engaged in cleaning or painting vessels, or in working in the bilges, boilers or double bottoms of vessels in any such port;

18[(p) 19[**] for the prevention of danger arising to the public health by the introduction and the spread of any infectious or contagious disease from vessels arriving at, or being in, any such and for the prevention of the conveyance of infection or contagion by means of any vessel sailing from any such port, and in particular and without prejudice to the generality of this provision, for-

(i) the signals to be hoisted and the places of anchorage to be taken up by such vessels having any case, or suspected case, of any infectious or contagious disease on board, or arriving at such port from a port in which, or in the neighbourhood of which, there is believed to be, or to have been at the time when the vessel left such port, any infectious or contagious disease;

(ii) the medical inspection of such vessels and of persons on board such vessels;

(iii) the questions to be answered and the information to be supplied by masters, pilots and other persons on board such vessels;

(iv) the detention of such vessels and of persons on board such vessels;

(v) the duties to be performed in cases of any such disease by masters, pilots and other persons on board such vessels;

(vi) the removal to hospital or other place approved by the health-officer and the detention therein of any person from any such vessel who is suffering or suspected to be suffering from any such disease;
(vii) the cleansing, ventilation and disinfection of such vessels or any part thereof and or of any articles therein likely to retain infection or contagion, and the destruction of rats or other vermin in such vessels; and

(viii) the disposal of the dead on such vessels; and]

(q) for securing the protection from beat of the officers and crew of vessels in any such port by requiring the owner or master of any such vessel:

(i) to provide curtains and double awnings for screening from the sun's rays such portions of the deck as are occupied by, or are situated immediately above, the quarters of the officers and crew,

(ii) to erect windsails so far as the existing portholes or apertures in the deck admit of their being used for ventilating the quarters of the officers and crew;

(iii) when the deck is made of iron and not wood-sheathed, to cover with wooden planks or other suitable non-conducting material such portions of the deck as are situated immediately above the quarters of the officers and crew;

(iv) when the quarters used by the crew and the galley are separated by an iron bulk-head only to furnish a temporary screen of some suitable non-conducting material between such quarters and the galley.

20[***]

(2) The power to, make rules under Sub-section (1) 21[***] is subject to the condition of the rules being made after previous publication:

Provided that nothing in this sub-section shall be construed to affect the validity of any rule in force immediately before the commencement of the Indian Ports Act, 1889 (10 of 1889), and continued by section 2, sub-section (2), of that Act.
(2A) Every rule made by the State Government under this Act shall be laid as soon as may be after it is made, before the State Legislature.

(2B) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session, immediately following the session or the successive Sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be; so however, that any such modification, or annulment shall be without prejudice to the validity of anything previously done under that rule].

(3) If any person disobeys any rule made under clause (p) of subsection (1), he shall be punishable for every such offence with fine which may extend to one thousand rupees.

(4) If a master fails wholly or in part to do any act prescribed by any rule made under clause (p) of sub-section (1) the health-officer shall cause such act to be done, and the reasonable expenses incurred in doing such act shall be recoverable by him from such master.

7. Appointment of conservator

(1) The Government] shall appoint some officer or body of persons to be conservator of every part subject to this Act.

(2) Subject to any direction by the Government] to the contrary,-

(a) in ports where there is a port-officer, the port-officer shall be the conservator;
(b) in ports where there is no port-officer, but where there is a harbour-master, the harbour master shall be the conservator.

(3) Whom the harbour-master is not conservator, the harbour-master and his assistants shall be subordinate to, and subject to the control of, the conservator.

(4) The conservator shall be subject to the control of the Government, or of any intermediate authority which the Government may appoint.

8. Power of conservator to give and enforce directions for certain specified purposes

(1) The conservator of any port subject to this Act may, with respect to any vessel within the port, give directions for carrying into effect any rule for the time being in force therein under section 6.

(2) If any person wilfully and without lawful excuse refuses or neglects to obey any lawful direction of the conservator, after notice thereof has been given to him, he shall, for every such offence, be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to one hundred rupees for every day during which, after such notice as aforesaid, he is proved to have wilfully and without lawful excuse continued to disobey the direction.

(3) In case of such refusal or neglect, the conservator may do, or cause to be done, all act necessary for the purpose of carrying the direction into execution, and may hire and employ proper persons for that purpose, and all reasonable expenses incurred in doing such acts shall be recoverable by him from the person so refusing or neglecting to obey the direction.

9. Power to cut warps and ropes
The conservator of any such port may, in case of urgent necessity, cut or cause to be cut, any warp, rope cable or hawser endangering the safety of any vessel in the port or at or near to the entrance thereof.

10. Removal of obstructions within limits of port

(1) The conservator may remove, or caused to be removed, any timber, raft or other thing, floating or being in any part of any such port, which in his opinion obstructs or impedes the free navigation thereof or the lawful use of any pier, jetty, landing-place wharf, quay, dock, mooring or other work on any part of the shore or bank which has been declared to be within the limits of the port and is not private property.

(2) The owner of any such timber, raft or other thing shall be liable to pay the reasonable expenses of the removal thereof, and if such owner or any other person has without lawful excuse caused any such obstruction or impediment, or causes any public nuisance affecting or likely to affect such free navigation or lawful use, he shall also be punishable with fine which may extend to one hundred rupees.

(3) The conservator or any Magistrate having jurisdiction over the offence may cause any such nuisance to be abated.

11. Recovery of expenses of removals

If the owner of any such timber, raft or other thing, or the person who has caused any such obstruction, impediment or public nuisance as is mentioned in the last foregoing section, neglects to pay the reasonable expenses incurred in the removal thereof, within one week after demand, or within fourteen days after such removal has been notified in the official Gazette or in such other manner as the Government by general or special order, directs, the conservator may cause such timber, raft or other thing, or the materials of any
public nuisance so removed, or so much thereof as may be necessary, to be sold by public auction;

and may retain all the expenses of such removal and sale out of the proceeds of the sale, and shall pay the surplus of such proceeds, or deliver so much of the thing or materials as may remain unsold, to the person entitled to receive the same;

and, if no such person appears, shall cause the same to be kept and deposited in such manner as the 2[Government] directs;

and may, if necessary from time to time, realise the expenses of keeping the same, together with the expenses of sale, by a further sale of so much of the thing or materials as may remain unsold.

12. Removal of lawful obstructions

(1) If any obstruction or impediment to the navigation of any port subject to this Act has been lawfully made, or has become lawful by reason of the long continuance of such obstruction or impediment, or otherwise, the conservator shall report the same for the information of the 2[Government], and shall, with the sanction of 23[the Government], cause the same to be removed or altered, making reasonable compensation to the person suffering damage by such removal or alteration.

(2) Any dispute arising concerning such compensation shall be determined according to the law relating to like disputes in the case of land required for public purposes.

13. Fouling of Government moorings

(1) If any vessel hooks or gets foul of any of the buoys or moorings laid down by or by the authority of the 2[Government] in any such port, the master of such vessel shall not, nor shall any other person, except in case of emergency,
lift the buoy or mooring for the purpose of unhooking or getting clear from
the same without the assistance of the conservator.

and the conservator, immediately on receiving notice of such accident, shall
assist and superintend the clearing of such vessel;

and the master of such vessel shall, upon demand, pay such reasonable
expenses as may incurred in clearing the same.

(2) Any master or other person offending against the provisions of this
section shall, for every such offence, be punishable with fine which may
extend to one hundred rupees.

14. Raising or removal or wreck impeding navigation within limits of port

(1) If any vessel is wreck stranded or sunk in any such port so as to impede,
or be likely to impede, the navigation thereof, the conservator may cause the
vessel to be raised, removed or destroyed.

(2) If any property recovered by a conservator acting under sub-section (1) is
unclaimed or the person claiming it fails to pay the reasonable expenses
incurred by the conservator under that sub-section and a further sum of
twenty per cent. of the amount of such expenses, the conservator may sell the
property by public auction, if the property is of a perishable nature, forthwith,
and, if it is not of a perishable nature, at any time not less than 24[two
months] after the recovery thereof.

(3) The expenses and further sum aforesaid shall be payable to the
conservator out of the sale proceeds of the property, and the balance shall be
paid to the person entitled to the property recovered or if no such person
appears and claims the balance, shall be held in deposit for payment, without
interest, to any person thereafter establishing his right thereto:
Provided that the person makes his claim within three years from the date of the sale.

25[(4) Where the sale proceeds of the property are not sufficient to meet the expenses and further sum aforesaid, the owner of the vessel at the time the vessel was wrecked, stranded or sunk shall be liable to pay the deficiency to the conservator on demand, and if the deficiency be not paid within One month of such demand the conservator may recover the deficiency from such owner in the manner laid down in sub-section (2) of section 57 for recovery of expenses and damages or in any other manner according as the deficiency does not or does exceed one thousand rupees.]

15. Power to board vessels and enter buildings

(1) The conservator or any of his assistant may, whenever he suspects that any offence against this Act has been, or is about to be, committed or whenever it is necessary for him so to do in the performance of any duty imposed upon him by this Act,

and the person appointed under this act to receive any port dues, fees or other charges payable in respect of any vessel, may, whenever it is necessary for him so to do in the performance of any duty imposed upon him by this Act,

either alone or with any other person, board any vessel, or enter any building or place, within the limits of any port subject to this Act.

(2) If the master of the vessel, or any person in possession or occupation of the building or place, without lawful excuse, refuses to allow any such person as is mentioned in sub-section (1) to board or enter such vessel, building or place in the performance of any duty imposed upon him by this Act, he shall
for every such offence be punishable with fine which may extend to two hundred rupees.

16. Power to require crews to prevent or extinguish fire

(1) For the purpose of preventing or extinguishing fire in any port subject to this Act, the conservator or port-officer may require the master of any vessel within the port to place at his disposal such number as he requires, not exceeding three-fourths, of the crew then under the orders of such master.

(2) Any master refusing or neglecting to comply with such requisition shall be punishable with fine which may extend to five hundred rupees, and any seaman then under his orders who, after being directed by the master to obey the orders of the conservator or port-officer for the purpose aforesaid, refuses to obey such orders, shall be punishable with fine which may extend to twenty-five rupees.

17. Appointment and powers of health-officer

(1) The 2[Government] may appoint at any port subject to this Act an officer to be called the health-officer.

(2) A health-officer shall, subject to the control of the 2[Government], have the following powers, within the limits of the port for which he is appointed, namely

(a) with respect to any vessel, the powers conferred on a shipping-master by the Indian Merchant Shipping Act, 185926 (1 of 1859), section 71;

(b) power to enter on board any vessel and medically examine all or any of the seaman or apprentices on board the vessel;

(c) power to require and enforce the production of the log-book and any other books, papers or documents which he thinks necessary for the purpose
of enquiring into the health and medical condition of the persons on board the vessel;

(d) power to call before him and question for any such purpose all or any of those persons and to require true answers to any questions which he thinks fit to ask

(e) power to require any person so questioned to make and subscribe a declaration of the truth of the statements made by him.

18. Indemnity of Government against act or default of port-official or pilot

The Government shall not be responsible for any act or default of any conservator, port-officer or harbour-master, of any port subject to this Act, or of any deputy or assistant of any of the authorities aforesaid, or of any person acting under the control or direction of any such authority, deputy or assistant, or for any act or default of any pilot, or for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers or other things belonging to the Government which may be used by the vessel

Provided that nothing in this section shall protect the Government from a suit a respect of any act done by or under the express order or sanction of the Government

CHAPTER IV: RULES FOR THE SAFETY OF SHIPPING AND THE CONSERVATION OF PORTS

General Rules

19. Injuring buoys, beacons and moorings

(1) No person shall, without lawful excuse, lift, injure, loosen or set adrift any buoy, beacon or mooring fixed or laid down by, or by the authority, of the Government in any port subject to this Act.
(2) If any person offends against the provisions of this section, he shall for every such offence be liable, in addition to the payment of the amount of damage done, to fine which may extend to two thousand rupees, or to imprisonment for a term which may extend to two years.

20. Wilfully loosening vessel from moorings

If any person wilfully and without lawful excuse loosens or removes from her moorings any vessel within any such port without leave or authority from the owner or master of the vessel, he shall, for every such offence, be punishable with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to six months.

21. Improperly discharging ballast

(1) No ballast or rubbish, and no other thing likely to form a bank or shoal or to be detrimental to navigation, shall, without lawful excuse, be cast or thrown into any such port or into or upon any place on shore from which the same is liable to be washed into any such port, either by ordinary or high tides, or by storms or land-floods and no oil or water mixed with oil shall be discharged in or into any such port, to which any rules made under clause (ee) of sub-section (1) of section 6 apply, otherwise than in accordance with such rules.

(2) Any person who by himself or another so casts or throws any ballast or rubbish or any such other thing or so discharges any oil or water mixed with oil, and the master of any vessel from which the same is so cast, thrown or discharged, shall be punishable with fine which may extend to five hundred rupees, and shall pay any reasonable expenses which may be incurred in removing the same.

(3) If after receiving notice from the conservator of the port to desist from so casting or throwing any ballast or rubbish or such other thing or from so
discharging any oil or water mixed with oil, any master continues so to cast, throw or discharge the same, he shall also be liable to simple imprisonment for a term which may extend to two months.

(4) Nothing in this section applies to any case in which the ballast or rubbish or such other thing is cast or thrown into or the oil or water mixed with oil is discharged in or into any such port with the consent in writing of the conservator, or within any limits within which such act may be authorised by the Government.

22. Graving vessel within prohibited limits

If any person graves, breams or smokes any vessel in any such port, contrary to the directions of the conservation, or at any time or within any limits at or within which such act is prohibited by the Government, he and the master of the vessel shall for every such offence be punishable with fine which may extend to five hundred rupees each.

23. Boiling pitch on board vessel within prohibited limits

If any person boils or heats any pitch, tar, resin, dammer, turpentine, oil, or other such combustible matter on board any vessel within any such port, or at any place within its limits where such act is prohibited by the Government, or contrary to the directions of the conservator, he and the master of the vessel shall for every such offence be punishable with fine which may extend to two hundred rupees each.

24. Drawing spirits by unprotected artificial light

If any person, by an unprotected artificial light, draws off spirits on board any vessel within any port subject to this Act, he and the master of the vessel shall for every such offence be punishable with fine which may extend to two
hundred rupees each.

25. Warping

(1) Every master of a vessel in any port subject to this Act shall, when required so to do by the conservator, permit warps or hawsers to be made fast to the vessel for the purpose of warping any other vessel in the port, and shall not allow any such warp or hawser to be let go until required so to do.

(2) A master offending against sub-section (1) shall be punishable for every such offence with fine which may extend to two hundred rupees.

26. Leaving out warp or hawser after sunset

(1) A master of a vessel shall not cause or suffer any warp or hawser attached to his vessel to be left out in any port subject to this Act after sunset in such a manner as to endanger the safety of any other vessel navigating in the port.

(2) A master offending against sub-section (1) shall be punishable for every such offence with fine which may extend to two hundred rupees.

27. Discharge of fire-arms in port

If any person, without lawful excuse, discharges any firearm in any port subject to this Act or on or from any pier, landing place, warp or quay thereof, except a gun loaded only with gunpowder for the purpose of making a signal of distress, or for such other purposes as may be allowed by the Government, he shall for every such offence be punishable with fine which may extend to fifty rupees.

28. Penalty on master omitting to take order to extinguish fire
If the master of any vessel in which fire takes place while lying in any such port wilfully omits to take order to extinguish the fire or obstructs the conservator or the port-officer, or any person acting under the authority of the conservator or port-officer, in extinguishing or attempting to extinguish the fire, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees or with both.

29. Unauthorised person not to search for lost stores

(1) No person, without the permission of the conservator, shall, in any port subject to this Act, creep or sweep for anchors, cables or other stores lost or supposed to be lost therein.

(2) If any person offends against the provisions of sub-section (1), he shall be punishable with fine which may extend to one hundred rupees.

30. Removing stones or injuring shores of port prohibited

(1) No person without the permission of the conservator shall in any port subject to this Act remove or carry away any rock, stones, shingle, gravel, sand or soil or any artificial protection from any part of the bank or shore of the port;

and no person shall sink or bury in any part of such bank or shore, whether the game is public or private property, any mooring-post, anchor or any other thing or do any other thing which is likely to injure or to be used so as to injure such bank or shore, except with the permission of the conservator, and with the aid or under the inspection of such person, if any, as the conservator may appoint to take part in or overlook the performance of such work.

(2) If any person offends against sub-section (1), he shall for every such offence be punishable with fine which may extend to one hundred rupees and
shall pay any reasonable expenses which may be incurred in repairing any
injury done by him to the bank or shore.

Special rules

31. Moving of vessels without pilot or permission of harbour master

(1) No vessel of the measurement of two hundred tons or upwards shall
enter, leave or be moved in any port to which this section has been especially
extended without having a pilot, harbour-master or assistant of the port-
officer or harbour-master on board.

31[and no mechanically propelled vessel of any measurement less than two
hundred tons and no other vessel of any measurement legs than two hundred
tons and exceeding one hundred tons] shall enter, leave or be moved in any
such port without having a pilot, harbour-master or assistant of the port
officer or harbour-master on board, unless authority in writing so to do has
been obtained from the conservator or some officer empowered by him to
give such authority.

32[Provided that the 33[Government] may, by notification in the Official
Gazette, direct that in any port specified in such notification the provisions of
this sub-section shall not apply to sailing vessels of any measurement not
exceeding a measurement go specified].

34[(2) Notwithstanding anything in sub-section (1), the owner or master of a
vessel which is by that sub-section required to have a pilot, harbour-master or
assistant of the port-officer or harbour-master on board, shall be answerable
for any loss or damage caused by the vessel or by any fault of the navigation
of the vessel, in the same manner as he would have been if he had not been
required by that sub-section:
Provided that the provisions of this sub-section shall not take effect till the first day of January, 1918, or such earlier date as the Central Government may notify in that behalf in the Official Gazette.

35[(3)] If any vessel, except in case of urgent necessity, enters, leaves or is moved in the port contrary to the provisions of subsection (1), the master of the vessel shall for every such offence be punishable with fine which may extend to two hundred rupees, unless upon application to the proper officer the master was unable to procure a pilot, harbour-master or assistant of the port-officer or harbour-master to go on board the vessel.

36[***]

32. Provision of certain vessels with fire extinguishing apparatus

(1) Every vessel exceeding the measurement of two hundred tons and lying in any port to which this section has been specially extended shall be provided with a proper force-pump and hose and appurtenances, for the purpose of extinguishing any fire which may occur on board.

(2) The master of such a vessel who, having been required by the conservator to comply with the provisions of sub-section (1), neglects or refuses, without lawful excuse, so to do for the space of seven days after such requisition, shall be punishable with fine which may extend to five hundred rupees.

CHAPTER V: PORT-DUES, FEES AND OTHER CHARGES

33. Levy of port-dues

(1) Subject to the provisions of sub-section (2), in each of the ports mentioned in the first schedule such port-dues, not exceeding the amount specified for the part in the third column of the schedule as the Government directs, shall be levied on vessels entering the
port and described in the second column of the schedule, but not oftener than the time fixed for the port in the fourth column of the schedule.

37[(2) The 2[Government] may, by notification in the Official Gazette, alter or add to any entry in the first schedule relating to ports in any State or, as the case may be, in the State, and this power shall include the power to regroup any such ports.]

38[***]

40[***]

41[(3) Whenever the 2[Government] declares any other port other than a major port] to be subject to this Act it may, by the same or any subsequent declaration further declare,-

(a) in the terms of any of the entries in the second column of the first schedule, the vessels which are to be chargeable with port-dues on entering the port.

(b) the highest rates at which such dues may be levied in respect of vessels chargeable there with, and

(c) the times at which such vessels are to be so chargeable.

42[***]

41[(4) All port-dues now leviable in any port shall continue to be so leviable until it is otherwise declared in exercise of the powers conferred by this section.

43[***]

41[(5) An order increasing or imposing port-dues under this section shall not take effect till the expiration of sixty days from the day on which the order was published in the Official Gazette.

34. Variation of port-dues by Government

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The Government may after consulting,-

(a) in case of ports other than major ports, the authority appointed under section 36;

(b) in case of major ports, the Authority constituted under section 47A of the Major Port Trust Act, 1963,

exempt, subject to such conditions, if any, as it thinks fit to impose, any vessel or class of vessels entering a port subject to this Act from payment of port-dues and cancel the exemption, or may vary the rates at which port-dues are to be fixed in the port, in such manner as, having regard to the receipts and charges on account of the port it thinks expedient, by reducing or raising the dues, or any of them or may extend the periods for which any vessel or class of vessels entering a port shall be exempt from liability to pay port-dues:

Provided that the rates shall not in any case exceed the amount authorized to be taken by or under by or under this Act.]

35. Fees for pilotage and certain other services

(1) Within any port subject to this Act, 14[not being a major port] fees may be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels, at such rates as the 2[Government] may direct

45[***]

(2) The fees now chargeable for such services shall continue to be chargeable unless and until they are altered in exercise of the power conferred by sub-section (1).

46[(3) The Government may, in special cases, remit the whole or any portion of the fees chargeable under sub-section (1), or sub-section (2).]
36. Receipt, expenditure and account of port-charges

(1) The 2[Government] shall appoint some officer or body of persons at every port at which any dues, fees or other charges are authorised to be taken by or under this Act to receive the same and, subject to the control of the 2[Government], to expend the receipts on any of the objects authorized by this Act.

(2) Such officer or body shall keep for the port a distinct account, to be called the port fund account, showing in such detail as the 2[Government] prescribes, the receipts and expenditure of the port, and shall publish annually as soon after the first day of April as may be practicable an abstract, in such from as 47[the Government] prescribes, of the account for the past financial year

48[Provided that the port fund account for any port may, if so authorized under the provisions of any Act relating to such port, be merged with the general account of that port, and in such a case, the provisions of sub-section (6) shall not apply and the provisions of sub-sections (4) and (5) shall have effect as if for the words "the port fund account of the port" therein, the words "the general account of the port" had been substituted.]

49[***]

(4) All money received under this Act at or on account of any port subject to this Act, excluding receipts on account of pilotage but including

50[(a) fines other than those creditable to the pilotage account of the port under sub-section (5a)],

(b) proceeds of waifs, and
(c) any balance of the proceeds of a sale under section 14 where no right to
the balance has been established on a claim made within three years from the
date of the sale, shall be credited in the port fund account of the port.

(5) All expenses incurred for the sake of any such port, excluding expenses on
account of pilotage but including-

(a) the pay and allowances of all persons upon the establishment of the port,

(b) the cost of buoys, beacons, lights and all other works maintained chiefly
for the benefit of vessels being in or entering or leaving the port or passing
through the rivers or channels leading thereto,

(c) pensions, allowances and gratuities of persons who have been employed in
the port under this or any other enactment relating to ports and port-dues, or
such portion of those pensions, allowances and gratuities as the
2[Government] may by rule determine.

(d) with the previous sanction of the 2[Government], contributions towards
the support of public hospitals or dispensaries suitable for the reception or
relief of seamen or otherwise towards the provision of sanitary
superintendence and medical aid for the shipping in the port and for seamen
whether ashore or afloat, belonging to vessels in the port, and

(e) with the like sanction, contributions towards sailors homes, institutes, rest-
house and coffee-houses and for other purposes connected with the health,
recreation and temporary well-being of sailors,

shall be charged to the port fund account of the port.

51[(5a) All fees charged for pilotage at any port subject to this Act and all
fines and penalties levied under the Act or under any other Act relating to the
port from pilots or other persons employed in the pilot service other than
fines and penalties imposed by a court, shall be credited to a distinct account
to be called the pilotage account of the port.

(5b) All sums so credited to the pilotage account may be applied, in such
proportions as the Government may from time to time direct, to the
following purposes, namely

(a) the purchase and maintenance in repair of such vessels, and the supply of
such materials, stores or other things as the officer or body appointed under
sub-section (1) may deem it necessary to purchase, maintain or supply for the
efficiency of the pilot service;

(b) the payment of the salaries, wages and allowances of pilots and other
persons employed in the pilot service or in the supervision thereof;

(c) the payment of pensions, retiring gratuities, compassionate allowances or
bonuses to pilots and other persons engaged in the pilot service, and of the
contributions, if any, duly authorized to be made in their behalf to any
provident fund or welfare fund;

(d) the payment of pensions, gratuities and compassionate allowances granted
by the officer or body appointed under sub-section (1) to pilots and other
persons engaged in the pilot service who have been injured in the execution
of their duty and to the surviving relatives of pilots and other persons so
engaged who have been killed in the execution of their duty or who may die
while still in the service of such officer or body;

(e) the provision of educational, recreational and other amenities for pilots
and other persons employed in the pilot service;

(f) the payment of contributions or appropriations to any special fund or
funds established under the provisions of any other Act relating to the port to
which the officer or body appointed sub-section (1) considers contributions or appropriations should be made from the pilotage account;

(g) any other expenditure which may, with the previous sanction of the Government, be incurred in respect of the pilot service,

(5c) If the officer or body appointed under sub-section (1) at any port is also the authority responsible for maintaining the general account of the port, then notwithstanding the absence of any provision in that behalf in the Act under which such general account is maintained, such officer or body may, with the previous sanction of the Government, apply any sum out of the moneys credited to such general account towards meeting deficits, if any, in the pilotage account of the port, or transfer the whole or any part of any surplus funds, in the pilotage account to the general account of the port.]

(6) Subject to the provisions of any local law as to the disposal of any balance from time to time standing to the credit of a port fund account 48[or of a pilotage account], any such balance may be temporarily invested in such manner as the 2[Government] may direct

37. Grouping of ports

(1) The State Government may direct that for the purposes of the last foregoing section any number of ports 52[in the State not being major ports] shall be regarded as constituting a single port, and thereupon all moneys to be credited to the port fund account under sub-section (4) of that section shall form a common port fund account which shall be available for the payment of all expenses incurred for the sake of any of the ports:

53[***]

(2) Where ports are grouped by or under this Act, the following consequences ensue, namely
(a) the State Government, in the exercise of its control over expenditure debit able to the common port fund account of the group, may, 54[***] make rules with respect of the expenditure of the fund for the sake of the several ports of the group on the objects authorized by this Act 54[***]; and

(b) the State Government may exercise its authority under section 34 as regards all the ports in, the group collectively or as regards any of them separately.

38. Receipts for port-charges

The person to whom any dues, fees or other charges authorized to be taken by or under this Act are paid shall grant to the person paying the same a proper voucher in writing under his hand, describing the name of his office, the port or place at which the dues, fees or other charges are paid, and the name, tonnage and other proper description of the vessel in respect of which the payment is made.

39. Master to report arrival

(1) Within twenty-four hours after the arrival within the limit of any port subject to this Act of any vessel liable to the payment of port-dues under this Act, the master of the vessel shall report her arrival to the conservator of the port.

(2) A master failing without lawful excuse to make such within the time aforesaid shall for every such offence be punishable with, fine which may extend to one hundred rupees.

(3) Nothing in this section applies to tug-steamers, ferry steamers or river steamers plying to and from any of the ports subject to this Act 55[***]
40. Conservator may in certain cases ascertain draught and charge expense to master

If any vessel liable to the payment of port-dues is in any such port without proper marks on the stem and stem posts thereof for denoting her draught, the conservator may cause the same to be ascertained by means of the operation of hooking, and the master of the vessel shall be liable to pay the expenses of the operation.

41. Ascertainment of tonnage of vessel liable to port-dues

In order to ascertain the tonnage of any vessel liable to pay port-dues the following rules shall be observed, namely

(1) (a) If the vessel is a British registered vessel or a vessel registered under the Indian Registration of Ships Act, 1841 (10 of 1841), or the Indian Registration of Ships Act (1841) Amendment Act, 1850 (11 of 1850), or under any other law for the time being in force for the registration of vessels in India, the conservator may require the owner or master of the vessel or any person having possession of her register to produce the register for inspection.

(b) If the owner or master of such person neglects or refuses to produce the register or otherwise to satisfy the conservator as to what is the true tonnage of the vessel in respect of which the port-dues are payable, he shall be punishable with fine which may extend to one hundred rupees, and the conservator may cause the vessel to be measured, and the tonnage thereof to be ascertained, according to the mode of measurement prescribed by the rules for the time being in force for regulating the measurement of British vessels, and in such case the owner or master of the vessel shall also be liable to pay the expenses of the measurement.

(2) If the vessel is not a British registered vessel or a vessel registered under the Indian Registration of Ships Act, 1841, (10 of 1841), or the Indian
Registration of Ships Act (1841) Amendment Act, 1850 (11 of 1850), or under any other law for the time being in force for the registration of vessels in India, and the owner or master thereof fails to satisfy the conservator as to what is her true tonnage according to the mode of measurement prescribed by the rules for the time being in force for regulating the measurement of British vessels, the conservator shall cause the vessel to be measured and the tonnage thereof to be ascertained according to the mode aforesaid and in such case owner or master of the vessel shall be liable to pay the expenses or the measurement.

(3) If the vessel is a vessel of which the tonnage cannot be ascertained according to the mode of measurement mentioned in clauses (1) and (2), the tonnage of the vessel shall be determined by the conservator on such an estimate as may seem to him to be just.

42. Distraint and sale on refusal to pay port-charges

If the master of any vessel in respect of which any port-dues, fees or other charges are payable under this Act, refuses or neglects to pay the same on demand, the authority appointed to receive such port-dues, fees or other charges may distrain or arrest the vessel, and the tackle apparel and furniture belonging thereto or any part thereof, and detain the same until the amount due is paid;

and in case any part of the port-dues fees or other charges or of the costs of the distress or arrest or of the keeping of the vessel or other thing distrained or arrested remains unpaid for the space of five days next after any such distress or arrest, may cause the vessel or other thing distrained or arrested to be sold, and with the proceeds of such sale may satisfy the port-dues, fees or other charges and the cost including the costs of sale remaining unpaid, and shall render the surplus, if any, to the master of the vessel upon demand.

43. No port-clearance to be granted until port-charges are paid
The officer of the Government whose duty it is to grant a port-clearance for any vessel shall not grant such clearance—

(a) until her owner or master, or some other person, has paid or secured to the satisfaction of such officer the amount of all port-dues, fees and other charges, and of all fines penalties and expenses to which the vessel or her owner or master is liable under this Act;

(b) until all expenses which by the Merchant Shipping Act, 1894, (57 & 58 Vict., C. 60) section 207, are to be borne by her owner incurred since her arrival in the port from which he seeks clearance, have been paid.

44. Port-charges payable in one port recoverable at any other port

(1) If the master of any vessel in respect of which any such sum as is mentioned in the last foregoing section is payable causes her to leave any port without having paid the sum the authority appointed to receive port-dues, fees and other charges at the port under this Act may require in writing the authority appointed to receive port-dues, fees and other charges under this Act at any other port in India to which she may proceed or in which she may be, to levy the sum.

(2) The authority to whom the requisition is directed shall proceed to levy such sum in the manner prescribed in section 42, and a certificate purporting to be made by the authority appointed to receive port-dues, fees and other charges at the port where such sum as is mentioned in the last foregoing section became payable stating the amount payable, shall be sufficient prima facie proof of such amount in any proceeding under section 42 and also (in case the amount payable is disputed) in any subsequent proceeding under section 59.

45. Penalty for evading payment of port-charges
(1) If the master of a vessel evades the payment of any such sum as is mentioned in section 43 he shall be punishable with fine which may extend to five times the amount of the sum.

(2) In any proceeding before a Magistrate on a prosecution under sub-section (1) any such certificate as is mentioned in, section 44, sub-section (2), stating that the master has evaded such payment, shall be sufficient prima facie proof of the evasion, unless the master shows to the satisfaction of the Magistrate that the departure of the vessel without payment of the sum was caused by stress of weather, or that there was lawful or reasonable ground for such departure.

(3) Any Magistrate having jurisdiction under this Act in any port to which the vessel may proceed, or in which she may be found, shall be deemed to have jurisdiction in any proceeding under this section.

46. Port-due on vessels in ballast

A vessel entering any port [not being a major port] subject to this Act in ballast and not carrying passengers shall be charged with a port-due at a rate to be determined by the Government and not exceeding three-fourths of the rate with which she would otherwise be chargeable.

47. Port-due on vessels not discharging or taking in cargo

When a vessel enters a port [not being a major port] subject to this Act but does not discharge or take in any cargo or passengers therein (with the exception of such unshipment and reshipment as may be necessary for purposes of repair) she shall be charged with a port-due at a rate to be determined by the Government and not exceeding half the rate with which she would otherwise be chargeable.

48. Port-due not to be chargeable in certain cases
No port-due shall be chargeable in respect of-

(a) any pleasure-yacht, or

(b) any vessel which, having left any port, is compelled to re-enter it by stress of whether or in consequence of having sustained any damage, or

(c) any vessel which, having entered any port in the territories which, immediately before the 1st November, 1956, were comprised in the States of Madras and Andhra or the Port of Gopalpur in the State of Orissa, leaves it within forty-eight hours without discharge or taking in any passengers or cargo.

49. Power to impose hospital port-dues

(1) The Central Government may, by notification in the Official Gazette, order that there shall be paid in respect of every vessel entering any port subject to this Act, within a reasonable distance of which there is a public hospital or dispensary suitable for the reception or relief of seamen requiring medical aid such further port-dues not exceeding one anna per ton as the Central Government thinks fit.

(2) Such port-dues shall be called hospital port-dues, and the Central Government shall, in making any order under sub-section (1), have regard to any contributions made under section 36, sub-section (5), clause (d).

(3) An order imposing or increasing hospital port-dues shall not take effect till the expiration of sixty days from the day on which the order was published in the Official Gazette.

(4) Whenever the Central Government is satisfied that proper provision has been made by the owners or agents of any class of vessels or giving medical aid to the seamen employed on board such class of vessels, or that such provision is unnecessary in the case of any class of vessels, it may, by
notification in the Official Gazette, exempt such class of vessels from any payment under this Sections.

50. Application and account of hospital port-dues

(1) Hospital port-dues shall be applied, as the 2[Central Government] may direct, to the support of any such hospital or dispensary as aforesaid, or otherwise for providing sanitary superintendence and medical aid for the shipping in the port in which they are levied and for the seamen belonging to the vessels therein, whether such seamen are ashore or afloat.

(2) The 2[Central Government] shall publish annually in the Official Gazette, as soon after the first day of April as may be, an account, for the past financial year, of the sums received as hospital port-dues at each port where such dues are payable, and of the expenditure charged against these receipts.

(3) Such account shall be published as a supplement to the abstract published under section, 36, sub-section (2).

51. Master to hoist number of vessel

(1) The master of every inward or outward bound vessel, on arriving within signal distance of any signal-station established within the limits of the river Hooghly, or within the limits of any part of a river or channel leading to a port subject to this Act, shall, on the requisition of the pilot in charge of the vessel, signify the name of the vessel by hoisting the number by which she is known, or by adopting such other means to this end as may be practicable and usual, and shall keep the signal flying until it is answered from the signal-station.

(2) If the master of a vessel arriving as aforesaid offends against sub-section (1), he shall be punishable for every such offence with fine which may extend to one thousand rupees.
52. Pilot to require master to hoist number

(1) Every pilot in charge of a vessel shall require the number of the vessel to be duly signalled as provided by the last foregoing, section.

(2) When, on such requisition from the pilot; the master refuses to hoist the number of a vessel, or to adopt such other means of making her name known as may be practicable and usual, the pilot may, on arrival at the first place of safe anchorage, anchor the vessel and refuse to proceed on his course until the requisition has been complied with.

53. Penalty on pilot disobeying provisions of this Chapter

Any pilot in charge of a vessel who disobeys, or abets disobedience to, any of the provisions of this Chapter, shall be punishable with fine which may extend to five hundred rupees for each instance of such disobedience or abetment, and, in addition, shall be liable to have his authority to act as a pilot withdrawn.

CHAPTER VII: PROVISIONS WITH RESPECT TO PENALTIES

54. Penalty for disobedience to rules and orders of the Government

If any person disobeys any rule or order which a Government has made in pursuance of this Act and for the punishment of disobedience to which express provision has not been made elsewhere in this Act, he shall be punishable for every such offence with fine which may extend to one hundred rupees.

55. Offences how triable, and penalties how recovered

All offences against this Act shall be triable by a Magistrate, and any Magistrate may, by warrant under his hand, cause the amount of any fine imposed upon the owner or master of any vessel, for any offence committed
on board of the vessel or in the management thereof or otherwise in relation thereto, whereof the owner or master is convicted. to be levied by distress and sale of the vessel, and the tackle apparel and furniture thereof, or so much thereof as is necessary.

56. Costs of conviction

(1) In case of any conviction under this Act, the convicting Magistrate may order the offender to pay the costs of the conviction in addition to any fine or expenses to which he may be liable.

(2) Such costs may be assessed by the Magistrate and may be recovered in the same manner as any fine under this Act

57. Ascertainment and recovery of expenses and damages payable under this Act

(1) If any dispute arises as to the sum to be paid in any case as expenses or damages under this Act, it shall be determined by a Magistrate upon application made to him for that purpose by either of the disputing parties.

(2) Whenever any person is liable to pay any sum, not exceeding one thousand rupees, as expenses or damages under this Act, any Magistrate, upon application made to him by the authority to whom the sum is payable, may, in addition to or instead of any other means for enforcing payment, recover the sum as if it were a fine.

58. Cost of distress

Whenever any fine, expenses or damages is or are levied under this Act, by distress and sale, the cost of the distress and sale may be levied in addition to such fine. expenses or damages, and in the same manner.

59. Magistrate to determine the amount to be levied in case of dispute
If any dispute arises concerning the amount leviable by any distress or arrest under this Act or the costs payable under the last foregoing section, the person making the distress or using the arrest may detain the goods distrained or arrested, or the proceeds of the sale thereof, until the amount to be levied has been determined by a Magistrate, who, upon application made to him for that purpose, may determine the amount, and award such costs to be paid by either of the parties to the other of them as he thinks reasonable and payment of such costs, if not paid on demand, shall be enforced as if they were a fine.

60. Jurisdiction over offences beyond local limits of jurisdiction

(1) Any person offending against the provisions of this Act in any port subject to this Act shall be punishable by any Magistrate having jurisdiction over any district or place adjoining the port.

(2) Such Magistrate may exercise all the powers of a Magistrate under this Act, in the same manner and to the same extent as if the offence had been committed locally within the limits of his jurisdiction, notwithstanding that the offence may not have been committed locally within such limits, and, in case any such Magistrate exercises the jurisdiction hereby vested in him, the offence shall be deemed, for all purposes, to have been committed locally within the limits of his jurisdiction.

61. Conviction to be quashed on merits only

(1) No conviction, order or judgement of any Magistrate under this Act shall be quashed for error of form or procedure, but only on the merits, and it shall not be necessary to state, on the face of the conviction, order or judgement, the evidence on which it proceeds.

(2) If no jurisdiction appears on the face of the conviction, order or judgement, but the depositions taken supply that defect, the conviction, order or judgement shall be aided by what so appears in the depositions.
CHAPTER VIII: SUPPLEMENTAL PROVISIONS

62. Hoisting unlawful colours in port

(1) If any vessel belonging to any citizen of India or common wealth citizen sailing under Indian or British colours, hoists, carries or wears, within the limits of any port subjects to this Act, any flag, jack, pennant or colours, the use whereof on board such vessel has been prohibited by the, Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60) or any other Statute now or hereafter to be in force, or by any proclamation made or to be made in pursuance of any such Statute, or by any of the regulations in force for the time being, the master of the vessel shall, for every such offence, be punishable with fine which may extend to fifty rupees.

(2) Such fine shall be in addition to any other penalty recoverable in respect of such an offence.

(3) The conservator of the port, or any officer of the Indian Navy, may cater on board any such vessel and seize and take away any flag, jack, pennant or colours so unlawfully hoisted, carried or worn on board the same.

63. Foreign deserters

Any Magistrate, upon an application being made to him by the Consul of any Foreign Power to which section 238 of the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60) has, by an Order in Council or order, been, or shall hereafter be, declared to be applicable, or by the representative of such Consul, and upon complaint on oath of the desertion of any seaman, not being a slave, from any vessel of such Foreign Power, may, until a revocation of such Order in Council or order has been publicly notified, issue his warrant for the apprehension of any such deserter, and, upon due proof of the desertion, may order him to be conveyed on board the vessel to which he belongs or, at the instance of the Consul, to be detained in custody until the
vessel is ready to sail, or, if the vessel has sailed, for a reasonable time not exceeding one month:

Provided that a deposit be first made of such sum as the Magistrate deems necessary for the subsistence of the deserter during the detention and that the detention of the deserter shall not be continued beyond twelve weeks.

64. Application of sections 10 and 21

(1) The provisions of section 10 and 21 shall be applicable to all ports heretofore or hereafter declared by the 2[Government] to be parts for the shipment and landings of goods but not otherwise subject to this Act, and may be enforced by any Magistrate to whose ordinary jurisdiction any such port is subject.

(2) Any penalties imposed by him, and any expenses incurred by his order, under the said provisions, shall be recoverable respectively in the manner provided in sections 55 and 57.

(3) In any of the said ports for the shipment and landing of goods the consent referred to in section 21, sub-section (4), may be given by the principal officer of customs at such port or by any other officer appointed in that behalf by the 2[Government].

65. Grant of sites for sailors institutes

Any local authority in which any immovable property in or near a port is vested may, 66[with the previous sanction, in the case of a cantonment authority or the port authority of a major port, of the Central Government, and in other cases, of the State Government], appropriate and either retain and apply, or transfer by way of gift or otherwise, the whole or any part of the
property as a site for, or for use as, a sailors' home or other institution for the health, recreation and temporal well-being of sailors.

66. Exercise of powers of conservator by his assistants

(1) All acts, orders or directions by this Act authorized to be done or given by any conservator may, subject to his control, be done or given by any harbour-master or any deputy or assistant of such conservator or harbour-master.

(2) Any person authorised by this Act to do any act may call to his aid such assistance as may be necessary.

67. Service of written notices of directions

Any written notice of a direction given under this Act, left for the master of any vessel with any person employed on board thereof, or affixed on a conspicuous place on board of the vessel, shall, for the purposes of this Act, be deemed to have been given to the master thereof.

68. Publication of orders of Government

Every declaration, order and rule of a Government made in pursuance of this Act shall be published in the Official Gazette, and a copy thereof shall be kept in the office of the conservator and at the custom-house, if any, of every port to which the declaration, order or rule relates, and shall there be open at all reasonable times to the inspection of any person without payment of any fee.

68A. Authorities exercising jurisdiction in ports to co-operate in manoeuvres for defence of port

Every authority exercising any powers or jurisdiction in, or relating to, any port to which this Act for the time being applies shall, if so required by an officer authorized by general or special order of the Central Government in
this behalf, co-operate in such manner, as such officer may direct, in carrying out any manoeuvres in connection with any scheme or preparations for the defence of the said port in time of war, and for this purpose shall, if so required, temporarily place at the disposal of such officer the services of any of its staff and the use of any of its vessels, property, equipment or other material:

Provided, firstly that if any vessels are placed at the disposal of such officer in accordance with this section, the Central Government shall, in respect of the period during which they are so at his disposal bear the running expenses of such vessels, and be responsible for any damage thereto.

Explanation.—The expression 'running expenses' in this proviso includes all outlay incurred in connection with the use of vessels other than any charges for their hire, or for the wages of the officer and crews of such vessels:

Provided, secondly, that any officer making a requisition under this section shall exercise his powers in such a way as to cause as little disturbance to the ordinary business of the port as is compatible with the exigencies of the efficient carrying out of the manoeuvres

Provided, thirdly, that no suit or other legal proceeding shall lie against any authority for any default occurring by reason only of compliance with a requisition under this section.

68B. Duties of the said authorities in an emergency

Whenever the Central Government is of opinion that an emergency has arisen which renders it necessary that the duties imposed for the purposes specified in section 68A on the authorities therein mentioned, or other duties of a like nature, should be imposed on such authorities continuously during the existence of the emergency, it may, by general or special order, authorise any officer to require the said authorities to perform such duties until the
Central Government is of opinion that the emergency has passed and he said authority shall comply accordingly, and the provisions of the said section shall apply subject to the following modification, namely:

The Central Government shall pay any authority, on whom a requisition has been made, such compensation for any loss or damage attributable to such requisition, and for any services rendered or expenditure incurred in complying therewith as, in default of agreement, shall be decided to be just and reasonable, having regard to the circumstances of the case, by the arbitration of a person to be nominated in this behalf by the Central Government, and the decision of such person shall be final.

68C. Application of certain provisions of the Act to aircraft

(1) The provisions of sections 6, 13 to 16 (both inclusive), 18, 21 and 28, subsection (2) of section 31 and sections 33, 34, 35, 39, 42 to 48 (both inclusive) and 55 shall apply in relation to all aircraft making use, of any part subject to this Act, while on water as they apply in relation to vessels.

(2) No such aircraft shall enter or leave any port subject to this Act, except with the permission granted by the Conservator of the Port or by such other officer as may be authorized in this behalf by the Conservator.

[Section 69 repealed by the Repealing Act, 1938 (1 of 1938)]

Foot Notes
1. Enacted w.e.f. 18th December, 1908.
2. Substituted by the A.O. 1937, for the words "Local Government".
3. Substituted by the A.O. 1950, for the words "His Majesty".
4. The words "or the Government of India" omitted by the A.O. 1937.
6. Inserted by Act 35 of 1951, section 188.
7. Inserted, ibid.
8. Clause (10) omitted by Act 3 of 1951.
15. Substituted by the A.O. 1950, for the word "Crown" which had been
    Substituted by the A.O. 1937, for the word "Government."
18. Substituted by Act 4 of 1911, section 2 for clause (p).
20. Sub-section (1A) omitted by Act 26 of 1938.
21. The words, brackets, figure and letter "and sub-section (1A)" Inserted by
    Act 15 of 1922 omitted, ibid.
23. Substituted, ibid., for the words "that Government".
24. Substituted by Act 55 of 1952, for the words "six months".
27. The words "the Secretary of State for India in Council" successively
    Substituted by the A.O. 1937 and the A.O. 1950 to read as above.
29. Substituted, ibid., for the words "or thrown".
30. Substituted, ibid., for the words "or throw it".
32. Inserted by Act 36 of 1925.
33. Substituted by the A.O. 1937, for the words "Governor-General in
    Council".
34. Inserted by Act 6 of 1916.
35. Sub-sections (2), (3) and (4) re-numbered as sub-sections (3), (4) and (5)
    respectively by Act No. 6 of 1916.
36. Sub-sections (4) and (5), as re-numbered by Act 6 of 1916, omitted by Act 36 of 1925.

37. Inserted by Act 6 of 1916.

38. Substituted ibid, for the words "within its own province."

39. The words "British India" successively Substituted by the A.O. 1948 and the A.O. 1950 to read as above.

40. Proviso omitted by the A.O. 1937.

41. Sub-sections (2), (3) and (4) re-numbered as sub-sections (3), (4) and (5) respectively by Act 6 of 1916.

42. Certain words omitted by Act 6 of 1916.

43. Proviso omitted by the A. O. 1937.


45. Proviso omitted by the A. O. 1937.

46. Inserted by Act 35 of 1951, section 190.

47. Substituted by the A.O. 1937, for the words "that Government".


49. Sub-section (5) omitted by Act 6 of 1916.

50. Substituted by Act 35 of 1951, 191 for clause (a).

51. Inserted by Act 35 of 1951.

52. Inserted, ibid.

53. Proviso omitted, ibid.

54. Omitted, ibid.

55. Omitted by the A.O. 1948.

56. The words "British India" submissively amended by the A.O. 1948, the A.O. 1950 and Act 3 of 1951.


58. Substituted ibid., for the words "Local Government".


60. Substituted by the A. O. (No. 2), 1956, for the words "in the State of Madras or in the State of Andhra".

61. Substituted by the A. O. 1950, for the words "any of His Majesty's subjects".

62. Substituted, ibid., for the words "British colours".
63. Substituted, ibid., for the words "His Majesty's regulations."

64. Substituted by the A. O. 1250, for the words "His Majesty's Navy or the Royal Indian Navy".

65. Inserted, ibid.

66. Substituted ibid., for the words "with the previous sanction of the Local Government".


68. Ins by Act 35 of 1951.

69. This Schedule is liable to variation by notifications of State Government, and for any change thereof notification of the State concerned should be consulted.

70. Substituted by notification No. G.S.R. 257 (E) dated 1st May, 1978, Gazette of India, Pt. II, s. 3 (i) p. 398, for the heading and major ports of Calcutta and Paradip and the entries relating thereto.


74. Added by notification No.11. (2)/ TRA/ 1914(c)/ 78, dated 1st. May, 1978, Gazette of Tamil Nadu.


THE INDIAN BILLS OF LADING ACT, 1856

ACT NO. 9 OF 1856 11th April, 1856 An Act to amend the Law relating to Bills of Lading.

Preamble.-- Whereas by the custom of merchants a bill of lading of goods being transferable by endorsement, the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner, and it is expedient that such rights should pass with the property; and whereas it frequently happens that the goods in respect of which bills of lading purport to be signed have been laden on board, and it is proper that such bills of lading in the hands of a bona fide holder for value should not be questioned by the master or other person signing the same, on the ground of the goods not having been laden as aforesaid: It is enacted is follows:-

1. Rights under bills of lading to vest in consignee of endorsee.-- Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

2. Not to affect right of stoppage in transitu of claims for freight.-- Nothing herein contained shall prejudice or affect any right of stoppage in transitu, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.
3. Bill of lading in hands of consignee, etc., conclusive evidence of the shipment as against master, etc.-- Every bill of lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not in fact been laden on board: Provided that the master or other person so signing may exonerate himself in respect of such misrepresentation, by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims.

1. Short title given by the Indian Short Titles Act, 1897 (14 of 1897), s. 2 and Sch. This Act is based on the Bills of Landing Act, 1855 (18 and 19 Vict., c. 111). It has been declared to be in force in the whole of India except Part B States and the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3 Extended to former Part B States by Act 18 of 1949, s. 4. Extended to Union territory of Pondicherry be Act 26 of 1968, s. 3 and Sch. It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:- West Jalpaiguri, see Gazette of India, 1881, Pt. I p. 74. The Districts of Hazaribagh, Lohardaga (now the Ranchi district, see Calcutta Gazette, 1899, Pt. I, p. 44), and Manbhum, and Pargana Dalbhum and the Kolhan in the District of Singhbhum, See Gazette of India, 1881, Pt. I, p. 504. Assam (except the North Lushai Hills), see Gazette of India, 1897, Pt. I, p. 299.

2. As to stoppage in transit, see the Indian Contract Act, 1872 (9 of 1872), ss. 99-106.
THE YORK-ANTWERP RULES 2004

The Comité Maritime International at its conference held in Vancouver 31 May-4 June 2004 has completed a revision of the York-Antwerp Rules 1994 and approved a new text to be referred to as York-Antwerp Rules 2004. These new rules are set out below.

The CMI has published a printed version of the new rules. In summary the amendments made are the following:

RULE VI. SALVAGE REMUNERATION

has been amended to exclude the allowance of salvage from G.A., except in cases where one party to the salvage has paid all or any of the proportion of salvage due from another party.

RULE XI. EXPENSES AT PORT OF REFUGE

has been amended to exclude the allowance in G.A. of wages and maintenance of master, officers and crew while the vessel is detained at a port of refuge.

RULE XIV. TEMPORARY REPAIRS

A second sentence has been added to Rule IV b), the effect of which is that recovery in G.A. of the cost of temporary repairs of accidental damage at a port of refuge is limited to the amount by which the estimated cost of the permanent repairs at the port of refuge exceeds the sum of the temporary repairs plus the permanent repairs actually carried out. This capping of the amount allowed as temporary repairs has sometimes been referred to as the "Baily" method.
RULE XX. PROVISION OF FUNDS

has been amended to abolish commission on G.A. disbursements.

RULE XXI. INTEREST ON LOSSES

has been amended to the effect that the Interest charged is no longer a fixed rate, but a rate that will be fixed each year by the Assembly of the CMI. The CMI will publish this on its website www.comitemaritime.org.

The Plenary Session of the Vancouver Conference adopted the following guidelines for fixing the rate of interest:

"Guidelines for the Assembly of the Comité Maritime International when deciding the annual interest rate provided for in YAR Rule XXI.

The Assembly is empowered to decide the rate of interest based upon any information or consideration, which in the discretion of the Assembly are considered relevant, but may take the following matters into account:

The rate shall be based upon a reasonable estimate of what is the rate of interest charged by a first class commercial bank to a ship owner of good credit rating.

Due regard shall be had to the following:

• That the majority of all G.A. adjustments are drawn up in USD.

• That therefore the level of interest for one-year USD loans shall be given particular consideration.

• That most adjustments, which are not drawn up in USD, are drawn up in GBP, EUR or JPY.
• That, if the level of interest for one year loans in GBP, EUR or JPY differs substantially from the level of interest for one year loans in USD, this shall be taken into account.

• That readily available information about the level of interest such as USD prime rate and LIBOR shall be collected and used.

• Any amendment of these guidelines shall be made by a decision of a conference of the CMI."

RULE XXIII. TIME BAR.

A new rule has been added into the YAR 2004 providing for any rights to G.A. contribution to be time-barred after a period of one year after the date of the G.A. adjustment or six years after the date of termination of the common maritime adventure whichever comes first. The rule recognizes that its provisions may be invalid in some countries.

TIDYING UP THE TEXT OF THE YAR

Interchangeable terms have been standardized such as "admitted in", "allowed in" and "admitted as" now all become "allowed as". Some terms have been modernized and a consistent numbering of paragraphs has been introduced.

The Plenary Session of the Vancouver Conference adopted the following resolution:

"The delegates representing the National Associations of Maritime Law of the States listed hereunder

1. having noted with approval the amendments which have been made to the York Antwerp Rules 1994;

2. propose that the new text be referred to as the York-Antwerp Rules 2004;
3. recommend that the York-Antwerp Rules 2004 should be applied in the adjustment of claims in General Average as soon as practicable after 31 December 2004."

List of States:
Argentina Japan
Australia and New Zealand Malaysia
Belgium Mexico
Brazil Nigeria
Bulgaria Norway
Canada Peru
Chile Philippines
China Singapore
Colombia South Africa
Denmark Spain
Finland Sweden
France Switzerland
Germany United Kingdom
Ireland USA
Israel Venezuela
Italy

Copenhagen, 19 July 2004

BENT NIELSEN
Chairman of the CMI International Sub-Committee on G.A.

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YORK-ANTWERP RULES 2004

RULE OF INTERPRETATION

In the adjustment of general average the following Rules shall apply to the exclusion of any Law and Practice inconsistent therewith.

Except as provided by the Rule Paramount and the numbered Rules, general average shall be adjusted according to the lettered Rules.
RULE PARAMOUNT

In no case shall there be any allowance for sacrifice or expenditure unless reasonably made or incurred.

RULE A

1. There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

2. General average sacrifices and expenditures shall be borne by the different contributing interests on the basis hereinafter provided.

RULE B

1. There is a common maritime adventure when one or more vessels are towing or pushing another vessel or vessels, provided that they are all involved in commercial activities and not in a salvage operation.

   When measures are taken to preserve the vessels and their cargoes, if any, from a common peril, these Rules shall apply.

2. A vessel is not in common peril with another vessel or vessels if by simply disconnecting from the other vessel or vessels she is in safety; but if the disconnection is itself a general average act the common maritime adventure continues.

RULE C

1. Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average.
2. In no case shall there be any allowance in general average for losses, damages or expenses incurred in respect of damage to the environment or in consequence of the escape or release of pollutant substances from the property involved in the common maritime adventure.

3. Demurrage, loss of market, and any loss or damage sustained or expense incurred by reason of delay, whether on the voyage or subsequently, and any indirect loss whatsoever, shall not be allowed as general average.

RULE D

Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the adventure, but this shall not prejudice any remedies or defences which may be open against or to that party in respect of such fault.

RULE E

1. The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.

2. All parties claiming in general average shall give notice in writing to the average adjuster of the loss or expense in respect of which they claim contribution within 12 months of the date of the termination of the common maritime adventure.

3. Failing such notification, or if within 12 months of a request for the same any of the parties shall fail to supply evidence in support of a notified claim, or particulars of value in respect of a contributory interest, the average adjuster shall be at liberty to estimate the extent of the allowance or the contributory value on the basis of the information available to him, which estimate may be challenged only on the ground that it is manifestly incorrect.
RULE F

Any additional expense incurred in place of another expense, which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

RULE G

1. General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends.

2. This rule shall not affect the determination of the place at which the average statement is to be made up.

3. When a ship is at any port or place in circumstances which would give rise to an allowance in general average under the provisions of Rules X and XI, and the cargo or part thereof is forwarded to destination by other means, rights and liabilities in general average shall, subject to cargo interests being notified if practicable, remain as nearly as possible the same as they would have been in the absence of such forwarding, as if the adventure had continued in the original ship for so long as justifiable under the contract of affreightment and the applicable law.

4. The proportion attaching to cargo of the allowances made in general average by reason of applying the third paragraph of this Rule shall not exceed the cost which would have been borne by the owners of cargo if the cargo had been forwarded at their expense.

RULE I. JETTISON OF CARGO

No jettison of cargo shall be allowed as general average, unless such cargo is carried in accordance with the recognised custom of the trade.
RULE II. LOSS OR DAMAGE BY SACRIFICES FOR THE COMMON SAFETY

Loss of or damage to the property involved in the common maritime adventure by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship's hatches opened or other opening made for the purpose of making a jettison for the common safety, shall be allowed as general average.

RULE III. EXTINGUISHING FIRE ON SHIPBOARD

Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be allowed as general average; except that no allowance shall be made for damage by smoke however caused or by heat of the fire.

RULE IV. CUTTING AWAY WRECK

Loss or damage sustained by cutting away wreck or parts of the ship which have been previously carried away or are effectively lost by accident shall not be allowed as general average.

RULE V. VOLUNTARY STRANDING

When a ship is intentionally run on shore for the common safety, whether or not she might have been driven on shore, the consequent loss or damage to the property involved in the common maritime adventure shall be allowed in general average.

RULE VI. SALVAGE REMUNERATION

a. Salvage payments, including interest thereon and legal fees associated with such payments, shall lie where they fall and shall not be allowed in general.
average, save only that if one party to the salvage shall have paid all or any of
the proportion of salvage (including interest and legal fees) due from another
party (calculated on the basis of salved values and not general average
contributory values), the unpaid contribution to salvage due from that other
party shall be credited in the adjustment to the party that has paid it, and
debited to the party on whose behalf the payment was made.

b. Salvage payments referred to in paragraph (a) above shall include any
salvage remuneration in which the skill and efforts of the salvors in
preventing or minimising damage to the environment such as is referred to in
Article 13 paragraph 1(b) of the International Convention on Salvage 1989
have been taken into account.

c. Special compensation payable to a salvor by the shipowner under Article 14
of the said Convention to the extent specified in paragraph 4 of that Article or
under any other provision similar in substance (such as SCOPIC) shall not be
allowed in general average and shall not be considered a salvage payment as
referred to in paragraph (a) of this Rule.

RULE VII. DAMAGE TO MACHINERY AND BOILERS

Damage caused to any machinery and boilers of a ship which is ashore and in
a position of peril, in endeavouring to refloat, shall be allowed in general
average when shown to have arisen from an actual intention to float the ship
for the common safety at the risk of such damage; but where a ship is afloat
no loss or damage caused by working the propelling machinery and boilers
shall in any circumstances be allowed as general average.

RULE VIII. EXPENSES LIGHTENING A SHIP WHEN ASHORE AND
CONSEQUENT DAMAGE

When a ship is ashore and cargo and ship's fuel and stores or any of them are
discharged as a general average act, the extra cost of lightening, lighter hire
and reshipping (if incurred), and any loss or damage to the property involved in the common maritime adventure in consequence thereof, shall be allowed as general average.

RULE IX. CARGO, SHIP'S MATERIALS AND STORES USED FOR FUEL

Cargo, ship's materials and stores, or any of them, necessarily used for fuel for the common safety at a time of peril shall be allowed as general average, but when such an allowance is made for the cost of ship's materials and stores the general average shall be credited with the estimated cost of the fuel which would otherwise have been consumed in prosecuting the intended voyage.

RULE X. EXPENSES AT PORT OF REFUGE, ETC.

a.(i) When a ship shall have entered a port or place of refuge or shall have returned to her port or place of loading in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, the expenses of entering such port or place shall be allowed as general average; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place consequent upon such entry or return shall likewise be allowed as general average.

(ii) When a ship is at any port or place of refuge and is necessarily removed to another port or place of refuge because repairs cannot be carried out in the first port or place, the provisions of this Rule shall be applied to the second port or place of refuge as if it were a port or place of refuge and the cost of such removal including temporary repairs and towage shall be allowed as general average. The provisions of Rule XI shall be applied to the prolongation of the voyage occasioned by such removal.
b.(i) The cost of handling on board or discharging cargo, fuel or stores whether at a port or place of loading, call or refuge, shall be allowed as general average, when the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, except in cases where the damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstances connected with such damage having taken place during the voyage.

(ii) The cost of handling on board or discharging cargo, fuel or stores shall not be allowable as general average when incurred solely for the purpose of restowage due to shifting during the voyage, unless such restowage is necessary for the common safety.

c. Whenever the cost of handling or discharging cargo, fuel or stores is allowable as general average, the costs of storage, including insurance if reasonably incurred, reloading and stowing of such cargo, fuel or stores shall likewise be allowed as general average. The provisions of Rule XI shall be applied to the extra period of detention occasioned by such reloading or restowing.

But when the ship is condemned or does not proceed on her original voyage, storage expenses shall be allowed as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.

RULE XI. WAGES AND MAINTENANCE OF CREW AND OTHER EXPENSES PUTTING IN TO AND AT A PORT OF REFUGE, ETC.

a. Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her
port or place of loading shall be allowed as general average when the expenses of entering such port or place are allowable as general average in accordance with Rule X(a).

b. For the purpose of this and the other Rules wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the terms of articles of employment.

c.(i) When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, fuel and stores consumed during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be allowed as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.

(ii) Port charges incurred during the extra period of detention shall likewise be allowed as general average except such charges as are incurred solely by reason of repairs not allowable in general average.

(iii) Provided that when damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstance connected with such damage having taken place during the voyage, then fuel and stores consumed and port charges incurred during the extra detention for repairs to damages so discovered shall not be allowable as general average, even if the repairs are necessary for the safe prosecution of the voyage.

(iv) When the ship is condemned or does not proceed on her original voyage, fuel and stores consumed and port charges shall be allowed as general average only up to the date of the ship's condemnation or of the abandonment of the...
voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.

d. The cost of measures undertaken to prevent or minimise damage to the environment shall be allowed in general average when incurred in any or all of the following circumstances:

(i) as part of an operation performed for the common safety which, had it been undertaken by a party outside the common maritime adventure, would have entitled such party to a salvage reward;

(ii) as a condition of entry into or departure from any port or place in the circumstances prescribed in Rule X(a);

(iii) as a condition of remaining at any port or place in the circumstances prescribed in Rule XI(c), provided that when there is an actual escape or release of pollutant substances the cost of any additional measures required on that account to prevent or minimise pollution or environmental damage shall not be allowed as general average;

(iv) necessarily in connection with the discharging, storing or reloading of cargo whenever the cost of those operations is allowable as general average.

RULE XII. DAMAGE TO CARGO IN DISCHARGING, ETC.

Damage to or loss of cargo, fuel or stores sustained in consequence of their handling, discharging, storing, reloading and stowing shall be allowed as general average, when and only when the cost of those measures respectively is allowed as general average.

RULE XIII. DEDUCTIONS FROM COST OF REPAIRS

a. Repairs to be allowed in general average shall not be subject to deductions in respect of "new for old" where old material or parts are replaced by new
unless the ship is over fifteen years old in which case there shall be a deduction of one third. The deductions shall be regulated by the age of the ship from the 31st December of the year of completion of construction to the date of the general average act, except for insulation, life and similar boats, communications and navigational apparatus and equipment, machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.

b. The deductions shall be made only from the cost of the new material or parts when finished and ready to be installed in the ship. No deduction shall be made in respect of provisions, stores, anchors and chain cables. Drydock and slipway dues and costs of shifting the ship shall be allowed in full.

c. The costs of cleaning, painting or coating of bottom shall not be allowed in general average unless the bottom has been painted or coated within the twelve months preceding the date of the general average act in which case one half of such costs shall be allowed.

RULE XIV. TEMPORARY REPAIRS

a. Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be allowed as general average.

b. Where temporary repairs of accidental damage are effected in order to enable the adventure to be completed, the cost of such repairs shall be allowed as general average without regard to the saving, if any, to other interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there. Provided that for the purposes of this paragraph only, the cost of temporary repairs falling for consideration shall be limited to the extent that the cost of temporary repairs effected at the port of loading, call or refuge, together with either the cost of permanent repairs eventually effected or, if
unrepaired at the time of the adjustment, the reasonable depreciation in the value of the vessel at the completion of the voyage exceeds the cost of permanent repairs had they been effected at the port of loading, call or refuge.

c.No deductions "new for old" shall be made from the cost of temporary repairs allowable as general average.

RULE XV. LOSS OF FREIGHT

Loss of freight arising from damage to or loss of cargo shall be allowed as general average, either when caused by a general average act, or when the damage to or loss of cargo is so allowed.

Deduction shall be made from the amount of gross freight lost, of the charges which the owner thereof would have incurred to earn such freight, but has, in consequence of the sacrifice, not incurred.

RULE XVI. AMOUNT TO BE ALLOWED FOR CARGO LOST OR DAMAGED BY SACRIFICE

a. The amount to be allowed as general average for damage to or loss of cargo sacrificed shall be the loss which has been sustained thereby based on the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value. The value at the time of discharge shall include the cost of insurance and freight except insofar as such freight is at the risk of interests other than the cargo.

b. When cargo so damaged is sold and the amount of the damage has not been otherwise agreed, the loss to be allowed in general average shall be the difference between the net proceeds of sale and the net sound value as computed in the first paragraph of this Rule.

RULE XVII. CONTRIBUTORY VALUES
a.(i) The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure except that the value of cargo shall be the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value.

(ii) The value of the cargo shall include the cost of insurance and freight unless and insofar as such freight is at the risk of interests other than the cargo, deducting therefrom any loss or damage suffered by the cargo prior to or at the time of discharge.

(iii) The value of the ship shall be assessed without taking into account the beneficial or detrimental effect of any demise or time charterparty to which the ship may be committed.

b.To these values shall be added the amount allowed as general average for property sacrificed, if not already included, deduction being made from the freight and passage money at risk of such charges and crew's wages as would not have been incurred in earning the freight had the ship and cargo been totally lost at the date of the general average act and have not been allowed as general average; deduction being also made from the value of the property of all extra charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average or fall upon the ship by virtue of an award for special compensation under Art. 14 of the International Convention on Salvage, 1989 or under any other provision similar in substance.

c.In the circumstances envisaged in the third paragraph of Rule G, the cargo and other property shall contribute on the basis of its value upon delivery at original destination unless sold or otherwise disposed of short of that destination, and the ship shall contribute upon its actual net value at the time of completion of discharge of cargo.
d. Where cargo is sold short of destination, however, it shall contribute upon the actual net proceeds of sale, with the addition of any amount allowed as general average.

e. Mails, passengers' luggage, personal effects and accompanied private motor vehicles shall not contribute to general average.

RULE XVIII. DAMAGE TO SHIP

The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear caused by a general average act shall be as follows:

a. When repaired or replaced,

The actual reasonable cost of repairing or replacing such damage or loss, subject to deductions in accordance with Rule XIII;

b. When not repaired or replaced,

The reasonable depreciation arising from such damage or loss, but not exceeding the estimated cost of repairs. But where the ship is an actual total loss or when the cost of repairs of the damage would exceed the value of the ship when repaired, the amount to be allowed as general average shall be the difference between the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not general average and the value of the ship in her damaged state which may be measured by the net proceeds of sale, if any.

RULE XIX. UNDECLARED OR WRONGFULLY DECLARED CARGO

a. Damage or loss caused to goods loaded without the knowledge of the shipowner or his agent or to goods wilfully misdescribed at time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved.
b. Damage or loss caused to goods which have been wrongfully declared on shipment at a value which is lower than their real value shall be contributed for at the declared value, but such goods shall contribute upon their actual value.

RULE XX. PROVISION OF FUNDS

a. The capital loss sustained by the owners of goods sold for the purpose of raising funds to defray general average disbursements shall be allowed in general average.

b. The cost of insuring average disbursements shall also be allowed in general average.

RULE XXI. INTEREST ON LOSSES ALLOWED IN GENERAL AVERAGE

a. Interest shall be allowed on expenditure, sacrifices and allowances in general average until three months after the date of issue of the general average adjustment, due allowance being made for any payment on account by the contributory interests or from the general average deposit fund.

b. Each year the Assembly of the Comité Maritime International shall decide the rate of interest which shall apply. This rate shall be used for calculating interest accruing during the following calendar year.

RULE XXII. TREATMENT OF CASH DEPOSITS

Where cash deposits have been collected in respect of cargo's liability for general average, salvage or special charges such deposits shall be paid without any delay into a special account in the joint names of a representative nominated on behalf of the shipowner and a representative nominated on behalf of the depositors in a bank to be approved by both. The sum so deposited together with accrued interest, if any, shall be held as security for...
payment to the parties entitled thereto of the general average, salvage or
special charges payable by cargo in respect of which the deposits have been
collected. Payments on account or refunds of deposits may be made if
certified to in writing by the average adjuster. Such deposits and payments or
refunds shall be without prejudice to the ultimate liability of the parties.

RULE XXIII. TIME BAR FOR CONTRIBUTIONS TO GENERAL
AVERAGE

a. Subject always to any mandatory rule on time limitation contained in any
applicable law:

(i) Any rights to general average contribution, including any rights to claim
under general average bonds and guarantees, shall be extinguished unless an
action is brought by the party claiming such contribution within a period of
one year after the date upon which the general average adjustment was issued.
However, in no case shall such an action be brought after six years from the
date of the termination of the common maritime adventure.

(ii) These periods may be extended if the parties so agree after the termination
of the common maritime adventure.

b. This Rule shall not apply as between the parties to the general average and
their respective insurers.
An Act to provide for the regulation of the multimodal transportation of goods, from any place in India to a place outside India, on the basis of a multimodal transport contract and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-fourth Year of the republic of India as follows:--

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.

(1) This Act may be called the Multimodal Transportation of Goods Act, 1993.(2) It extends to the whole of India except the State of Jammu and Kashmir. (3) It shall be deemed to have come into force on the 16th day of October, 1992.

2. Definitions. In this Act, unless the context otherwise requires,-

(a) "carrier" means a person who is engaged in the business transporting for hire goods by road, rail, inland waterways or sea;

(b) "competent authority" means any person or authority authorised by the Central Government, by notification in the Official Gazette, to perform the functions of the competent authority under this Act;
(c) "consignee" means the person named as consignee in the multimodal transport contract;

(d) "consignment" means the goods entrusted to a multimodal transport operator for multimodal transportation;

(e) "consignor" means the person, named in the multimodal transport contract as consignor, by whom or on whose behalf the goods covered by such contract are entrusted to a multimodal transport operator for multimodal transportation;

(f) "delivery" means-

(i) in the case of a negotiable multimodal transport document, delivering of the consignment to, or placing the consignment at the disposal of, the consignee or any other person entitled to receive it;

(ii) in the case of a no-negotiable multimodal transport document, delivering of the consignment to, or placing the consignment at the disposal of, the consignee or any person authorised by the consignee to accept delivery of the consignment on his behalf;

(g) "endorsee" means the person in whose favour an endorsement is made, and in the case of successive endorsements, the person in whose favour the last endorsement is made;

(h) "endorsement" means the signing by the consignee or the endorsee after adding a direction on a negotiable multimodal transport document to pass the property in the goods mentioned in such document to a specified person;

(i) "goods" includes-

(l) containers, pallets or similar articles of transport used to consolidate goods; and
(II) animals;

(j) "mode of transport" means carriage of goods by road, rail, inland waterways or sea;

(k) "multimodal transportation" means carriage of goods by two or more modes of transport from the place of acceptance of the goods in India to a place of delivery of the goods outside India;

(l) "multimodal transport contract" means a contract entered into by the consignor and the multimodal transport operator for multimodal transportation;

(m) "multimodal transport operator" means any person who-

(i) concludes a multimodal transport contract on his own behalf or through another person acting on his behalf;

(ii) acts as principal, and not as an agent either of the consignor or of the carrier participating in the multimodal transportation, and who assumes responsibility for the performance of the said Contract; and

(iii) is registered under sub-section (3) of section 4;

(n) "negotiable multimodal transport document" means a multimodal transport document which is-

(i) made out to order or to bearer; or

(ii) made out to order and is transferable by endorsement;

or

(iii) made out to bearer and is transferable without endorsement;
(o) "non-negotiable multimodal transport, document" means a multimodal transport document which indicates only one named consignee;

(p) "prescribed" means prescribed by rules made under this Act;

(q) "registration" means registration of multimodal transport operator under sub-section (3) of section 4.

CHAPTER II

REGULATION OF MULTIMODAL TRANSPORTATION

3. No person to carry on business without registration.

No person shall carry on or commence the business of multimodal transportation unless he is registered under this Act:

Provided that a person carrying on the business of multimodal transportation immediately before the commencement of this Act, may continue to do so for a period of three months from such commencement; and if he has made an application for registration within the said period, till the disposal of such application.

4. Registration for multimodal transportation.

(1) Any person may apply for registration to the competent authority to carry on or commence the business of multimodal transportation.

(2) An application under sub-section (1) shall be made in such form as may be prescribed and shall be accompanied by a fee of ten thousand rupees.

(3) On receipt of the application, the competent authority shall satisfy that the applicant fulfils the following, conditions, namely:-
(a) (i) that the applicant is a shipping company or a company engaged in the business of freight forwarding in India or abroad with a minimum annual turnover of fifty lakh rupees during the immediate preceding financial year or an average annual turnover of fifty lakh rupees during the preceding three financial years as certified by a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949)

4.(ii) that if the applicant is a company other than a company specified in sub-clause (i), the subscribed share capital of such company is not less than fifty lakh rupees;

(b) that the applicant has offices or agents or representatives in not less than two other countries, and on being so satisfied, register the applicant as a multimodal transport operator and grant a certificate to it to carry on or commence the business of multimodal transportation:

Provided that the competent authority may, for reasons to be recorded in writing, refuse to grant registration if it is satisfied that the applicant does not fulfil the said conditions.

(4) A certificate granted under sub-section (3) shall be valid for a period of one year and may be renewed from time to time for a further period of one year at a time.

(5) An application for renewal shall be made in such form as may be prescribed and shall be accompanied by a fee of two thousand rupees.

5. Cancellation of registration.

The competent authority may, if it is satisfied at any time after registration that-
(a) any statement in, or in relation to, any application under sub-section (2) of section 4 or its renewal under sub-section (5) of that section, is incorrect or false in any material particular; or

(b) any of the provisions of this Act or the rules made there under has been contravened by the multimodal transport operator; or

(c) the multimodal transport operator has not entered into any multimodal transport contract during the preceding two years after his registration, cancel by order the certificate of registration:

Provided that no such registration shall be cancelled unless the multimodal transport operator has been given a reasonable opportunity of showing cause against the proposed action.

6. Appeal.

(1) Any person aggrieved by an order made by the competent authority under section 5 may prefer an appeal to the Central Government within such period as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of the prescribed period.

Provided that an appeal may be admitted after the expiry of the prescribed period if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form and on payment of such fees as may be prescribed and shall be accompanied by a copy of the order appealed against.
(4) On receipt of any such appeal, the Central Government shall, after giving the parties a reasonable opportunity of being heard and after making such inquiry as it deems proper, make such order as it thinks fit.

CHAPTER III

MULTIMODAL TRANSPORT DOCUMENT


(1) Where the consignor and the Multimodal transport operator have entered into a contract for the multimodal transportation and the multimodal transport operator has taken charge of the goods, he shall, at the option of the consignor, issue a negotiable or non-negotiable multimodal transport document.

(2) The multimodal transport document shall be signed by the multimodal transport operator or by a person duly authorised by him.

8. Multimodal transport document to be regarded as document of title.

(1) Every consignee named in the negotiable or non-negotiable multimodal transport document and every endorsee of such document, as the case may be, to whom the property in the goods mentioned therein shall pass, upon or by reason of such consignment or endorsement, shall have all the rights and liabilities of the consignor.

(2) Nothing contained in sub-section (1) shall prejudice or affect the right of the multimodal transport operator to claim freight from the consignor or enforce any liability of the consignee or endorsee by reason of his being such consignee or endorsee.

The multimodal transport document shall contain the following particulars, namely:

(a) the general nature of the goods, the leading marks necessary for identification of the goods, the character of the goods (including dangerous goods), number of packages or units and the gross weight and quantity of the goods;

(b) apparent condition of the goods;

(c) the name and principal place of business of the multimodal transport operator;

(d) the name of the consignor;

(e) the name of the consignee, if specified by the consignor;

(f) the place and date of taking charge of the goods by the multimodal transport operator;

(g) the place of delivery of the goods;

(h) the date or the period of delivery of the goods at the place of delivery;

(i) whether it is negotiable or non-negotiable;

(j) the place and date of its issue;

(k) freight payable by the consignor or the consignee, as the case may be;

(l) the signature of the multimodal transport operator or of a person duly authorised by him;
(m) the intended journey route, modes of transport and places of transhipment, if known at the time of its issue;

(n) terms of shipment and a statement that the document has been issued subject to and in accordance with this Act; and

(o) any other particular which the parties may agree to insert in the document, if any such particular is not inconsistent with any law for the time being in force.

10. Reservation in the multimodal transport document.

(1) Where the multimodal transport operator or a person acting on his behalf knows, or has reasonable rounds to suspect, that the particulars furnished by the consignor in the multimodal transport document do not accurately represent the goods actually taken in charge, or if he has no reasonable means of checking such particulars, the multimodal transport operator or a person acting on his behalf shall insert in the multimodal transport document a reservation specifying the inaccuracies, if any, the grounds of suspicion or the absence of reasonable means of checking the particulars.

(2) Where the multimodal transport operator or a person acting on his behalf fails to insert the reservation in the multimodal transport document relating to the apparent condition of the goods, he shall be deemed to have accepted the goods in apparent good condition.


Save as provided in section 10,-

(a) the multimodal transport document shall be prima facie evidence of the fact that the multimodal transport operator has taken charge of the goods as described in the documents; and
(b) no proof to the contrary by the multimodal transport operator shall be admissible if the multimodal transport document is issued in negotiable form and has been transmitted to the consignee or transferred by the consignee to a third party, if the consignee or the third party has acted in good faith relying on the description of the goods in the documents.

12. Responsibility of the consignor.

(1) The consignor shall be deemed to have guaranteed to the multimodal transport operator the adequacy and accuracy, at the time the multimodal transport operator takes charge of the goods of the particulars referred to in clauses (a) and (b) of section 9 as furnished by the consignor for insertion in the multimodal transport document.

(2) The consignor shall indemnify the multimodal transport operator against loss resulting from inadequacy or inaccuracy of the particulars referred to in sub-section (1).

(3) The right of the multimodal transport operator under sub-section (2) shall in no way limit his liability under the multimodal transport contract to any person other than the consignor.

CHAPTER IV

RESPONSIBILITIES AND LIABILITIES OF THE MULTIMODAL TRANSPORT OPERATOR

13. Basis of liability of multimodal transport operator.

(1) The multimodal transport operator shall be liable for loss resulting from-

(a) any loss of, or damage to, the consignment;
(b) delay in delivery of the consignment and any consequential loss or damage arising from such delay,

Where such loss, damage or delay in delivery took place while the consignment was in his charge:

Provided that the multimodal transport operator shall not be liable if he proves that no fault or neglect on his part or that of his servants or agents had caused or contributed to such loss, damage or delay in delivery:

Provided further that the multimodal transport operator shall not be liable for loss or damage arising out of delay in delivery unless the consignor had made a declaration of interest in timely delivery which has been accepted by the multimodal transport operator.

Explanation.- For the purposes of this sub-section, "delay in delivery" shall be deemed to occur when the consignment has not been delivered within the time expressly agreed upon or, in the absence of such agreement, within a reasonable time required by a diligent multimodal transport operator, having regard to the circumstances of the case, to effect the delivery of the consignment.

(2) If the consignment has not been delivered within ninety consecutive days following the date of delivery expressly agreed upon or the reasonable time referred to in the Explanation to sub-section (1), the claimant may treat the consignment as lost.

14.Limits of liability when the nature and value of the consignment have not been declared and stage of transport where loss or damage occurred is not known.

(1) Where a multimodal transport operator becomes liable for any loss of, or damage to, any consignment, the nature and value whereof have not been
declared by the consignor before such consignment has been taken in charge by the multimodal transport operator and the stage of transport at which such loss or damage occurred is not known, then the liability of the multimodal transport operator to pay compensation shall not exceed two Special Drawing Rights per kilogram of the gross weight of the consignment lost or damaged or 666.67 Special Drawing Rights per package or unit lost or damaged, whichever is higher.

Explanation--For the purposes of this sub-section, where a container, pallet or similar article of transport is loaded with more than one package or unit, the packages or units enumerated in the multimodal transport document, as packed in such container, pallet or similar article of transport shall be deemed as packages or units.

(2) Notwithstanding anything contained in sub-section (1), if the multimodal transportation does not, according to the multimodal transport contract, include carriage of goods by sea or by inland waterways, the liability of the multimodal transport operator shall be limited to an amount not exceeding 8.33 Special Drawing Rights per kilogram of the gross weight of the goods lost or damaged.

15. Limits of liability when the nature and value of the consignment have not been declared and stage of transport where loss or damage occurred is known.

Where a multimodal transport operator becomes liable for any loss of, or damage to, any consignment, the nature and value whereof have not been declared by the consignor before such consignment has been taken in charge by the multimodal transport operator and the stage of transport at which such loss or damage occurred is known, then the limit of the liability of the multimodal transport operator for such loss or damage shall be determined in accordance with the provisions of the relevant law applicable in relation to the mode of transport during the course of which the loss or damage occurred.
and any stipulation in the multimodal transport contract to the contrary shall be void and unenforceable.

16. Liability of the multimodal transport operator in case of delay in delivery of goods under certain circumstances.

Where delay in delivery of the consignment occurs under any of the circumstances mentioned in the Explanation to sub-section (1) of section 13, or any consequential loss or damage arises from such delay, then, the liability of the multimodal transport operator shall be limited to the freight payable for the consignment so delayed.

17. Assessment of compensation.

(1) Assessment of compensation for loss of, or damage to, the consignment shall be made with reference to the value of such consignment at the place where, and the time at which, such consignment is delivered to the consignee or at the place and time when, in accordance with the multimodal transport contract, it should have been delivered.

(2) The value of the consignment shall be determined according to the current commodity exchange price, or, if there is no such price, according to the current market price, or, if the current market price is not ascertainable, with reference to the normal value of a consignment of the same kind and quantity.

18. Loss of right of multimodal transport operator to limit liability.

The multimodal transport operator shall not be entitled to the benefit of limitation of liability under any of the provisions of this Chapter if it is proved that the loss, damage or delay in delivery of consignment resulted from an act or omission of the multimodal transport operator with intent to cause such
loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

19. Limit of liability of multimodal transport operator for total loss of goods.

The multimodal transport operator shall not, in any case, be liable for an amount greater than the liability for total loss of goods for which a person will be entitled to make a claim against him under the provisions of this Act.

20. Notice of loss of or damage to goods.

(1) The delivery of the consignment to the consignee by the multimodal transport operator shall be treated as prima facie evidence of delivery of the goods as described in the multimodal transport document unless notice of the general nature of loss of, or damage to, the goods is given, in writing, by the consignee to the multimodal transport operator at the time of handing over of the goods to the consignee.

(2) Where the loss or damage is not apparent, the provisions of sub-section (1) shall apply unless notice in writing is given by the consignee of the loss of, or damage to, the goods within six consecutive days after the day when the goods were handed over to the consignee.

CHAPTER V

MISCELLANEOUS

21. Special provision for dangerous goods.

(1) Where the consignor hands over the prescribed dangerous goods to a multimodal transport operator or any person acting on behalf of such operator, the consignor shall inform him of the nature of the dangerous goods and, if necessary, the precautions to be taken while transporting such goods.
(2) Where the consignor fails to inform the multimodal transport operator or the other person acting on behalf of such operator of the nature of the dangerous goods and such operator or person does not otherwise have knowledge of the dangerous goods-

(a) the consignor shall be liable to the multimodal transport operator or the other person acting on behalf of such operator for all loss resulting from the multimodal transportation of such goods; and

(b) the goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation.

22. Right of multimodal transport operator to have lien on goods and documents.

(1) The multimodal transport operator who has not been paid the amount of consideration stipulated in the multimodal transport contract shall have a lien on the consignment and on the documents in his possession.

(2) Notwithstanding anything contained in sections 13, 16 and 18, the period during which the goods are in possession of the multimodal transport operator in exercise of his right of lien referred to in sub-section (1) shall not be included for the purposes of calculating the time or delay under any of those sections.

23. General average.

Notwithstanding anything contained in any other provision of this Act, it shall be lawful for the parties to the multimodal transport contract to include in the multimodal transport document any provision relating to general average.

Explanation.-For the purposes of this section, "general average"
means loss, damage or expense reasonably incurred in order to avert danger to property in common peril and in the common interest involved in the multimodal transportation.

24. Limitation on action.

The multimodal transport operator shall not be liable under any of the provisions of this Act unless action against him is brought within nine months of:

(a) the date of delivery of the goods, or

(b) the date when the goods should have been delivered, or

(c) the date on and from which the party entitled to receive delivery of the goods has the right to treat the goods as lost under sub-section (2) of section 13.25. Jurisdiction for institution action.

25. Jurisdiction for instituting action. Any party to the multimodal transport contract may institute an action in a court which is competent and within the jurisdiction of which is situated one of the following places, namely:

(a) the principal place of business, or, in the absence thereof, the habitual residence of the defendant; or

(b) the place where the multimodal transport contract was made, provided that the defendant has a place of business, branch or agency at such place; or

(c) the place of taking charge of the goods for multimodal transportation or the place of delivery thereof; or

(d) any other place specified in the multimodal transport contract and evidenced in the multimodal transport document.

(1) The parties to a multimodal transport contract may provide therein that any dispute which may arise in relation to multimodal transportation under the provisions of this Act shall be referred to arbitration.

(2) The arbitration proceeding may be instituted at such place or in accordance with such procedure as may be specified in the multimodal transport document.

27. Delegation of power.

The Central Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act, except the power under section 30, shall, in such circumstances and subject to such conditions, if any, as may be specified therein, be exercisable also by such officer or authority as may be specified in the notification.

28. Multimodal transport contract to be made in accordance with this Act.

No person registered as a multimodal transport operator shall enter into any contract for multimodal transportation except in accordance with the provisions of this Act and any contract, to the extent it is inconsistent with the said provisions, shall be void and unenforceable.

29. Act to override other enactments.

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

30.

Power to make rules.
(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such rules may provide for all or any of the following matters, namely:-

(a), the forms in which applications shall be made under section 4;

(b) the period within which appeal shall be preferred under sub-section (1) of section 6;

(c) the form in which an appeal shall be preferred under section 6 and the amount of fee payable in respect of such appeal;

(d) dangerous goods for the purpose of section 21;

(e) any other matter which is to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

31.Amendment of certain enactments.

On and from the date of the commencement of this Act, the enactments specified in Parts I, II and
III of the Schedule shall be amended in the manner specified therein.

32. Repeal and savings.

(1) The Multimodal Transportation of Goods Ordinance, 1993 (Ord. 6 of 1993) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE

(See section 31)

AMENDMENT OF CERTAIN ENACTMENTS

PART

Amendment of the Carriers Act, 1865 (3 of 1865)

PART I

Amendment of the Carriers Act, 1865.(3 of 1865)

In the Carriers Act, 1865,-

(a) in section 2, in the definition relating to "common carrier", after the words "engaged in the business of", the words "transporting property under multimodal transport document or of" shall be inserted;

12.(b) in sections 6, 7 and 8, for the words "property delivered", the words and brackets "property (including container, pallet or similar article of transport used to consolidate goods) delivered" shall, respectively, be substituted;
(c) in sections 9 and 10, for the words "goods entrusted", the words and brackets "goods (including containers, pallets or similar article of transport used to consolidate goods) entrusted" shall, respectively, be substituted.

PART

Amendment of the Indian carriage of Goods by Sea Act, 1925 (26 of 1925)

PART II

Amendment of the Indian Carriage of Goods by Sea Act, 1925 (26 of 1925)

In the Indian Carriage of Goods by Sea Act, 1925,—

(a) in the Preamble, after the second paragraph, the following paragraph shall be inserted, namely:-

"AND WHEREAS the said rules were amended by the Protocol signed at Brussels on 23rd February, 1968 and by the Protocol signed at Brussels on 21st December, 1979;"

(b) in section 7, in sub-section (1), for the words and figures "sections 331 and 352", the words, figures and letters "section 331 and Part XA" shall be substituted;

(c) in the Schedule,—

(i) in Article I, in clause (c), after the word "merchandises," , the words "containers, pallets or similar article of transport used to consolidate goods if supplied by the shipper," shall be inserted;

(ii) in Article III,—

(1) in paragraph 4, the following shall be added at the end, namely: -
"However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith."

(2) in paragraph 6, in the third sub-paragraph, the following shall be added at the end, namely:-

"This period may, however, be extended if the parties so agree after the cause of action has arisen:

Provided that a suit may be brought after the expiry of the period of one year referred to in this sub-paragraph within a further period of not more than three months as allowed by the court."

(iii) in Article IV, in paragraph 5, -

(1) for the words and figures "amount exceeding 100 l. per package or unit", the words and figures "amount exceeding 666.67 Special Drawing Rights per package or unit or

13. two Special Drawing Rights per kilogram of gross weight of the goods lost or damaged, whichever is higher" shall be substituted;

(2) after the first sub-paragraph, the following sub-paragraphs shall be inserted, namely:-

"Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading and as packed in such article of transport shall be deemed to be the number of packages or units for the purposes of this paragraph as far as these packages or units are concerned.

Neither the carrier nor the ship shall be entitled to the benefit of limitation of liability provided for in this paragraph if it is proved that the damage resulted
from an act or omission of the carrier done with intent to cause, damage, or recklessly and with knowledge that damage would probably result.

Where the nature or value of the goods has been knowingly mis-stated by the shipper in the bill of lading, the liability of the carrier or ship shall not exceed the value so stated.

PART

Amendment of the Sale of Goods Act, 1930 (30 of 1930)

PART III

Amendment of the Sale of Goods Act, 1930

(3 of 1930)

In the Sale of Goods Act, 1930, in section 2, in clause (4), after the words "railway receipt," the words "multimodal transport document," shall be inserted.
THE INDIAN CARRIAGE OF GOODS BY SEA ACT, 1925
1 ACT NO. 26 OF 1925 [21st September, 1925.]

An Act to amend the law with respect to the carriage of goods by sea.

1. Short title and extent.

(1) This Act may be called the Indian Carriage of Goods by Sea Act, 1925.

(2) It extends to the whole of India.

2. Application of Rules. Subject to the provisions of this Act, the rules set out in the Schedule (hereinafter referred to as "the Rules") shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in India to any other port whether in or outside India.

3. Absolute warranty of sea worthiness not to be implied in contracts to which Rules apply. There shall not be implied in any contract for the carriage of goods by sea to which the Rules apply any absolute undertaking by the carrier of the goods to provide a seaworthy ship.

1. This Act has been extended to Goa, Daman and Diu by Reg. 12 of 1962, s. 3 and Sch., to Pondicherry by Reg. 7 of 1963, s. 3 and Sch. I and to Laccadive, Minicoy and Amindivi Islands by Reg. 8 of 1965, s. 3 and Sch. 2. The words "including the delegates representing His Majesty" omitted by Act 52 of 1964, s. 3 and Sch. II. 3. Ins. by Act 28 of 1993, s. 31 and Sch. (w. e. f. 16. 10. 1992). 4. Subs. by s. 3 and Sch. II, ibid., for third and fourth paragraphs. 5. Subs. by the A. O. 1950, for "all the Provinces of India". 6. Subs., ibid., for "the provinces".
4. Statement as to application of Rules to be included in bills of lading. Every bill of lading, or similar document of title, issued in 1[ India] which contains or is evidence of any contract to which the Rules apply, shall contain an express statement that it is to have effect subject to the provisions of the said Rules as applied by this Act.

5. Modification of Article VI of Rules in relation to goods carried in sailing ships and by prescribed routes. Article VI of the Rules shall, in relation to--

(a) the carriage of goods by sea in sailing ships carrying goods from any port in 1[ India] to any other port whether in or outside 1[ India], and

(b) the carriage of goods by sea in ships carrying goods from a port in 1[ India] notified in this behalf in the Official Gazette by the Central Government to a port in Ceylon specified in the said notification, have effect as though the said Article referred to goods of any class instead of to particular goods and as though the proviso to the second paragraph of the said Article were omitted.

6. Modification of Rules 4 and 5 of Article III in relation to bulk cargoes. Where under the custom of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then, notwithstanding anything in the Rules, the bill of lading shall not be deemed to be prima facie evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper.

7. Saving and operation.

(1) Nothing in this Act shall affect the operation of 2[ 3[ section 331 and Part X A] of the Merchant Shipping Act, 1958 , (44 of 1958 )] or the operation of
any other enactment for the time being in force limiting the liability of the
owners of sea-going vessels.

(2) The Rules shall not by virtue of this Act apply to any contract for the
carriage of goods by sea before such day 3[1], not being earlier than the first
day of January, 1926], as the Central Government may, by notification in the
Official Gazette, appoint, nor to any bill of lading or similar document of title
issued, whether before or after such day as aforesaid, in pursuance of any
such contract as aforesaid.

1. Subs. by the A. O. 1950, for "the Provinces". 2. Subs. by Act 52 of 1964, s.
3 and Sch. II, for certain words. 3. Subs. by Act 28 of 1993, s. 31 and Sch.,
for "section 331 and 352" (w. e. f. 16. 10. 1992 ). 4. 1st January, 1926, see

SCHEDULE

RULES RELATING TO BILLS OF LADING

ARTICLE I.-Definitions. In these Rules the following expressions have the
meanings hereby assigned to them respectively, that is to say-- (a) "carrier"
includes the owner or the charterer who enters into a contract of carriage with
a shipper: (b) "contract of carriage" applies only to contracts of carriage
covered by a bill of lading or any similar document of title, in so far as such
document relates to the carriage of goods by sea including any bill of lading or
any similar document as aforesaid issued under or pursuant to a charterparty
from the moment at which such bill of lading or similar document of title
regulates the relations between a carrier and a holder of the same: (c) "goods"
includes goods, wares, merchandises, containers, pallets or similar article of
transport used to consolidate goods if supplied by the shipper,] and articles of
every kind whatsoever, except live animals and cargo which by the contract of
carriage is stated as being carried on deck and is so carried: (d) "ship" means
any vessel used for the carriage of goods by sea: (e) "carriage of goods" covers
the period from the time when the goods are loaded on to the time when they are discharged from the ship.

ARTICLE II.--Risks. Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

ARTICLE III.--Responsibilities and Liabilities. 1. The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to-- (a) make the ship seaworthy: (b) properly man, equip, and supply the ship: --------- 1. Ins. by Act 28 of 1993, s. 31 and Sch. (w.e.f. 16.10.1992). 336 (c) make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation. 2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried. 3. After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things-- (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage: (b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper: (c) The apparent order and condition of the goods: Provided that no carrier, master or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking. 4. Such a bill of lading
shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b) and (c). 1*[However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.] 5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper. 6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within 3 days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection. In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. 1*[This period may, however, be extended if the parties so agree after the cause of action has arisen; Provided that a suit may be brought after the expiry of the period of one year referred to in this sub-paragraph within a further period of not more than three months as allowed by the court.] In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods. 7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that, if
the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier, such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this Article be deemed to constitute a "shipped" bill of lading. 8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect. A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

ARTICLE IV.—Rights and Immunities. 1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III. Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this section. 2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from— (a) act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship: (b) fire, unless caused by the actual fault or privity of the carrier: (c) perils, dangers and accidents of the sea or other navigable waters: (d) act of God: (e) act of war: (f) act of public enemies: (g) arrest or restraint of princes, rulers or people, or seizure under

1. Added by Act 28 of 1993, s. 31 and Sch. (w.e.f. 16.10.1992). 338 reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III. Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this section. 2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from— (a) act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship: (b) fire, unless caused by the actual fault or privity of the carrier: (c) perils, dangers and accidents of the sea or other navigable waters: (d) act of God: (e) act of war: (f) act of public enemies: (g) arrest or restraint of princes, rulers or people, or seizure under
legal process: (h) quarantine restriction: (i) act or omission of the shipper or owner of the goods, his agent, or representative: (j) strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general: (k) riots and civil commotions: (l) saving or attempting to save life or property at sea: (m) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods: (n) insufficiency of packing: (o) insufficiency or inadequacy of marks: (p) latent defects not discoverable by due diligence: (q) any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage. 3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents, or his servants. 4. Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom. 5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding 666.67 Special Drawing Rights per package or unit or two Special Drawing Rights per kilogram of gross weight of the goods lost or damaged, whichever is higher], or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. 2*Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading and as packed in such article of transport shall be deemed to be the number of packages or units for the purposes of this paragraph as far as these packages or units are concerned. Neither the carrier nor the ship shall be entitled to the benefit of limitation of liability provided
for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result. Where the nature or value of the goods has been knowingly mis-stated by the shipper in the bill of lading, the liability of the carrier or ship shall not exceed the value so stated.]

This declaration if embodied in the bill of lading shall be prima facie evidence, but shall not be binding or conclusive on the carrier. By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure above named. Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been knowingly mis-stated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier, has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.  


ARTICLE V.--Surrender of Rights and Immunities, and Increase of Responsibilities and Liabilities. A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under the Rules contained in any of these Articles, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper. The provisions of these Rules shall not be
applicable to charterparties, but if bills of lading are issued in the case of a ship under a charterparty they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

ARTICLE VI.--Special Conditions. Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier, and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care, and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such. Any agreement so entered into shall have full legal effect: Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the charter or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed, are such as reasonably to justify a special agreement.

ARTICLE VII -- Limitations on the Application of the Rules. Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.
ARTICLE VIII -- Limitation of liability The provisions of these Rules shall not affect the rights and obligation of the carrier under any Statute for the time being in force relating to the limitation of the liability of owners of seagoing vessels.

ARTICLE IX The monetary units mentioned in these Rules are to be taken to be gold value.
THE MERCHANT SHIPPING ACT, 1958
ACT NO. 44 OF 1958

1. This Act has been extended to Goa, Daman and Diu by Reg. 12 of 1962, s. 3 and Sch. and to Pondicherry by Reg. 7 of 1963, s. 3 and Sch. I.

2. The words “and a Shipping Development fund” omitted by Act 66 of 1986, s. 3 (w.e.f. 3-4-1987).

3. Subs. by Act 40 of 2007, s. 2, for the word “registration”(w.e.f. 1-3-2008).

4. Parts I and II came into force w.e.f. 15th December, 1958, vide Notification No. S. O. 2583A, dated the 10th December, 1958, see Gazette of India, 1958, Pt. II. Sec. 3(ii).

Part IV came into force w.e.f. 17th March, 1959, vide Notification No. S. O. 627, dated the 17th March, 1959, see Gazette of India, 1959, Pt. II, Sec. 3(ii).

Sections 7, 405 to 414 (both inclusive), 436 (in so far as it relates to offences mentioned against S. Nos. 122 to 125), 437 to 442, 447, 448, 456 to 460 and so much of section 461 and of Part I of the Schedule as relate to the Control of Shipping Act, 1947 (26 of 1947), came into force on the 1st April, 1960, see Notification No. S. O. 565, dated the 26th February, 1960, Gazette of India, Pt. II, Sec. 3(ii).

The remaining provisions came into force w.e.f. 1st January, 1961, vide Notification No. S. O. 3127, dated the 17th December, 1960, see Gazette of India, 1960, Pt. II, Sec. 3(ii).

5. Subs. by Act 12 of 1983, s. 2, for section 2 (w.e.f.18-5-1983).

[30th October, 1958.]
An Act to foster the development and ensure the efficient maintenance of an Indian mercantile marine in a manner best suited to serve the national interests and for that purpose to establish a National Shipping Board to provide for the registration, certification, safety and security of Indian ships and generally to amend and consolidate the law relating to merchant shipping.

BE it enacted by Parliament in the Ninth Year of the Republic of India as follows:—

PART I

PRELIMINARY

1. Short title and commencement.—(1) This Act may be called the Merchant Shipping Act, 1958.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

2. Application of Act.—(1) Unless otherwise expressly provided, the provisions of this Act which apply to—

(a) any vessel which is registered in India; or

(b) any vessel which is required by this Act to be so registered; or

(c) any other vessel which is owned wholly by persons to each of whom any of the descriptions specified in clause (a) or in clause (b) or in clause (c), as the case may be, of section 21 applies,

shall so apply wherever the vessel may be.

(2) Unless otherwise expressly provided, the provisions of this Act which apply to vessels other than those referred to in sub-section (1) shall so apply
only while any such vessel is within India, including the territorial waters thereof.]

3. Definitions.—In this Act, unless the context otherwise requires,—

1[(1) “cargo ship” means a ship which is not a Passenger ship];

1. Ins. by Act 21 of 1966, s. 2 (w.e.f. 28.5.1966).

2. Clause (1) renumbered as clause (1A) by s. 2, ibid. (w.e.f. 28-5-1966).

3. The words “or is deemed to have been declared” omitted by Act 25 of 1970, s. 2 (w.e.f. 21-7-1968).

4. Subs. by s. 2, ibid., for “article twenty-one” (w.e.f. 21-7-1968).

2[(1A)] “coasting ship” means a ship exclusively employed in trading between any port or place in India and any other port or place on the continent of India or between ports or places in India and ports or places in Ceylon or Burma;

(2) “coasting trade of India” means the carriage by sea of passengers or goods from any port or place in India to any other port or place on the continent of India;

(3) “collision regulations” means the regulations made under section 285 for the prevention of collisions at sea;

(4) “company” means a company as defined in section 3 of the Companies Act, 1956 (1 of 1956);

(5) “country to which the Load Line Convention applies” means,—
(a) a country the Government of which has been declared under section 283 to have accepted the Load Line Convention and has not been so declared to have denounced that Convention;

(b) a country to which it has been so declared that, the Load Line Convention has been applied under the provisions of article thirty-two thereof, not being a country to which it has been so declared that that Convention has ceased to apply under the provisions of that article;

(6) “country to which the Safety Convention applies” means,—

(a) a country the Government of which has been declared under section 283 to have accepted the Safety Convention and has not been so declared to have denounced that Convention;

(b) a territory to which it has been so declare that the Safety Convention extends, not being a territory to which it has been so declared that that Convention has ceased to extend;

(7) “court” in relation to sections 178 to 183 (inclusive) means a civil or revenue court;

(8) “Director-General” means the Director-General of Shipping appointed under section 7;

(9) “distressed seaman” means a seaman engaged under this Act who, by reason of having been discharged or left behind from, or shipwrecked in, any ship at a place outside India, is in distress at that place;

(10) “effects”, in relation to a seaman, includes clothes and documents;

(11) “equipment”, in relation to a ship, includes boats, tackle, pumps, apparel, furniture, life saving appliances of every description, spars, masts, rigging and sails, fog signals, lights, shapes and signals of distress, medicines and medical
and surgical stores and appliances, charts, radio installations, appliances for preventing, detecting or extinguishing fires, buckets, compasses, axes, lanterns, loading and discharging gears and appliances of all kinds and all other stores or articles belonging to or to be used in connection with or necessary for the navigation and safety of the ship;

1[(11A) “family” means—

1. Ins. by Act 41 of 1984, s. 2 (w.e.f. 15-7-1985).

2. Subs. by Act 25 of 1970, s. 2, for clause (14) (w.e.f.21-7-1968).

(i) in the case of male, his wife, his children whether married or unmarried, his dependent parents and his deceased son’s widow and children:

Provided that if a person proves that his wife has ceased under the personal law governing him or the customary law of the community to which the spouses belong to be entitled to maintenance she shall no longer be deemed to be a part of such person’s family for the purpose of this Act unless such person subsequently intimates by express notice, in writing, to the Central Government that she shall continue to be so regarded; and

(ii) in the case of female, her husband, her children, whether married or unmarried, her dependent parents, her husband’s dependent parents and her deceased son’s widow and children:

Provided that if a person by notice in writing to the Central Government expresses her desire to exclude her husband from the family, the husband and his dependent parents shall no longer be deemed to be a part of such person’s family for the purpose of this Act, unless such person subsequently cancels in writing any such notice.

Explanation.—In either of the above two cases, if the child, or, as the case may be, the child of a deceased son, of a person has been adopted by another
person and if under the personal law of the adopter adoption is legally recognised, such a child shall be considered as excluded from the family of the first mentioned person.]

(12) “fishing vessel” means a ship fitted with mechanical means of propulsion which is exclusively engaged in sea fishing for profit;

(13) “foreign-going ship” means a ship, not being a home trade ship, employed in trading between any port or place in India and any other port or place or between ports or places, outside India;

(14) “free board” means the distance measured vertically downwards, amidships, from the upper edge of the deck line to the upper edge of the related load line;

(15) “High Court”, in relation to a vessel, means the High Court within the limits of whose appellate jurisdiction—

(a) the port of registry of the vessel is situate; or

(b) the vessel is for the time being; or

(c) the cause of action wholly or in part arises;

(16) “home-trade ship” means a ship not exceeding three thousand tons gross which is employed in trading between any port or place in India and any other port or place on the continent of India or between ports or places in India and ports or places in Ceylon, Maladive Islands, Federation of Malaya, Singapore or Burma;

(17) “Indian consular officer” means the consul-general, consul, vice-consul, consular agent and pro-consul appointed as such by the Central Government, and includes any person authorised by the Central Government to perform
the functions of consul-general, consul, vice-consul, consular agent or pro-consul;

(18) “Indian ship” means a ship registered as such under this Act and includes any ship registered at any port in India at the commencement of this Act which is recognised as an Indian ship under the proviso to sub-section (2) of section 22;

1[(18A) “international voyage” means a voyage from or to a port or place in India to or from a port or place outside India;]

1. Ins. by Act 21 of 1966, s 2 (w.e.f. 28-5-1966).

2. Subs. by Act 25 of 1970, s. 2, for clause (20) (w.e.f.21-7-1968).

3. Subs. by Act 69 of 1976, s. 3, for clauses (27) and (28) (w.e.f. 1-12-1976).

(19) “load line certificate” means the certificate issued under section 316 or section 321;

2[(20) “Local Line Contention” means the International Convention on Load Lines signed in London on the 5th day of April, 1966, as amended from time to time;]

(21) “Marine Board” means a Board of Marine Inquiry convened under section 373;

(22) “master” includes any person (except a pilot or harbour master) having command or charge of a ship;

1[(22A) “nuclear ship” means a ship provided with a nuclear power plant;]

(23) “owner” means—
(a) in relation to a ship, the person to whom the ship or a share in the ship belongs;

(b) in relation to a sailing vessel, the person to whom the sailing vessel belongs;

(24) “passenger” means any person carried on board a ship except—

(a) a person employed or engaged in any capacity on board the ship on the business of the ship;

(b) a person on board the ship either in pursuance of the obligations laid upon the master to carry shipwrecked, distressed or other persons or by reason of any circumstances which neither the master nor the charterer, if any, could have prevented or forestalled;

(c) a child under one year of age;

(25) “passenger ship” means a ship carrying more than twelve passengers;

(26) “pilgrim” means a person making a pilgrimage and, in the case of a passenger on board a pilgrim ship, includes every person accompanying or travelling with the person making the pilgrimage;

(27) “pilgrimage” means pilgrimage to any holy place in the Hedjaz or to any other place declared by the Central Government to be a place of pilgrimage by notification in Official Gazette;

(28) “pilgrim ship” means a special trade passenger ship which makes a voyage to or from the Hedjaz, or, as the case may be, to or from any other place of pilgrimage declared as such by the Central Government in pursuance of clause (27), during the season of the pilgrimage and which carries pilgrims in a proportion of not less than one pilgrim for every one hundred tons of the gross tonnage of the ship;]
(29) “port of registry”, in relation to a ship or a sailing vessel, means the port at which she is registered or is to be registered;

(30) “prescribed” means prescribed by rules made under this Act;

(31) “proceeding” in relation to sections 178 to 183 (inclusive) includes any suit, appeal or application;

(32) “proper officer” means the officer designated by the Central Government to be the proper officer at the port or place and in respect of the matter to which reference is made in the provision of this Act in which the expression occurs;

(33) “proper return port”, in relation to a master, seaman or apprentice discharged or left behind, means the port at which the master, seaman or apprentice was engaged, or the port agreed to as such by the master, seaman or apprentice, as the case may be;

(34) “radio inspector” means a person appointed as such under section 10;

(35) “registrar” means the registrar referred to in section 24;

(36) (a) “repatriation expenses” means expenses incurred in returning a distressed seaman to a proper return port and in providing him with necessary clothing and maintenance until his arrival at such port, and includes in the case of a ship wrecked seaman the repayment of expenses incurred in conveying him to port after shipwreck and maintaining him while being so conveyed; and

(b) “excepted expenses”, in relation to repatriation expenses, means repatriation expenses incurred in cases where the cause of the seaman being left behind is desertion or absence without leave or imprisonment for misconduct, or discharge from his ship by a Marine Board on the ground of misconduct;
(37) “Safety Convention” means the Convention for the Safety of Life at Sea signed in London on the 1st day of November, 1974 as amended from time to time;

1. Subs. by Act 12 of 1983, s. 3, for “17th day of June, 1960” (w.e.f. 18-5-1983).

2. Subs. by Act 21 of 1966, s. 2, for clause (38) (w.e.f. 28-5-1966).

3. Ins. by Act 69 of 1976, s. 3 (w.e.f. 1-12-1976).

2[(38) “safety convention certificate” means,—

(i) a passenger ship safety certificate,

3[(ia) a special trade passenger ship safety certificate,

(ib) a special trade passenger ship space certificate,]

(ii) a qualified passenger ship safety certificate,

(iii) a cargo ship safety construction Certificate,

(iv) a qualified cargo ship safety construction certificate,

(v) a cargo ship safety equipment certificate,

(vi) a qualified cargo ship safety equipment certificate,

(vii) a cargo ship safety radio telegraphy certificate,

(viii) a cargo ship safety radio telephony certificate,

(ix) an exemption certificate,

(x) a nuclear passenger ship safety certificate,
(xi) a nuclear cargo ship safety certificate, issued under Part IX or, as the case may be, Part IXA;

(39) “sailing vessel”, means any description of vessel provided with sufficient sail area for navigation under sails alone, whether or not fitted with mechanical means of propulsion, and includes a rowing boat or canoe but does not include a pleasure craft;

(40) “salvage” includes all expenses properly incurred by the salvor in the performance of salvage services;

(41) “sea-going”, in relation to a vessel, means a vessel proceeding to sea beyond inland waters or beyond waters declared to be smooth or partially smooth waters by the Central Government by notification in the Official Gazette;

(42) “seaman” means every person (except a master, pilot or apprentice) employed or engaged as a member of the crew of a ship under this Act, but in relation to sections 178 to 183 (inclusive) includes a master;

(43) “seamen’s employment office” means the seamen's employment office referred to in section 12;

(44) “seamen's welfare officer” means the seamen's welfare officer referred to in section 13;

1[(44A) “security” means maritime security and includes any measure to protect ports or ships or any person or thing relating directly or indirectly to maritime navigation,—

1. Ins. by Act 40 of 2007, s. 3 (w.e.f. 1-3-2008).

2. Ins. by Act 69 of 1976, s. 3 (w.e.f. 1-12-1976).
(i) against terrorism, sabotage, stowaways, illegal migrants, asylum seekers, piracy, armed robbery, seizure or pilferage; and

(ii) against any other hostile act or influence which threatens the security in the maritime transport sector,

employed by the owners or operators or persons in charge of the vessels or management of port facilities, offshore installations and other marine organisations or establishments;

(45) “ship” does not include a sailing vessel;

(46) “shipping master” means the shipping master referred to in section 11; but in relation to any seaman for the purposes of sections 178 to 183 (inclusive) means a shipping master appointed,—

(i) for the port at which the seaman entered into, or is believed to have entered into, an agreement, or

(ii) where the seaman did not enter into his agreement in India, for the port to which the seaman has returned, or is expected to return, on the completion of his latest voyage;

(47) “shipping office” means the shipping office referred in section 11;

2[(47A) “special trade” means the conveyance of large number of passengers by sea within prescribed sea areas;

(47B) “special trade passenger” means a passenger carried in special trade passenger ship in spaces on the weather deck or upper deck or between decks which accommodate more than eight passengers and includes a pilgrim or a person accompanying a pilgrim;]
(47C) “special trade passenger ship” means a mechanically propelled ship carrying more than thirty special trade passengers;]

(48) “surveyor” means the surveyor referred to in section 9;

1[(48A) “tanker” means a cargo ship constructed or adapted for the carriage in bulk of liquid cargoes of an inflammable nature;]

1. Ins. by Act 21 of 1966, s.2 (w.e.f. 28-5-1966).

2. Clauses (51) and (52) omitted by Act 69 of 1976, s. 3 (w.e.f. 1-12-1976).

(49) “tidal water” means any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tides and not being a harbour;

(50) “tindal” means the person in command or charge of a sailing vessel;

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(53) “valid international load line certificate” means a certificate purporting to have been issued in accordance with the Load Line Convention in respect of a ship, other than an Indian ship, by the Government of the country in which the ship is registered;

(54) “valid safety convention certificate” means a certificate purporting to have been issued in accordance with the Safety Convention in respect of a ship, other than an Indian ship, by the Government of the country in which the ship is registered;

(55) “vessel” includes any ship, boat, sailing vessel, or other description of vessel used in navigation;

(56) “voyage” for the purposes of Part VIII, means the whole distance between the ship’s port or place of departure and her final port or place of arrival;
(57) “wages” includes emoluments;

(58) “wreck” includes the following when found in the sea or in tidal water or on the shores thereof—

(a) goods which have been cast into the sea and then sink and remain under water;

(b) goods which have been cast or fall into the sea and remain floating on the surface;

(c) goods which are sunk in the sea, but are attached to a floating object in order that they may be found again;

(d) goods which are thrown away or abandoned; and

(e) a vessel abandoned without hope or intention of recovery;

(59) “young person” means a person under eighteen years of age.

PART II

NATIONAL SHIPPING BOARD

4. Establishment of National Shipping Board.—(1) With effect from such date as the Central Government may, by notification in the Official Gazette, specify in this behalf, there shall be established a Board to be called the National Shipping Board (hereinafter in this Part referred to as the Board).

(2) The Board shall consist of the following members, namely:—

(a) six members elected by Parliament, four by the House of the People from among its members and the other two by the Council of States from among its members;
(b) such number of other members, not exceeding sixteen as the Central Government may think fit to appoint to the Board, to represent—

(i) the Central Government,

(ii) ship owners,

(iii) seamen, and

(iv) such other interests as, in the opinion of the Central Government, ought to be represented on the Board:

Provided that the Board shall include an equal number of persons representing the ship owners and seamen.

3. The Central Government shall nominate one of the members of the Board to be the Chairman of the Board.

4. The Board shall have power to regulate its own procedure.

5. Functions of National Shipping Board.―The Board shall advise the Central Government—

(a) on matters relating to Indian shipping, including the development thereof; and

(b) on such other matters arising out of this Act as the Central Government may refer to it for advice.

6. Power to make rules in respect of matters in this Part.—(1) The Central Government may make rules to carry out the purposes of this Part.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
(a) the term of office of members of the Board and the manner of filling casual vacancies in the Board;

(b) the appointment of officers and other employees to enable the Board to discharge its functions under section 5 and the terms and conditions of their service;

(c) the travelling and other allowances payable to members of the Board.

PART III

GENERAL ADMINISTRATION

7. Director-General of Shipping—(1) The Central Government may by notification in the Official Gazette, appoint a person to be the Director-General of Shipping for the purpose of exercising or discharging the powers, authority or duties conferred or imposed upon the Director-General by or under this Act.

(2) The Central Government may, by general or special order, direct that any power, authority or jurisdiction exercisable by it under or in relation to any such provisions of this Act as may be specified in the order shall, subject to such conditions and restrictions as may be so specified, be exercisable also by the Director-General or by such other officer as may be specified in the order.

(3) The Director-General may, by general or special order, and with the previous approval of the Central Government, direct that any power or authority conferred upon or delegated to, and any duty imposed upon, the Director-General by or under this Act may, subject to such conditions and restrictions as he may think fit to impose, be exercised or discharged also by such officer or other authority as he may specify in this behalf.

8. Mercantile Marine Department.—(1) The Central Government may establish and maintain at each of the ports of Bombay, Calcutta and Madras
and at such other port in India as it may consider necessary an office of the Mercantile Marine Department for the administration of this Act and the rules and regulations thereunder.

(2) The office of the Mercantile Marine Department at the port of Bombay, Calcutta or Madras shall be in the charge of a principal officer, and the office at any other port shall be in the charge of such officer as the Central Government may appoint in this behalf.

(3) In the discharge of their duties, the principal officer and other officers shall be subject to the control of the Director-General.

9. Surveyors.—(1) The Central Government may by notification in the Official Gazette, appoint at such ports as it may consider necessary as many persons as it may think fit to be surveyors for the purposes of this Act.

1[(1A) Without prejudice to the provisions of sub-section (1), the Central Government, in the case of cargo ships, may, by notification in the Official Gazette authorise any person or body of persons, on such terms and conditions as may be specified therein, to be surveyors for the purposes of this Act.]

1. Ins. by Act 21 of 1966, s. 3 (w.e.f. 25-8-1966).

(2) The surveyors may be nautical surveyors, ship surveyors or engineer and ship surveyors.

(3) At any port at which no surveyor appointed under this section is available, the Central Government may, by notification in the Official Gazette, appoint any qualified person to perform the functions of a surveyor under this Act.

(4) All acts done under this Act by a principal officer of the Mercantile Marine Department or a person appointed under sub-section (3) relating to matters
within the competence of a surveyor shall have the same effect as if done by a 
surveyor for the purposes of this Act.

10. Radio inspectors.—The Central Government may, by notification in the 
Official Gazette, appoint as many radio inspectors as it may consider 
necessary for the purpose of securing that the requirements of this Act and 
the rules and regulations there under relating to radio telegraphy, radio 
telephony and direction finders are complied with.

11. Shipping offices.—(1) The Central Government may, by notification in the 
Official Gazette, establish a shipping office at every port in India in which it 
thinks it necessary so to do, and shall appoint thereto a shipping master and 
as many deputy shipping masters and assistant shipping masters, as it may 
consider necessary.

(2) Shipping masters, deputy shipping masters and assistant shipping masters 
shall exercise their powers and discharge their duties subject to the general 
control of the Central Government or of any intermediate authority which the 
Central Government may specify in this behalf.

(3) The Central Government may direct that at any port at which no separate 
shipping office is established, the whole or any part of the business of the 
shipping office shall be conducted at the custom house or at the office of the 
port officer or at such other office as the Central Government may specify, 
and thereupon the same shall be conducted accordingly.

(4) All acts done by or before a deputy shipping master, an assistant shipping 
master and the officer to whom any business of the shipping office is 
committed under sub-section (3) shall have the same effect as if done by or 
before a shipping master for the purposes of this Act.

12. Seamen's employment offices.—(1) The Central Government may, by 
notification in the Official Gazette, establish at every port in India in which it
thinks it necessary so to do, a seamen's employment office and shall appoint thereto a director and as many deputy directors and assistant directors as it may consider necessary.

(2) The directors, deputy directors and assistant directors shall exercise their powers and discharge their duties subject to the general control of the Central Government or of any intermediate authority which the Central Government may specify in this behalf.

(3) All acts done by or before a deputy or assistant director shall have the same effect as if done by or before a director for the purposes of this Act.

(4) The Central Government may, by notification in the Official Gazette, direct that at any port at which no separate seamen's employment office is established, the functions of the seamen's employment office in that port shall be discharged by such person or body of persons as it may specify in the notification, and thereupon the office of the person or body of persons so specified shall be deemed to be the seamen's employment office established at that port for the purposes of this Act.

13. Seamen’s welfare officers.—(1) The Central Government may appoint a seamen's welfare officers at such ports in or outside India as it may consider necessary.

(2) A seamen”s welfare officer appointed under sub-section (1) shall perform—

(a) in the case of any such officer appointed at any port in India, such functions in relation to welfare of seamen as may be assigned to him by the Central Government;

(b) in the case of any such officer appointed at any port outside India, such functions in relation to welfare of seamen and such functions of an Indian
consular officer under Part VII as may be assigned to him by the Central Government.

(3) If any seamen’s welfare officer appointed at any port outside India performs any functions assigned to an Indian consular officer under Part VII, such functions shall have the same effect as if they had been performed by an Indian consular officer for the purposes of that Part.

1* * * * *

1. Part IV omitted by Act 66 of 1986, s. 3 (w.e.f. 3-4-1987).

2. Subs. by Act 43 of 1961, s. 2, for “either” (w.e.f. 28-9-1981).

PART V

REGISTRATION OF INDIAN SHIPS

20. Application of Part.—This Part applies only to sea-going ships fitted with mechanical means of propulsion.

21. Indian ships.—For the purposes of this Act, a ship shall not be deemed to be an Indian ship unless owned wholly by persons to each of whom 2[any] of the following descriptions applies:—

(a) a citizen of India; or

1(b) a company or a body established by or under any Central or State Act which has its principal place of business in India; or

1. Subs. by Act 68 of 1993, s. 2, for clauses (b) and (c) (w.e.f. 27-10-1993).

2. Explanation ins. by Act 12 of 1983, s. 4 (w.e.f. 18-5-1983).

3. Proviso ins. by Act 41 of 1984, s. 3 (w.e.f. 15-7-1985).
(c) a co-operative society which is registered or deemed to be registered under the Co-operative Societies Act, 1912 (2 of 1912), or any other law relating to co-operative societies for the time being in force in any State.]

22. Obligation to register.—(1) Every Indian ship, unless it is a ship which does not exceed fifteen tons net and is employed solely in navigation on the coasts of India, shall be registered under this Act.

(2) No ship required by sub-section (1) to be registered shall be recognised as an Indian ship unless she has been registered under this Act:

Provided that any ship registered at the commencement of this Act at any port in India under any enactment repealed by this Act, shall be deemed to have been registered under this Act and shall be recognised as an Indian ship.

(3) A ship required by this Act to be registered may be detained until the master of the ship, if so required, produces a certificate of registry in respect of the ship.

2[Explanation.—For the purposes of this section, “ship” does not include a fishing vessel.]

Procedure for registration

23. Ports of registry.—(1) The ports at which registration of ships shall be made shall be the ports of Bombay, Calcutta and Madras and such other ports in India as the Central Government may, by notification in the Official Gazette, declare to be ports of registry under this Act.

(2) The port at which an Indian ship is registered for the time being under this Act shall be deemed to be her port of registry and the port to which she belongs.
24. Registrars of Indian ships.—At each of the ports of Bombay, Calcutta and Madras, the principal officer of the Mercantile Marine Department, and at any other port such authority as the Central Government may, by notification in the Official Gazette, appoint, shall be the registrar of Indian ships at that port:

3[Provided that subject to such order as the Central Government may issue in this behalf when the office of registrar of Indian ships at any port is vacant or the holder of such office is on leave or is not available, for any reason at the port to exercise and discharge the powers, duties and functions of the office the senior most surveyor at that port may act as and exercise and discharge the powers' duties and functions of the registrar of Indian ships at that port.]

25. Register book.—Every registrar shall keep a book to be called the register book and entries in that book shall be made in accordance with, the following provisions:

(a) the property in a ship shall be divided into ten shares;

(b) subject to the provisions of this Act with respect to joint owners or owners by transmission, not more than ten individuals shall be entitled to be registered at the same time as owners of any one ship; but this rule shall not affect the beneficial interest of any number of persons represented by or claiming under or through any registered owner or joint owner;

(c) a person shall not be entitled to be registered as owner of a fractional part of a share in a ship; but any number of persons not exceeding five may be registered as joint owners of a ship or of any share or shares therein;

(d) joint owners shall be considered as constituting one person and shall not be entitled to dispose in severally of any interest in a ship or any share therein in respect of which they are registered;
(e) a company 1[or a co-operative society] may be registered as owner by its name.

1. Ins. by Act 43 of 1981, s. 3 (w.e.f. 28-9-1981).

2. Ins. by s. 4, ibid. (w.e.f. 28-9-1981).


26. Application for registry.—An application for the registry of an Indian ship shall be made—

(a) in the case of an individual, by the person requiring to be registered as owner or by his agent;

(b) in the case of more than one individual requiring to be so registered, by some one or more of the persons so requiring or by his or their agent; and

(c) in the case of a company 2[or a co-operative society] requiring to be so registered, by its agent;

and the authority of the agent shall be testified by writing, if appointed by an individual, under the hand of the person appointing him and, if appointed by a company, 2[or a co-operative society] under its common seal.

27. Survey and measurement of ships before registry.—(1) The owner of every Indian ship in respect of which an application for registry is made shall cause such ship to be surveyed by a surveyor and the tonnage of the ship ascertained in the prescribed manner.

(2) The surveyor shall grant a certificate specifying the ship’s tonnage and build and such other particulars descriptive of the identity of the ship as may be prescribed and the certificate of the surveyor shall be delivered to the registrar before registry.
28. Marking of ship.—(1) The owner of an Indian ship who applies for registry under this Act shall, before registry, cause her to be marked permanently and conspicuously in the prescribed manner and to the satisfaction of the registrar and any ship not so marked may be detained by the registrar.

(2) Subject to any other provision contained in this Act and to the provisions of any rules made there under, the owner and the master of an Indian ship shall take all reasonable steps to ensure that the ship remains marked as required by this section, and the said owner or master shall not cause or permit any alterations of such marks to be made except in the event of any of the particulars thereby denoted being altered in the manner provided in this Act or except to evade capture by the enemy or by a foreign ship of war in the exercise of some belligerent right.

29. Declaration of ownership on registry.—A person shall not be registered as the owner of an Indian ship or of a share therein until he or, in the case of a company or a co-operative society, the person authorised by this Act to make declarations on its behalf has made and signed a declaration of ownership in the prescribed form referring to the ship as described in the certificate of the surveyor and containing the following particulars:—

(a) a statement whether he is or is not a citizen of India; 1[or in the case of a company, or a co-operative society, whether the company or a co-operative society, satisfies the requirements specified in clause (b) or, as the case may be, clause (c) of section 21];

1. Subs. by Act 43 of 1981, s. 5, for “or in the case of a company, whether the company satisfies the requirements specified in clause (b) of section 21” (w.e.f. 28-2-1981).

2. Ins. by s. 5, ibid. (w.e.f. 28-2-1981).
3. Ins. by Act 40 of 2007, s. 4 (w.e.f. 1-3-2008).

(b) a statement of the time when and the place where the ship was built or if the ship is built outside India and the time and place of building is not known, a statement to that effect; and in addition, in the case of a ship previously registered outside India, a statement of the name by which she was so registered;

(c) the name of her master;

(d) the number of shares in the ship in respect of which he or the company, or the co-operative society, as the case may be, claims to be registered as owner; and

(e) a declaration that the particulars stated are true to the best of his knowledge and belief.

Explanation.—In respect of a ship or share owned by more than one person, a declaration may be made by such one of them as may be authorised by them.

30. Evidence on first registry.—On the first registry of an Indian ship the following evidence shall be produced in addition to the declaration of ownership:—

(a) in the case of a ship built in India, a builder’s certificate, that is to say, a certificate signed by the builder of the ship and containing a true account of the proper denomination and the tonnage of the ship as estimated by him and the time when and the place where she was built, and the name of the person, if any on whose account the ship was built, and if there has been any sale, the instrument of sale under which the ship or the share therein has become vested in the applicant for registry;

(b) in the case of a ship built outside India, the same evidence as in the case of a ship built in India unless the declarant who makes the declaration of
ownership declares that the time and place of her building are not known to him, or that the builder’s certificate cannot be procured, in which case there shall be required only the instrument of sale under which the ship or a share therein has become vested in the applicant for registry.

31. Entry of particulars in register book.—As soon as the requirements of this Act preliminary to registry have been complied with the registrar shall enter in the register book the following particulars in respect of the ship:—

(a) the name of the ship and the name of the port to which she belongs;

3[(aa) the ship identification number;]

(b) the details contained in the surveyor’s certificate;

(c) the particulars respecting her origin stated in the declaration of ownership; and

(d) the name and description of her registered owner or owners, and, if there are more owners than one, the number of shares owned by each of them.

32. Documents to be retained by registrar.—On the registry of a ship, the registrar shall retain in his custody the following documents:—

(a) the surveyor’s certificate;

(b) the builder’s certificate;

(c) any instrument of sale by which the ship was previously sold;

(d) all declarations of ownership.

33. Power of Central Government to inquire into title of Indian ship to be so registered.—(1) Where it appears to the Central Government that there is any doubt as to the title of any Indian ship to be registered as an Indian ship, it
may direct the registrar of her port of registry to require evidence to be given to his satisfaction within such time, not being less than thirty days as the Central Government may fix, that the ship is entitled to be registered as an Indian ship.

(2) If within such time as may be fixed by the Central Government under sub-section (1) evidence to the satisfaction of the registrar that the ship is entitled to be registered as an Indian ship is not given, the ship shall be liable to forfeiture.

Certificate of registry

34. Grant of certificate of registry.—On completion of the registry of an Indian ship, the registrar shall grant a certificate of registry containing the particulars respecting her as entered in the register book with the name of her master.

35. Custody and use of certificate.—(1) The certificate of registry shall be used only for the lawful navigation of the ship, and shall not be subject to detention by reason of any title, lien, charge or interest whatever, had or claimed by any owner, mortgagee or other person to, on or in the ship.

(2) No person, whether interested in the ship or not, who has in his possession or under his control the certificate of registry of a ship, shall refuse or omit without reasonable cause to deliver such certificate on demand to the person entitled to the custody thereof for the purposes of the lawful navigation of the ship or to any registrar, customs collector or other person entitled by law to require such delivery.

(3) Any person refusing or omitting to deliver the certificate as required by sub-section (2), may, by order, be summoned by 1[any Judicial Magistrate of the first class or any Metropolitan Magistrate, as the case may be,] to appear before him and to be examined touching such refusal, and if the person is
proved to have absconded so that the order of such magistrate cannot be
served on him, or if he persists in not delivering up the certificate, 2[the said
Magistrate] shall certify the fact, and the same proceedings may then be taken
as in the case of a certificate mislaid, lost or destroyed, or as near thereto as
circumstances permit.

1. Subs. by Act 12 of 1983, s. 17 and the Schedule, for “any magistrate of the
first class” (w.e.f. 18-5-1983).

2. Subs. by s. 17 and the Schedule, ibid., for “the magistrate” (w.e.f. 18-5-
1983).

(4) If the master or owner of an Indian ship uses or attempts to use for her
navigation a certificate of registry not legally granted in respect of the ship, he
shall be guilty of an offence under this sub-section and the ship shall be liable
to forfeiture.

36. Power to grant new certificate when original certificate is defaced, lost,
etc.—(1) In the event of the certificate of registry of an Indian ship being
defaced or mutilated, the registrar of her port of registry may, on the delivery
to him of that certificate, grant a new certificate in lieu of her original
certificate.

(2) In the event of the certificate of registry of an Indian ship being mislaid,
lost or destroyed or of the person entitled thereto being unable to obtain it
from the custody of any other person, the registrar of her port of registry shall
grant a new certificate in lieu of her original certificate.

(3) If the port at which the ship is at the time of the event referred to in sub-
section (2) or first arrives after the event is outside India, then the master of
the ship or some other person having knowledge of the facts of the case shall
make a declaration stating such facts and the names and descriptions of the
registered owners of such ship to the best of the declarant’s knowledge and
belief to the nearest available Indian consular officer who may thereupon grant a provisional certificate containing a statement of the circumstances under which it is granted.

(4) The provisional certificate shall, within ten days after the first subsequent arrival of the ship at her port of discharge in India, be delivered by the master to the registrar of her port of registry and the registrar shall thereupon grant a new certificate of registry.

(5) If the certificate of registry stated to have been mislaid, lost or destroyed shall at any time afterwards be found, or if the person entitled to the certificate of registry obtains it at any time afterwards, the said certificate shall forthwith be delivered to the registrar of her port of registry to be cancelled.

37. Endorsement on certificate of change of master.—Where the master of an Indian ship is changed, each of the following persons, that is to say,—

(a) if the change is made in consequence of the removal of the master by a Marine Board or by a court under this Act, the presiding officer of the Marine Board or of the court, as the case may be;

(b) if the change occurs from any other cause,—

(i) In India, the registrar or any other officer authorised by the Central Government in this behalf at the port where the change occurs; and

(ii) outside India, the Indian consular officer at the port where the change occurs;

shall endorse and sign on the certificate of registry a memorandum of the change, and any customs collector at any port in India may refused to permit any person to do any act there as master of an Indian ship unless his name is inserted in or endorsed on her certificate of registry as her last appointed master.
38. Endorsement on certificate of change of ownership.—(1) Whenever a change occurs in the registered ownership of an Indian ship, the change of ownership shall be endorsed on her certificate of registry either by the registrar of the ship's port of registry or by the registrar of any port at which the ship arrives who has been advised of the change by the registrar of the ship’s port of registry.

(2) The master shall, for the purposes of such endorsement by the registrar of the ship’s port of registry, deliver the certificate of registry to the registrar forthwith after the change if the change occurs when the ship is at her port of registry, and if it occurs during her absence from that port and the endorsement under this section is not made before her return, then, upon her first return to that port.

(3) The registrar of any port, not being the ship’s port of registry, who is required to make an endorsement under this section may, for that purpose, require the master of the ship to deliver to him the ship's certificate of registry so that the ship need not thereby be detained and the master shall deliver the same accordingly.

39. Delivery of certificate of ship lost or ceasing to be an Indian ship.—(1) In the event of a registered ship being either actually or constructively lost, taken by the enemy, burnt or broken up or ceasing for any reason to be an Indian ship, every owner of the ship or any share in the ship shall immediately on obtaining knowledge of the event, if no notice thereof has already been given to the registrar, give notice thereof to the registrar at her port of registry and that registrar shall make an entry thereof in the register book and its registry in that book shall be considered as closed except so far as relates to any unsatisfied mortgages entered therein.

(2) In any such case, except where the ship’s certificate of registry is mislaid, lost or destroyed, the master of the ship shall, immediately if the event occurs
in any port in India, or within ten days after his arrival in port if it occurs elsewhere, deliver the certificate to the registrar of the port or any other officer specified in this behalf by the Central Government if the port of arrival is in India, or if the arrival is in any port outside India to the Indian consular officer there, and the registrar if he is not himself the registrar of her port of registry or the officer so specified or the Indian consular officer, as the case may be, shall forthwith forward the certificate delivered to him to the registrar of her port of registry.

40. Provisional certificate for ships becoming Indian ships abroad.—(1) If at any port outside India a ship becomes entitled to be registered as an Indian ship, the Indian consular officer there may grant to her master on his application a provisional certificate containing such particulars as may be prescribed in relation to the ship and shall forward a copy of the certificate at the first convenient opportunity to the Director-General.

(2) Such a provisional certificate shall have the effect of a certificate of registry until the expiration of six months from its date or until the arrival of the ship at a port where there is a registrar whichever first happens, and on either of those events happening shall cease to have effect.

41. Temporary pass in lieu of certificate of registry.—Where it appears to the Central Government that by reason of special circumstances it is desirable that permission should be granted to any Indian ship to pass without being previously registered from one port to any other port in India, the Central Government may authorise the registrar of the first-mentioned port to grant a pass in such form as may be prescribed, and that pass shall for the time and within the limits therein mentioned have the same effect as a certificate of registry.

Transfers of ships, shares, etc.
42. Transfer of ships or shares.—(1) No person shall transfer or acquire any Indian ship or any share or interest therein at any time during which the security of India or of any part of the territory thereof is threatened by war or external aggression and during which a Proclamation of Emergency issued under clause (1) of article 352 of the Constitution is in operation] without the previous approval of the Central Government and any transaction effected in contravention of this provision shall be void and unenforceable.

(2) The Central Government may, if it considers it necessary or expedient so to do for the purpose of conserving the tonnage of Indian shipping, refuse to give its approval to any such transfer or acquisition.

1[(2A) No transfer or acquisition of any Indian ship shall be valid unless—

1. Ins. by Act 68 of 1993, s. 3 (w.e.f. 27-10-1993).

(a) all wages and other amounts due to seamen in connection with their employment on that ship have been paid in accordance with the provisions of this Act;

(b) the owner of the ship has given notice of such transfer or acquisition of the ship to the Director-General.]

(3) Subject to the other provisions contained in this section, an Indian ship or a share therein shall be transferred only by an instrument in writing.

(4) The instrument shall contain such description of the ship as is contained in the surveyor's certificate or some other description sufficient to identify the ship to the satisfaction of the registrar and shall be in the prescribed form or
as near thereto as circumstances permit and shall be executed by the 
transferor in the presence of and be attested by at least two witnesses.

43. Registry of transfer.—(1) Every instrument for the transfer of an Indian 
ship or of a share therein when duly executed shall be produced to the 
registrar of her port of registry, and the registrar shall thereupon enter in the 
register book the name of the transferee as owner of the ship or share, as the 
case may be, and shall endorse on the instrument the fact of that entry having 
been made with the day and hour thereof.

(2) Every such instrument shall be entered in the register book in the order of 
its production to the registrar.

44. Transmission of property in Indian ship on death, insolvency, etc.—(1) Where the property in an Indian ship or share therein is transmitted to a 
person on the death or insolvency of any registered owner, or by any lawful 
means other than by a transfer under this Act,—

(a) that person shall authenticate the transmission by making and signing a 
declaration in the prescribed form (in this Act referred to as a declaration of 
transmission) identifying the ship and also a statement of the manner in which 
and the person to whom the property has been transmitted;

(b) if the transmission is consequent on insolvency, the declaration of 
transmission shall be accompanied by proper proof of such claim;

(c) if the transmission is consequent on death, the declaration of transmission 
shall be accompanied by a succession certificate, probate or letters of 
administration under the Indian Succession Act, 1925 (39 of 1925), or a duly 
certified copy thereof.

(2) The registrar, on receipt of the declaration of transmission so 
accompanied, shall enter in the register book the name of the person entitled
under the transmission as owner of the ship or share the property in which has been transmitted, and, where there are more persons than one, shall enter the names of all those persons, but those persons however numerous shall, for the purpose of the provisions of this Act with respect to the number of persons claiming to be registered as owners, be considered as one person:

Provided that nothing in this sub-section shall require the registrar to make an entry in the register book under this section, if he is of opinion that by reason of the transmission the ship has ceased to be an Indian ship.

45. Order for sale where ship has ceased to be an Indian ship.—(1) Where by reason of the transmission of any property in a ship or a share therein on death, insolvency or otherwise, a ship ceases to be an Indian ship, the registrar of her port of registry shall submit a report to the Central Government setting out the circumstances in which the ship has ceased to be an Indian ship.

(2) On receipt of such report, the Central Government may make an application to the High Court for a direction for the sale to any citizen of India 1[or any 2[company or body or co-operative society] which satisfies the requirements specified in clause (b) or, as the case may be, clause (e) of section 21] of the property so transmitted.

1. Subs. by Act 43 of 1981, s. 6, for “or any company which satisfies the requirements specified in clause (b) of section 21” (w.e.f.28-9-1981).

2. Subs. by Act 68 of 1993, s. 4, for “company or any co-operative society” (w.e.f. 27-10-1993).

3. Subs. by Act 58 of 1960, s. 3 and the Second Schedule, for “in any case” (w.e.f.16-12-1960).

(3) The High Court may require any evidence in support of the application it thinks requisite and may make such order thereon and on such terms and
conditions as it thinks just or may reject the application [in case] it finds that the ship has not ceased to be an Indian ship; and in case the ship or the share is ordered to be sold, it shall direct that the proceeds of the sale after deducting the expenses thereof, be paid to the person entitled under such transmission or otherwise.

(4) Every application for sale shall be made within such time as may be prescribed:

Provided that an application may be admitted by the High Court after the time prescribed, if the Central Government satisfies the High Court that it had sufficient cause for not making the application within such time.

46. Transfer of ship on sale by order of court.—Where any court, whether under section 45 or otherwise, orders the sale of any ship or share therein, the order of the court shall contain a declaration vesting in some person named by the court the right to transfer that ship or share, and that person shall thereupon be entitled to transfer the ship or share in the same manner and to the same extent as if he were the registered owner thereof; and every registrar shall obey the requisition of the person so named in respect of any such transfer to the same extent as if such person were the registered owner.

47. Mortgage of ship or share.—(1) A registered ship or a share therein may be made a security for a loan or other valuable consideration, and the instrument creating the security (in this Act called a mortgage) shall be in the prescribed form or as near thereto as circumstances permit, and on the production of such instrument the registrar of the ship’s port of registry shall record it in the register book.

(2) Mortgages shall be recorded by the registrar in the order in time in which they are produced to him for that purpose, and the registrar shall, by memorandum under his hand, notify on each mortgage that it has been recorded by him stating the day and hour of that record.
48. Entry of discharge of mortgage.—Where a registered mortgage is discharged, the registrar shall, on the production of the mortgage deed with a receipt for the mortgage money endorsed thereon, duly signed and attested, make an entry in the register book to the effect that the mortgage has been discharged, and on that entry being made the estate, if any, which passed to the mortgagee shall vest in the person in whom (having regard to intervening acts and circumstances, if any) it would have vested, if the mortgage had not been made.

49. Priority of mortgages.—If there are more mortgages than one recorded in respect of the same ship or share, the mortgagees shall, notwithstanding any express, implied or constructive notice, have priority according to the date on which each mortgage is recorded in the register book and not according to the date of each mortgage itself.

50. Mortgagee not deemed to be owner.—Except in so far as may be necessary for making a mortgaged ship or share available as a security for the mortgage debt, the mortgagee shall not, by reason of his mortgage, be deemed to be the owner of the ship or share, nor shall the mortgagor be deemed to have ceased to be owner thereof.

1[51. Rights of mortgagee.—(1) Where there is only one registered mortgagee of a ship or share, he shall be entitled to recover the amount due under the mortgage by selling the mortgaged ship or share without approaching the High Court:

1. Subs. by Act 68 of 1993, s. 5, for section 51 (w.e.f. 27-10-1993).

Provided that nothing contained in this sub-section shall prevent the mortgagee from recovering the amount so due in the High Court as provided in sub-section (2).
(2) Where there are two or more registered mortgagees of a ship or share they shall be entitled to recover the amount due under the mortgage in the High Court, and when passing a decree or thereafter the High Court may direct that the mortgaged ship or share be sold in execution of the decree.

(3) Every registered mortgagee of a ship or share who intends to recover the amount due under the mortgage by selling the mortgaged ship or share under sub-section (1) shall give an advance notice of fifteen days relating to such sale to the registrar of the ship's port of registry.

(4) The notice under sub-section (3) shall be accompanied with the proof of payment of the wages and other amounts referred to in clause (a) of sub-section (2A) of section 42.

52. Mortgage not affected by insolvency.—A registered mortgage of a ship or share shall not be affected by any act of insolvency committed by the mortgagor after the date of the record of such mortgage, notwithstanding that the mortgagor, at the commencement of his insolvency, had the ship or share in his possession, order or disposition, or was the reputed owner thereof, and the mortgage shall be preferred to any right, claim or interest therein of the other creditors of the insolvent or any trustee or assignee on their behalf.

53. Transfer of mortgages.—(1) A registered mortgage of a ship or share may be transferred to any person and the instrument effecting the transfer shall be in the prescribed form or as near thereto as circumstances permit, and on the production of such instrument, the registrar shall record it by entering in the register book the name of the transferee as mortgagee of the ship or share and shall, by memorandum under his hand, notify on the instrument of transfer that it has been recorded by him stating the day and hour of the record.

(2) The person to whom any such mortgage has been transferred shall enjoy the same right of preference as was enjoyed by the transferor.
54. Transmission of interest in mortgage in certain circumstances.—(1) Where the interest of a mortgagee in a ship or share is transmitted on death, or insolvency, or by any lawful means other than by a transfer under this Act, the transmission shall be authenticated by a declaration of the person to whom the interest is transmitted containing a statement of the manner in which and the person to whom the property has been transmitted, and shall be accompanied by the like evidence as is by this Act required in case of a corresponding transmission of the ownership of a ship or share.

(2) The registrar, on receipt of the declaration and the production of the evidence aforesaid, shall enter the name of the person entitled under the transmission in the register book as mortgagee of the ship or share.

Name of ship

55. Rules as to name of ship.—(1) An Indian ship shall not be described by any name other than that by which she is for the time being registered.

(2) The registrar may refuse the registry of any Indian ship by the name by which it is proposed to register the ship if that name is already borne by another ship or if the name be so similar as is calculated or likely to deceive.

(3) A change shall not be made in the name of an Indian ship except in the prescribed manner.

(4) If any person acts or suffers any person under his control to act in contravention of this section or omits to do or suffers any person under his control to omit to do anything required under this section the ship may be detained until the provisions of this section are complied with:

1. Subs. by Act 58 of 1960, s. 3 and the Second Schedule, for “sub-section” (w.e.f. 26-12-1960).
Provided that nothing in this sub-section shall apply to a foreign ship which has become, and is sought to be registered as, an Indian ship.

Registry of alterations, registry anew and transfer of registry

56. Registry of alterations.—When a registered ship is so altered as not to correspond with the particulars relating to her tonnage or description contained in the register book, then, if the alteration is made at any port having a registrar, that registrar, or if it is made elsewhere, the registrar of the first port having a registrar at which the ship arrives after the alteration, shall, on application being made to him stating the particulars of the alteration, either cause the alteration to be registered or direct that the ship be registered anew.

57. Regulations for registry of alterations.—(1) For the purpose of registry of an alteration in a ship the ship's certificate of registry shall be produced to the registrar, and the registrar shall, in his discretion, either retain the certificate of registry and grant a new certificate of registry containing a description of the ship as altered or endorse and sign on the existing certificate a memorandum of the alteration.

(2) The particulars of the alteration so made, and the fact of the new certificate having been granted, or endorsement having been made, shall be entered by the registrar of the ship's port of registry in his register book; and for that purpose the registrar to whom the application for the registry of the alteration has been made (if he is not the registrar of the ship's port of registry) shall forthwith report to the last mentioned registrar the particulars and facts as aforesaid, accompanied, where a new certificate of registry has been granted, by the old certificate of registry.

58. Provisional certificate and endorsement where ship is to be registered anew.—(1) Where any registrar, not being the registrar of the ship’s port of registry, on an application as to an alteration in a ship directs the ship to be
registered anew, he shall either grant a provisional certificate describing the
ship as altered, or provisionally endorse the particulars of the alteration on the
existing certificate.

(2) Every such provisional certificate, or certificate provisionally endorsed,
shall, within ten days after the first subsequent arrival of the ship at her port
of discharge in India, be delivered to the registrar thereof and that registrar
shall cause the ship to be registered anew.

(3) The registrar granting a provisional certificate, or provisionally endorsing a
certificate under this section shall add to the certificate or endorsement a
statement that the same is made provisionally, and shall send a report of the
particulars of the case to the registrar of the ship's port of registry, containing
a similar statement as the certificate or endorsement.

59. Registry anew on change of ownership.—Subject to the other provisions
contained in this Act, where the ownership of any Indian ship is changed, the
registrar of the port at which the ship is registered may, on the application of
the owner of the ship, register the ship anew although registry anew is not
required under this Act.

60. Procedure for registry anew.—(1) Where a ship is to be registered anew,
the registrar shall proceed as in the case of first registry, and on the delivery to
him of the existing certificate of registry and on the other requisites to
registry, or in the case of a change of ownership such of them as he thinks
material, being duly complied with, shall make such registry anew, and grant a
certificate thereof.

(2) When a ship is registered anew, her former registry shall be considered as
closed except so far as relates to any unsatisfied mortgage entered thereon,
but the names of all persons appearing on the former register to be interested
in the ship as owners or mortgagees shall be entered in the new register and
the registry anew shall not in any way affect the rights of any of those persons.
61. Transfer of registry.—(1) The registry of any ship may, with the previous approval of the Director-General, be transferred from one port of registry to another on the application to the registrar of the existing port of registry of the ship made by declaration in writing of all persons appearing in the register to be interested therein as owners or mortgagees, but that transfer shall not in any way affect the rights of those persons or any of them and those rights shall in all respects continue in the same manner as if no such transfer had been effected.

(2) On receipt of any such application the registrar shall transmit notice thereof to the registrar of the intended port of registry with a copy of all particulars relating to the ship and the names of all persons appearing in that register to be interested therein as owners or mortgagees.

(3) The ship's certificate of registry shall be delivered to the registrar either of the existing or intended port of registry, and, if delivered to the former, shall be transmitted to the registrar of the intended port of registry.

(4) On receipt of the documents aforesaid the registrar of the intended port of registry shall enter in his register book all the particulars and names so transmitted as aforesaid, and grant a fresh certificate of registry, and thenceforth such ship shall be considered to be registered at the new port of registry, and the name of the ship’s new port of registry shall be substituted for the name of her former port of registry on the ship.

62. Restrictions on re-registry of abandoned ships.—Where a ship has ceased to be registered as an Indian ship by reason of having been wrecked or abandoned, or for any reason other than capture by the enemy, the ship shall not be re-registered until she has at the expense of the applicant for the registry been surveyed by a surveyor and certified by him to be seaworthy.
National character and flag

63. National colours for Indian ships.—(1) The Central Government may, by notification in the Official Gazette, declare what shall be the proper national colours for all ships registered under this Act and for all ships which are not so registered but which are owned by the Government or by any local authority or by any body corporate established by or under any law for the time being in force in India or by a citizen of India; and different colours may be declared for different classes of ships.

(2) Any commissioned officer of the Indian Navy, or any customs collector, or any Indian consular officer, may board any ship on which any colours are hoisted contrary to this Act and seize and take away the colours which shall be forfeited to the Government.

64. Unlawful assumption of Indian character.—No person on board a ship which is not an Indian ship shall, for the purpose of making it appear to be an Indian ship, use the Indian national colours, unless the assumption of Indian character has been made (the burden of proving which shall lie on him) for the purpose of escaping capture by the enemy or by a foreign ship of war in the exercise of some belligerent right.

65. Concealment of Indian, or assumption of foreign, character.—No owner or master of an Indian ship shall knowingly do anything, or permit anything to be done, or carry or permit to be carried any papers or documents, with intent to conceal the Indian character of the ship from any person entitled by any law for the time being in force to inquire into the same, or with intent to assume a foreign character for the ship, or with intent to deceive any person so entitled as aforesaid.

66. Indian ships to hoist proper national colours in certain cases.—An Indian ship shall hoist the proper national colours—
(a) on a signal being made to her by any vessel of the Indian Navy;

(b) on entering or leaving any foreign port;

(c) if of fifty tons gross tonnage or more, on entering or leaving any Indian port.

67. National character of ship to be declared before clearance.—(1) A customs collector shall not grant a clearance for any ship until the master of such ship has declared to that officer the name of the country to which he claims that she belongs, and that officer shall thereupon inscribe that name on the clearance.

(2) If a ship attempts to proceed to sea without such clearance, she may be detained by any customs collector until the declaration is made.

Miscellaneous

68. Liabilities of ships not recognised as Indian ships.—Where it is declared by this Act that an Indian ship shall not be recognised as such, that ship shall not be entitled to any privileges, benefits, advantages or protection usually enjoyed by Indian ships or to use the Indian national colours for Indian ships or to assume the Indian national character, but so far as regards the payment of dues the liability to fine and forfeiture and the punishment of offences committed on board such ship, or by any persons belonging to her, such ship shall be dealt with in the same manner in all respects as if she were a recognised Indian ship.

69. Proceedings on forfeiture of ship.—Where any ship has either wholly or as to any share therein become subject to forfeiture under this Part, any commissioned officer of the Indian Navy, any customs collector or any Indian consular officer or any other officer authorised by the Central Government, may seize and detain the ship, and
bring her for adjudication before the High Court, and the High Court may thereupon adjudge the ship with her equipment to be forfeited to the Government, and make such order in the case as to the High Court seems just and may award to the officer bringing in the ship for adjudication such portion of the proceeds of the sale of the ship or any share therein as the High Court thinks fit.

70. Notice of trust not received.—No notice of any trust, express, implied or constructive, shall be entered in the register book or be receivable by the registrar, and subject to any rights and powers appearing by the register book to be vested in any other person, the registered owner of a ship or of a share therein shall have power to dispose of the ship or share in the manner provided in this Act and to give effectual receipts for any money paid or advanced by way of consideration.

71. Liability of owners.—Where any person is beneficially interested otherwise than by way of mortgage in any ship or share in a ship registered in the name of some other person as owner, the person so interested shall, as well as the registered owner, be subject to all the pecuniary penalties imposed by this or any other Act on the owners of ships or shares therein, so nevertheless that proceedings for the enforcement of any such penalties may be taken against both or either of the said parties with or without joining the other of them.

72. Evidence of register book, certificate of registry and other documents.—(1) On application to the registrar and on payment of the prescribed fee, a person may, at any time during office hours, inspect any register book, and may obtain a certified copy of any entry in the register book.

(2) The following documents shall be admissible in evidence in any Court in manner provided by this Act, namely:
(a) any register book on its production from the custody of the registrar or other person having the lawful custody thereof;

(b) a certificate of registry under this Act purporting to be signed by the registrar or any other officer authorised in this behalf by the Central Government;

(c) an endorsement on a certificate of registry purporting to be signed by the registrar or any other officer authorised in this behalf by the Central Government;

(d) every declaration made in pursuance of this Part in respect of an Indian ship.

(3) A certified copy of an entry in a register book shall be admissible in evidence in any Court and have the same effect to all intents as the original entry in the register book of which it is a copy.

73. Power to register Government ships under this Part.—The Central Government may, by notification in the Official Gazette, direct that, subject to such rules as may be made in this behalf, ships belonging to the Government other than ships of the Indian Navy may be registered as Indian ships under this Act and thereupon this Act, subject to any exceptions and modifications which may be made in the notification either generally or with respect to any class of ships belonging to Government, shall apply to ships belonging to Government registered in accordance with those rules as they apply to Indian ships registered in manner provided by this Act.

74. Power to make rules in respect of matters in this Part.—(1) The Central Government may make rules to carry out the purposes of this Part.
(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which the tonnage of any ship shall be ascertained, whether for the purpose of registration or otherwise, including the mode of measurement;

(b) the recognition for the purpose of ascertaining the tonnage of any ship or for any other purpose, of any tonnage certificate granted in respect of any ship in any country outside India, the tonnage regulations of which are substantially the same as the tonnage rules made by the Central Government, including the conditions and restrictions subject to which such recognition may be granted;

(c) the manner in which surveys of ships shall be conducted and the form of certificates of surveying officers;

(d) the manner in which ships shall be marked;

(e) the form in which any document required by this Part shall be prepared and the particulars which it should contain;

(f) the persons by whom and the authorities before which any declaration required by this Part shall be made and the circumstances in which any such declaration may be waived and other evidence accepted;

(g) the form of the instrument creating a mortgage on a ship or share of transferring a mortgage;

(h) the returns that shall be made by registrars to the Director-General or to such other authority as the Central Government may appoint and the form in which and the intervals within which such returns shall be made;
(i) the procedure for the registration, marking or alteration of the names of Indian ships;

1[(j) the fees that may be levied for the survey or inspection of any ship for the purposes of registration and the manner in which such fees may be collected.]

1. Subs. by Act 12 of 1983, s. 5, for clause (j) (w.e.f.18-5-1983).

2. Subs. by Act 13 of 1987, s. 2, for “Masters, mates and engineers” (w.e.f.1-7-1989).

3. Subs. by s. 3, ibid., for sections 75 and 76 (w.e.f. 1-7-1989).

(k) the manner in which registrars and other authorities may exercise their powers under the Part or maintain their books and other registers;

(l) the manner in which ships belonging to the Government, to which the provisions of this Act may be made applicable under section 73, may be registered;

(m) any other matter which may be or is to be prescribed.

PART VI

CERTIFICATES OF OFFICERS

2[Masters, mates, engineers, skippers, etc.]

3[75. Application of Part.—This Part applies to—

(a) every sea-going Indian ship fitted with mechanical means of propulsion wherever it is; and

(b) every foreign ship while it is a port or place in India.
75A. Definitions.—In this Part, unless the context otherwise requires,—

(a) “contiguous zone” means the contiguous zone of India described, or notified as such for the time being under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976);

(b) “convention” means the International Convention on Standards of Training, Certification and Watch keeping for Seafarers, 1978, signed at London on the 7th day of July, 1978, as amended from time to time;

1[76. Certificates of competency to be held by officers of ships.—(1) Every Indian ship, when going to sea from any port or place, shall be provided with officers duly certificated under this Act in accordance with such manning scales as may be prescribed:


2. Subs. by Act 13 of 1987, s. 4, for section 78 (w.e.f. 1-7-1989).

Provided that the Central Government may prescribe different manning scales for different types of ships.

(2) Every ship, whether at sea or in any port or place, shall engage such number of persons and with such qualifications as may be prescribed for maintaining watches.]

77. When officers deemed duly certificated.—Subject to the provisions contained in section 86, an officer shall not be deemed to be duly certificated under this Act unless he holds a certificate of a grade appropriate to his station in the ship or of a higher grade granted in accordance with this Act.
2[78. Grades of certificates of competency.—(1) Certificates of competency shall be granted in accordance with the provisions of this Act for each of the following grades, namely:—

extra Master;

master of a foreign-going ship;

first mate of a foreign-going ship;

second mate of a foreign-going ship;

master of a home-trade ship;

mate of a home-trade ship;

navigational watchkeeping officer;

extra first class engineer;

marine engineer officer class I;

marine engineer officer class II;

marine engineer officer class III;

marine engineer officer class IV;

engine driver of a sea-going ship;

skipper grade I of a fishing vessel;

skipper grade II of a fishing vessel;

mate of a fishing vessel;

engineer of a fishing vessel;
engine driver of a fishing vessel;

dredger master grade I;

dredger master grade II;

dredger mate grade I;

dredger mate grade II;

dredger engineer grade I;

dredger engineer grade II;

dredger driver grade I;

dredger driver grade II.

(2) A certificate of competency granted for any grade of engineer or engine driver shall state whether it entitles the holder to act as engineer of ships or fishing vessels fitted with steam or motor engines or with any other type of engines and the holder shall not be entitled to act as engineer of a ship fitted with a type of engine not stated in the certificate.

(3) Certificates issued to masters, mates and engineers who have to work on board ships carrying dangerous goods shall require endorsement as to the additional qualifications that may be prescribed.

(4) If it appears to the Central Government that certificates of competency for grades, other than those referred to in sub-section (1) may be granted, it may, by notification in the Official Gazette, specify the other grades in respect of which certificates of competency may be granted.

(5) A certificate of competency for a foreign-going ship shall be deemed to be of a higher grade than the corresponding certificate of a home-trade ship, and
shall entitle the lawful holder thereof to go to sea in the corresponding grade in such home-trade ship; but no certificate for a home-trade ship shall entitle the holder to go to sea as a master or mate of a foreign-going ship.

(6) A certificate of competency as extra master shall be deemed to be of a higher grade than any other certificate of competency as master or mate of a foreign-going ship or a home-trade ship or navigational watch keeping officer.

(7) A certificate of competency as extra first class engineer shall be deemed to be of a higher grade than any other certificate of competency as marine engineer officer, engineer or engine driver of a fishing vessel or engine driver of a sea-going ship.

79. Examinations for, and grant of, certificates.—(1) The Central Government or a person duly authorised by it in this behalf shall appoint persons for the purpose of examining the qualifications of persons desirous of obtaining certificate of competency under section 78.

(2) The Central Government or such authorised person shall grant to every applicant, who is duly reported by the examiners to have passed the examination satisfactorily and to have given satisfactory evidence of his sobriety, experience and ability and general good conduct on board ship, such a certificate of competency as the case requires:

Provided that the Central Government may, in any case in which it has reason to believe that the report has been unduly made, require, before granting a certificate, a re-examination of the applicant or a further inquiry into his testimonials and character.

1[(3) Every certificate granted under sub-section (2), shall be valid for such period as may be prescribed.]

1. Ins. by Act 13 of 1987, s. 5 (w.e.f.1-7-1989).
80. [Certificates of service of naval officers.] Omitted by Act Merchant Shipping (Amendment) Act, 1986 (33 of 1986), s. 2 (w.e.f. 14-8-1986).

81. Form of certificates.—Every certificate of competency granted under this Act shall be in the prescribed form and shall be made in duplicate, and one copy shall be delivered to the person entitled to the certificate, and the other shall be kept and recorded in the prescribed manner.

82. Record of orders affecting certificates.—A note of all orders made for cancelling, suspending, altering or otherwise affecting any certificate of competency, in pursuance of the powers contained in this Act, shall be entered on the copy of the certificate kept under section 81.

83. Loss of certificates.—Whenever a person holding a certificate granted under this Act proves to the satisfaction of the Central Government that he has, without fault on his part, lost or been deprived of such certificate, the Central Government shall on payment of the prescribed fee, cause a copy of the certificate, to which by the record kept in accordance with this Act he appears to be entitled, to be granted to him, and such copy shall have all the effect of the original.

84. Production of certificates of competency to shipping master.—(1) The master of a foreign-going ship or the master of a home-trade ship of two hundred tons gross or more—

(a) on signing the agreement with his crew, shall produce to the shipping master before whom the same is signed, the certificates of competency which the mates and engineers of the ship are by this Act required to hold; 2

1. Subs. by Act 13 of 1987, s. 6, for “master, mate, engineers and engine drivers” (w.e.f. 1-7-1989).

2. The word “and” omitted by s. 6, ibid. (w.e.f. 1-7-1989).
3. Ins. by s. 6, ibid. (w.e.f. 1-7-1989).

4. The words “or service” omitted by Act 33 of 1986, s. 3 (w.e.f. 14-8-1986).

(b) in the case of a running agreement, shall, also, before the second and every subsequent voyage, produce to the shipping master the certificate of competency of any mate or engineer then first engaged by him who is required by this Act to hold a certificate.

3[(c) who is not required to sign the agreement with the crew, shall submit before commencing the first voyage from any port to the Mercantile Marine Department having jurisdiction over such port, a list of crew with the particulars of grades of certificates of master, mates and engineers and shall also report to that Department of any later change in the list of the crew before any subsequent voyage.]

(2) Upon the production of the certificates of competency, the shipping master shall, if the certificates are such as the master, mates and engineers of the ship ought to hold, give to the master a certificate to the effect that the proper certificates of competency have been so produced.

(3) The master shall, before proceeding to sea, produce the certificate given to him by the shipping master to the customs collector.

(4) No customs collector shall clear any such ship outwards without the production of such certificate; and, if any ship attempts to go to sea without a clearance, the customs collector may detain her until the certificate is produced.

85. Power to cancel or suspend certificates obtained on false or erroneous information.—If it appears to the Central Government that the holder of a certificate granted under this Act has obtained it on false or erroneous information, it may cancel or suspend such certificate:
Provided that no order under this section shall be passed by the Central Government unless the person concerned has been given an opportunity of making a representation against the order proposed.

86. Recognition of certificate of competency granted in other countries.—(1) If provision is made by the laws in force in any country other than India for the grant of certificates of competency similar to those referred to in this Act, and the Central Government is satisfied—

(a) that the conditions under which any such certificates are granted in that country require standards of competency not lower than those required for the grant under this Act of corresponding certificates; and

(b) that certificates granted under this Act are accepted in that country in lieu of the corresponding certificates granted under the laws of that country;

the Central Government may, by notification in the Official Gazette, declare that any certificate of competency granted under the laws in force in that country and specified in that notification, shall for the purposes of this Act be recognised as equivalent to the corresponding certificate of competency granted under this Act and specified in the notification.

(2) Whenever the provisions of this Act require that a person employed in any capacity on board any ship shall be the holder of a specified certificate of competency granted under this Act, any person employed in that capacity shall, if he is the holder of a certificate recognised under sub-section (1) as equivalent to the first-mentioned certificate or to a certificate of higher grade granted under this Act, and still in force, be deemed to be duly certificated under this Act.

1[86A. Foreign ships not to sail without certificated officers.—(1) Every master of a foreign ship shall, before proceeding to sea from any port or place
in India, ensure that the ship has the requisite number of officers and engineers of appropriate grades as specified by the Convention.

1. Ins. by Act 13 of 1987, s. 7 (w.e.f. 1-7-1989).

2. Subs. by s. 8, ibid., for section 87 (w.e.f. 1-7-1989).


(2) A surveyor or any person authorised in this behalf by the Central Government may, at any reasonable time, go on board a ship to which any of the provisions of this Part applies for the purpose of ensuring that the officers holding certificates issued in accordance with the Convention are actually appointed and are present, and satisfy himself about the adequacy of such officers for the watch-keeping duties in ports and at sea.

(3) If any report made under sub-section (2) by a surveyor or any person authorised in this behalf by the Central Government, reveals any deficiency in a foreign ship in relation to the requirements of the Convention and the Central Government is satisfied that it will be unsafe for such ship to proceed to sea, that ship may be detained by the officer authorised for this purpose till such requirements are fulfilled.]

2[87. Power to make rules.—(1) The Central Government may make rules to carry out the provisions of this Part.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner in which a service endorsement shall be made on the certificate of competency of a marine engineer officer class II;
(b) the number of persons and the qualifications they may possess for maintaining watches at sea or in any port or place;

(c) the conduct of the examination of persons desirous of obtaining certificates of competency and endorsements thereon for the grades falling under section 78;

(d) the qualifications to be required of persons desirous of obtaining certificates of competency for the grades falling under section 78;

(e) the fees to be paid by applicants for examination;

(f) the period for which certificate granted under sub-section (2) of section 79 shall be valid;

(g) the form of such certificates and the manner in which copies of certificates are to be kept and recorded;

(h) the circumstances or cases in which certificates of competency may be cancelled or suspended.]

1[PART VIA

1. Part VIA ins. by Act 20 of 1979, s. 2 (w.e.f. 4-5-1979).

2. Sub-clause (ii) omitted by Act 33 of 1986, s. 4 (w.e.f. 14-8-1986).

3. The words „or service” omitted by s. 4, ibid. (w.e.f. 14-8-1986).

4. The words “or Indian Naval ship” omitted by s. 4, ibid. (w.e.f. 14-8-1986).

OBLIGATION OF CERTAIN CERTIFICATE HOLDERS TO SERVE GOVERNMENT OR IN INDIAN SHIPS
87A. Definitions.—In this Part, unless the context other requires,—

(a) “appointed day” means the date on which the Merchant Shipping (Amendment) Act, 1979 (20 of 1979), comes into force;

(b) “certificate” means—

(i) a certificate of competency referred to in section 78; or

(ii) a certificate of competency referred to in section 86,

which has been obtained by any person by availing of training facilities in any of the merchant navy training establishments in India or experience of sea service on board any Indian ship;

(c) “Government” includes—

(i) a Board of Trustees constituted under the Major Port Trusts Act, 1963 (38 of 1963) for any port,

(ii) a corporation established by or under a Central, Provincial or State Act,

(iii) A Government company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956), and

(iv) a Merchant Navy Training Institution financed wholly or mainly by Government;

(d) “suitable employment”, in relation to the holder of any certificate, means employment in a capacity for which the holding of such certificate is an essential qualification.
87B. Holders of certificates to serve the Government or in Indian ships for certain period.—(1) Every citizen of India who obtains, on or after the appointed day, a certificate shall be liable to serve the Government or in any Indian ship, for such period not extending beyond four years from the date on which he obtains such certificate or for such shorter period as the Central Government may, by a general or special order published in the Official Gazette, specify.

(2) No citizen of India who has obtained on or after the appointed day a certificate shall accept any employment other than an employment under the Government or in any Indian ship, before the expiry of the period during which he is liable to serve the Government or in any Indian ship in accordance with the provisions of sub-section (1) and the orders made thereunder.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), a citizen of India who has obtained, on or after the appointed day, two or more certificates shall not be liable to serve under the Government or in any Indian ship for any period or periods exceeding, or, as the case may be, exceeding in the aggregate, seven years or such shorter period as the Central Government may, by a general or special order, published in the Official Gazette, specify.

87C. Exemption from section 87B.—(1) When any person referred to in section 87B has failed to secure suitable employment within a reasonable period from the date on which he applied for the same, he may make an application to the Director-General for exempting him from the requirements of sub-sections (1) and (2) of that section and if the Director-General is satisfied that the grounds stated in the application justify the exemption sought for, he shall, by order, exempt such person from the requirements of those sub-sections.
(2) The Director-General may, either on own motion or on an application made by any person referred to in section 87B, by order in writing, exempt such person from the requirements of sub-sections (1) and (2) of that section, if the Director-General is satisfied—

(a) that it is necessary so to do for compliance with any request made by the Government of any foreign country to make available the services of Indian personnel for meeting shortage of qualified personnel in its ships or shore establishments, or for compliance with any request made by any agency of the United Nations Organisation for making available Indian personnel for providing consultancy services on its behalf in technical co-operation or technical assistance programme in any country; or

(b) that such person is likely to suffer undue hardship if he is not so exempted.

(3) An application for exemption under sub-section (1) or sub-section (2) shall set out clearly all the particulars on the basis of which such exemption is applied for.

(4) Every such application shall be disposed of by the Director-General as expeditiously as possible and where the Director-General refuses to grant the exemption applied for, he shall record his reasons therefore and communicate the same to the applicant.

(5) Where, within a period of forty-five days of the date of receipt of any such application, the Director-General does not refuse to grant the exemption applied for, or does not communicate the refusal to the applicant, the Director-General shall be deemed to have granted the exemption applied for.

(6) Where the Director-General refuses to grant the exemption applied for, the applicant may prefer an appeal against such refusal to the Central Government within thirty days of the receipt of the order of the Director-
General refusing the exemption and the Central Government may make such orders as it deems fit:

Provided that the Central Government may admit any appeal after the expiry of the period aforesaid, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time:

Provided further that no order confirming the order of the Director-General shall be made under this sub-section without giving the appellant an opportunity to represent his case.

87D. Particulars of certificate, etc., to be furnished.—Every citizen of India who obtains, on or after the appointed day, a certificate, shall furnish, in such form and at such intervals as may be described, particulars of the certificate or certificates obtained by him and of his employment.]

PART VII

SEAMEN AND APPRENTICES

1[Classification of seamen, seafarer, maritime labour standards and prescription of minimum manning scale]

1. Subs. by Act 32 of 2014, s. 2, for “Classification of seamen and prescription of minimum manning scale” (w.e.f. 1-4-2015).

2. Ins. by s. 3, ibid. (w.e.f. 1-4-2015).

88. Power to classify seamen.—The Central Government may make rules for the classification of seamen other than ship's officers into different categories and for the prescription of the minimum manning scale of seamen of such categories for ships; and different scales may be prescribed for different classes of ships.
2[88A. Definitions.—In this Part, unless the context otherwise requires,—

(a) “Declaration of Maritime Labour Compliance” means a declaration issued by the Director-General of Shipping or by any officer, authority or organization authorized by him in this behalf, in respect of a ship that it meets with the requirements and standards set out in the provisions of the Maritime Labour Convention;

(b) “Maritime Labour Certificate” means the certificate issued by the Director-General of Shipping or by any officer, authority or organization authorised by him in this behalf, in accordance with the provisions of the Maritime Labour Convention;

(c) “Maritime Labour Convention” means the International Convention of Maritime Labour Organisation on Maritime Labour Standards signed in Geneva on the 23rd February, 2006;

(d) “seafarer” means any person who is employed or engaged or works in any capacity on board a sea going ship, but does not include—

(i) the employment or engagement or work on board in any capacity of any person in a ship of war; or

(ii) any Government ship used for military or non-commercial purposes.

88B. Application of maritime labour standards to seafarers and ships.—(1) The provisions relating to maritime labour standards as contained in the Maritime Labour Convention, shall apply to all seafarers and ships engaged in commercial activities, but does not include—

(a) ships which navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where any law for the time being in force relating to ports apply;
(b) ships engaged in fishing activities;

c) traditionally built ships such as dhows and junks;

d) ships of war or naval auxiliaries.

(2) Subject to the provisions of sub-section (1), the Central Government may, on the recommendation of the Director-General of Shipping, by order, extend the provisions of the said sub-section to ships not engaged in commercial activities with such exceptions and modifications as it may consider necessary.]

Shipping Masters

89. Duties of shipping masters.—It shall be the duty of shipping masters—

(a) to superintend and facilitate the engagement and discharge of seamen in the manner provided in this Act;

(b) to provide means for securing the presence on board at the proper times of the seamen who are so engaged;

(c) to facilitate the making of apprenticeship to the sea service;

(d) to hear and decide disputes under section 132 between a master, owner or agent of a ship and any of the crew of the ship:

1[(dd) to transmit the complaint of any dispute of a foreign seaman of a vessel, registered in a country other than India, in Indian territorial waters, with the master, owner or agent, to the competent authority of the country of registration and a copy of such complaint shall be forwarded to the Director-General, International Labour Organisation Office;]

1. Ins. by Act 9 of 1998, s. 2 (w.e.f. 26-9-1997).
(e) to perform such other duties relating to seamen, apprentices and merchant ships as are for the time being committed to them by or under this Act.

90. Fees to be paid.—(1) The Central Government may, by notification in the Official Gazette, fix the fees which shall be payable upon all engagements and discharges effected before a shipping master.

(2) Scales of the fees payable for the time being shall be conspicuously placed in the shipping office, and a shipping master may refuse to proceed with any engagement or discharge unless the fees payable thereon are first paid.

(3) Every owner or master of a ship engaging or discharging any seamen in a shipping office or before a shipping masters shall pay to the shipping master the whole of the fees hereby made payable in respect of such engagement or discharge, and may, for the purpose of reimbursing himself in part, deduct in respect of each such engagement or discharge from the wages of all persons (except apprentices) so engaged or discharged, and retain any sums not exceeding such sums as the Central Government may, by notification in the Official Gazette, fix in this behalf:

Provided that, if in any case the sums which may be so deducted exceed the amount of the fee payable by him, such excess shall be paid by him to the shipping master in addition to such fee.

(4) For the purpose of determining the fees to be paid upon the engagement and discharge of seamen belonging to foreign-going ships which have running agreements as hereinafter provided, the crew shall be considered to be engaged when the agreement is first signed, and to be discharged when the agreement finally terminates; and all intermediate engagements and discharges shall be considered to be engagements and discharges of single seamen.

Apprenticeship to the sea service
91. Assistance for apprenticeship to sea service.—All shipping masters shall give to persons desirous of apprenticing young persons not under the age of sixteen years] to sea service or requiring apprentices not under that age for the sea service such assistance as may be in their power, and may receive from those persons such fees as the Central Government may fix.

1. Subs. by Act 32 of 2014, s. 4, for “boys not under fifteen years of age” (w.e.f. 1-4-2015).

2. Subs. by s. 5, ibid., for sub-section (1) (w.e.f. 1-4-2015).

3. Subs. by s. 5, ibid., for “fifteen years” (w.e.f. 1-4-2015).

4. Subs. by s. 5, ibid., for “a minor” (w.e.f. 1-4-2015).

92. Special provisions as to apprenticeship to the sea service.—(1) The apprenticeship of any person to the sea service shall be by contract in writing between the apprentice or if he is a young person, then, on his behalf by his guardian, and the master or owner of the ship requiring the apprentice.

(2) Every such contract shall be executed in duplicate in the prescribed form and in accordance with the rules made by the Central Government in this behalf.

(3) Every such contract shall be executed in the presence of, and shall be attested by, the shipping master of the port, who shall, before the execution of the contract, satisfy himself—

(a) that the intended apprentice—

(i) understands the contents and provisions of the contract;

(ii) freely consents to be bound;

(iii) has attained the age of 3[sixteen years]; and
(iv) is in possession of a certificate to the effect that he is physically fit for sea service;

(b) if the intended apprentice is an young person, that his guardian's consent has been obtained to his being bound as an apprentice.

(4) Every such contract made in India and every assignment, alteration or cancellation thereof, and where the apprentice bound dies or deserts, the fact of the death or desertion shall be recorded in the manner specified in section 93.

93. Manner in which contract is to be recorded.—For the purpose of the record—

(a) the master or owner of the ship to whom an apprentice to the sea service is bound shall transmit the contract executed in duplicate within seven days of the execution thereof, to the shipping master, who shall record one copy and endorse on the other the fact that it has been recorded and redeliver it to the master or owner;

(b) the master or owner shall notify any assignment or cancellation of the contract and the death or desertion of the apprentice to the shipping master, within seven days of the occurrence, if it occurs within India, or, as soon as circumstances permit, if it occurs elsewhere.

94. Production of contracts to authorised person before voyage in ship.—(1) The master of a ship shall, before carrying an apprentice to sea from a port in India, cause the apprentice to appear before the shipping master before whom the crew are engaged, and shall produce to him the contract by which the apprentice is bound, and every assignment thereof.
(2) The name of the apprentice, with the date of the contract and of the assignments thereof, if any, and the names of the ports at which the same have been registered, shall be entered on the agreement with the crew.

Seamen’s employment offices

95. Business of seamen's employment offices.—(1) It shall be the business of the seamen's employment offices—

1[(a) to issue licence, to regulate and control the recruitment and placement service, and to—

1. Subs. by Act 63 of 2002, s. 4, for clauses (a) and (b) (w.e.f. 1-2-2003).

2. Omitted by s. 4, ibid. (w.e.f. 1-2-2003).

3. Subs. by s. 4, ibid., for clauses (b) and (c) (w.e.f. 1-2-2003).

(i) ensure that no fees or other charges for recruitment or placement of seafarers are borne directly or indirectly or in whole or in part, by the seafarers;

(ii) ensure that adequate machinery and procedures exist for the investigation, if necessary, of complaints concerning the activities of recruitment and placement services; and

(iii) to maintain registers of seamen in respect of the categories of seamen.]

(c) to perform such other duties relating to seamen and merchant ships as are, from time to time, committed to them by or under this Act.

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(3) The Central Government may make rules for the purpose of enabling seamen”s employment offices effectively to exercise their powers under this
Act; and in particular and, without prejudice to the generality of such power, such rules may, provide for—

(a) consultation with respect to any specified matter by seamen's employment offices with such advisory boards or other authorities as the Central Government may think fit to constitute or specify in this behalf;

(b) the levy and collection of such fees as may be specified for the issue of licences to recruitment and placement services, renewal of such licences and services to be rendered by the seamen's employment office;

(c) the issue of directions by the Central Government to any seamen’s employment office or any recruitment and placement service with reference to the exercise of any of its powers;

(ca) the conditions under which the recruitment and placement service to recruit and place seafarers abroad;

(cb) the circumstances and conditions under which licence to be suspended or withdrawn;

(cc) the conditions under which seafarers’ personal data to be processed by the recruitment and placement services including the collection, storage, combination and communication of such data to third parties;

(d) the supersession of any seamen's employment office which fails to comply with any such direction.

1[Explanation.—For the purposes of this section,—


2. Explanation omitted by Act 32 of 2014, s. 6 (w.e.f. 1-4-2015).

3. Subs. by Act 63 of 2002, s. 5, for section 97 (w.e.f. 1-2-2003).]
4. Ins. by s. 6, ibid. (w.e.f. 1-2-2003).

(a) “recruitment and placement service” means any person, company, institution, agency or other organisation, in the public or private sector which is engaged in recruiting seafarers on behalf of employers or placing seafarers with employers;

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96. Supply or engagement of seamen in contravention of Act prohibited.—(1) A person shall not engage or supply a seaman to be entered on board any ship in India unless that person is the owner, master or mate of the ship, or is the agent of the owner or is bona fide the servant and in the constant employ of the owner, or is a director of a seaman’s employment office, or a shipping master.

(2) A person shall not employ for the purpose of engaging or supplying a seaman to be entered on board any ship in India, any persons unless that person is the owner, master or mate of the ship, or is the agent of the owner or is bona fide the servant and in the constant employ of the owner, or is a director of a seaman’s employment office, or a shipping master.

(3) A person shall not receive or accept to be entered on board any ship any seaman, if that person knows that the seaman has been engaged or supplied in contravention of this section or section 95.

3]97. Receipt of remuneration, donation, fees, etc., from seamen for shipping them prohibited.—(1) A person or company or organisation including a union purporting to represent the interests of seamen shall not demand or receive, either directly or indirectly, from any seaman or person seeking employment as seaman or any person on his behalf, any remuneration or donation or fees or compulsory subscription of any kind attributable from such seaman or person’s employment as seaman, other than the fees authorised by this Act.
(2) It shall be the duty of the company employing or proposing to employ a person as seaman to ensure that no money has been demanded or received by any person or company or organisation including the union purporting to represent the interests of seamen by way of any remuneration or donation or fees or compulsory subscription of any kind attributable to employment of such person as seaman.

4[97A. Prohibition against discrimination.—There shall be no discrimination between seamen,—

(a) on the ground of their membership or lack of membership in any particular union purporting to represent the interests of seamen and membership in such union shall not be pre-requisite condition;

(b) on the basis of training institute from where they obtained training or place of issue of their continuous discharge certificates,

for their recruitment and engagement on board any ship.]}

Engagement of seamen

98. Qualifications for, and medical examination of, seamen.—(1) The Central Government may, by notification in the Official Gazette, direct that, with effect from such date as may be specified in the notification, seamen generally or any category of seamen in particular shall not be engaged or carried to sea to work in any capacity in any ship or in any class of ships so specified, unless each one of them possesses the prescribed qualifications.

(2) Except as otherwise provided under the rules made under sub-section (3), no person shall engage or carry to sea any seaman to work in any capacity in any ship or in any class of ships specified in this behalf by the Central Government, unless the seaman is in possession of a certificate in the
prescribed form granted by the prescribed authority to the effect that he is physically fit to be employed in that capacity.

(3) The Central Government may make rules for the purpose of giving effect to the provisions of this section; and, in particular, and, without prejudice to the generality of such power, any rules so made may provide for—

(a) the courses of training to be pursued, the vocational standards to be attained or the tests to be passed by seamen generally or by any class of seamen in particular;

(b) the standard of physical fitness required of seamen, different standards being laid down, if necessary, for different classes of seamen having regard to the age of the seamen to be examined or the nature of the duties to be performed by them;

(c) the nature of the medical examination of seamen, the authorities by which the examination shall be conducted, and the fees payable therefore;

(d) the form and contents of medical certificates and the period of their validity;

(e) the re-examination by such medical authority as may be specified of persons who have been refused medical certificates of physical fitness in the first instance and the fees payable for such re-examination;

(f) the circumstances in which, or the conditions subject to which, any seaman or class of seamen, or any ship or class of ships, may be exempted from the operation of sub-section (2).

99. Prohibition of engagement of seamen in Indian port without discharge certificate.—No person shall engage or carry to sea any seaman under this Act in any ship, except a home-trade ship of less than two hundred tons gross,
from any port in India unless the seaman is in possession of a certificate of discharge or a continuous certificate of discharge issued under this Part.

199A. Prohibition of engagement of seafarer without seafarer’s identity document.—(1) No person shall engage or carry to sea any seafarer in any ship, unless the seafarer is in possession of seafarer’s identity document.

1. Ins. by Act 40 of 2007, s. 5 (w.e.f. 1-3-2008).

2. Explanation omitted by Act 32 of 2014, s. 7 (w.e.f. 1-4-2015).

(2) The seafarer’s identity document under sub-section (1) shall be issued in such form and manner and on payment of such fees as may be prescribed.

100. Agreements with crew.—The master of every Indian ship, except a home-trade ship of less than two hundred tons gross, shall enter into an agreement (in this Act called the agreement with the crew) in accordance with this Act with every seaman whom he engages in, and carries to sea as one of his crew from any port in India.

101. Form and contents of the agreement.—(1) An agreement with the crew shall be in the prescribed form, and shall be dated at the time of the first signature thereof, and shall be [signed by the owner or agent and the master] before any seaman signs the same.

1. Subs. by Act 41 of 1984, s. 4, for “signed by the master” (w.e.f.15-7-1985).

2. Ins. by Act 32 of 2014, s. 8 (w.e.f. 1-4-2015).

3. Subs. by s. 8, ibid., for “arising out of and” (w.e.f. 1-4-2015).

(2) The agreement with the crew shall contain as terms thereof the following particulars, namely:—
(a) the name of the ship or ships on board which the seaman undertakes to serve;

(b) either the nature and, as far as practicable, the duration of the intended voyage or engagement or the maximum period of the voyage or engagement, and the places or parts of the world, if any, to which the voyage or engagement is not to extend;

(c) the number and description of the crew of different categories in each department;

2[(cc) hours of work and rest in a week, as may be prescribed;]

(d) the time at which each seaman is to be on board or to begin work;

(e) the capacity in which each seaman is to serve;

(f) the amount of wages which each seaman is to receive;

2[(ff) the entitlement for leave, as may be prescribed; and]

(g) a scale of the provisions which are to be furnished to each seaman, such scale being not less than the scale fixed by the Central Government and published in the Official Gazette;

(h) a scale of warm clothing and a scale of additional provisions to be issued to each seaman during periods of employment in specified cold regions;

(i) any regulations as to conduct on board and as to fines or other lawful punishment for misconduct, which have been sanctioned by the Central Government as regulations proper to be adopted, and which the parties agree to adopt;

(j) payment of compensation for personal injury or death caused by accident arising out of employment or in the course of employment;
(k) where it is agreed that the services of any seaman shall end at any port not in India, a stipulation to provide him either fit employment on board some other ship bound to the port at which he was shipped or to such other port in India as may be agreed upon, or a passage to some port in India free of charge or on such other terms as may be agreed upon;

2[(kk) the terms of agreement with the crew shall be determined after consultation with such organisations in India as the Central Government may, by order, notify to be the most representative of the employers of seamen and of seamen.]

(l) stipulations relating to such other matters as may be prescribed.

(3) The agreement shall provide that in the event of a dispute arising outside India between the master, owner or agent of a ship and a seaman in respect of any matter touching the agreement, such dispute shall be referred to the Indian consular officer whose decision thereon shall be binding on the parties until the return of the ship to the port in India at which the seaman is to be discharged:

Provided that in the case of a ship other than an Indian ship, no such dispute shall be referred to the Indian consular officer if such reference is contrary to the rules of international law.

(4) The agreement with the crew shall be so framed as to admit of stipulations, to be adopted at the will of the master and seaman in each case (not being inconsistent with the provisions of this Act) respecting the advance and allotment of wages and may contain any other stipulations which are not contrary to law.

1[102. Engagement of seaman where agreement is made out of India.—Notwithstanding anything contained in any other provision of this Act, the master of a ship registered at a port outside India who has an}
agreement with the crew made in due form according to the law of that port or of the port in which her crew were engaged may engage in any port in India—

1. Subs. by Act 41 of 1984, s. 5, for section 102 (w.e.f. 15-7-1985).

(a) a seaman who is not a citizen of India and who holds a continuous discharge certificate or any other similar document of identity issued by the competent authority of the country in which the ship is registered or, as the case may be, of the country in which the said agreement was made; or

(b) a seaman who is a citizen of India and who holds a certificate of discharge or a continuous certificate of discharge issued under this Act,

and any seaman so engaged under clause (a) or clause (b) may sign the agreement aforesaid and it shall not be necessary for him to sign an agreement under this Act.]

103. Special provisions with regard to agreements with crew of Indian ships.—(1) The following provisions shall have effect with respect to every agreement made in India with the crew of an Indian ship, namely:—

(a) the agreement shall, subject to the provision of this Act as to substitute, be signed by each seaman in the presence of a shipping master;

(b) the shipping master shall cause the agreement to be read over and explained to each seaman, in a language understood by him or shall otherwise ascertain that each seaman understands the same before he signs it, and shall attest each signature;

(c) when the crew is first engaged, the agreement shall be signed in duplicate, and one part shall be retained by the shipping master, and the other part shall be delivered to the master, and shall contain a special place or form for the
descriptions and signatures of substitutes or persons engaged subsequently to the first departure of the ship;

(d) when a substitute is engaged in the place of a seaman who has duly signed the agreement and whose services are within twenty-four hours of the ship's putting to sea lost by death, desertion or other unforeseen cause, the engagement shall, if practicable, be made before a shipping master, and if not practicable, the master shall, before the ship puts to sea, if practicable, and, if not, as soon afterwards as possible, cause the agreement to be read over and explained to the substitute; and the substitute shall thereupon sign the same in the presence of a witness, who shall attest the signature.

(2) In the case of an agreement made in India with the crew of a foreign-going Indian ship the following provisions shall have effect in addition to the provisions specified in sub-section (1), namely:—

(a) the agreement may be made for a voyage of the ship or, if the voyages of the ship average less than six months in duration, may be made to extend over two or more voyages, and agreements so made are in this Act referred to as running agreements;

(b) a running agreement may be made to extend over two or more voyages so that it shall terminate either within six months from the date on which it was executed, or on the first arrival of the ship at her port of destination in India after the expiration of that period, or on the discharge of cargo consequent upon such arrival, whichever of these dates shall be the latest:

Provided that no such running agreement shall continue in force, if, after the expiration of such period of six months as aforesaid, the ship proceeds on a voyage from a port outside India to any other such port which is not on the direct route or a customary route to her port of destination in India;
(c) on every return to a port in India before the final termination of a running agreement, the master shall discharge or engage before the shipping master at such port any seaman whom he is required by law so to discharge or engage, and shall upon every such return endorse on the agreement a statement (as the case may be) either that no such discharges or engagements have been made or are intended to be made before the ship leaves port, or that all those made have been made as required by law;

(d) the master shall deliver the running agreement so endorsed to the shipping master, and the shipping master shall, if the provisions of this Act relating to agreements have been complied with, sign the endorsement and return the agreement to the master.

(3) In the case of an agreement made in India with the crew of a home-trade Indian ship of two hundred tons gross or more, the following provisions shall have effect in addition to the provisions specified in sub-section (1), namely:—

(a) the agreement shall not be for a period longer than six months, but if the period for which the agreement was entered into expires while the ship is not in an Indian port, the agreement shall continue in force until the ship is again in an Indian port:

Provided that, except with the consent in writing of the seaman concerned, the agreement shall not continue in force for more than three months after the expiration of the period for which it was entered into;

(b) an agreement for service in two or more ships belonging to the same owner may be made by the owner instead of by the master, and the provisions of this Act with respect to the making of the agreement shall apply accordingly.
104. Renewal of running agreements in certain cases.—(1) When a running agreement has been made with a crew of a foreign-going Indian ship and the ship arrives after the expiration of a period of six months from the date on which it was executed at a port of destination in India which is not the port at which the crew have agreed to be discharged, the master may, with the previous sanction of the shipping master renew the agreement with the crew, or may be required by the shipping master so to renew the agreement for the voyage from such port of destination to the port in India at which the crew have agreed to be discharged.

(2) If the master of the ship is required by the shipping master to renew the agreement as aforesaid and refuses so to renew it, any expenses which may be incurred by the Government for the subsistence of the crew and their conveyance to the port at which they have agreed to be discharged shall be a charge upon the ship, and shall be recoverable as if they were expenses incurred in respect of distressed seamen under the provisions of this Act.

105. Changes in crew to be reported.—1[(1)] The master of every foreign-going Indian ship and of every home-trade Indian ship of two hundred tons gross or more, the crew of which has been engaged before a shipping master, shall, before finally leaving the port where the engagement took place, sign and send to the nearest shipping master a full and accurate statement in the prescribed form, of every change which has taken place in his crew, and that statement shall be admissible in evidence.

1. Section 105 renumbered as sub-section (1) thereof by Act 41 of 1984, s. 6 (w.e.f. 15-7-1985).

1[(2) A copy of the statement referred to in sub-section (1) shall also be sent to the seaman's employment office concerned.]

1. Ins. Act 41 of 1984, by s. 6 (w.e.f. 15-7-1985).
2. Subs. by s. 7, ibid., for certain words (w.e.f. 15-7-1985).

3. Subs. by Act 32 of 2014, s. 9, for section 109 (w.e.f. 1-4-2015).

106. Certificate as to agreement with crew.—(1) In the case of a foreign-going Indian ship or a home-trade Indian ship of two hundred tons gross or more, on the due execution of an agreement with the crew in accordance with this act, and also when, in the case of a foreign-going Indian ship, the agreement is a running agreement, on compliance by the master before the second and every subsequent voyage made after the first commencement of the agreement with the provisions of this Act respecting that agreement, the shipping master shall grant the master of the ship a certificate to that effect.

(2) The master of every such ship shall, before proceeding to sea, produce that certificate to the customs collector whose duty it is to grant a port clearance.

(3) No customs collector shall clear any such ship outwards without the production of such certificate, and, if any such ship attempts to go to sea without a clearance, the customs collector may detain her until such certificate as aforesaid is produced.

(4) The master of every such ship shall, within forty-eight hours after the ship's arrival at the port in India at which the crew is to be discharged, deliver such agreement to a shipping master at the port; and such shipping master shall thereupon give to the master a certificate of such delivery; and no customs collector shall clear any such inwards without the production of such certificate.

107. Copy of agreement to be made accessible to the crew.—The master shall, at the commencement of every voyage or engagement, cause a legible copy of the agreement and, if necessary, a certified translation thereof in a language
understood by the majority of the crew (omitting the signatures), to be placed or posted up in such part of the ship as to be accessible to the crew.

108. Alteration in agreement with the crew.—Every erasure, interlineation or alteration in any agreement with the crew (except additions made for the purpose of shipping substitutes or persons engaged subsequently to the first departure of the ship) shall be wholly inoperative, unless proved to have been made with the consent of all the persons, interested in the erasure, interlineation or alteration by the written attestation,—

(a) if in India, of some shipping master or customs collector; or

(b) if outside India, by an Indian consular officer or at any port outside India at which no Indian consular officer is available any such person as is authorised in this behalf by the Central Government by notification in the Official Gazette.

Employment of young persons

3[109. Prohibition of engagement of underage persons in certain cases.—(1) No person under the age of sixteen years shall be engaged or carried to sea to work in any capacity in any ship.

(2) (a) No young person shall be engaged in night work.

(b) The period of night work shall be such, as may be prescribed:

Provided that the Director-General of Shipping,—

(i) for giving effective training; or

(ii) for performing a specific nature of duty,
at night, may, by order permit engagement of any young person in night work which shall not be detrimental to the health or well being of such young person.]

110. [Engagement of young persons as trimmers or stokers.] Omitted by the Merchant Shipping (Second Amendment) Act, 2014 (32 of 2014), s. 10 (w.e.f. 1-4-2015).

111. Medical examination of young persons.—(1) Save as otherwise provided in sub-section (2), no young person shall be engaged or carried to sea to work in any capacity in any ship, unless there has been delivered to the master a certificate granted by a prescribed authority that the young person is physically fit to be employed in that capacity.

(2) Sub-section (1) shall not apply,—

(a) to the employment of a young person in a ship in which all persons employed are members of one family; or

(b) where the shipping master, on the ground of urgency, has authorised a young person to be engaged and carried to sea, without the certificate required by sub-section (1) being delivered to the master, and the young person is not employed beyond the first port at which the ship in which he is so engaged calls except in accordance with the provisions of sub-section (1).

(3) A certificate of physical fitness required under this section shall remain in force for one year only from the date on which it is granted.

112. Maintenance of list or register of young persons in a ship.—There shall be included in every agreement with the crew of every Indian ship and every other ship which engages young persons in India, a list of young persons who are members of the crew, together with particulars of the dates of their birth, and, in the case of any such ship where there is no agreement, the master shall
keep a register of young persons with particulars of the dates of their birth and of the dates on which they became or ceased to be members of the crew.

113. Power to make rules respecting employment of young persons.—The Central Government may make rules for the purposes of employment of young persons, prescribing—

1. Subs. by Act 32 of 2014, s. 11, for section 113 (w.e.f. 1-4-2015).

(a) the authorities, whose certificates of physical fitness shall be accepted for the purposes of section 111;

(b) the form of register of young persons to be maintained in ships where there is no agreement with the crew.]

Engagement of seamen by masters of ships other than Indian ships

114. Engagements between seamen and masters of ships other than Indian ships.—(1) When the master of a ship other than an Indian ship engages a seaman at any port in India to proceed to any port outside India, he shall enter into an agreement with such seaman, and the agreement shall be made before a shipping master in the manner provided by this Act for the making of agreements in the case of foreign going Indian ships.

(2) All the provisions, of this Act respecting the form of such agreements and the stipulations to be contained in them and the making and signing of the same shall be applicable to the engagement of such seaman.

(3) The master of a ship other than an Indian ship shall give to the shipping master a bond with the security of some approved person resident in India for such amount as may be fixed by the Central Government in respect of each seaman engaged by him at any port in India and conditioned for the due performance of such agreement and stipulations, and for the repayment to the Central
Government of all expenses which may be incurred by it in respect of any such seaman who is discharged or left behind at any port out of India and becomes distressed and is relieved under the provisions of this Act:

Provided that the shipping master may waive the execution of a bond under this section where the owner of the ship has an agent at any port in India and such agent accepts liability in respect of all matters for which the master of the ship would be liable if he were to execute a bond under this section or may accept from the agent such security as may be approved by the Central Government.

(4) The fees fixed under section 90 shall be payable in respect of every such engagement, and deductions from the wages of seamen so engaged may be made to the extent and in the manner allowed under the said section 90.

115. Power to prohibit engagement of persons as seamen.—The Central Government or any officer authorised by it in this behalf, if satisfied that in the national interest or in the interests of seamen generally it is necessary so to do, may, by order in writing, prohibit the owner, master or agent of any ship other than an Indian ship specified in the order from engaging in India or in any specified part of India, any person to serve as a seaman on such ship.

116. Engagement of seamen outside India for Indian ships.—With respect to the engagement of seamen outside India, the following provisions shall have effect:—

When the master of an Indian ship engages a seaman at any port outside India, the provisions of this Act respecting agreements with the crew made in India shall apply subject to the following modifications:—

(a) at any such port having an Indian consular officer, the master shall, before carrying the seaman to sea, procure the sanction of the consular officer, and shall, if not contrary to any law in force in that port, engage the seaman before
that officer;

(b) the master shall request the Indian consular officer to endorse upon the agreement an attestation to the effect that it has been signed in his presence and otherwise, made as required by this Act, and that it has his sanction, and if the attestation is not made, the burden of proving that the engagement was made as required by this Act shall lie up on the master.

117. Power to board ships and master seamen.—For the purpose of preventing seamen from being taken on board any ship at any port in India contrary to the provisions of this Act, any shipping master or deputy or assistant shipping master or any director, deputy director or assistant director of the seamen's employment office, may enter at any time on board any such ship upon which he has reason to believe that seamen have been shipped, and may muster and examine the several seamen employed therein.

Discharge of seamen

118. Discharge before shipping master.—(1) When a seaman serving in a foreign-going ship is, on the termination of his engagement, discharged in India, he shall, whether, the agreement with the crew be an agreement for the voyage or running agreement, be discharged in the manner provided by this Act in the presence of a shipping master.

(2) The provisions of sub-section (1) shall apply inflation to the discharge, of seamen serving in a home-trade Indian ship of two hundred tons gross or more as they apply in relation to the discharge of seamen serving in a foreign-going ship:

Provided that this sub-section shall not apply where a seaman is discharged from a Ship under an agreement made in accordance with section 103 for
service in two or more ships, for the purpose of being engaged in another
ship to which the agreement relates.

(3) If the master, owner or agent of a home-trade ship, other than a ship to
which the last preceding sub-section applies, so desires, the seamen of that
ship may be discharged in the same manner as seamen discharged from a
foreign-going ship.

119. Certificate of discharge.—(1) The master shall sign and give to a sea-
man discharged from his ship in India, either on his discharge or on payment of
his wages, a certificate of his discharge in the prescribed form specifying the
period of his service and the time and place of his discharge.

(2) The master shall also, upon the discharge of every certificated officer
whose certificate of competency has been delivered to and retained by him,
return the certificate to the officer.

120. Certificate as to work of seamen.—(1) When a seaman is discharged from
a ship in India, the master shall furnish to the shipping master before whom
the discharge is made a report in the prescribed form stating —

(a) the quality of the work of the seaman; or

(b) whether the seaman has fulfilled his obligations under the agreement with
the crew; or

(c) that he declines to express an opinion on those particulars;

and the shipping master shall, if the seaman so desires, give to him or endorse
on his certificate of discharge a copy of such report.

(2) A seaman who is entitled to a certificate of discharge under section 119
may, if he so desires, be granted by the master, in lieu of the certificate
referred to in sub-section (1) of the said section or the report referred to in
sub-section (1) of this section, a continuous discharge certificate specifying
the period of his service together with an endorsement stating —

(a) the quality of the work of the seaman; or

(b) whether the seaman has fulfilled his obligations under the agreement with
the crew; or

(c) that he declines to express an opinion on those particulars;

and the shipping master shall thereupon sign and give such continuous
discharge certificate notwithstanding anything to the contrary contained in
sub-section (1).

(3) If the master states that he declines to express an opinion on the
particulars mentioned in clauses (a) and (b) of sub-section (1) or sub-section
(2), he shall enter in the official log book his reasons for so declining.

121. Discharge and leaving behind of seamen by masters of Indian ships.—(1)
The master of an Indian ship shall not—

(a) discharge a seaman before the expiration of the period for which he was
engaged, unless the seaman consents to his discharge; or

(b) except in circumstances beyond his control, leave a seaman or apprentice
behind;

without the authority of the officer specified in this behalf by the Central
Government and the officer aforesaid shall certify on the agreement with the
crew that he has granted such authority, and also the reason, for the seaman
being discharged or the seaman or apprentice being left behind.

(2) The officer aforesaid to whom application is made for authority in terms
of sub-section (1) shall investigate the grounds on which the seaman is to be
discharged or the seaman or apprentice left behind and may in his discretion grant or refuse to grant such authority:

Provided that he shall not refuse to grant his authority if he is satisfied that the seaman has without reasonable cause—

(a) failed or refused to join his ship or to proceed to sea therein; or

(b) been absent from his ship without leave, either at the commencement or during the progress of a voyage for a period of more than forty-eight hours.

(3) The officer aforesaid shall keep a record of all seamen or apprentices discharged or left behind with his authority; and whenever any charge is made against a seaman or apprentice under section 191, the fact that no such authority is so recorded shall be prima facie evidence that it was not granted.

122. Wages and other property of seaman or apprentice left behind.—(1) If a seaman or apprentice is left behind, the master shall enter in the official logbook a statement of the amount due to the seaman or apprentice in respect of wages at the time when he was left behind and of all property left on board by him, and shall take such property into his charge.

(2) Within forty-eight hours after the arrival of the ship at the port in India at which the voyage terminates, the master shall deliver to the shipping master—

(a) a statement of the amount due to the seaman or apprentice in respect of wages, and of all property left on board by him; and

(b) a statement, with full particulars, of any expenses that may have been caused to the master or owner of the ship by the absence of the seaman or apprentice, where the absence is due to a contravention by the seaman or apprentice of section 191; and, if required by the shipping master to do so
shall furnish such vouchers as are reasonably required to verify the statements.

(3) The master shall at the time when he delivers the statements referred to in sub-section (2) to the shipping master also deliver to him the amount due to the seaman or apprentice in respect of wages and the property that was left on board by him, and the shipping master shall give to the master a receipt therefor in the prescribed form.

(4) The master shall be entitled to be reimbursed out of the wages or property referred to in clause (a) of sub-section (2) such expenses shown in the statement referred to in clause (b) of that sub-section as appear to the shipping master to be properly chargeable.

123. Repatriation of seamen or termination of service at foreign port.—(1) When the service of a seaman or apprentice terminates without the consent of the said seaman or apprentice at a port outside India, and before the expiration of the period for which the seaman was engaged or the apprentice was bound, the master or owner of the ship shall, in addition to any other relative obligation imposed on either of them by this Act, make adequate provision for the maintenance of the seaman or apprentice according to his rank or rating, and for the return of that seaman or apprentice to a proper return port.

(2) If the master or owner fails without reasonable cause to comply with sub-section (1), the expenses of maintenance and of the journey to the proper return port shall, if defrayed by the seaman or apprentice, be recoverable as wages due to him, and if defrayed by an Indian consular officer, be regarded as expenses falling within the provisions of sub-sections (3) and (4) of section 161.

Explanation.—Inability to provide the said expenses shall not, for the purposes of this sub-section, be regarded as reasonable cause.
124. Discharge of seamen on change of ownership.—(1) If an Indian ship is transferred or disposed of while she is at or on a voyage to any port outside India, every seaman or apprentice belonging to that ship shall be discharged at that port, unless he consents in writing in the presence of the Indian consular officer to complete the voyage in the ship if continued.

(2) If a seaman or apprentice is discharged from an Indian ship in terms of sub-section (1), the provisions of section 123 shall apply as if the service of the seaman or apprentice had terminated without his consent and before the expiration of the period for which the seaman was engaged or the apprentice was bound.

(3) Every seaman or apprentice discharged in terms of sub-section (1) shall, if the voyage for which he was engaged is not continued, be entitled to the wages to which he would have been entitled if his Service has been wrongfully terminated by the owner before the expiration of the period for which the seaman was engaged or the apprentice was bound.

Payment of wages

125. Master to deliver account of wages.—(1) The master of every ship shall, before paying off or discharging a seaman under this Act deliver at the time and in the manner provided by this Act a full and true account in the form prescribed of the seaman’s wages and of nil deductions to be made therefrom on any account whatever.

(2) The said account shall be delivered, either to the seaman himself, at or before the time of his leaving the ship, or to the shipping master not less than twenty-four hours before the discharge or payment off.

126. Disrating of seamen.—(1) Where the master of a ship disrates a seaman, he shall forthwith enter of cause to be entered in the official log book, a statement of the disrating, and furnish the seaman with a copy of the entry;
and any reduction of wages consequent on the disrating shall not take effect until the entry has been so made and the copy so furnished.

(2) Any reduction of wages consequent on the disrating of a seaman shall be deemed to be a deduction from wages within the meaning of sections 125 and 127.

127. Deductions from wages of seamen.—(1) A deduction from the wages of a seaman shall not be allowed unless it is included in the account delivered in pursuance of this Act except in respect of a matter happening after such delivery.

(2) The master shall during the voyage enter the various matters in respect of which the deductions are made, with the amount of the respective deductions as they occur, in a book to be kept for that purpose, and shall, if required, produce the book at the time of the payment of wages and also upon the hearing before any competent authority of any complaint or question relating to that payment.

128. Payment of wages before shipping master.—(1) Where a seaman is discharged in India before a shipping master, the shall receive his wages through, or in the presence of, the shipping master unless a competent Court otherwise directs.

(2) If the master or owner of a home-trade ship of less than two hundred tons gross so desires the seamen of that ship may receive their wages in the same manner as seamen discharged from a foreign-going ship, or from a home-trade ship of two hundred tons gross or more.

129. Time of payment of wages.—(1) The master, owner or agent of every ship shall pay to every seaman his wages within four days after the seaman's discharge, and the seaman shall at the time of his discharge be entitled to be paid on account a sum equal to one-fourth part of the balance due to him.
(2) If a master, owner or agent fails without reason able cause to make payment at that time, he shall pay to the seaman such sum not exceeding the amount of two day”s pay for each of the days commencing from the day of discharge, during which payment is delayed as the shipping master may in each case decide, but the sum so payable shall not exceed ten days' double pay.

(3) Any sum payable under this section may be recovered as wages.

130. Settlement of wages.—(1) Where a seaman is discharged and the settlement of his wages completed before a shipping master, the seaman, shall sign in the presence of the shipping master a release in the form, prescribed of all claims in respect of the past voyage or engagement, and the release shall also be signed by the master, owner or agent of the ship and attested by the shipping master.

(2) The release so signed and attested shall be retained by the shipping master and shall operate as a mutual discharge and settlement of all demands between the parties thereto in respect of the past voyage or engagement but shall not debar a claim, to compensation for personal injury caused by accident arising out of and in the course of employment.

(3) A copy of the release, certified under the hand of the shipping master to be a true copy, shall be given by him to any party thereto requiring the same and such copy shall be receivable in evidence upon any question touching such claims, and shall have all the effect of the original of which it purports to be a copy.

(4) No payment, receipt or settlement of the wages of a seaman made otherwise than in accordance with this Act shall operate or be admitted as evidence of the release or satisfaction of any claim in respect of such wages.
(5) Upon any payment being made by a master before a shipping master, the shipping master shall, if required, sign and give to the master a statement of the whole amount so paid, and the statement shall as between the master and his employer, be admissible as evidence that the master has made the payments therein mentioned.

(6) Notwithstanding anything contained in the preceding sub-sections a seaman may except from the release signed by him any specified claim or demand against the master or owner of the ship, and a note of any claim or demand so excepted shall be entered upon the release; and the release shall not operate as a discharge and settlement of any claim or demand so noted, nor shall sub-section (4) apply to any payment, receipt or settlement made with respect to any such claim or demand.

1[130A. Certain undisbursed amounts to be utilised for welfare of seamen.—Subject to the provisions of section 160 and to such restriction and conditions as may be prescribed any amount deposited with or recovered by the shipping master for making payment in accordance with the allotment note made by a seaman or for being paid to a seaman or his nominee may, if such amount remains unclaimed with the shipping master for a period of not less than six years be utilised for the welfare of seamen in such manner as the Central Government may direct.]

1. Ins. by Act 41 of 1984, s. 8 (w.e.f.15-7-1985).

2. Subs. by Act 32 of 2014, s. 12, for clause (a) (w.e.f. 1-4-2015).


131. Master to give facilities to seaman for remitting wages.—Where a seaman expresses to the master of the ship his desire to have facilities afforded to him for remitting any part of the balance of the wages due to him to a savings bank or to a near relative, the master shall give to the seaman all reasonable
facilities for so doing so far as regards so much of the balance as is within the limits, if any, specified in this behalf by the Central Government, but shall be under no obligation to give those facilities while the ship is in port if the sum will become payable before the ship leaves port or otherwise than conditionally on the seaman going to sea in the ship.

132. Decision of questions by shipping masters.—(1) Where under the agreement with the crew any dispute arises at any port in India between the master, owner or agent of a ship and any of the crew of the ship, it shall be submitted to the shipping master,—

2[(a) where the amount in dispute is up to five lakh rupees or such higher amount not exceeding ten lakh rupees, as the Central Government may, by notification, specify, at the instance of either party to the dispute;]

(b) in any other case, if both parties to the dispute agree in writing to submit the dispute to the shipping master.

3[(1A) Any complaint of dispute received by the shipping master from an Indian seaman, on a vessel registered in a country other than India, in Indian territorial waters, with the master, owner or agent.]

(2) The shipping master shall hear and decide the dispute so submitted and an award made by him upon the submission shall be conclusive as to the rights of the parties, and any document purporting to be such submission or award shall be prima facie evidence thereof.

(3) An award made by a shipping master under this section may be enforced by 1[a Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be,] in the same manner as an order for the payment of wages made by such Magistrate under this Act.
1. Subs. by Act 12 of 1983, s. 17 and Sch., for “a magistrate” (w.e.f.18-5-1983).

(4) Nothing in the Arbitration Act, 1940 (10 of 1940), shall apply to any matter submitted to a shipping master for decision under this section.

133. Power of shipping master to require production of ship's papers.—In any proceedings under this Act before a shipping master relating to the wages, claims or discharge of a seaman, the shipping master may require the owner, master or agent or any mate or other member of the crew to produce any logbooks, papers, or other documents in his possession or power relating to any matter in question in the proceedings, and may require the attendance of and examine any of those persons being then at or near the place on the matter.

134. Rule as to payment to seamen in foreign currency.—Where a seaman or apprentice has agreed with the master of a ship for payment of his wages in Indian or other currency, any payment of, or on account of, his wages, if made in any currency other than that stated in the agreement, shall, notwithstanding anything in the agreement, be made at the rate of exchange for the time being current at the place where the payment is made.

Advance and allotment of wages

135. Advance of wages.—(1) Any agreement with the crew may contain a stipulation for payment to a seaman, conditional on his going to sea in pursuance of the agreement of a sum not exceeding the amount of one month's wages payable to the seaman under the agreement.

(2) Save as aforesaid, an agreement by or on behalf of the employer of a seaman for the payment of money to or on behalf of the seaman, conditional on his going to sea from any port in India shall be void, and no money paid in satisfaction or in respect of any such agreement shall be deducted from the
seaman’s wages, and no person shall have any right of action, suit or set-off against the seaman or his assignee in respect of any money so paid or purporting to have been so paid.

(3) No seaman, who has been lawfully engaged and has received under his agreement an advance payment, wilfully or through misconduct shall fail to attend his ship or desert there from before the payment becomes really due to him.

(4) Where it is shown to the satisfaction of a shipping master that a seaman lawfully engaged has willfully or through misconduct failed to attend his ship, the shipping master shall report the matter to the Director-General who may direct that any of the seaman's certificates of discharge referred to in sections 119 and 120 shall be withheld for such period as he may think fit; and while a seaman's certificate of discharge is so withheld, the Director-General or any other person having the custody of the necessary documents may, notwithstanding anything in this Act, refuse to furnish copies of any such certificate or certified extracts therefrom.

136. Allotment notes respecting seaman's wages.—(1) A seaman may require that a stipulation be inserted in the agreement for the allotment, by means of an allotment note, of any part (not exceeding three-fourths) of the amount of the monthly wages payable to him in favour of any such member of his family or any such relative or for any such purpose approved in this behalf by the Central Government by general or special order, as may be specified in the note.

(2) Every shipping master or other officer before whom the seaman is engaged shall, after the seaman has signed the agreement, inquire from the seaman whether he requires such a stipulation for the allotment of his wages by means of an allotment note.
(3) Whenever a seaman requires such a stipulation, the stipulation shall be inserted in the agreement of the crew, and such stipulation shall be deemed to have been agreed to by the master.

(4) An allotment note shall be in the prescribed form and shall be signed by the owner, master or agent of the ship and by the seaman.

137. Commencement and payment of sums allotted.—(1) A payment under an allotment note shall begin at the expiry of 1[one month from the date on which the seaman's right to wages begins] and shall be made at the expiration of every subsequent month after the first month and shall be made only in respect of the wages earned before the date of payment.

1. Subs. by Act 41 of 1984, s. 10, for “one month from the date of the agreement” (w.e.f. 15-7-1985).


(2) The owner, master or agent who has authorised the drawing of an allotment note shall pay to the shipping master on demand the sums due under the note, and, if he fails to do so, the shipping master may sue for and recover the same with costs:

Provided that no such sum shall be recoverable if it is shown to the satisfaction of the Court trying the case that the seaman has forfeited or ceased to be entitled to the wages out of which the allotment was to have been paid but the seaman shall be presumed to be duly earning his wages unless the contrary is shown to the satisfaction of the Court either by the official statement of the change in the crew caused by his absence made and signed by the master as by this Act is required or by a certified copy of some entry in the official logbook to the effect that he has died or left the ship, or by a credible letter from the master of the ship to the same effect, or by such other evidence of whatever description, as the Court may consider sufficient.
(3) The shipping master on receiving any such sum as aforesaid shall pay it over to the person named in that behalf in the allotment note.

(4) All such receipts and payments shall be entered in a book to be kept for the purpose, and all entries in the said book shall be authenticated by the signature of the shipping master.

(5) The said book shall at all reasonable times be open to the inspection of the parties concerned.

Rights of seamen in respect of wages

138. Right to wages and provisions.—A seaman's right to wages and provisions shall be taken to being either at the time at which he commences work or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

139. Right to recover wages and salvage not to be forfeited.—(1) A seaman shall not by any agreement forfeit his lien on the ship or be deprived of any remedy for the recovery of his wages to which, in the absence of the agreement, he would be entitled, and shall not by any agreement abandon his right to wages in case of loss of the ship or abandon any right that he may have or obtain in the nature of salvage, and every stipulation in any agreement inconsistent with any provisions of this Act shall be void.

(2) Nothing in this section shall apply to a stipulation made by the seamen belonging to any ship which according to the terms of the agreement is to be employed on salvage service with respect to the remuneration to be paid to them for salvage service to be rendered by that ship to any other ship.
140. Wages not to depend on freight.—(1) The right to wages shall not depend on the earning of freight, and every seaman and apprentice who would be entitled to demand and recover any wages if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to demand and recover the same notwithstanding that freight has not been earned, but in all cases of wreck or loss of the ship, proof that the seaman has not exerted himself to the utmost to save the ship, cargo and stores shall bar his claim to wages.

(2) Where a seaman or apprentice who would but for death be entitled by virtue of this section to demand and recover any wages dies before the wages are paid, they shall be paid and applied in manner provided by this Act with respect to the wages of a seaman who dies during a voyage.

141. Wages on termination of service by wreck, illness, etc.—(1) Where the service of any seaman engaged under this Act terminates before the date contemplated in the agreement by reason of the wreck, loss or abandonment of the ship or by reason of his being left on shore at any place outside India under a certificate granted under this Act of his unfitness or inability to proceed on the voyage the seaman shall be entitled to receive—

(a) in the case of wreck, loss or abandonment of the ship—

(i) wages at the rate to which he was entitled at the date of termination of his service for the period from the date his service is so terminated until he is returned to and arrives at a proper return port;

Provided that the period for which he shall be entitled to receive wages shall be not less than one month; and

(ii) compensation for the loss of his effects—
(a) in the case of a seaman employed on a home-trade ship, of not less than one month”s wages; and

(b) in the case of a seaman employed on a foreign-going ship, of not less than three month”s wages;

(b) in the case of unfitness or inability to proceed on the voyage, wages for the period from the date his service is terminated until he is returned to and arrives at a proper return port.

(2) A seaman shall not be entitled to receive wages under sub-clause (i) of clause (a) of sub-section (1) in respect of any period during which—

(a) he was, or could have been, suitably employed; or

(b) through negligence he failed to apply to the proper authority for relief as a distressed or destitute seaman.

(3) Any amount payable by way of compensation under sub-clause (ii) of clause (a) of sub-section (1) shall be deposited with the shipping master at the port of engagement in India for payment to the seaman, or, in the case of a deceased seaman, to the person nominated by him in this behalf under section 159A or if he has not made any such nomination or the nomination made by him is or has become void, to his legal heirs.

1. Subs. by Act 41of 1984, s. 11, for “to his legal heirs” (w.e.f. 15-7-1985).

142. Wages not to accrue during absence without leave, refusal to work or imprisonment.—(1) A seaman or apprentice shall not be entitled to wages —

(a) for any period during which he is absent without leave from his ship or from his duty; or
(b) for any period during which he unlawfully refuses or neglects to work when required; or

(c) unless the court hearing the case otherwise directs, for any period during which he is lawfully imprisoned.

(2) A seaman or apprentice shall not be disentitled to claim wages for any period during which he has not performed his duty if he proves that he was incapable of doing so by reason of illness, hurt or injury, unless it be proved that—

(a) his illness, hurt or injury was caused by his own willful act or default or his own misbehavior; or

(b) his illness was contracted or his hurt or injury was sustained at a proper return port and was not attributable to his employment; or

(c) he has unreasonably refused to undergo medical or surgical treatment for his illness, hurt or injury involving no appreciable risk to his life.

143. Compensation to seamen for premature discharge.—(1) If a seaman having signed an agreement is discharged, otherwise than in accordance with the terms thereof, without fault on his partjustifying the discharge and without his consent, he shall be entitled to receive from the master, owner or agent, in addition to any wages he may have earned, as due compensation for the damage caused to him by the discharge, such sum as the shipping master may fix having regard to the circumstances relating to the discharge:

Provided that the compensation so payable shall not exceed —

(a) in the case of a seaman who has been discharged before the commencement of a voyage, one month's wages; and
(b) in the case of a seaman who has been discharged after the commencement of a voyage, three months' wages.

(2) Any compensation payable under this section may be recovered as wages.

144. Restriction on sale of and charge upon wages.—(1) As respects wages due or accruing to a seaman or apprentice—

(a) they shall not be subject to attachment by order of any court;

(b) an assignment thereof made prior to the accruing thereof shall not bind the person making the same;

(c) a power of attorney or authority for the receipt thereof shall not be irrevocable;

(d) a payment of wages to a seaman or apprentice shall be valid in law notwithstanding any previous assignment of those wages or any attachment thereof or encumbrance thereon.

(2) The provisions of clauses (b) and (c) of sub-section (1) shall not apply to so much of the wages of a seaman as have been or are hereafter assigned by way of contribution to any fund or scheme approved in this behalf by the Central Government, the main purpose of which is the provision for seamen of health or social insurance benefits and the provisions of clauses (a) and (d) of sub-section (1) shall not apply to anything done or to be done for giving effect to such an assignment.

(3) Nothing in this section shall affect the provisions of this Act or any other law for the time being in force with respect to allotment notes.

Mode of recovering wages
145. Summary proceedings for wages.—(1) A seaman or apprentice or a person duly authorised on his behalf may, as soon as any wages due to him become payable, apply to 1[any Judicial Magistrate of the first class or any Metropolitan Magistrate, as the case may be,] exercising jurisdiction in or near the place at which his service has terminated or at which he has been discharged or at which any person upon whom the claim is made is or resides, and 2[such Magistrate] shall try the case in a summary way and the order made by 2[such Magistrate] in the matter shall be final.

1. Subs. by Act 12 of 1983, s. 17 and Schedule, for “any magistrate” (w.e.f. 18-5-1983).

2. Subs. by s. 17 and Schedule, ibid., for “the magistrate” (w.e.f. 18-5-1983).

(2) An application under sub-section (1) may also be made by any officer authorised by the Central Government in this behalf by general or special order.

146. Restrictions on suits for wages.—A proceeding for the recovery of wages due to a seaman or apprentice shall not be instituted by or on behalf of any seaman or apprentice in any civil court except where—

(a) the owner of the ship has been declared insolvent;

(b) the ship is under arrest or sold by the authority of any Court;

(c) 1[a Judicial Magistrate of the first class or a Metropolitan Magistrate as the case may be,] refers a claim to the Court.

1. Subs. by Act 12 of 1983, s. 17 and the Schedule, for the words “a magistrate” (w.e.f. 19-5-1983).

147. Wages not recoverable outside India in certain cases.—Where a seaman is engaged for a voyage which is to terminate in India, he shall not be entitled to
sue in any court outside India for wages unless he is discharged with such sanction as is required by this Act, and with the written consent of the master, or proves such ill-usage on the part, or by the authority, of the master, as to warrant a reasonable apprehension of danger to his life if he were to remain on board.

148. Remedies of master for wages, disbursements, etc.—(1) The master of a ship shall, so far as the case permits, have the same rights, liens and remedies for the recovery of his wages as a seaman has under this Act or by any law or custom.

(2) The master of a ship and every person lawfully acting as a master of a ship by reason of the decease or incapacity from illness, of the master of the ship shall, so far as the case permits, have the same rights, liens and remedies for the recovery of disbursements or liabilities properly made or incurred by him on account of the ship as a master has for recovery of his wages.

(3) If in any proceeding in any court touching the claim of a master in respect of such wages, disbursements or liabilities any set-off is claimed or any counter-claim is made, the court may enter into, and adjudicate upon, all questions and settle all accounts then arising or outstanding and unsettled between the parties to the proceeding and may direct payment of any balance found to be due.

Power of courts to rescind contracts

149. Power of Court to rescind contract between master, owner or agent and seaman or apprentice.—Where a proceeding is instituted in any court in relation to any dispute between master, owner or agent of a ship and a seaman or apprentice, arising out of or incidental to their relation as such, or instituted for the purpose of this section, the court, if having regard to all the circumstances of the case, it thinks it, just to do so, may rescind any contract between the master, owner or agent and the seaman or apprentice, upon such
terms as the court may think just, and this power shall be in addition to any other jurisdiction which the court can exercise independently of this section.

Disputes between seamen and employers

150. Power to refer disputes between seamen and their employers to tribunals.—(1) Where the Central Government is of opinion that any dispute between seamen or any class of seamen or of any union of seamen and the owners of ships in which such seamen are employed or are likely to be employed and exists or is apprehended and such dispute relates to any matter connected with or incidental to the employment of the seamen, the Central Government may, by notification in the Official Gazette, constitute a tribunal consisting of one or more persons, and refer the dispute to the tribunal for adjudication.

(2) The tribunal so constituted shall have power to regulate its own procedure and shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters:—

(a) enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents;

(c) issuing commissions for the examination of witnesses;

(d) any other matter which may be prescribed,

and any proceeding before the tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).
(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any proceeding before the tribunal except with the consent of the other party or parties to the proceeding and with the leave of the tribunal.

(4) The tribunal shall dispose of the reference expeditiously and shall, as soon as practicable on the conclusion of the proceedings, submit its award to the Central Government.

(5) On receipt of the award the Central Government shall cause it to be published and the award shall become enforceable on the expiry of thirty days from the date of such publication:

Provided that where the Central Government is of opinion that it will be inexpedient on public grounds to give effect to the award or any part of it, it may before the expiry of the said period of thirty days by order in the Official Gazette either reject the award or modify it, and where the Central Government does so, the award shall not become enforceable or shall become enforceable subject to the modifications, as the case may be.

(6) An award which has become enforceable under this section shall be binding on—

(a) all parties to the dispute;

(b) where any party to the dispute is the owner of the ship, his heirs, successors, or assigns.

(7) Save as otherwise provided in the award, an award shall remain in operation for a period of one year from the date on which it becomes enforceable and shall thereafter continue to remain in operation until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.
(8) Any money due to a seaman from the owner of a ship under an award may be recovered as wages.

(9) Nothing contained in the Industrial Disputes Act, 1947 (14 of 1947), shall apply to any dispute between seamen or any class of seamen or any union of seamen and the owners of ships in which such seamen are employed or are likely to be employed.

151. Conditions of service, etc., to remain unchanged during pendency of proceedings before tribunal.—During the pendency of proceedings under section 150—

(a) no seamen or class of seamen or union of seamen shall go or remain on strike or otherwise act in a manner prejudicial to the normal operation of the ships in which the seamen are employed or are likely to be employed; and

(b) no owner of a ship shall—

(i) alter to the prejudice of the seamen concerned in the dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(ii) discharge or punish any seaman in respect of any matter connected with the dispute.

Property of deceased seamen and apprentices

152. Master to take charge of the effects of deceased seamen.—(1) If any seaman or apprentice engaged on any ship, the voyage of which is to terminate in India, dies during that voyage, the master of the ship shall report the death to the next-of-kin of the seaman or apprentice and to the shipping master at his port of engagement and shall take charge of any money or effects belonging to the seaman or apprentice which are on board the ship.
(2) The master shall thereupon enter in the official log book the following particulars, namely:—

(a) a statement of the amount of money and a detailed description of the other effects;

(b) a statement of the sum due to the deceased for wages and of the amount of deduction, if any, to be made from the wages.

(3) The said money, balance of wages and other effects are in this Act referred to as the property of the seaman or apprentice.

153. Dealing with and account of property of seamen who die during voyage.—(1) If any seaman or apprentice engaged on any ship, the voyage of which is to terminate in India, dies during that voyage and the ship before coming to a port in India touches and remains for forty-eight hours at some port elsewhere, the master shall report the case to the Indian consular officer at such port and shall give to the officer any information he requires as to the destination of the ship and probable length of the voyage.

(2) The Indian consular officer may, if he thinks it expedient, require the property of the seaman or apprentice to be delivered and paid to him and shall thereupon give to the master a receipt therefor and endorse under his hand upon the agreement with the crew such particulars with respect thereto as the Central Government may require.

(3) The receipt shall be produced by the master to the shipping master within forty-eight hours after his arrival at his port of destination in India.

(4) Where a seaman or apprentice dies as aforesaid and the ship proceeds at once to a port in India without touching and remaining as aforesaid at a port elsewhere or the Indian consular officer does not require the delivery and payment of the property as aforesaid, the master shall within forty-eight hours
after his arrival at his port of destination in India, pay and deliver the property to the shipping master at that port.

(5) A deduction claimed by the master in such account shall not be allowed unless verified by an entry in the Official log book, and also by such other vouchers, if any, as may be reasonably required by the shipping master.

(6) A shipping master in India shall grant to a master upon due compliance with such provisions of this section as relate to acts to be done at the port of destination a certificate to that effect.

154. Master to pay and deliver property of deceased seamen.—(1) If the master of a ship fails to comply with the provisions of this Act with respect to taking charge of the property of the deceased seaman or apprentice, or to making in the official log book the proper entries relating thereto, or to the payment or delivery of such property, he shall be accountable for such property to the shipping master as aforesaid, and shall pay and deliver the same accordingly.

(2) The property may be recovered in the same Court and manner in which the wages of seamen may be recovered under this Act.

155. Property of deceased seaman left abroad but not on board ship.—If any seaman or apprentice on an Indian ship, or engaged in India on any other ship, the voyage of which is to terminate in India, dies at any place outside India leaving any money or effects not on board the ship, the Indian consular officer at or near the place shall claim and take charge of such money and other effects (hereinafter referred to as the property of a deceased seaman or apprentice).

156. Dealing with property of deceased seamen.—(1) An Indian consular officer or a shipping master to whom the effects of a deceased seaman or apprentice are delivered or who takes charge of such effects under this Act
may, if he thinks fit, sell the effects, and the proceeds of any such sale shall be
deemed to form part, of the property of the deceased seaman or apprentice.

(2) Before selling any valuables comprised in the said effects, such officer of
shipping master shall endeavour to ascertain the wishes of the next-of-kin of
the deceased seaman or apprentice as to the disposal of such valuables and
shall, if practicable and lawful, comply with such wishes.

(3) An Indian consular officer to whom any property of a deceased seaman or
apprentice is delivered or who takes charge of any such property under this
Act shall remit the property to the shipping master at the port of engagement
of the deceased seaman or apprentice in such manner and shall render such
accounts in respect thereof as may be prescribed.

157. Recovery of wages, etc., of seamen lost with their ship.—(1) Where a
seaman or apprentice is lost with the ship to which he belongs, the Central
Government or such officer as the Central Government may appoint in this
behalf may recover the wages and the compensation due to him from the
owner, master or agent of the ship in the same Court and in the same manner
in which seamen's wages are recoverable, and shall deal with those wages in
the same manner as with the wages and compensation due to other deceased
seamen or apprentices under this Act.

(2) In any proceedings for the recovery of the wages and compensation, if it is
shown by some official records or by other evidence that the ship has, twelve
months or upwards before the institution of the proceeding, left any port, she
shall, unless it is shown that she has been heard of within twelve months after
the departure be deemed to have been lost with all hands on board either
immediately after the time she was last heard of or at such later time as the
Court hearing the case may think probable.
158. Property of seamen dying in India.—If a seaman or apprentice dies in India and is at the time of his death entitled to claim from the master or owner of the ship in which he has served any effects or unpaid wages, the master, owner or agent shall pay and deliver or account for such property to the shipping master at the port where the seaman or apprentice was discharged or was to have been discharged or to such other officer as the Central Government may direct.

159. Payment over of property of deceased seamen by shipping master.—Where any property of a deceased seaman or apprentice is paid or delivered to a shipping master, the shipping master, after deducting for expenses incurred in respect of that seaman or apprentice or of his property such sums as he thinks proper to allow, shall pay and deliver the residue to the person nominated by the seaman or apprentice in this behalf under section 159A and if he has not made any such nomination or the nomination made by him is or has become void, the shipping master may—

1. Subs. by Act 41 of 1984, s.12, for “such sums as he thinks proper to allow, may—” (w.e.f.15-7-1985).

2. Ins. by s. 12, ibid. (w.e.f. 15-7-1985).

3. Ins. by s. 13, ibid. (w.e.f. 15-7-1985).

(a) pay and deliver the residue to any claimants who can prove themselves to the satisfaction of the said shipping master to be entitled thereto, and the said shipping master shall be thereby discharged from all further liability in respect of the residue so paid or delivered; or

(b) if he thinks fit so to do, require probate or letters of administration or a certificate under the Indian Succession Act, 1925 (39 of 1925) or a certificate under section 29 of the Administrators-General Act, 1963 (45 of
1963)], to be taken out, and thereupon pay and deliver the residue to the legal representatives of the deceased.

3[159A. Nomination.—(1) A seaman may, for the purposes of sub-section (3) of section 141 and clause (b) of section 159 and an apprentice may, for the purposes of clause (b) of section 159, nominate any person or persons:

Provided that if the seaman or the apprentice has a family, he may nominate for the purposes aforesaid any one or more members of his family only and if a seaman or an apprentice acquires a family after he has made any such nomination, the nomination shall become void.

(2) The form in which any nomination may be made under sub-section (1), the cancellation or variation of any such nomination (including the making of a fresh nomination) and all other matters connected with such nominations shall be such as may be prescribed.]

160. Disposal of unclaimed property of deceased seamen.—(1) Where no claim to the property of a deceased seaman or apprentice received by a shipping master is substantiated within one year from the receipt thereof by such shipping master, the shipping master shall cause such property to be sold and pay the proceeds of the sale into the public account of India.

(2) If, after the proceeds of the sale having been so paid, any claim is made thereto, then, if the claim is established to the satisfaction of the shipping master, the amount or so much thereof as shall appear to him to be due to the claimant, shall be paid to him, and if the claim is not so established, the claimant may apply by petition to the High Court, and such Court, after taking evidence either orally or on affidavit, shall make such order on the petition as shall seem just:
Provided that, after the expiration of six years from the receipt of such property by the shipping master, no claim to such property shall be entertained without the sanction of the Central Government.

1[Provided further that if, before the expiration of six years after the proceeds of the sale have been so paid, no claim is made thereto the amount or any part thereof may be utilised for the welfare of seamen in such manner as the Central Government may direct.]

1. Ins. by Act 41 of 1984, s. 14 (w.e.f. 15-7-1985).

Distressed seamen

161. Relief and maintenance of distressed seamen.—(1) The Indian consular officer at or near the place where a seaman is in distress shall, on application being made to him by the distressed seaman, provide in accordance with the rules made under this Act for the return of that seaman to a proper return port, and also for the said seaman's necessary clothing and maintenance until his arrival at such port.

(2) A distressed seaman shall not have any right to be maintained or sent to a proper return port except to the extent and on the conditions provided for in the rules.

(3) All repatriation expenses, other than excepted expenses, incurred by or on behalf of the Central Government in accordance with the provisions of this Act shall constitute a debt due to the Central Government for which the owner or agent of the ship to which the seaman in respect of whom they were incurred belonged at the time of his discharge or other event which resulted in his becoming distressed seaman shall be liable; and the owner or agent shall not be entitled to recover from the seaman any amount paid by him to the Central Government in settlement or part settlement of such debt.
(4) All excepted expenses incurred by or on behalf of the Central Government in accordance with the provisions of this Act shall constitute a debt due to the Central Government for which the seaman in respect of whom they were incurred and the owner or agent or the ship to which that seaman belonged at the time of his discharge or other event which resulted in his becoming a distressed seaman shall be jointly and severally liable; and the owner or agent shall be entitled to recover from the seaman any amount paid by him to the Central Government in settlement or part settlement of such debt, and may apply to the satisfaction of his claim so much as may be necessary of any wages due to the seaman.

(5) All excepted expenses incurred in accordance with the provisions of this Act in respect of any distressed seaman by the owner or agent of the ship to which he belonged at the time of his discharge or other event which resulted in his becoming a distressed seaman shall constitute a debt due to the owner or agent for which the seaman shall be liable; and the owner or agent may apply to the satisfaction of his claim so much as may be necessary of any wages due to the seaman; but he shall not be entitled to recover from the seaman any repatriation expenses other than excepted expenses.

(6) In any proceedings for the recovery of any expenses which in terms of sub-section (3) or sub-section (4) are a debt due to the Central Government, the production of any account of the expenses and proof of payment thereof by or on behalf of or under the direction of the Central Government shall be prima facie evidence that the expenses were incurred in accordance with the provisions of this Act by or on behalf of the Central Government.

(7) Any debt which may be due to the Central Government under this section may be recovered by any officer authorised by it in writing in this behalf from the person concerned in the same manner as wages are recoverable under section 145.
162. Mode of providing for return of seamen to proper return port.—(1) A seaman may be sent to a proper return port by any reasonable route either by sea or land or if necessary by air or partly by any one and partly by any other of these modes.

(2) Provisions shall be made for the return of the seaman as to the whole of the route if it is by sea or as to any part of the route which is by sea by placing the seaman on board an Indian ship which is in want of men to make up its complement, or, if that is not practicable, by providing the seaman with a passage in any ship, Indian or foreign, or with the money for his passage and, as to any part of the route which is by land or air, by paying the expenses of his journey and of his maintenance during the journey or providing him with means to pay those expenses.

(3) Where the master of a ship is required under this Part to provide for the return of a discharged seaman to a proper return port, the master may, instead of providing the seaman's passage or the expenses of his journey or of providing the seaman with means to pay his passage or those expenses, deposit with the proper officer such sum as that officer considers sufficient to defray the expenses of the return of the seaman to a proper return port.

163. Receiving distressed seamen on ships.—(1) The master of an Indian ship shall receive on board his ship and afford passage and maintenance to all distressed seamen whom he is required by the Indian consular officer to take on board his ship, and shall during the passage provide every such distressed seaman with accommodation equal to that normally provided for the crew of the ship and subsistence, proper to the rank or rating of the said distressed seaman.

(2) The master of a ship shall not be required to receive on board his ship a distressed seaman in terms of this section, if the Indian consular officer is satisfied that accommodation is not and cannot be made available for such seaman.
164. Provisions as to taking distressed seamen on ships.—(1) Where a

distressed seaman is for the purpose of his return to a proper return port

placed on board an Indian ship, the Indian consular officer by whom the

seaman is so placed shall endorse on the agreement with the crew of the ship

particulars of the seaman so placed on board.

(2) On the production of a certificate signed by the Indian consular officer by

whose directions any such distressed seamen were received on board,

specifying the number and names of the distressed seamen and the time when

each of them was received on board, and on a declaration made by the master

stating the number of days during which each distressed seaman has received

subsistence and stating the full complement of his crew and the actual

number of seamen employed on board his ship and every variation in that

number, whilst the distressed seamen received maintenance, the master shall

be entitled to be paid in respect of the subsistence and passage of every

seaman so conveyed and provided for by him, exceeding the number, if any,

wanted to make up the complement of his crew, such sum for each day as the

Central Government may by rules made in this behalf allow.

165. What shall be evidence of distress.—In any proceeding under this Part a

certificate of the Central Government or of such officer as the Central

Government may specify in this behalf to the effect that any seaman named

therein is distressed shall be conclusive evidence that such seaman is

distressed within the meaning of this Act.

166. Indian consular officer to decide return port to which or route by which

seaman is to be sent.—If any question arises as to what return port a seaman is

to be sent in any case or as to the route by which he should be sent, that

question shall be decided by the Indian consular officer concerned, and in

deciding any question under this provision the Indian consular officer shall

have regard both to the convenience of the seaman and to the expense

involved, and also, where that is the case, to the fact that an Indian ship which
is in want of men to make up its complement is about to proceed to a proper return port.

167. Power to make rules with respect to distressed seamen.—The Central Government may make rules with respect to the relief, maintenance and return to a proper return port of seamen found in distress in any place out of India and with respect to the circumstances in which and the conditions subject to which, seamen may be relieved and provided with passages under this Part, and generally to carry out the provisions of this Part relating to distressed seamen.

Provisions, health and accommodation

168. Ships to have sufficient provisions and water.—(1) All Indian ships and all ships upon which seamen have been engaged shall have on board sufficient provisions and water of good quality and fit for the use of the crew on the scale specified in the agreement with the crew.

(2) If any person making an inspection under section 176 finds the provisions or water to be of bad quality and unfit for use or deficient in quantity, he shall signify it in writing to the master of the ship and may, if he thinks fit, detain the ship until the defects are remedied to his satisfaction.

(3) The master shall not use any provisions or water so signified to be of bad quality and shall in lieu of such provisions or water, provide other proper provisions or water and he shall, if the provisions or water be signified to be deficient in quantity, procure the requisite quantity of any provisions or water to cover the deficiency.

(4) The person making the inspection shall enter a statement of the result of the inspection in the official log book, and shall, if he is not the shipping master, send a report thereof to the shipping master and that report shall be admissible in evidence in any legal proceeding.
(5) If the inspection was made in pursuance of a request by the members of the crew and the person making the inspection certifies in the statement of the result of the inspection that the complaint was false and either frivolous or vexatious, every member of the crew who made the request shall be liable to forfeit to the owner out of his wages a sum not exceeding one week’s wages.

(6) The master of the ship and any other person having charge of any provisions or water liable to inspection under this section shall give the person making the inspection every reasonable facility for the purpose.

(7) The master of the ship or any person having charge over the ship shall maintain such standards, in accordance with the provisions of the Maritime Labour Convention, for the quantity and quality of food and drinking water, and the catering standards applicable to food provided to the seamen on ships, as may be prescribed.

1. Ins. by Act 32 of 2014, s. 13 (w.e.f. 1-4-2015).

(8) The master of the ship or any person having charge over the ship shall undertake educational activities to promote awareness and implementation of the standards referred to in sub-section (7).

169. Allowances for short or bad provisions.—(1) In either of the following cases, that is to say,—

(a) if during the voyage the allowance of any of the provisions for which a seaman has by his agreement stipulated is reduced, or

(b) if it is shown that any of those provisions are or have during the voyage been bad in quality or unfit for use,

the seaman shall receive by way of compensation for that reduction or bad quality according to the time of its continuance, sums in accordance with such
scale as may be prescribed, to be paid to him in addition to, and to be recoverable as, wages.

(2) If it is shown to the satisfaction of the court before which the case is tried that any provisions, the allowance of which has been reduced, could not be procured or supplied in proper quantities, and

that proper and equivalent substitutes were supplied in lieu thereof, the court shall take those circumstances into consideration in making an order.

170. Foreign going Indian ship to carry duly certificated cook.—(1) With effect from such date as the Central Government may, by notification in the official Gazette, specify, every foreign-going Indian ship of such tonnage as may be prescribed shall be provided with, and shall carry, a cook duly certificated under this Act.

(2) The Central Government may make rules specifying the qualifications, experience or sea service which may be required from persons who wish to obtain certificates of competency as cooks under this Act, and the conditions under which any such certificate may be granted, cancelled or suspended.

171. Weights and measures on board.—The master of a ship shall keep on board proper weights and measures for determining the quantities of the several provisions and articles served out and shall allow the same to be used at the time of serving out the provisions and articles in the presence of witnesses whenever any dispute arises about the quantities.

172. Beddings, towels, medicines, medical stores, etc., to be provided and kept on board certain ships.—(1) The owner of every ship of over five hundred tons gross shall supply or cause, to be supplied to every seaman for his personal use, bedding, towels, mess utensils and other articles according, to such scale as may be prescribed; and different scales may be prescribed in respect of different classes of ships.
(2) All foreign-going Indian ships and all home-trade ships of two hundred tons gross or more shall have always on board a sufficient supply of medicines, medical stores, appliances and first aid equipment suitable for diseases and accidents likely to occur on voyages according to such scale as may be prescribed.

(3) It shall be the duty of the port health officer or such other person as the Central Government may appoint in this behalf to inspect the medicines, medical stores and appliances with which a ship is required to be provided.

173. Certain ships to carry medical officer.—1[(1) Every foreign-going ship carrying—

1. Subs. by Act 32 of 2014, s. 14, for sub-section (1) (w.e.f. 1-4-2015).

2. Subs. by Act 69 of 1976, s. 2, for “an unberthed passenger ship” (w.e.f. 1-12-1976).

(a) more than the prescribed number of persons (including the crew), shall have on board as part of her complement a medical officer possessing such qualifications; and

(b) less than the prescribed number of persons shall have such medical facilities,

as may be prescribed, in accordance with the provisions of the Maritime Labour Convention.]

(2) Nothing in this section shall apply to 2[a special trade passenger ship] or a pilgrim ship.

174. Expenses of medical attendance in case of illness.—(1) If the master of an Indian ship, or a seaman or apprentice, receives any hurt or injury or suffers from any illness (not being a hurt, injury or illness due to his own
wilful act or default or to his own misbehaviour), resulting in his being discharged or left behind at a place other than his proper return port, the expenses of providing the necessary surgical kind medical advice, attendance and treatment and medicine, and also the expenses of the maintenance of the master, seaman or apprentice until he is cured, or dies, or is brought back to the port from which he was shipped or other port agreed upon after receiving the necessary medical treatment and of his conveyance to that port, and, in case of death, the expenses, if any, of his burial or, cremation shall be defrayed by the owner of the ship without any deduction on that account from his wages.

(2) If the master, seaman or apprentice is on account of any illness or injury temporarily removed from his ship, at a port other than his proper return, port, for the purpose of preventing infection, or otherwise for the convenience of the ship, and subsequently returns to his duty, the expenses of removal and of providing the necessary surgical and medical advice, attendance and treatment and medicine and of his maintenance while away from the ship, shall be defrayed in like manner.

(3) The expenses of all medicines, and surgical and medical advice, attendance and treatment, given to a master, seaman or apprentice while on board his ship, shall be defrayed in like manner.

(4) In all other cases any reasonable expenses duly incurred by the owner for any master, seaman or apprentice in respect of illness, shall, if proved to the satisfaction of the Indian consular officer or a shipping master, be deducted from the wages of the master, seaman or apprentice.

(5) Where any expenses referred to in this section have been paid by the master, seaman or apprentice himself, the same may be recovered as if they were wages duly earned, and, if any such expenses are, paid by the
Government, the amount shall be a charge upon the ship and may be recovered with full costs of suit by the Central Government.

175. Accommodation for seaman.—(1) The Central Government may, subject to the condition of previous publication, make rules with respect to the crew accommodation to be provided in ships of any class specified in the rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the minimum space for each person which must be provided in any ship to which the rules apply by way of sleeping accommodation for seamen and apprentices and the maximum number of persons by whom any specified part of such sleeping accommodation may be used;

(b) the position in any such ship in which the crew accommodation or any part thereof may be located and the standards to be observed in the construction, equipment and furnishing of any such accommodation;

(c) the submission to such authority as may be specified in this behalf of plans and specifications of any works proposed to be carried out for the provision or alteration of any such accommodation and the authorisation of that authority to inspect any such works.

(d) the maintenance and repair of any such accommodation and the prohibition or restriction of the use of any such accommodation for purposes other than those for which it is designed;

(e) the manner as to how ships registered or under construction at the commencement of any rules made under this section may be dealt with after such commencement;
1[(f) the fees that may be levied for the survey or inspection of crew spaces and for scrutiny of plans of crew accommodation spaces and the manner in which such fees may be collected.]

1. Ins. by Act 12 of 1983, s. 7 (w.e.f.18-5-1983).

and such rules may make different provisions in respect of different classes of ships and in respect of crew accommodation provided for different classes of persons.

(3) If any person making an inspection under section 176 finds that the crew accommodation is in sanitary or is not in accordance with the provisions of this Act, he shall signify it in writing to the master of the ship and may, if he thinks fit, detain the ship until the defects are remedied to his satisfaction.

Explanation.—In this section, the expression “crew accommodation” includes sleeping rooms, mess rooms, sanitary accommodation, hospital accommodation, recreation accommodation, store rooms and catering accommodation provided for the use of seamen and apprentices, not being accommodation which is also used by, or provided for the use of passengers.

176. Inspection by shipping master, etc., of provisions, water, weights and measures and accommodation.—A shipping master, surveyor, seamen's welfare officer, port health officer, Indian

consular officer or any other officer at any port duly authorised in this behalf by the Central Government—

(a) in the case of any ship upon which seamen have been shipped at that port, may at any time, and

(b) in the case of any Indian ship, may at any time, and if the master or three or more of the crew so request, shall,
enter on board the ship and inspect—

(i) the provisions and water,

(ii) the weights and measures,

(iii) the accommodation for seamen,

with which the ship is required to be provided by or under this Act and also the space and equipment used for the storage and handling of food and water and the galley and other equipment used for the preparation and service of meals.

1[176A. Ships to possess Maritime Labour Certificate and Declaration of Maritime Labour Compliance.—(1) All ships of five hundred tons gross or more and engaged in international voyage or operating from a port, or between ports, in another country, shall possess a Maritime Labour Certificate and a Declaration of Maritime Labour Compliance.

1. Ins. by Act 32 of 2014, s. 15 (w.e.f. 1-4-2015).

2. Ins. by Act 41 of 1984, s. 15 (w.e.f. 15-7-1985).

(2) Ships not covered under sub-section (1) shall, unless, exempted by the Central Government, possess such certificate in such manner and form, as may be prescribed.

(3) The shipping master, surveyor, seamen's welfare officer, port health officer, Indian consular officer, or any other officer at any port duly authorised in this behalf by the Central Government, may inspect any ship, in such manner as may be prescribed, and the master of the ship or any person having charge over the ship shall make available to such inspecting officer, the Maritime Labour Certificate and the Declaration of Maritime Labour Compliance.]
177. Inspection by master of provisions, water and accommodation at sea.—The master of an Indian ship which is at sea shall, at least once in every ten days, cause an inspection to be made of the provisions and water provided for the use of the seamen and apprentices and the crew accommodation, for the purpose of ascertaining whether the same are being maintained in accordance with the requirements of this Act, and the person making the inspection shall enter a statement of the result of the inspection in a book specially kept for the purpose.

2[177A. Power to make rules to prevent accidents, etc.—(1) The Central Government may, having regard to the provisions of the Convention concerning the Prevention of Occupational Accidents to Seafarers adopted by the General Conference of the International Labour Organisation on the 30th day of October, 1970, make rules so as to ensure safe working conditions for Indian ships and for preventing accidents and different rules may be made for different classes of ships and for ships of the same class in different circumstances.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which any equipment or gear may be maintained, inspected or tested and conditions as to such maintenance, inspection and testing;

(b) the manner in which the use of any material or process shall be regulated for the manufacture of any such equipment or gear;

(c) the provision of safe means of access to such equipment or gear for the use of seamen and provision of protective clothing for seamen where necessary;
(d) restriction on the hours of employment of seamen in any specified operation or under any specified circumstances; and

e) the manner and form in which and the persons to whom any accident occurring on board a ship shall be reported.

Special provisions for the protection of seamen in respect of litigation

178. Meaning of serving seaman.—A seaman shall, for the purposes of these provisions, be deemed to be a serving seaman during any period commencing on the date of the agreement with the crew and ending thirty days after the date on which the seaman is finally discharged from such agreement.

179. Particulars to be furnished in plaints, etc.—(1) If any person presenting any plaint, application or appeal to any Court has reason to believe that any adverse party is a serving seaman, he shall make a statement accordingly in the plaint, application or appeal.

(2) If any collector has reason to believe that any seaman who ordinarily resides or has property in his district and who is a party to any proceedings pending before any Court is unable to appear therein or is a serving seaman, the collector may certify the facts to the Court.

180. Notice to be given in case of unrepresented seaman.—(1) If a collector has certified under sub-section (2) of section 179, or if a Court has reason to believe that a seaman who is a party to any proceeding before the Court, is unable to appear therein or is a serving seaman, the Court shall suspend the proceeding and shall give notice thereof to the shipping master:

Provided that the Court may refrain from suspending the proceeding and giving the notice—

(a) if the proceeding is one instituted or made by the seaman, alone or conjointly with others, with the object of enforcing a right of pre-emption, or
(b) if the interests of the seaman in the proceeding are, in the opinion of the Court, either identical with those of any other party thereto and adequately represented by such other party, or merely of a formal nature.

(2) If it appears to the Court before which any proceeding is pending that a seaman though not a party to the proceeding is materially concerned in the outcome of the proceeding and that his interests are likely to be prejudiced by his inability to attend, the Court may suspend the proceeding and shall give notice thereof to the shipping master.

(3) If on receipt of a notice under sub-section (1) or sub-section (2), the shipping master certifies to the Court, that the seaman is a serving seaman, the Court shall thereupon postpone the proceeding in respect of the seaman for such period as it thinks fit:

Provided that if by reason of the continued absence of the seaman the question of any further postponement of the proceeding in respect of the seaman arises, the court shall in deciding the question have regard to the purposes of the provisions of this Act conferring special protection on seaman in respect of litigation.

(4) If the shipping master either certifies that the seaman is not for the time being a serving seaman or fails within two months from the date of the receipt of the notice under sub-section (1) or sub-section (2) as the case may be, to certify that the seaman is a serving seaman, the Court may, if it thinks fit, continue the proceeding.

181. Power to set aside decrees and orders passed against serving seaman.—(1) Where in any proceeding before a court, a decree or order has been passed against any seaman while he was a serving seaman, the seaman, or if he dies while he is a serving seaman, his legal representative, may apply to the said court to have the decree or order set aside, and if the court after giving an opportunity to the opposite party of being heard, is satisfied that the interests
of justice require that the decree or order should be set aside as against the
seaman, the court, shall subject to such conditions, if any, as it thinks fit to
impose, make an order accordingly, and may, if it appears that any opposite
party in the proceeding has failed to comply with the provisions of sub-
section (1) of section 179, award, subject to such conditions as it thinks fit to
impose, damages against such opposite party.

(2) The period of limitation for an application under sub-section (1) shall be
sixty days from the date on which the seaman first ceases to be a serving
seaman after the passing of the decree or order, or where the summons or
notice was not duly served on the seaman in the proceeding in which the
decree or order was passed, from the date on which the applicant had
knowledge of the decree or order, whichever is later; and the provisions of
section 5 of the Indian Limitation Act, 1908 (9 of 1908), shall apply to such
applications.

(3) Where the decree or order in respect of which an application under sub-
section (1) is made is of such a nature that it cannot be set aside as against the
seaman only, it may be set aside as against all or any of the parties against
whom it was made.

(4) Where a court sets aside a decree or order under this section, it shall
appoint a day for proceeding with the suit, appeal or application, as the case
may be, in respect of which the decree or order was passed.

182. Modification of law of limitation where seaman is a party.—In computing
the period of limitation provided in the foregoing provisions or in the Indian
Limitation Act, 1908 (9 of 1908), or in any other law for the time being in
force, for any suit, appeal or application to a court to which a seaman is a
party, the period or periods during which the seaman has been a serving
seaman, and if the seaman has died while he was a serving seaman, the period
from the date of his death to the date on which his next-of-kin was first
informed, by the shipping master or otherwise, of his death, shall be excluded:
Provided that this section shall not apply in the case of any suit, appeal or application instituted or made with the object of enforcing a right of pre-emption except in such areas and in such circumstances as the Central Government may, by notification in the Official Gazette, specify in this behalf.

183. Reference in matters of doubt to shipping masters.—If any court is in doubt whether, for the purposes of section 180 or section 181, a seaman is or was at any particular time or during any particular period a serving seaman, it may refer the question to the shipping master, and the certificate of the shipping master shall be conclusive evidence on the question.

Provisions for the protection of seamen in respect of other matters

184. Facilities for making complaints.—If a seaman or apprentice states to the master that he desires to make a complaint to 1[a Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be] or other proper officer against the master or any of the crew, the master shall,—

1. Subs. by Act 12 of 1983, s. 17 and the Schedule, for “a magistrate” (w.e.f. 18-5-1983).

(a) if the ship is then at a place where there is 1[a Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be,] or other proper officer, as soon after such statement as the service of the ship will permit, and

(b) if the ship is not then at such place, as soon after her first arrival at such place as the service of the ship will permit.

allow the complainant to go ashore or send him ashore under proper protection so that he may be enabled to make the complaint.

185. Assignment or sale of salvage invalid.—Subject to the provisions of this Act, an assignment of salvage payable to a seaman or apprentice made prior
to the accruing thereof shall not bind the person making the same, and a power-of-attorney or authority for the receipt of any such salvage shall not be irrevocable.

186. No debt recoverable till end of voyage.—A debt incurred by any seaman after he has to serve shall not be recoverable until the service agreed for is concluded.

187. Seamen’s property not to be detained.—(1) Any person who receives or takes into his possession or under his control any money or other property of a seaman or apprentice shall return the same or pay the value thereof when required by the seaman or apprentice subject to deduction of such amounts as may be justly due to him from the seaman or apprentice in respect of board or lodging or otherwise.

(2) Where 1[a Judicial Magistrate of the first class or a Metropolitan Magistrate as the case may be,] imposes a fine for a contravention of this section, he may direct the amount of such money or the value of the property subject to such deduction as aforesaid, if any, or the property itself to be forthwith paid or delivered to the seaman or apprentice.

1. Subs. by Act 12 of 1983, s. 17 and the Schedule, for “a magistrate” (w.e.f. 18-5-1983).

188. Prohibition against solicitation by lodging house keepers.—No person shall, while a ship is at any port or place in India—

(a) solicit a seaman or apprentice to become a lodger at the house of any person letting lodgings for hire; or

(b) take out of the ship any property of the seaman or apprentice except under the direction of the seaman or apprentice and with the permission of the master.
189. Ship not to be boarded without permission before seamen leave.—Where a ship has arrived at a port or place in India at the end of a voyage and any person, not being in the service of the Government or not being duly authorised by law for the purpose, goes on board the ship without the permission of the master before the seamen lawfully leave the ship at the end of their engagement or are discharged (whichever happens last), the master of the ship may take such person into custody and deliver him up forthwith to a police officer to be taken before [a Judicial Magistrate of the first class or a Metropolitan Magistrate as the case may be] to be dealt with according to the provisions of this Act.

Provisions as to discipline

190. Misconduct endangering life or ship.—No master, seaman, or apprentice belonging to an Indian ship, wherever it may be, or to any other ship, while in India, shall knowingly—

(a) do anything tending to the immediate loss or destruction of, or serious damage to, the ship, or tending immediately to endanger the life of, or to cause injury to any person belonging to or on board the ship; or

(b) refuse or omit to do any lawful act proper and requisite to be done by him for preserving the ship from immediate loss, destruction or serious damage, or for preserving any person belonging to or on board the ship from danger to life or from injury.

191. Desertion and absence without leave.—(1) No seaman lawfully engaged and no apprentice—

(a) shall desert his ship; or
(b) shall neglect or refuse, without reasonable cause, to join the ship or to proceed to sea in his ship or be absent without leave at any time within twenty-four hours of the ship’s sailing from a port either at the commencement or during the progress of a voyage, or be absent at any time without leave and without sufficient reason from his ship or from his duty.

(2) For the purposes of sub-section (1), the fact that the ship, on which the seaman or apprentice is engaged or to which he belongs is unseaworthy shall be deemed to be a reasonable cause:

Provided that the seaman or apprentice has, before failing or refusing to join his ship or to proceed to sea in his ship or before absenting himself or being absent from the ship, as the case may be, complained to the master or a shipping master, surveyor, seamen”s welfare officer, port health officer, Indian consular officer or any other officer at any port duly authorised in this behalf by the Central Government, that the ship is unseaworthy.

192. Power to suspend deserter's certificate of discharge.—If it is shown to the satisfaction of a proper officer that a seaman has deserted his ship or has absented himself without leave and without sufficient reason from his ship or from his duty, the proper officers shall forthwith make a report to that effect to the Director-General who may thereupon direct that the seaman's certificate of discharge or continuous certificate of discharge shall be withheld for such period as may be specified in the direction.

193. Conveyance of deserter or imprisoned seaman on board ship.—(1) If a seaman or apprentice deserts his ship or is absent without leave and without sufficient reason from his ship or from his duty, the master, any mate, the owner or agent of the owner of the ship may, without prejudice to any other action that may be taken against the seaman or apprentice under this Act, convey him on board his ship and may for that purpose cause to be used such force as may be reasonable in the circumstances of the case.
(2) If, either at the commencement or during the progress of any voyage, a seaman or apprentice engaged in an Indian ship commits outside India, the offence of desertion or absence without leave or any offence against discipline, the master, any mate, the owner or agent of the owner may, if and so far as the laws in force in the place will permit, arrest him without first procuring a warrant.

(3) No person shall convey on board or arrest a seaman or apprentice on improper or insufficient grounds.

(4) Where a seaman or apprentice is brought before a court on the ground of desertion or of absence without leave or of any offence against discipline, and the master or the owner, or his agent, so requires, the court, may, in lieu of committing and sentencing him for the offence, cause him to be conveyed on board his ship for the purpose of proceeding on the voyage, or deliver him to the master or any mate of the ship or the owner or his agent, to be by them so conveyed, and may in such case order any costs and expenses properly incurred by or on behalf of the master or owner by reason of the conveyance to be paid by the offender and, if necessary, to be deducted from any wages which he has then earned or by virtue of his then existing engagements may afterwards be earned.

194. General offences against discipline.—A seaman lawfully engaged or an apprentice shall be guilty of an offence against discipline if he commits any of the following acts, namely:—

(a) if he quits the ship without leave after her arrival at her port of delivery and before she is placed in security;

(b) if he is guilty of wilful disobedience to any lawful command or neglect of duty;
(c) if he is guilty of continued wilful disobedience to lawful commands or continued wilful neglect of duty;

(d) if he assaults the master or any other 1[officer of or a seaman or an apprentice belonging to, the ship];

1. Subs. by Act 41 of 1984, s. 16, for “officers of the ship” (w.e.f. 15-7-1985).

(e) if he combines with any of the crew to disobey lawful commands or to neglect duty or to impede the navigation of the ship or retard the progress of the voyage;

(f) if he willfully damages his ship or commits criminal misappropriation or breach of trust in respect of, or willfully damages any of, her stores or cargo.

195. Smuggling of goods by seamen or apprentices.—(1) If a seaman lawfully engaged or an apprentice is convicted of an offence of smuggling any goods whereby loss or damage is occasioned to the master or owner of the ship, he shall be liable to pay to that master or owner a sum sufficient to reimburse the loss or damage and the whole or a part of his wages may he retained in satisfaction on account of that liability without prejudice to any other remedy.

(2) If a seaman lawfully engaged is convicted of an offence of smuggling opium, hemp or any other narcotic drug or narcotic, the Director-General may direct that the seaman's certificate of discharge or continuous certificate of discharge shall be cancelled or shall be suspended for such period as may be specified in the direction.

196. Entry of offences in official logs.—If any offence within the meaning of this Act of desertion or absence without leave or against discipline is committed, or if any act of misconduct is committed for which the offender's agreement imposes a fine, and it is intended to enforce the fine,—
(a) an entry of the offence or act shall be made in the official log book and signed by the master, the mate and one of the crew; and

(b) the offender, if still in the ship, shall, before the next subsequent arrival of the ship at any, port, or, if she is at the time in port, before her departure therefrom, be furnished with a copy of the entry and have the same read over distinctly and audibly to him and may thereupon make such reply thereto as he thinks fit; and

(c) a statement of a copy of the entry having been so furnished and the entry having been so read over and the reply, if any, made by the offender shall likewise be entered and signed in manner aforesaid; and

(d) in any subsequent legal proceedings the entries by this section required shall, if practicable, be produced or proved, and, in default of such production or proof, the court hearing the case may in its discretion, refuse to receive evidence of the offence or act of misconduct.

197. Report of desertions and absence without leave.—Whenever any seaman engaged outside India on an Indian ship deserts or otherwise absents himself in India without leave, the master of the ship shall, within forty-eight hours of discovering such desertion or absence, report the same to the shipping master or to such other officer as the Central Government specifies in this behalf, unless in the meantime, the deserter or absentee returns.

198. Entries and certificates of desertion abroad.—(1) In every case of desertion from an Indian ship whilst such ship is at any place out of India, the master shall produce the entry of desertion in the official log book to the Indian consular officer at the place, and that officer shall thereupon, make and certify a copy of the entry.

(2) The master shall forthwith transmit such copy to the shipping master at the port at which the seaman or apprentice was shipped, and the shipping
master shall, if required, cause the same to be produced in any legal proceeding.

(3) Such copy, if purporting to be so made and certified as aforesaid, shall, in any legal proceeding relating to such desertion, be admissible in evidence.

199. Facilities for proving desertion in proceedings for forfeiture of wages.—(1) Whenever a question arises whether the wages of any seaman or apprentice are forfeited for desertion from a ship, it shall be sufficient for the person insisting on the forfeiture to show that the seaman or apprentice was duly engaged in or belonged to the ship, and either that he left the ship before the completion of the voyage or engagement or, if the voyage was to terminate in India and the ship has not returned, that he is absent from her and that an entry of his desertion has been duly made in the official log book.

(2) The desertion shall thereupon, so far as relates to any forfeiture of wages under this Part, be deemed to be proved, unless the seaman or apprentice can produce a proper certificate of discharge or can otherwise show to the satisfaction of the court that he had sufficient reasons for leaving his ship.

200. Application of forfeiture.—(1) Where any wages or other property are under this Act forfeited for desertion from a ship, they shall be applied towards reimbursing the expenses caused by the desertion to the master or the owner of the ship, and subject to that reimbursement, shall be paid to the Central Government.

(2) For the purposes of such reimbursement the master or the owner or his agent may, if the wages are earned subsequent to the desertion, recover them in the same manner as the deserter could have recovered them if not forfeited; and the court in any legal proceeding relating to such wages may order them to be paid accordingly.
201. Decision of questions of forfeiture and deduction in suits for wages.—Any question concerning the forfeiture of or deductions from the wages of a seaman or apprentice may be determined in any proceeding lawfully instituted with respect to those wages, notwithstanding that the offence in respect of which the question arises, though by this Act made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding.

202. Payment of fines imposed under agreement to shipping master.—(1) Every fine imposed on a seaman for any act of misconduct under this agreement shall be deducted and paid over as follows, namely:—

(a) if the offender is discharged at any port or place in India and the offence and such entries in respect thereof as aforesaid are proved to the satisfaction of the shipping master before whom the offender is discharged, the master or owner shall deduct such fine from the wages of the offender and pay the same over to such shipping master; and

(b) if the seaman is discharged at any port or place outside India and the offence and such entries as aforesaid are proved to the satisfaction of the Indian consular officer, by whose sanction he is so discharged, the fine shall thereupon be deducted as aforesaid, and an entry of such deduction shall then be made in the official log book, if any, and signed by such officer and on the return of the ship to India, the master or owner shall pay over such fine to the shipping master before whom the crew is discharged.

(2) An act of misconduct for which any such fine has been inflicted and paid shall not be otherwise punishable under the provisions of this Act.

(3) The proceeds of all fines received by a shipping master under this section shall be utilised for the welfare of seamen in such manner as the Central Government may direct.
203. Seaman or apprentice not to be enticed to desert.—No person shall by any means whatever persuade or attempt to persuade a seaman or apprentice to neglect or refuse to join or proceed to sea in or desert from his ship, or otherwise to absent himself from his duty.

204. Deserters not to be harboured.—No person shall harbour or secrete a seaman or, apprentice who has wilfully neglected or refused to join or has deserted from his ship, knowing or having reason to believe the seaman or apprentice to have so done.

1[Provided that the provisions of this section shall not extend to the case in which the harbour or secreting is by the spouse of the seaman or apprentice.]  

1. Ins. by Act 41 of 1984, s. 17 (w.e.f. 15-7-1985).

205. Stowaways and seamen carried under compulsion.—(1) No person shall secrete himself and go to sea in a ship without the consent of either the owner, agent or master or of a mate, or of the person in charge of the ship or of any other person entitled to give that consent.

(2) Every seafaring person to whom the master of a ship, is under the authority of this Act or any other law compelled to take on board and convey and every person who goes to sea in a ship without such consent as aforesaid, shall, so long as he remains in the ship, be subject to the same laws and regulations for preserving discipline and to the same fines and punishments for offences constituting or tending to a breach of discipline as if he were a member of, and has signed the agreement with, the crew.

(3) The master of any Indian ship arriving at any port or place in or outside India and the master of any ship other than an Indian ship arriving at any port or place in India shall, if any person has gone to sea on that ship without the consent referred to in sub-section (1), report the fact in writing to the proper officer as soon as may be after the arrival of the ship.
206. Procedure where seaman not shipped in India is imprisoned on complaint of master or owner.—If any seaman engaged outside India is imprisoned on complaint made by or on behalf of the master or owner of the ship or for any offence for which he has been sentenced to imprisonment for a term not exceeding one month, then—

(a) while such imprisonment lasts, no person shall, without the previous sanction in writing of the Central Government or of such officer as it may specify in this behalf, engage in India any person to serve as a substitute for such seaman on board the ship; and

(b) the Central Government or such officer as it may specify in this behalf may tender such seaman to the master or owner of the ship in which he is engaged to serve, and if such master or owner, without assigning reasons satisfactory to the Central Government or to such officer as aforesaid, refuses to receive him on board, may require such master or owner to deposit in the local shipping office—

(i) the wages due to such seaman and his money and other property, and

(ii) such sum as may, in the opinion of the Central Government or such officer as aforesaid, be sufficient to defray the cost of the passage of such seaman to the port at which he was shipped according to the scale of costs usual in the case of distressed seamen.

207. Power to send on board seaman not shipped in India who is undergoing imprisonment.—If any seaman engaged outside India is imprisoned for any offence for which he has been sentenced to imprisonment for a term not exceeding three months, and if, during such imprisonment and before his engagement is at an end, his services are required on board his ship, any magistrate may, at the request of the master or owner or his agent, cause the seaman to be conveyed on board the ship for the purpose of proceeding on the voyage or to be delivered to the master or any mate of the ship or to the
owner or his agent to be by them so conveyed, notwithstanding that the period for which he was sentenced to imprisonment has not terminated.

208. On change of master, documents to be handed over to successor.—(1) If during the progress of a voyage the master of any Indian ship is removed or superseded or for any other reason quits the ship and is succeeded in the command by some other person, he shall deliver to his successor the various documents relating to the navigation of the ship and the crew thereof which are in his custody.

(2) Such successor shall immediately on assuming the command of the ship enter in the official log book a list of the documents so delivered to him.

209. Transmission of documents on transfer of seaman from one ship to another.—Where a seaman is transferred under his agreement from one ship to another, the master of the ship from which the seaman is transferred shall, as soon as practicable, transmit to the master of the other ship all documents in his possession relating to the seaman.

210. Leaving behind in India of seaman or apprentice engaged abroad.—(1) The master of a ship shall not discharge at any place in India, a seaman or apprentice engaged outside India unless he previously obtains the sanction in writing of such officer as the Central Government appoints in this behalf; but such sanction shall not be refused when the seaman or apprentice is discharged on the termination of his service.

(2) Subject to the provisions contained in sub-section (1), the sanction under that sub-section shall be given or withheld at the discretion of the officer so appointed, but whenever it is withheld, the reasons for so withholding it shall be recorded by him.

211. Deserters from foreign ships.—(1) Where it appears to the Central Government that due facilities are or will be given by the Government of any
country outside India for recovering and apprehending seamen who desert from Indian ships in that country, the Central Government may, by notification in the Official Gazette, stating that such facilities are or will be given, declare that this section shall apply to seamen belonging to ships of such country, subject to such limitations or conditions as may be specified in the notification.

(2) Where this section applies to seamen belonging to ships of any country and a seaman deserts from any such ship, when within India, any court that would have had cognizance of the matter if the seaman or apprentice had deserted from an Indian ship shall, on the application of a consular officer of that country, aid in apprehending the deserter and for that purpose may, on information given on oath, issue a warrant for his apprehension and on proof of the desertion order him to be conveyed on board his ship of delivered to the master or mate of his ship or to the owner of the ship or his agent to be so conveyed and any such warrant or order may be executed accordingly.

Official logs

212. Official logs to be kept and to be dated.—(1) An official log shall be kept in the prescribed form in every Indian ship except a home-trade ship of less than two hundred tons gross.

(2) The official log may, at the discretion of the master or owner, be kept distinct from or united with the ordinary ship’s log so that in all cases the spaces in the official log book be duly filled up.

213. Entries in official log books how and when to be made.—(1) An entry required by this Act in the official log book shall be made as soon as possible after the occurrence to which it relates, and, if not made on the same day as that occurrence, shall be made and dated so as to show the date of the occurrence and of the entry respecting it and if made in respect of an
occurrence happening before the arrival of the ship at her final port of discharge, shall not be made more than twenty-four hours after that arrival.

(2) Save as otherwise provided in this Act, every entry in the official log book shall be signed by the master and by the mate or some other member of the crew and also—

(a) if it is an entry of injury or death, shall be signed by the medical officer on board, if any;

(b) if it is an entry of wages due to or the property of a seaman or apprentice who dies, shall be signed by the mate and by some member of the crew besides the master.

(3) Every entry made in an official log books, in the manner provided by this Act shall be admissible in evidenced.

214. Entries required to be made in official log books.—(1) The master of a ship for which an official log is required shall enter or cause to be entered in the official log book the following matters namely:—

(a) every conviction by a legal tribunal of a member of his crew and the punishment inflicted;

(b) every offence committed by a member of his crew for which it is intended to prosecute or to enforce a forfeiture or exact a fine, together with such statement concerning the reading over of that entry and concerning the reply (if any) made to the charge as is by this Act required;

(c) every offence for which punishment is inflicted on board and the punishment inflicted;
(d) a report on the quality of work of each member of his crew, or a statement that the master declines to give an opinion thereon with statement of his reasons for so declining;

(e) every case of illness, hurt or injury happening to a member of the crew with the nature thereof and the medical treatment adopted (if any);

(f) every case of death happening on board and the cause thereof, together with such particulars; as may be prescribed;

(g) every birth happening on board, with the sex of the infant, the names of the parents and such other particulars as may be prescribed;

(h) every marriage taking place on board with the names and ages of the parties;

(i) the name of every seaman or apprentice who ceases to be a member of the crew otherwise than by death, with the place, time, manner and cause thereof;

(j) the wages due to any seaman or apprentice who dies during the voyage and the gross amount of all deductions to be made therefrom;

(k) the money or other property taken over of any seaman or apprentice who dies during the voyage;

(l) any other matter which is to be or may be prescribed for entry in the official log.

(2) The master of every such ship, upon its arrival at any port in India or at such other time and place as the Central Government may with respect to any ship or class of ships direct, shall deliver or transmit, in such form as the Director-General may specify, a return of the facts recorded by him in respect of the birth of a child, or the death of a person on board the ship to the Director-General.
(3) (a) The Director-General shall send a certified copy of such of the returns received by him under sub-section (2) as relate to citizens of India, to such officer as may be specified in this behalf by the Central Government; and such officer shall cause the same to be preserved in such manner as may be specified in this behalf by the Central Government.

(b) Every such copy shall be deemed to be a certified copy of the entry with respect to the person concerned, registered under any law in force for the time being relating to the registration of births and deaths.

215. Offences in respect of official logs.—(1) An official log book shall be kept in the manner required by this Act, and an entry directed by this Act to be made therein shall be made at the time and in the manner directed by this Act.

(2) No person shall make or procure to be made or assist in making any entry in any official log book in respect of any occurrence happening previously to the arrival of the ship at her final port of discharge more than twenty-four hours after such arrival.

216. Delivery of official logs to shipping masters.—The master of every ship for which an official log book is required to be kept under this Act shall, within forty-eight hours after the ship's arrival at her final port of destination in India or upon the discharge of the crew, whichever first happens, deliver the official log book of the voyage to the shipping master before whom the crew is discharged.

217. Official logs to be sent to shipping master in case of transfer of ship or loss.—(1) If for any reason the official log ceases to be required in respect of an Indian ship, the master or owner of the ship shall, if the ship is then in India within one month, and if she is elsewhere within six months, after the cessation, deliver or transmit to the shipping master at the port to which the
ship belonged the official log book duly completed up to the time of cessation.

(2) If a ship is lost or abandoned, the master or owner thereof shall, if practicable and as soon as possible, deliver or transmit to the shipping master at her port of registry the official log book, duly completed up to the time of the loss or abandonment.

National Welfare Board for Seafarers

218. Functions of National Welfare Board for Seafarers.—(1) The Central Government may, by notification in the Official Gazette, constitute an advisory board to be called the National Welfare Board for Seafarers (hereinafter referred to as the Board) for the purpose of advising the Central Government on the measures to be taken for promoting the welfare of seamen (whether ashore or on boardship) generally and in particular the following:—

(a) the establishment of hostels or boarding and lodging houses for seamen;

(b) the establishment of clubs, canteens, libraries and other like amenities for the benefit of seamen;

(c) the establishment of hospitals for seamen or the provision of medical treatment, for seamen;

(d) the provision of educational and other facilities for seamen.

(2) The Central Government may make rules providing for—

(a) the composition of the Board and the term of office of members thereof;

(b) the procedure to be followed in the conduct of business by the Board

(c) the travelling and other allowances payable to members of the Board;
(d) the levy of fees payable by owners of ships at such rates as may be prescribed (which may be at different rates for different classes of ships) for the purpose of providing amenities to seamen and for taking other measures for the welfare of seamen;

(e) the procedure by which any such fees may be collected or recovered and the manner in which the proceeds of such fees, after deduction of the cost of collection, shall be utilised for the purpose specified in clause (d).

1[218A. Power to make rules for purposes of Maritime Labour Convention.—(1) The Central Government may, having regard to the provisions of the Maritime Labour Convention, and in consultation with such organisations in India as the Central Government may, by order, notify to be the most representative of the employers of seamen and of seamen, make rules for carrying out the purposes of this Part.

1. Ins. by Act 32 of 2014, s. 16 (w.e.f. 1-4-2015).

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(i) the hours of work and rest in a week under clause (cc) of sub-section (2) of section 101;

(ii) the entitlement for leave under clause (ff) of sub-section (2) of section 101;

(iii) the period of night work under clause (b) of sub-section (2) of section 109;

(iv) standards for the quantity and quality of food and drinking water, including the catering standards that apply to food provided to the seamen on ships, under sub-section (7) of section 168;
(v) the qualifications of medical officer under clause (a) and the medical facilities under clause (b) of sub-section (1) of section 173;

(vi) the manner and form of certificate to be provided to ships under sub-section (2) of section 176A;

(vii) the manner of conducting inspection in a ship to verify possession of the Maritime Labour Certificate and the Declaration of Maritime Labour Compliance under sub-section (3) of section 176A;

(viii) any other matter which may be or is to be prescribed relating to the Maritime Labour Convention.]

PART VIII

PASSENGER SHIPS

Survey of passenger ships

219. Application of Part.—This Part applies only to sea-going passenger ships fitted with mechanical means of propulsion, but the provisions of this Part relating to 1[special trade passenger ships] shall not apply —

1. Subs. by Act 69 of 1976, s. 2, for “unberthed passenger ships” (w.e.f. 1-12-1976).

2. Subs. by s. 2, ibid., for “unberthed passengers” (w.e.f. 1-12-1976).

(a) to any such ship not carrying more than thirty 2[special trade passengers];

or

(b) to any such ship not intended to carry 2[special trade passengers] to or from any port or place in India.
220. No ship to carry passengers without a certificate of survey.—(1) No ship shall carry more than twelve passengers between ports or places in India or to or from any port or place in India from or to any port or place outside India, unless she has a certificate of survey under this Part in force and applicable to the voyage on which she is about to proceed or the service on which she is about to be employed:

Provided that nothing in this section shall apply to any ship which has been granted a certificate under section 235, unless it appears from the certificate that it is inapplicable to the voyage on which the ship is about to proceed or the service on which she is about to be employed, or unless there is reason to believe that the ship has, since the grant of the certificate, sustained injury or damage or been found unseaworthy or otherwise inefficient.

(2) No Customs Collector shall grant a port clearance, nor shall any pilot be assigned, to any ship for which a certificate of survey is required by this Part until after the production by the owner, agent or master thereof of a certificate under this Part in force and applicable to the voyage on which she is about to proceed or the service on which she is about to be employed.

(3) If any ship for which a certificate of survey is required by this Part, leaves or attempts to leave any port of survey without a certificate, any Customs Collector or any pilot on board the ship may detain her until she obtains a certificate.

221. Power of surveyor.—(1) The owner or agent of every passenger ship for which a certificate of survey is required under this Part shall cause it to be surveyed in the prescribed manner.

(2) For the purposes of a survey under this Part, a surveyor may, at any reasonable time, go on board a ship, and may inspect the Ship and any part thereof, and the machinery, equipment or articles on board thereof:
Provided that he does not unnecessarily hinder the loading or unloading of the ship, or unnecessarily detain or delay her from proceeding on any voyage.

(3) The owner, agent, master and every officer of the ship shall afford to the surveyor all reasonable facilities for a survey, and all such information respecting the ship and her machinery and equipment, or any part thereof, respectively, as the surveyor reasonably requires.

222. Fees in respect of survey.—Before a survey under this part is commenced, the owner, agent or master of the ship to be surveyed shall pay to such officer as, the Central Government may appoint in this behalf—

(a) a fee calculated on the tonnage of the ship according to the prescribed rates;

(b) when the survey is to be made in any port of survey other than Bombay, Calcutta or Madras, such additional fee, in respect of the expense (if any) of the journey of the surveyor to the port, as the Central Government may by order direct.

223. Declaration of survey.—When a survey under this Part is completed, the survey or making it shall forthwith, if satisfied that he can with propriety do so, deliver to the owner, agent or master of the ship surveyed a declaration of survey in the prescribed form containing the following particulars, namely:—

(a) that the hull and machinery of the ship are sufficient for the service intended and in good condition;

(b) that the equipment of the ship is in such condition and that the certificates of the master, mates, engineers or engine-drivers and of the radio telegraphy operators, are such, as are required by this Act or any other law for the time being in force and applicable to the ship;
(c) the time (if less than one year) for which the hull, machinery and equipment of the ship will be sufficient;

(d) the voyages or class of voyages, on which, as regards construction, machinery and equipment, the ship is the surveyor’s opinion fit to ply;

(e) the number of passengers which the ship is in the opinion of the survey, fit to carry, distinguishing, if necessary, between the respective numbers to be carried on the deck and in the cabins and in different parts of the deck and cabins; the number to be subject to such conditions and variations, according to the time of year, the nature of the voyage the cargo carried or other circumstances as the case requires; and

(f) any other prescribed particulars.

224. Sending of declaration by owner, agent or master to Central Government.—(1) The owner, agent or master to whom a declaration of survey is given shall, within fourteen days after the date of the receipt thereof, send the declaration to such officer as the Central Government may appoint in this behalf.

(2) If the owner, agent or master fails to do so, he shall forfeit a sum not exceeding five rupees for every day during which the sending of the declaration is delayed and shall pay any sum so forfeited on the delivery of the certificate of survey.

225. Grant of certificate of survey by Central Government.—(1) Upon receipt of a declaration of survey, the Central Government shall, if satisfied that the provisions of this Part have been complied with, cause a certificate, in duplicate, to be prepared and delivered, through such officer at the port at which the ship was surveyed as the Central Government may appoint in this behalf, to the owner, agent or master of the ship surveyed, on his applying
and paying the sums (if any) mentioned in section 224 as payable on the
delivery of a certificate.

(2) A certificate granted under this section shall be in the prescribed form;
shall contain a statement to the effect that the provisions of this Part with
respect to the survey of the ship and the transmission of the declaration of
survey in respect thereof have been complied with; and shall also set forth.

(a) the particulars concerning the ship which clauses (c), (d) and (e) of section
223 require the declaration of survey to contain; and

(b) any other prescribed particulars.

226. Power of Central Government to order a second survey.—(1) If a
surveyor making a survey under this part refuses to give a declaration of
survey under section 223 with regard to any ship or gives a declaration with
which the owner or agent or master of the ship surveyed is dissatisfied, the
Central Government may, on the application of the owner, agent or master,
and the payment by him of such fee, not exceeding twice the amount of the
fee for the previous survey, as the Central Government may require, direct
any other surveyor to survey the ship.

(2) The surveyor so directed shall forthwith survey the ship, and may, after
the survey, either refuse to give a declaration or give such declaration as under
the circumstances seems to him proper, and his decision shall, save as
otherwise provided in this Act, be final.

227. Duration of certificates of survey.—(1) A certificate of survey granted
under this Part shall not be in force—

(a) after the expiration of one year from the date of issue; or
(b) after the expiration of the period, if less than one year, for which the hull, boilers, engines or any of the equipment have been stated in the certificate to be sufficient; or

(c) after notice, has been given by the Central Government to the owner, agent or master of the ship to which the certificate relates that the Central Government has cancelled or suspended it.

(2) If a passenger ship is absent from India at the time when her certificate expires the provisions of this Part relating to certificate of survey shall not be deemed to be contravened unless she first begins to ply with passengers after her next return to India.

228. Cancellation or suspension of certificate of survey by Central Government.—(1) Any certificate of survey granted under this Part may be cancelled or suspended by the Central Government if it has reason to believe—

(a) that the declaration by the surveyor of the sufficiency of the hull, boilers, engines or any of the equipment of the ship has been fraudulently or erroneously made; or

(b) that the certificate has otherwise been issued upon false or erroneous information.

(2) Before any certificate of survey is cancelled or suspended under sub-section (1), the holder of the certificate shall be given a reasonable opportunity of showing cause why the certificate should not be cancelled or suspended, as the case may be:

Provided that this sub-section shall not apply where the Central Government is satisfied that for some reason to be recorded in writing it is not reasonably
practicable to give to the holder of the certificate an opportunity of showing cause.

229. Alterations in ships subsequent to grant of certificate of survey, and additional surveys.—(1) The owner, agent or master of a ship in respect of which a certificate of survey granted under this Part is in force, shall, as soon as possible after any alteration is made in the ship’s hull, equipment or machinery which affects the efficiency thereof or the seaworthiness of the ship, give written notice to such person as the Central Government may direct containing full particulars of the alteration.

(2) If the Central Government has reason to believe that since the making of the last declaration of survey in respect of a ship —

(a) any such alteration as aforesaid has been made in the hull, equipment or machinery of the ship; or

(b) the hull, equipment or machinery of the ship have sustained any injury or are otherwise insufficient;

the Central Government may require the ship to be again surveyed to such extent as it may think fit, and, if such requirement is not complied with, may cancel any certificate of survey issued under this Part in respect of the said ship.

230. Power to require delivery of expired or cancelled certificate of survey.—Every certificate of survey granted under this Part which has expired, or has been cancelled or suspended, shall be delivered to such person as the Central Government may direct.

231. Certificate of survey to be affixed in conspicuous part of ship.—The owner or master of every ship for which a certificate of survey has been granted under this Part shall forthwith, on the receipt of the certificate cause
one of the duplicates thereof to be affixed, and kept affixed so long as the certificate remains in force and the ship is in use on some conspicuous part of the ship where it may be easily read by all persons on board thereof.

232. Ship not to carry passengers in contravention of Act.—(1) No ship on any voyage shall carry or attempt to carry passengers in contravention of section 220 or shall have on board or in any part thereof a number of passengers which is greater than the number set forth in the certificate of survey as the number of passengers which the ship or the part thereof is fit to carry on that voyage.

(2) If the master or any other officer of any ship which carries or attempts to carry passengers in contravention of section 220 is a licensed pilot, he shall be liable to have his licence as a pilot cancelled or suspended for such period as the Central Government may, by order, specify.

Keeping Order in Passenger ships

233. Offences in connection with passenger ships.—(1) If, in the case of a ship for which a certificate of survey has been granted under this Part,—

(a) any person being drunk or disorderly has been on that account refused admission thereto by the owner or any person in his employ and, after having the amount of his fare (if he has paid it) returned or tendered to him, nevertheless persists in attempting to enter the ship;

(b) any person being drunk or disorderly on board the ship is requested by the owner or any person in his employ to leave the ship at any place in India at which he can conveniently do so, and after having the amount of his fare (if he has paid it) returned or tendered to him, does not comply with the request;

(c) any person on board the ship after warning by the master or other officer thereof, molests or continues to molest any passenger;
(d) any person having gone on board the ship at any place and being requested, on account of the ship being full, by the owner or any person in his employ to leave the ship, before it has departed from that place, and having had the amount of his fare (if he has paid it) returned or tendered to him, does not comply with that request;

(e) any person travels or attempts to travel in the ship without first paying his fare and with intent to avoid payment thereof;

(f) any person on arriving in the ship at the place for which he has paid his fare knowingly and wilfully refuses or neglects to quit the ship;

(g) any person on board the ship fails when requested by the master or other officer thereof either to pay his fare or to exhibit such ticket or other receipt, if any, showing the payment of his fare as is usually given to persons travelling by and paying fare for the ship;

he shall be guilty of an offence under this sub-section.

(2) No person on board any such ship shall wilfully do or cause to be done anything in such a manner as to obstruct or injure any part of the machinery or tackle of the ship or to obstruct, impede or molest the crew or any of them in the navigation or management of the ship or otherwise in the execution of their duty on or about the ship.

(3) The master or other officer of any such ship and all persons called by him to his assistance may, without warrant, detain any person who commits any offence under this section and whose name and address are unknown to the master or officer and convey the offender with all convenient dispatch before the 1[nearest Judicial Magistrate of the first class or the Metropolitan Magistrate as the case may be.] to be dealt with according to law.
234. Power to exclude drunken passengers from passenger ships.—The master of any passenger ship may refuse to receive on board thereof any person who by reason of drunkenness or otherwise is in such a state, or misconducts himself in such a manner, as to cause annoyance or injury to passengers on board, and if any such person is on board, may put him on shore at any convenient place; and a person so refused admittance or put on shore shall not be entitled to the return of any fare he has paid.

235. Ships with certificates of survey or certificates of partial survey granted outside India.—(1) When a ship requires to be furnished with a certificate of survey under this Part and the Central Government is satisfied—

(a) by the production of a certificate of survey that the ship has been officially surveyed at a port in a country outside India;

(b) that the requirements of this Act are proved by that survey to have been substantially complied with; and

(c) that certificates of survey granted under this Part are accepted in such country in lieu of the corresponding certificates required under the laws in force in that country;

the Central Government may, if it thinks fit, dispense with any further survey of the ship in respect of the requirements so complied with, and give a certificate which shall have the same effect as a certificate given after survey under this Part.

(2) When the Central Government has, by notification in the Official Gazette, declared that it is satisfied that an official survey at a port in a country outside India specified in the declaration is such as to prove that the requirements of
this Act have been substantially complied with, any person authorised by the Central Government in this behalf may exercise the power to dispense with a survey and to give a certificate conferred on the Central Government by subsection (1) in the case of any ship furnished with a valid certificate of survey granted at such port.

(3) The provisions of sub-section (1) shall be applicable in the case of ships furnished with valid certificates of partial survey including docking certificates, as if they were ships furnished with like certificates granted at ports in countries outside India subject to the modification that the powers of the Central Government under the said sub-section may be exercised by any person authorised by the Central Government in this behalf.

236. Power to make rules as to surveys.—(1) The Central Government may, subject to the condition of previous publication, make rules to regulate the making of surveys under this Part and the provisions to be made for the safety of life at sea.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the times and places at which, and the manner in which, surveys are to be made;

(b) the requirements as to construction, machinery, equipment and marking of sub-division load lines, which are to be fulfilled by ships generally or by any class of ships in particular before a declaration of survey may be granted;

(c) the survey of ships by two or more surveyors;
(d) the duties of the surveyor making a survey and, where two or more surveyors are employed, the respective duties of each of the surveyors employed;

(e) the form in which declarations of survey and certificates of survey under this Part are to be made and the nature of the particulars to be stated therein respectively;

(f) the rates according to which the fees payable in respect of surveys are to be calculated in the case of all or any of the ports of survey;

(g) the closing of, and keeping closed, the openings in ships’ hulls and in water-tight bulk-heads;

(h) the securing of, and keeping in place and the inspection of contrivances for closing any such openings as aforesaid;

(i) the operation of mechanisms of contrivances for closing any such openings as aforesaid and the drills in connection with the operation thereof; and

(j) the entries to be made in the official log book or other record to be kept of any of the matters aforesaid.

1[Special trade passenger ships] and pilgrim ships

1. Subs. by Act 69 of 1976, s. 2, for “unberthed passenger ships” (w.e.f. 1-12-1976).

2. Subs. by s. 2, ibid., for “an unbertherd passengers” (w.e.f. 1-12-1976).

3. Subs. by s. 2, ibid., for “unbertherd passengers” (w.e.f. 1-12-1976).

4. Subs. by s. 2, ibid., for “an unbertherd passenger” (w.e.f. 1-12-1976).
237. Ports or places where special trade passengers or pilgrims may embark or be discharged.—(1) Neither 2[a special trade passenger ship] nor a pilgrim ship shall depart or proceed from on discharge 3[special trade passengers] or pilgrims, as the case may be, at any port or place within India other than a port or place appointed in this behalf by the Central Government for 1[special trade passenger ships] or pilgrim ships, as the case may be.

(2) After a ship has departed or proceeded on a voyage from a port or place so appointed, a person shall not be received on board as 4[a special trade passenger] or pilgrim, as the case may be, except at some other port or place so appointed.

238. Notice to be given of day of sailing.—(1) The master, owner or agent of 2[a special trade passenger ship] or a pilgrim ship so departing or proceeding shall give notice to an officer appointed in this behalf by the Central Government that the ship is to carry 3[special trade passengers] or pilgrims and of her destination and of the proposed time of sailing.

(2) The notice shall be given—

(a) in the case of 2[a special trade passenger ship], not less than twenty-four hours before that time;

(b) in the case of a pilgrim ship at the original port of departure, if in India, and in any other case at the first port at which she touches in India, not less than three days, and at all other ports not less than twenty-four hours, before that time.

239. Power to enter on and inspect ship.—After receiving the notice under section 238 the officer appointed under that section or a person authorised by him in this behalf shall be at liberty at all times to enter on the ship and inspect her and her fittings and the provisions and stores on board.
240. Ship not to sail without certificates A and B.—1[(1) A ship intended to carry special trade passengers between ports or places in India shall not commence a voyage from any port or place appointed under sub-section (1) of section 237, unless the master holds certificates to the effect mentioned in sections 241 and 242.


2. Subs. by, s. 4, ibid., for “unless the master holds the aforesaid certificates” (w.e.f.1-12-1976).


4. Subs. by s. 6, ibid., for clause (e) (w.e.f. 1-12-1976).

(1A) A ship intended to carry special trade passengers from or to a port or place in India to or from a port or place outside India shall not commence a voyage from any port or place appointed under sub-section (1) of section 237, unless the master holds—

(i) a passenger ship safety certificate;

(ii) an exemption certificate;

(iii) a special trade passenger ship safety certificate;

(iv) a special trade passenger ship space certificate; and

(v) a certificate referred to in section 242.]

(2) The customs Collector whose duty it is to grant a port clearance for the ship shall not grant it 2[unless the master holds the appropriate certificate for the voyage specified in sub-section (1), or as the case may be in sub-section (1A).]
3[241. Contents of certificate A.—(1) The first of the certificates referred to in subsection (1) of section 240 (hereinafter called certificate A) shall be in the prescribed form and contain such particulars as may be prescribed.

(2) In particular and without prejudice to the generality of the foregoing power, certificate A shall contain the following statements and particulars, namely:—

(i) that the ship is seaworthy;

(ii) that the ship is properly equipped, fitted and ventilated;

(iii) the number of special trade passengers the ship is certified to carry; and

(iv) such other particulars as may be prescribed.

(3) Certificate A shall remain in force for a period of one year from the date of issue or for such shorter period as may be specified therein.]

242. Contents of certificate B.—The second of the certificates (hereinafter called certificate B) shall be in the prescribed form and shall state—

(a) the voyage which the ship is to make, and the intermediate ports (if any) at which she is to touch;

(b) that she has the proper complement of officers and seamen;

4[(c) that the master holds—

(i) a certificate of survey and certificate A; or

(ii) a passenger ship safety certificate accompanied by an exemption certificate, a special trade passenger ship safety certificate and a special trade passenger ship space certificate; or

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(iii) a nuclear passenger ship safety certificate;

(d) that she has on board such number of medical officers licensed in the prescribed manner and such number of attendants, if any, as may be prescribed;

(e) that food, fuel and pure water over and above what is necessary for the crew, and the other things (if any) prescribed for special trade passenger ships or pilgrim ships, have been placed on board, of the quality prescribed, properly packed, and sufficient to supply the special trade passengers or pilgrims on board during the voyage which the ship is to make (including such detention in quarantine as may be probable) according to the prescribed scale;

1. Subs. by Act 69 of 1976, s. 2, for “unberthed passenger ships” (w.e.f. 1-12-1976).

2. Subs. by s. 2, ibid., for “unberthed passengers” (w.e.f. 1-12-1976).

3. Subs. by s. 2, ibid., for “un berthed passenger ship” (w.e.f. 1-12-1976).

4. The proviso subs. by s. 7, ibid. (w.e.f. 1-12-1976).

5. Subs. by s. 2, ibid., for “unberthed passenger” (w.e.f. 1-12-1976).

(f) in the case of a special trade passenger ship, if the ship is to make a voyage in season of foul weather specified as such in the rules made under section 262, and to carry upper-deck passengers, that she is furnished with substantial bulwarks and a double awning or with other sufficient protection against the weather;

(g) in the case of a special trade passenger ship, the number of cabin and 2[a special trade passengers] embarked at the port of embarkation;
(h) such other particulars, if any, as may be prescribed for special trade passenger ships or pilgrim ships, as the case may be.

243. Officers entitled to grant certificates.—The person by whom certificate A and certificate B are to be granted shall be the officer appointed under section 238 who is hereinafter referred to as the certifying officer.

244. Survey of ship.—After receiving the notice required by section 238, the certifying officer may, if he thinks fit, cause the ship to be surveyed at the expense of the master or owner by a surveyor, who shall report to him whether the ship is, in his opinion, seaworthy and properly equipped, fitted and ventilated for the service on which she is to be employed:

4[Provided that he shall not cause a ship holding a valid certificate referred to in sub-clause (i) or sub-clause (ii) or sub-clause (iii) of clause (c) of section 242 to be surveyed unless, by reason of the ship having met with damage or having undergone alterations, or on other reasonable grounds, he considers it likely that she may be found unseaworthy or not properly equipped, fitted or ventilated for the service on which she is to be employed.]

245. Discretion as to grant of certificate B.—(1) The certifying officer shall not grant a certificate B if he has reason to believe that the leather conditions are likely to be adverse or that the ship has on board any cargo likely from its quality, quantity or mode of stowage to prejudice the health or safety of the 5[special trade passenger] or pilgrims.

(2) Save as aforesaid, and subject to the provisions of sub-section (3), it shall be in the discretion of the certifying officer to grant or withhold the certificate, and when he withholds the certificate, the reasons for so doing shall be communicated to the person concerned.
(3) In the exercise of that discretion that officer shall be subject to the control of the Central Government or of such authority as the Central Government may appoint in this behalf.

246. Copy of certificate A to be exhibited.—The master or owner shall post up in a conspicuous part of the ship, so as to be visible to the persons on board thereof, a copy of certificate A granted under this Part in respect of the ship and shall keep that copy so posted up as long as it is in force.

247. Special trade passengers or pilgrims to be supplied with prescribed provisions.—(1) The master of 1[a special trade passenger ship] or any contractor employed by him for the purpose shall not, without reasonable excuse, the burden of proving which shall lie upon him, omit to supply to any 2[special trade passenger] the prescribed allowance of food, fuel and water, and the master of a pilgrim ship, or any contractor employed by him for the purpose shall not, without reasonable excuse, the burden of proving which shall lie upon him, omit to supply to any pilgrim the prescribed allowances of food and of water as required by the provisions of this Part.

1. Subs. by Act 69 of 1976, s. 2, for “an unberthed passenger ship” (w.e.f. 1-12-1976).

2. Subs. by s. 2, ibid., for “unberthed passenger” (w.e.f. 1-12-1976).

3. Subs. by s. 2, ibid., for “an unberthed passenger” (w.e.f. 1-12-1976).

4. Subs. by s. 2, ibid., for “unberthed passengers” (w.e.f. 1-12-1976).

(2) Where, under the terms of the ticket issued to 3[a special trade passenger] he is not entitled to the supply of food by the master or owner or agent of the ship, sub-section (1) shall, in the case of such passenger, have effect as if the reference to “food” in that sub-section were omitted.
248. Number of passengers on board not to exceed that allowed by or under this Part.—(1) 1[a special trade passenger ship] or a pilgrim ship shall not carry a number of 4[special trade passengers] or pilgrims, which is greater than the number allowed for the ship by or under this Part.

(2) Any officer authorised in this behalf by the Central Government may cause all 4[special trade passengers] or pilgrims over and above the number allowed by or under this Part to disembark, and may forward them to any port at which they may have contracted to land, and recover the cost of so forwarding them from the master, owner or agent of the ship as if the cost were a fine imposed under this Part, and a certificate under the hand of that officer shall be conclusive proof of the amount of the cost aforesaid.

249. Special trade passenger or pilgrim not to be landed at a place other than that at which he has contracted to land.—No master, owner or agent of 1[a special trade passenger ship] or a pilgrim ship shall land any 2[special trade passenger] or pilgrim at any port or place other than the port or place at which the 2[special trade passenger] or pilgrim may have contracted to land, unless with his previous consent, or unless the landing is made necessary by perils of the sea or other unavoidable accident.

250. forwarding of passengers by Indian consular officers.—(1) If any 2[special trade passenger] from a ship which is on a voyage from any port or place in India finds himself without any neglect or default of his own at any port or place outside India other than the port or place for which the ship was originally bound or at which he has contracted that he should land; the Indian consular officer at or near that port or place may forward the passenger to his intended destination, unless the master, owner or agent of the ship within forty-eight hours of the arrival of the passenger gives to that officer a written undertaking to forward the passenger within six weeks thereafter to his original destination and forwards him accordingly within that period.
(2) A passenger so forwarded by or by the authority of an Indian consular officer shall not be entitled to the return of his passage money or to any compensation for loss of passage.

251. Recovery of expenses incurred in forwarding passengers.—(1) All expenses incurred under section 250 by an Indian consular officer in respect of the forwarding of a passenger to his destination including the cost of maintaining the passenger until forwarded to his destination shall be a debt due to the Central Government jointly and severally from the owner, charter, agent and master of the ship on board which the passenger had embarked.

(2) In any proceeding for the recovery of that debt a certificate purporting to be under the hand of the Indian consular officer and stating the circumstances of the case and the total amount of the expenses shall be prima facie evidence of the amount of the expenses and of the facts that the same were duly incurred.

252. Ship not to make voyage in contravention of contract.—The master, owner or agent of [a special trade passenger ship] or a pilgrim ship shall not, otherwise than by reason of perils of the sea

or other unavoidable accident, allow the ship to touch at any port or place in contravention of any express or implied contract or engagement with the [special trade passengers] or pilgrims with respect to the voyage which the ship was to make and the time which that voyage was to occupy, whether the contract or engagement was made by public advertisement or otherwise.

1. Subs. by Act 69 of 1976, s. 2, for “unberthed passengers” (w.e.f. 1-12-1976).

2. Subs. by s. 2, ibid., for “an unberthed passenger ship” (w.e.f. 1-12-1976).

3. Subs. by s. 2, ibid., for “unberthed passenger ship” (w.e.f. 1-12-1976).
4. The heading “special provisions relating to unberthed passenger ships” omitted by s. 8, ibid. (w.e.f.1-12-1976).

5. Ins. by s. 9, ibid. (w.e.f. 1-12-1976).

253. Information to be sent to ports of embarkation and discharge.—(1) The officer appointed by the Central Government in this behalf at any port or place within India at which 2[a special trade passenger ship] or a pilgrim ship touches or arrives, shall send any particulars which he may deem important respecting the 3[special trade passenger ship] or pilgrim ship, and the 1[special trade passengers] or pilgrims carried therein, to the officer at the port or place from which the ship commenced her voyage, and to the officer at any other port or place within India where the 1[special trade passengers] or pilgrims or any of them embarked or are to be discharged.

(2) The officer aforesaid may go on board any ship referred to in sub-section (1) and inspect her in order to ascertain whether the provisions of this Act as to the number of 1[special trade passengers] or pilgrims and other matters have been complied with.

254. Reports, etc., under section 253 to be admissible in evidence.—In any proceeding for the adjudication of any penalty incurred under this Part, any document purporting to be a report of such particulars as are referred to in sub-section (1) of section 253, or a copy of the proceedings of any court of justice duly authenticated, and also any like document purporting to be made and signed by an Indian consular officer shall be received in evidence, if it appears to have been officially transmitted to any officer at or near the place where the proceeding under this Part is held.

4* * * *

255. Destination of ship, time of sailing, etc., to be advertised.—(1) The master, owner or agent of a 2[a special trade passenger ship] departing or
proceeding from any port or place in India appointed in this behalf by the
Central Government under sub-section (1) of section 237 shall issue at such
port or place in the prescribed manner an advertisement, containing the
particulars required to be stated in the notice under sub-section (1) of section
238; and such advertisement shall be issued before such reasonable and
sufficient interval as may be prescribed before the date of sailing of any such
ship from such port or place.

(2) The Central Government may, by order in writing, exempt any class of
ships from the operation of sub-section (1).

5[(3) The master, owner or agent of any ship which is intended to sail on a
voyage as a pilgrim ship from any port or place in India shall, before
advertising such ship for the conveyance of pilgrims or offering to convey any
pilgrim by such ship or selling or promising or permitting any person to sell a
passenger ticket to any pilgrim for conveyance by such ship, supply to the
officer appointed in this behalf (hereinafter referred to as the pilgrim officer)
at the port or place from which the ship is to commence the voyage, and at
each port or place in India at which she is to touch for the purpose of
embarking pilgrims, full particulars as to the name, tonnage and age of the
ship, the maximum number of passage tickets of each class to be issued, the
maximum price of each class of passage tickets, the probable date on which
the ship is to sail from that port or place, the ports, if any, at which she is to
touch, the place of her destination, and the probable date of her arrival
thereat.

(4) The master, owner or agent of the ship shall supply to the pilgrim officer,
within three days from the date of demand, such further information in
regard to the matters mentioned in sub-section (3) as that officer may in
writing demand from him.

(5) (a) The master, owner or agent of the ship shall advertise at such port or
place and in such manner as may be prescribed—
(i) the place of destination of the ship,

(ii) the price of each class of passage tickets which shall not be in excess of the price communicated to the pilgrim officer under sub-section (3), and

(iii) the provisional date of sailing from that port or place.

(b) The master, owner or agent of the ship shall also advertise the final date of sailing not less than fifteen days before such date.

(6) No master, owner or agent shall—

(a) without reasonable cause, the burden of proving which shall lie upon him, fail or refuse to supply any particulars or information which he is by or under this section required to supply or supply false particulars or information; or

(b) advertise any ship for the conveyance of pilgrims, or offer to convey pilgrims by any ship, or sell or promise or permit any person to sell passage tickets to pilgrims for conveyance by any ship, without having first supplied the particulars required by sub-section (3) and in accordance with the provisions of that sub-section (3); or

(c) advertise a price for passage tickets at the port or place in excess of the price communicated to the pilgrim officer under sub-section (3); or

(d) offer to convey pilgrims by any ship from any port or place in India or sell or promise or permit any person to sell passage tickets to pilgrims for conveyance by a ship from any such port or place without having advertised as required by clause (a) of sub-section (5), the matters specified in that clause; or

(e) sell or permit any person to sell to any pilgrim any passage ticket at a price in excess of the price communicated to the pilgrim officer under sub-section (3).}
256. Ship taking additional passengers at intermediate place.—1[(1) If any 2[special trade passenger ship] performing a voyage between ports or places in India takes additional 3[special trade passengers] on board at an intermediate port or place, the master shall obtain from the certifying officer 4[or such other officer as the Central Government may appoint in this behalf] at the port or place a supplementary certificate stating—

1. Section 256 renumbered as sub-section (1) thereof by Act 69 of 1976, s.10 (w.e.f.1-12-1976).

2. Subs. by s. 2, ibid., for “unberthed passenger ship” (w.e.f. 1-12-1976).

3. Subs. by s. 2, ibid., for “unberthed passengers” (w.e.f. 1-12-1976).

4. Ins. by s. 10, ibid. (w.e.f. 1-12-1976).

(a) the number of 3[special trade passengers] so taken on board; and

(b) that food, fuel and pure water over and above what is necessary for the crew, and the other things, if any, prescribed for the ship, have been placed on board, of the quality prescribed, properly packed and sufficient to supply the 3[special trade passengers] on board during the voyage which the ship is to make (including such detention in quarantine as may be probable) according to the scale for the time being prescribed:

Provided that, if the certificate B held by the master of the ship states that food, fuel and pure water over and above what is necessary for the crew, and the other things, if any, prescribed for her, have been placed on board, of the quality prescribed, properly packed and efficient to supply the full number of 3[special trade passengers] which she is capable of carrying, the master shall not be bound to obtain any such supplementary certificate, but shall obtain from the certifying officer an endorsement on the certificate B showing the
number of passengers taken on board, and the number of passengers discharged, at that port or place.

3)[(2) In either of the following cases, namely:—

(a) if after a pilgrim ship has departed or proceeded on her voyage any additional pilgrims are taken on board at a port or place within India appointed under this Part for the embarkation of pilgrims, or

(b) if a pilgrim ship upon her voyage touches or arrives at any such port or place, having previously received on board additional pilgrims at any port or place outside India,

the master shall obtain a fresh certificate B from the certifying officer or such other officer as the Central Government may appoint in this behalf at that port or place, and shall make an additional statement specifying the number and the respective sexes of all the additional pilgrims.]

257. Statements concerning passengers.—(1) The master of 1[a special trade passenger ship] departing or proceeding on a voyage from a port or place in India to a port or place outside India shall sign a statement in duplicate, specifying the number and the respective sexes of all the 2[special trade passengers], and the number of the crew, and shall deliver both copies to the certifying officer, 3[or such other officer as the Central Government may appoint in this behalf] who shall thereupon, after having first satisfied himself that the entries are correct, countersign and return to the master one copy of the statement.

1. Subs. by Act 69 of 1976, s. 2, for “an unberthed passenger ship” (w.e.f. 1-12-1976).

2. Subs. by s. 2, ibid., for “unberthed passengers” (w.e.f. 1-12-1976).

3. Ins. by s. 11, ibid. (w.e.f. 1-12-1976).
4. Ins. by s. 11, ibid. (w.e.f. 1-12-1976).

5. Subs. by s. 2, ibid., for “unberthed passenger ship” (w.e.f. 1-12-1976).

6. Subs. by s. 2, ibid., for “unberthed passenger” (w.e.f. 1-12-1976).

(2) In either of the following cases, namely:

(a) if after the ship has departed or proceeded on such a voyage any additional 2[special trade passengers] are taken on board at a port or place within India appointed under this Part for the embarkation of 2[special trade passengers] or

(b) if the ship upon her voyage touches or arrives at any such port or place, having previously received on board additional 2[special trade passengers] at any port or place outside India;

the master shall obtain a fresh certificate to the effect of certificate B from the certifying officer 4[or such other officer as the Central Government may appoint in this behalf] at that port or place, and shall make an additional statement specifying the number and the respective sexes of all the additional passengers.

4][(3) The master of every pilgrim ship departing or proceeding from any port or place in India shall sign a statement in duplicate in the prescribed form specifying the total number of all the pilgrims embarked and the number of pilgrims of each sex embarked and the number of the crew and such other particulars as may be prescribed and shall deliver both copies to the certifying officer or such other officer as the Central Government may appoint in this behalf at the port or place and such officer shall thereupon, after having first satisfied himself that the entries are correct, countersign and return to the master one copy of the statement.
(4) The master of every pilgrim ship arriving at any port or place in India at which it may be intended to discharge pilgrims, shall, before any pilgrims disembark, deliver a statement signed by him specifying the total number of all the pilgrims on board and the number of pilgrims of each sex and the number of the crew, and such other particulars as may be prescribed to the certifying officer or such other officer as the Central Government may appoint in this behalf at the port or place.

258. Death of 2[special trade passengers] on voyage.—(1) The master of any 5[special trade passenger ship] performing a voyage between ports or places in India, shall, on arrival at her port of destination, notify to the certifying officer or such other officer as the Central Government may appoint in this behalf, the date and supposed cause of death of every 6[special trade passenger] who may die on the voyage.

(2) The master of any 2[special trade passenger ship] performing a voyage between a port or place in India and a port or place outside India, shall note in writing on the statement or the additional statement referred to in section 257 the date and supposed cause of death of any 6[special trade passengers] who may die on the voyage, and shall, when the ship arrives at her port or place of destination or at any port or place where it may be intended to land 1[special trade passengers], and before, any passenger leaves the ship, produce the statement with any additions made thereto—

1. Subs. by Act 69 of 1976, s. 2, for “unberthed passengers” (w.e.f. 1-12-1976).

2. Ins. by s. 13, ibid. (w.e.f. 1-12-1976).

3. Subs. by s. 2, ibid., for “an unberthed passenger ship” (w.e.f. 1-12-1976).
(a) where such port or place is in India, to the certifying officer or such other officer as the Central Government may appoint in this behalf;

(b) where such port or place is outside India, to the Indian consular officer.

2[(3) The master of every pilgrim ship shall note in writing on the copy of the additional statement referred to in sub-section (2) of section 256 or of the statement referred to in sub-sections (3) and (4) of section 257, the date and supposed cause of death of any pilgrim who may die on the voyage, and shall, when the pilgrim ship arrives at her port or place of destination or at any port or place where it may be intended to discharge pilgrims, and before any pilgrims disembark, produce the statement, with any additions made thereto,—

(a) where such port or place is in India, to the certifying officer or such other officer as the Central Government may appoint in this behalf;

(b) where such port or place is outside India, to the Indian consular officer.]

259. Certain ships to carry medical officer and attendants.—(1) Every ship carrying 1[special trade passengers] and crew not exceeding one thousand in number, shall have on board as part of her complement at least one medical officer possessing such qualification as may be prescribed.

(2) Every ship carrying 1[special trade passengers] and crew exceeding one thousand in number shall, in addition to a medical officer, have on board as part of her complement such number of medical attendants as may be prescribed.

(3) Every ship carrying 1[special trade passengers] shall be provided with a hospital with such medical stores and equipment as may be prescribed.

2[(4)(a) Every pilgrim ship carrying pilgrims and crew not exceeding one thousand in number shall have on board a medical officer possessing such
qualifications as may be prescribed, and, if the number of pilgrims and crew
carried exceeds one thousand, a second medical officer similarly qualified and
also in all cases such medical attendants as may be prescribed.

(b) A medical officer of every pilgrim ship shall perform such duties and
functions, keep such diaries and submit such reports or other returns as may
be prescribed.

c) No medical officer or attendant on a pilgrim ship shall charge any pilgrim
on such ship for his services.]

260. Bringing passengers from foreign port in excess of authorised number
prohibited.—No owner, agent or master of 3[special trade passenger ship]
shall carry or cause to be carried from any port or place outside India to any
port or place in India a number of passengers greater than—

(a) the number allowed for the ship by or under this Part, or

(b) the number allowed by the licence or certificate, if any, granted in respect
of the ship at her port or place of departure, whichever number is less.

239 and the Fifteenth Schedule (w.e.f. 14-5-2016).

1[261A. Bunks to be provided for passengers.—Every special trade passenger
ship making a voyage the duration of which, in ordinary circumstances, may
extend to seventy-two hours or more shall provide for each passenger on
board a bunk of the prescribed size and particulars.

1. Ins. by Act 69 of 1976, s. 14 (w.e.f. 1-12-1976).

2. Subs. by s. 2, ibid., for “unberthed passenger ships” (w.e.f. 1-12-1976).

3. Subs. by s. 2, ibid., for “unberthed passengers” (w.e.f. 1-12-1976).
261B. Space to be provided for passengers when bunks are not provided.—Every special trade passenger ship making a voyage the duration of which in ordinary circumstances may not extend to seventy-two hours shall provide space for each passenger at the prescribed scale.

261C. Airing space to be provided for passengers.—Every special trade passenger ship shall have reserved as airing space for the use of passengers on board, gratuitously by day and by night, so much of the upper deck as is not required for the airing space of the crew or for permanent structure:

Provided that the upper deck space so provided for passengers shall in no case be less than 0.37 square meter for each passenger.

262. Power to make rules as to 2[special trade passenger ships].—The Central Government may, subject to the condition of previous publication, make rules to regulate, in the case of a 2[special trade passenger ships] or any class of such ships, all or any of the following matters, namely:—

(a) the classification of voyages with reference to the distance between the port of departure and the port of destination, the duration of the voyage, or any other consideration which the Central Government may think fit to take into account for the purpose;

(b) the seasons of fair weather and seasons of foul weather for purposes of any voyage;

(c) the space to be allowed for 3[special trade passengers] in respect of different classes of voyages and for seasons of fair and foul weather;

(d) the disallowance of any space considered unsuitable by the surveyor for the carriage of 3[special trade passengers];

(e) the space to be set apart for alleyways, passages and the like;
(f) the provision of airing space for special trade passengers;

(g) the scale according to which dining rooms, latrines, wash places, baths, dressing rooms and other amenities are to be provided;

(h) the provision of separate accommodation for women and children;

(i) the prohibition or regulation of the carriage of cargo in any space reserved for passengers;

(j) where the deck on which special trade passengers are accommodated is not covered with wood, the nature of the sheathing to be provided in the space reserved for passengers;

(k) the disposal of baggage of passengers on board ship and the provisions of separate space in between-decks for the storage of light baggage;

(l) the conditions under which passengers may be allowed to be carried in the upper deck in seasons of foul weather;

(m) the provision of bunks for special trade passengers or for any proportion of such passengers on any specified classes of voyages, and the size and other particulars relating to the bunks to be so provided;

(n) the scale on which food, fuel and water are to be supplied to passengers or to any class of passengers, and the quality of the food, fuel and water;

(o) the nature and extent of hospital accommodation and the medical stores and other appliances and fittings to be provided on board for maintaining health, cleanliness and decency;

(p) the licensing and appointment of medical officers and attendants in cases where they are required by this Part to be carried;

(q) the boats, anchors and cables to be provided on board;
(r) the instruments for purposes of navigation to be supplied;

(s) the functions of the master, medical officer (if any) and other officers of the ship during the voyage;

(t) the access of between-decks passengers to the upper deck;

(u) the local limits within which, and the time and mode at and in which, passengers are to be embarked or discharged at any port or place appointed under this Part in that behalf;

(v) the time within which any ship of a specified class is to depart or proceed on her voyage after commencing to take passengers on board;

(w) the conditions under which live-stock may be allowed to be carried;

(x) the licensing, supervision and control of persons engaged in assisting persons to obtain 1[special trade passenger] accommodation in ships departing or proceeding from any port or place in India and the prohibition of unlicensed persons from being so engaged;

1. Subs. by Act 69 of 1976, s. 2, for “unberthed passenger” (w.e.f. 1-12-1976).

2. Clause (y) repealed Act 28 of 2016, s. 239 and the Fifteenth Schedule (w.e.f. 14-5-2016).

3. The heading “Special provisions regarding pilgrim ships” omitted by Act 69 of 1976, s. 15 (w.e.f. 1-12-1976).

4. Subs. by s. 16, ibid., for section 264 (w.e.f. 1-12-1976).

2* * * *

(z) generally to carry out the purposes of this Part relating to [special trade passenger ships.]
263. [Banks to be provided for pilgrims.] Omitted by the Merchant Shipping (Amendment) Act, 1976 (69 of 1976), s. 15 (w.e.f. 1-12-1976).

4[264. Hospital accommodation.—Every special trade passenger ship certified to carry more than one hundred passengers on a voyage the duration of which, in ordinary circumstances, may extend to forty-eight hours or more, shall provide on board a hospital offering such conditions relating to security, space, health and sanitation and capable of accommodating such proportion of the maximum number of passengers the ship is certified to carry, as may be prescribed.]

265. [Statements concerning pilgrims to be delivered before ship departs.] Omitted by the Merchant Shipping (Amendment) Act, 1976 (69 of 1976), s. 17 (w.e.f. 1-12-1976).

266. [Pilgrim ships taking additional pilgrims at intermediate places.] Omitted by the Merchant Shipping (Amendment) Act, 1976 (69 of 1976), s. 17 (w.e.f. 1-12-1976).

267. [Particulars relating to deaths of pilgrims on voyage.] Omitted by the Merchant Shipping (Amendment) Act, 1976 (69 of 1976), s. 17 (w.e.f. 1-12-1976).

268. [Statement concerning pilgrims to be delivered before pilgrims disembark in India.] Omitted by the Merchant Shipping (Amendment) Act, 1976 (69 of 1976), s. 17 (w.e.f. 1-12-1976).

269. [Certain pilgrim ships to carry medical officers and attendants.] Omitted by the Merchant Shipping (Amendment) Act, 1976 (69 of 1976), s. 17 (w.e.f. 1-12-1976).
270. Bond where pilgrim ship proceeds on outward voyage.—(1) Port clearance shall not be granted from any port in India to any pilgrim ship unless the master, owner or agent and two sureties resident in India have executed, in favour of the Central Government, a joint and several bond for the sum of ten thousand rupees or has given such other guarantee or security as may be acceptable to that Government covering all voyages which may be made by the ship in the current pilgrim season, conditioned that—

(a) the master and medical officer shall comply with the provisions of this Part and the rules made thereunder, and

(b) the master, owner or agent shall pay any sum claimed by the Central Government under sub-section (2) of section 277,

(2) A bond, guarantee or security may be given under this section covering any or all of the pilgrim ships owned by one owner, and in such cases the amount of the bond, guarantee or security shall be ten thousand rupees for each ship covered.

271. Medical inspection and permission required before embarkation of pilgrims.—(1) No pilgrim shall be received on board any pilgrim ship at any port or place in India unless and until he has been medically inspected, at such time and place, and in such manner, as the Central Government may fix in this behalf, nor until the certifying officer has given permission for the embarkation of pilgrims to commence.

(2) The medical inspection of female pilgrims shall, subject to any rules which may be made under this Act and as far as may be practicable, be carried out by women.
(3) No pilgrim shall be received on board any pilgrim ship unless he produces the medical certificate signed by a person who is duly qualified to grant such certificate, showing that such pilgrim—

(a) has been inoculated against cholera within such period before the inspection, as may be prescribed; and

(b) has been vaccinated against small-pox within such period before the inspection as may be prescribed:

Provided that the officer making the inspection may dispense with the certificate of vaccination, if in his opinion the pilgrim has marks showing that he has had small-pox.

(4) If, in the opinion of the officer making an inspection under this section, any pilgrim is suffering from cholera or choleraic indisposition, or any dangerously infectious or contagious disease, or shows any signs of the same or any other suspicious symptoms, such pilgrim shall not be permitted to embark.

(5) All articles which have been contaminated by persons suffering from cholera or choleraic indisposition, or any dangerously infectious or contagious disease, or are suspected having been so contaminated shall, before being taken on board a pilgrim ship, be disinfected, under the supervision of a medical officer appointed by the Central Government for the purpose, in such manner as may be prescribed.

272. Medical inspection after embarkation in certain cases.—(1) If in any case a pilgrim ship does not proceed on her voyage within forty-eight hours after all the pilgrims have been received on board, and there is reason to suspect that any person on board is suffering from cholera or choleraic indisposition or any dangerously infectious or contagious disease, a medical inspection of
all persons on board may be held in such manner as the Central Government may direct.

(2) If on such inspection any person is found to be suffering from cholera or choleraic indisposition or any dangerously infectious or contagious disease, or shows any signs of the same or any other suspicious symptoms, he shall, together with all articles belonging to him, be at once removed from the ship.

273. Pilgrims to arrange return passages.—No pilgrim shall be received on board any pilgrim ship at any port or place in India unless he—

(a) is in possession of a return ticket, or

(b) has deposited with the officer authorised in this behalf by the Central Government such sum for the purpose of defraying the cost of a return ticket as that Government may specify by notification in the Official Gazette:

Provided that the authorised officer may exempt any pilgrim from all or any of the aforesaid requirements, if he is satisfied that it is inexpedient, in the special circumstances of the case, to enforce them.

274. Issue or production of tickets.—(1) Every pilgrim travelling on a pilgrim ship shall be entitled, on payment of his passage money and fulfillment of other prescribed conditions, if any, to receive a ticket in the prescribed form, and shall be bound to produce it to such officers and on such occasions as may be prescribed and otherwise to deal with it in the prescribed manner:

Provided that no pilgrim, who has not been exempted under the proviso to section 273, shall be given a ticket other than a return ticket unless he has made the deposit required by that section.

(2) Any ticket issued to a pilgrim for a voyage on a pilgrim ship shall entitle him to receive food and water, on the scale and of the quality prescribed and medicines free of further charge, throughout the voyage.
275. Refund of passage money and deposits.—(1) Every pilgrim prevented from embarking under section 271, or removed from the ship under section 272, or otherwise prevented from proceeding shall be entitled to the refund of any passage money which he may have paid, and of any deposit which he may have made under section 273.

(2) Any pilgrim who, within one year of his sailing from India, satisfies the Indian consular officer at Jeddah that he intends to return to India by a route other than the route by which he came from India, shall be entitled to a refund of any deposit made by him under section 273, or, if he is in possession of a return ticket, to a refund of half the passage money paid by him.

(3) Where any pilgrim dies in the Hedjaz or on the voyage thereto, any person nominated by him in this behalf in writing in the prescribed manner, or, if no person has been so nominated, the legal representative of the pilgrim, shall be entitled to a refund of any deposit made by the pilgrim under section 273, or, if the pilgrim was in possession of a return ticket, to a refund of half the passage money paid by him.

(4) Where any pilgrim fails to return to India from the Hedjaz within one year of his sailing from India, or returns to India by a route other than the route by which he came from India, he or any person nominated by him in this behalf in writing in the prescribed manner shall be entitled to a refund of any deposit made by such pilgrim under section 273, or, if such pilgrim was in possession of a return ticket, to a refund of half the passage money paid by such pilgrim, except where such deposit or passage money has already been refunded under this section.

(5) Refunds under this section of deposits shall be subject to such conditions and of passage money to such deductions and conditions as may be prescribed.
276. Disposal of unclaimed passage money and deposit.—If any pilgrim,—

(a) who is entitled to a refund of passage money under sub-section (1) of section 275 does not claim such refund within the prescribed period, or

(b) who has purchased a return ticket, does not on the basis of such ticket obtain a return passage from the Hedjaz within the prescribed period and the value of the return half of such ticket has not been refunded under section 275, or

(c) who is entitled under section 275 to a refund of any deposit made under section 273 does not claim such refund within the prescribed period,

such passage money or value or deposit shall, subject to the exercise of the rights conferred by sub-section (4) of section 275, be made over to such authority administering any fund maintained for

the assistance of pilgrims as the Central Government may, by general or special order, designate in this behalf.

277. Cost of return journey of pilgrims on ships other than those for which return ticket is available.—(1) The master, owner or agent of every pilgrim ship shall make all arrangements for ensuring the return of all pilgrims in possession of a return ticket issued in India who are carried to the Hedjaz by such ship, within a period of ninety days after the Haj day in a year:

Provided that, for the purpose of computing the said period of ninety days, no period shall be taken into account during which the ship is prevented from carrying pilgrims on the return passage by reason of the port of Jeddah having been declared by proper authority to be infected or by reason of war, disturbance or any other clause not arising from any act or default of the master, owner or agent.
(2) Where any such pilgrim who has notified to the prescribed authority in the prescribed manner his desire to embark for the return voyage is, owing to his inability to obtain accommodation within the period of ninety days aforesaid in a ship for which the return ticket is available, detained at Jeddah beyond the said period, the master, owner or agent of the ship in which such pilgrim was carried to the Hedjaz shall pay to the Central Government in respect of such pilgrim such sum not exceeding double the sum received by the master, owner or agent in respect of the return ticket as the Central Government claims as the costs of repatriating the pilgrim, together with a sum of rupees five for each day after the expiry of the period aforesaid during which the pilgrim has been detained at Jeddah.

(3) A certificate of such detention purporting to be made and signed by the Indian consular officer at Jeddah shall be received in evidence in any court in India without proof of the signature or of the official character of the person who has signed the same.

278. [Notice of sailing of pilgrim ship.] Omitted by Merchant Shipping (Amendment) Act, 1976 (69 of 1976), s.17 (w.e.f.1-12-1976).]

279. Compensation for delay in sailing.—(1) If a pilgrim ship fails to proceed from any port or place on the date advertised under 1[clause (b) of sub-section (5) of section 278] as the final date of sailing there from, the master, owner or agent shall become liable to pay as compensation to each pilgrim who has paid his passage money on or before such date the sum of three rupees for each completed day during which the sailing of the ship is delayed after that date:

1. Subs. by Act 69 of 1976, s. 18, for “clause (b) of sub-section (3) of section 278” (w.e.f. 1-12-1976).

Provided that such compensation shall not be payable in respect of any period during which the departure of the ship is impossible owing to any cause not
arising from the act or default of the master, owner or agent, and the burden of proving such cause shall lie on such master, owner or agent:

Provided further that where compensation has been paid or has become payable to any pilgrim in respect of delay in the sailing of the ship from any port or place and the sailing of the ship from any other port or place is thereafter delayed beyond the date advertised in that behalf, the pilgrim shall be entitled to compensation only in respect of any period by which the duration of such further delay exceeds the duration of the delay in respect of which he has already received or become entitled to compensation.

(2) In the event of such failure the master, owner or agent shall be bound forthwith to inform the pilgrim officer at the port or place at which the delay occurs of the number of passage tickets of each class which have been issued for the voyage on or before the advertised final date of sailing.

(3) Any sum payable as compensation under sub-section (1) shall be paid on behalf of the pilgrims entitled thereto to the pilgrim officer at the port or place at which the delay occurs on receipt by the master, owner or agent of a notice from that officer specifying the sum payable, and that officer shall, in such manner as may be prescribed, pay to each such pilgrim the compensation paid in respect of his detention:

Provided that, if an objection is made by the master, owner or agent that the sum specified in any such notice or any part of such sum is not payable by him, the sum paid or, as the case may be, the balance thereof remaining after payment to the pilgrim entitled thereto of compensation the right to which is not in dispute, shall be held in deposit until the objection has been decided:

Provided further that, if for any reason the compensation due to any pilgrim cannot be paid to him at the time of embarkation or at or before the time of
his disembarkation at the port of his destination, the sum so remaining unpaid shall be made over to such authority administering any fund maintained for the assistance of pilgrims as the Central Government may, by general or special order, designate in this behalf.

(4) If the master, owner or agent objects that the sum specified in the notice issued under sub-section (3) or any part thereof is not payable by him, he may, at the time of payment of such sum, give to the pilgrim officer notice of his objection, together with a statement of the grounds thereof, and the pilgrim officer shall thereupon either cancel or modify the aforesaid notice in accordance with the objection and refund the sum held in deposit under sub-section (3), or refer the objection for decision to a Metropolitan Magistrate or a Judicial Magistrate of the first class exercising jurisdiction at the port or place at which the ship is delayed, whose decision on such reference shall be final; and there shall be refunded to the master, owner or agent any amount allowed to him by such decision.

1. Subs. by Act 12 of 1983, s. 17 and the Schedule, for “Presidency magistrate or a magistrate of the first class” (w.e.f. 18-5-1983).

2. Subs. by Act 69 of 1976, s. 18, for “clause (b) of sub-section (3) of section 278” (w.e.f. 1-12-1976).

3. Subs. by s. 19, ibid., for “278” (w.e.f. 1-12-1976).

(5) On the failure of any pilgrim ship to proceed from any port or place on the date advertised under clause (b) of sub-section (5) of section 255 as the date of final sailing there from, the pilgrim officer at that port or place shall forthwith give notice of such failure to the officer authorised to grant port clearance to ships thereat, and such officer shall refuse port clearance to the pilgrim ship until the master, owner or agent produces to him a certificate of the pilgrim officer that all sums payable by way of compensation under this section up to the day on which the ship is to proceed have been paid.
280. Substitution of ships.—Notwithstanding anything contained in section 3[255] or section 279; where any ship has been advertised under section 3[255] for the conveyance of pilgrims has been or is likely to be delayed beyond the advertised final date of sailing, the owner or agent may, with the permission in writing of the pilgrim officer, substitute for it any other ship which is capable of carrying not less than the same number of pilgrims of each class, and on such permission being given the advertisement shall be deemed to have been made in respect of the ship so substituted, and all the provisions of those sections shall apply accordingly in respect of such ship.

281. Sanitary taxes payable by master of pilgrim ship.—The master of every pilgrim ship shall be bound to pay the whole amount of the sanitary taxes imposed by lawful authority at the ports visited and such amount shall be included in the cost of the tickets issued to the pilgrims.

282. Powers to make rules relating to pilgrim ships.—The Central Government may, subject to the condition of previous publication, make rules to regulate all or any of the following matters, namely:—

(a) the boats, anchors and cables to be provided on board pilgrim ships;

(b) the instruments to be supplied for purposes of navigation;

(c) the fittings and other appliances to be provided in the upper and between decks for the comfort and convenience of pilgrims;

(d) the scale on which, and the manner in which, cooked and uncooked food and water are to be supplied to pilgrims, and the quality of such food and water;

(e) the kinds of food to be provided for pilgrims on payment, in addition to the food to be supplied in accordance with the rules made under clause (d), and the charges which may be made for the same;
(f) the quality, quantity and storage of the cargo to be carried;

(g) the allotment of the upper deck space between the various classes of pilgrims;

(h) the distribution or disposal of the baggage of pilgrims on board ship;

(i) the nature and extent of the hospital accommodation and the medical stores, disinfectants, and other appliances and fittings to be provided on board free of charge to pilgrims for maintaining health, cleanliness and decency;

(j) the form of the statements to be furnished by the master under 1[section 257] and the particulars to be entered therein;

1. Subs. by Act 69 of 1976, s. 20, for "sections 265 and 268" (w.e.f.1-12-1976).

2. Subs. by s. 20, ibid., for “section 278” (w.e.f.1-12-1976).

3. Subs. by Act 12 of 1983, s. 17 and the Schedule, for “magistrates” (w.e.f. 18-5-1983).

(k) the appointment of medical officers, and other attendants in cases where they are required by the provisions of this Part relating to pilgrim ships to be carried, and the diaries, reports and other returns to be kept or submitted by such medical officers;

(l) the manner in which contaminated articles shall be disinfected before being taken on board a pilgrim ship;

(m) the manner in which, and the persons by whom, the medical inspection of women shall be carried out;

(n) the manner in which deposits shall be made for the purposes of section 273, and any matter in respect of which provision is, in the opinion of the
Central Government, necessary or expedient for the purpose of giving effect to the provisions of that section;

(o) the manner in which provisional bookings may be made, the acceptance of deposits for such bookings and the forfeiture of any part of the deposit in cases in which any such bookings are cancelled;

(p) the supply of tickets to intending pilgrims, the form of such tickets and the conditions and other matters to be specified thereon, and the amount of the sanitary taxes to be included in the cost thereof;

(q) the refund of passage money and deposits under section 275 and the manner in which persons shall be nominated under that section for the purpose of entitling them to a refund;

(r) the period after which unclaimed passage money and deposits liable to be refunded shall be disposed of in the manner specified in section 276;

(s) the manner in which the dates of sailing shall be advertised under 2[section 255;] the appointment of pilgrim officers for the purposes of that section and sections 279 and 280; the manner in which payment shall be made under section 279 to pilgrims and to the pilgrim officer; and the procedure to be followed by masters, owners or agents and by pilgrim officers and 3[Metropolitan Magistrates or Judicial Magistrates of the first class, as the case may be] in proceedings under that section;

(t) the functions of the master, medical officer and other ship's officers during the voyage;

(u) the local limits within which, and the time and mode at and in which, pilgrims shall be embarked or discharged at any port or place appointed under this Part in that behalf;
(v) the time within which a pilgrim ship shall depart or proceed on her voyage after commencing to take pilgrims on board;

(w) providing that a pilgrim shall not be received on board any pilgrim ship, unless he is in possession of a passport or a pilgrim's pass regulating the issue of pilgrims passes and prescribing the form of and fees which may be charged for such passes; 1***

1. The word “and” omitted by Act 12 of 1983, s. 8 (w.e.f. 18-5-1983)

2. Ins. by s. 8, ibid. (w.e.f. 18-5-1983).

3. The brackets and figure “(1)” omitted by Act 25 of 1970, s. 3 (w.e.f. 21-7-1968).

4. Omitted by s. 3, ibid. (w.e.f. 21-7-1968).

5. Ins. by s. 4, ibid. (w.e.f. 21-7-1968).


7. Ins. by Act 69 of 1976, s. 21 (w.e.f. 1-12-1976).

2[(ww) the fees that may be levied for the survey or inspection of pilgrim ships with respect to sanitary conditions, provision of stores, medical facilities available on such ships and such other purposes that may be relevant for compliance with the provisions of this Part relating to pilgrim ships and the manner in which such fees may be collected;]

(x) generally, to carry out the provisions of this Part relating to pilgrim ships.

PART IX

SAFETY
283. Countries to which Load Line Convention or Safety Convention applies.—The Central Government, if satisfied,—

(a) that the Government of any country has accepted or denounced the Load Line Convention or, as the case may be, the Safety Convention; or

(b) that the Load Line Convention or, as the case may be, the Safety Convention extends, or has ceased to extend to any territory;

may, by notification in the Official Gazette, make a declaration to that effect.

5[283A. Definitions.—(1) In this Part, unless the context otherwise requires,—

(a) “existing ship” or “existing vessel” means a ship or vessel which is not a new ship or a new vessel,

(b) “new ship” or “new vessel” means a ship or vessel whose keel is laid or which is at a similar stage of construction on or after the material date as defined in sub-section (2).

(2) For the purposes of sub-section (1) “material date”;—

(i) in relation to an Indian ship, means the 21st July, 1968;

(ii) in relation to a foreign ship belonging to a country to which the Load Line Convention applies, means the date as from which it is declared under section 283 that the Government of such country has accepted the Load Line Convention or, as the case may be, that the said Convention has been applied to such country.]
284. Construction rules.—(1) The Central Government may make rules (in this Act called the construction rules), prescribing the requirements that the hull, equipment and machinery of Indian 6[passenger or cargo ships] shall comply with.

(2) The rules made under sub-section (1) shall include such requirements as appear to the Central Government to implement the provisions of the Safety Convention prescribing the requirements that the hull, equipment and machinery of 1[passenger or cargo ships] shall comply with, except so far as those provisions are implemented by the rules for life saving appliances, the radio rules, the rules for direction finders or the collision regulations.

7[Provided that different requirements may be specified for special trade passenger ships]

(3) The powers conferred on the Central Government by this section shall be in addition to the powers conferred by any other provision enabling it to prescribe the requirements that 1[passenger or cargo ships] shall comply with.

1. Subs. by Act 21 of 1966, s. 7, for “passenger ships” (w.e.f. 28-5-1966).

Prevention of collisions

285. Collision regulations.—(1) The Central Government may make regulations for the prevention of collisions at sea and may thereby regulate the lights and shapes to be carried and exhibited, the fog and distress signals to be carried and used, and the steering and sailing rules to be observed by Indian ships and sailing vessels registered in India.

(2) The collision regulations, together with the provisions of this Part relating thereto or otherwise relating to collisions, shall be observed by all foreign ships and sailing vessels within Indian jurisdiction, and in any case arising in any Court in India concerning matters arising within Indian jurisdiction, such
ships and sailing vessels shall, so far as respects the collision regulations and
the said provisions of this Act, be treated as if they were Indian ships or
sailing vessels registered in India, as the case may be.

286. Observance of collision regulations.—(1) The owner or master of every
ship and the owner or tindal of every sailing vessel to which section 285
applies shall obey the collision regulations, and shall not carry or exhibit any
lights or shapes or use any fog or distress signals, other than those required by
the said regulations.

(2) If any damage to person or property arises from the non-observance by
any such ship or sailing vessel of any of the collision regulations, the damage
shall be deemed to have been occasioned by the willful default of the person
in charge of the ship or the sailing vessel, as the case may be, at the time
unless it is shown to the satisfaction of the court that the circumstances of the
case made a departure from the regulations necessary.

287. Inspectors of lights and shapes and fog and distress signals.—(1) The
Central Government may appoint persons to inspect in any port ships or
sailing vessels to which the collision regulations apply, for the purpose of
seeing that such ships or sailing vessels are properly provided with lights and
shapes and with the means of making fog and distress signals, in pursuance of
such regulations.

(2) If an inspector appointed under sub-section (1) finds that any ship or
sailing vessel is not so provided, he shall give to the owner, master or tindal,
notice in writing pointing out the deficiency, and also what, in his opinion, is
requisite in order to remedy the same.

(3) Every notice so given shall be communicated in the prescribed manner to
the customs collector at any port from which such ship or sailing vessel may
seek to clear, and no customs collector to whom such communication is
made shall grant such ship a port clearance or allow her to proceed to sea
without a certificate under the hand of some person appointed as aforesaid, to
the effect that the said ship or sailing vessel is properly provided with lights
and shapes and with the means of making fog and distress signals in
pursuance of the said regulations.

Life saving appliances and fire appliances

288. Power to make rules as to life saving appliances.—(1) The Central
Government may, subject to the condition of previous publication, make
rules prescribing the life saving appliances to be carried by every Indian ship
going to sea from any port or place in India.

(2) In particular and without prejudice to the generality of the foregoing
power, such rules may provide for all or any of the following matters
namely:—

(a) the arranging of ships into classes, having regard to the services in which
they are employed, the nature and duration of the voyage and the number of
persons carried;

(b) the number, description and mode of construction of the boats, life-rafts,
line throwing appliances, life-jackets and life-buoys to be carried by ships
according to the classes in which the ships are arranged;

(c) the equipment to be carried by any such boats and rafts and the method to
be provided to get the boats and other life saving appliances into the water,
including oil for use in stormy weather;

(d) the provision in ships of a proper supply of lights inextinguishable in water
and fitted for attachment to life-buoys;

(e) the quantity, quality and description of buoyant apparatus to be carried on
board ships either in addition to or in substitution for boats, life-rafts, life-
jackets and life-buoys;
(f) the position and means of securing the boats, life-rafts, life-jackets, life-buoys and buoyant apparatus;

(g) the marking of boats, life-rafts, and buoyant apparatus so as to show their dimensions and the number of persons authorised to be carried on them;

(h) the meaning of life-boats and the qualifications and certificates of life-boatmen;

1[(hh) the training of crew in launching and using life-rafts;]

1. Ins. by Act 21 of 1966, s. 8 (w.e.f. 28-5-1966).

2. Subs. by s. 8, ibid., for “boats” (w.e.f. 28-5-1966).

(i) the provision to be made for mustering the persons on board and for embarking them in the 2[boats or rafts] (including provision for the lighting of, and the means of ingress to and egress from, different parts of the ship);

(j) the provision of suitable means situated outside the engine room whereby any discharge of water into the 2[boats or rafts] can be prevented;

(k) the assignment of specific duties to each member of the crew in case of emergency;

(l) the manner in which a notice given under section 287 or section 290 shall be communicated to the customs collector;

(m) the practice in ships of boat drills, and fire drills;

(n) the provision in ships of means of making effective distress signals by day and by night;
(o) the provision in ships, engaged on voyages in which pilots are likely to be embarked, of suitable pilot ladders and of ropes, lights and other appliances designed to make the use of such ladders safe;

(p) the periodical examination of any appliances or equipment required by any rules made under this Act to be carried by ships; and

(q) the fees to be charged for the grant of any certificate under sub-section (3) of section 290.

289. Rules relating to fire appliances.—The Central Government may make rules prescribing the methods to be carried and the appliances to be carried by every Indian ship going to sea from any port or place in India for the prevention, detection and extinction of fire on the ship (hereinafter referred to as fire appliances).

290. Inspection of life saving appliances and fire appliances.—(1) A surveyor may, at any reasonable time, inspect any ship for the purpose of seeing that she is properly provided with life saving and fire appliances in conformity with the rules made under this Act.

(2) If the said surveyor finds that the ship is not so provided he shall give to the master or owner notice in writing pointing out the deficiency, and also pointing out what in his opinion is requisite to remedy the same.

(3) Every notice so given shall be communicated in the prescribed manner to the customs collector of any port at which the ship may seek to obtain a clearance and the ship shall be detained until a certificate signed by such surveyor is produced to the effect that the ship is properly provided with life saving and fire appliances in conformity with the said rules.

Installation of Radio Telegraphy, Radio Telephony and Direction Finders
291. Radio requirements.—1[(1) Every Indian passenger ship and every Indian cargo ship of three hundred tons gross tonnage or more, shall in accordance with the rules made under section 296, be provided with a radio installation and shall maintain a radio telegraph service or a radio telephone service of the prescribed nature and shall be provided with such certificated operators as may be prescribed.]  

1. Subs. by Act 21 of 1966, s. 9, for sub-section (1) (w.e.f. 28-5-1966).

2. Subs. by s. 9, ibid., for "any other ship of sixteen hundred tons gross or more shall be a radio telegraph installation; and that required to be provided for a ship of less than sixteen hundred tons gross, other than a passenger ship” (w.e.f. 28-5-1966).

3. Ins. by s. 9, ibid. (w.e.f. 28-5-1966).

4. Section 292 renumbered as sub-section (1) of that section by s. 10, ibid. (w.e.f. 28-5-1966).

5. Ins. by s. 10, ibid. (w.e.f. 28-5-1966).

(2) The radio installation required under the said rules to be provided for a passenger ship or for 2[any cargo ship of sixteen hundred tons gross or more shall be a radio telegraph installation; and that required to be provided for a cargo ship of less than sixteen hundred tons gross] shall be either a radio telegraph installation or a radio-telephone installation at the option of the owners.

3[(3) The Central Government may, having regard to the length of the voyage or voyages on which a ship or a class of ships is engaged and the maximum distance of such ship or class of ships will be from the shore during such voyage or voyages, exempt, by order in writing and subject to such conditions and restrictions as may be specified therein, any ship or class of ships from
compliance with all or any of the obligations imposed by or under this section if that Government is satisfied that such compliance would be unreasonable or unnecessary:

Provided that an exemption from the obligation to provide with radio telegraph installation in respect of any passenger ship or in respect of any cargo ship of sixteen hundred tons gross tonnage or more shall be subject to the condition that she shall have on board a radiotelephone installation:

Provided further that no exemption shall be granted under this section, if it will have an adverse effect on the general efficiency of the distress service for the safety of ships.]

292. Radio direction finding apparatus.—[(1) Every Indian ship of sixteen hundred tons gross or more shall be provided with a radio direction finder of the prescribed description.

(2) The Central Government may, by order in writing and subject to such conditions and restrictions as may be specified therein, exempt any ship under five thousand tons gross tonnage from the obligation imposed by sub-section (1), if that Government is satisfied, having regard to the area or areas in which the ship is engaged on a voyage or voyages and the value of radio direction finder as a navigational instrument and as an aid to locating ships, aircraft or survival craft, that such compliance would be unreasonable or unnecessary.]

293. Radio log.—(1) Every ship compulsorily equipped under the provisions of section 291 with a radio telegraph or radio telephone installation shall maintain in the radio telegraph or radio telephone room a radio log in which shall be entered such particulars relating to the operation of the radio telegraph or radio telephone installation and as to the maintenance of the radio telegraph or radio telephone service as may be prescribed.
(2) The provisions of section 215 shall apply to the radio log kept under this section as if it were an official log.

294. Powers of radio inspectors.—(1) A radio inspector may inspect any ship for the purpose of seeing that she is properly provided with a radio telegraph or radio telephone installation and certificated operators in conformity with this Part, and for this purpose may go on board any ship at all reasonable times and do all things necessary for the proper inspection of the ship for the purpose of the provisions of this Part relating to radio telegraphy or radio telephony and may also require the master of the ship to supply him with any information which it is in the power of the master to supply for that purpose, including the production of any certificate granted under this Part in respect of the installation, and of the certificates of the operators 1*** on the ship:


2. Ins. by s. 12, ibid. (w.e.f. 28-5-1966).

3. Subs. by s. 13, ibid., for “signalling lamp of the type approved” (w.e.f. 28-5-1966).

Provided that if a valid safety convention certificate is produced in respect of any ship other than an Indian ship, the inspection shall be limited to seeing that the ship is provided with a radio telegraph or radio telephone installation and that the number of certified operators corresponds substantially with the particulars stated in the certificate.

(2) If a radio inspector finds that a ship is not so provided, he shall give to the master or owner notice in writing pointing out the deficiency, and also pointing out what in his opinion is requisite to remedy the same.
(3) Every notice given under sub-section (2) shall be communicated in the prescribed manner to the customs collector of any port at which the ship may seek to obtain port clearance who shall order that the ship shall be detained until a certificate under the hand of a radio inspector is produced to the effect that the ship is properly provided with a radio telegraph or radio telephone installation and certified operators in conformity with this Part.

295. Application of this Part to ships other than Indian ships.—The provisions of this Part relating to radio telegraphy, radio telephony and direction finders shall apply to ships other than Indian ships while they are within any port in India in like manner as they apply to Indian ships.

296. Power to make rules.—(1) The Central Government may make rules to carry out the purposes of this Part relating to radio telegraphy or radio telephony, or radio direction finders.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(a) the nature of the radio telegraph or radio telephone installation and radio direction finding apparatus to be provided and of the service to be maintained, the form of the radio log and the particulars to be entered therein, and the number, grades and qualifications of certified operators to be carried;

[(aa) the nature of radio telegraph installation to be provided on motor lifeboats and survival craft.]

(b) the manner in which a notice given under section 294 shall be communicated to the customs collector.

(c) the charging of fees for the grant of the certificate referred to in sub-section (3) of section 294, the amount of such fees and the manner in which they shall be recoverable.
Signalling lamps

297. Signalling lamps.—Every Indian ship exceeding one hundred and fifty tons gross shall, when proceeding to sea from any port or place in India to any port or place outside India, be provided with a signalling lamp which shall not be solely dependent upon the ship’s main source of electrical power and which shall be of the type approved by the Central Government.

Stability Information

298. Information about ship’s stability.—(1) There shall be carried on board every Indian ship whose keel was laid after the 15th day of June, 1953, such information in writing as is necessary to enable the master by rapid and simple processes to obtain accurate guidance as to the stability of the ship under varying conditions of service.

1. Subs. by Act 21 of 1966, s. 14, for “about the ship’s stability as is necessary for the guidance of the master in loading and ballasting the ship” (w.e.f. 28-5-1966).

2. Subs. by s. 14, ibid., for sub-section (2) (w.e.f. 28-5-1966).

3. Ins. by s. 14, ibid. (w.e.f. 28-5-1966).

4. Subs. by Act 63 of 2002, s. 8, for “radio telegraphy or radio telephony installation and radio direction finder” (w.e.f. 1-2-2003).

5. Subs. by Act 21 of 1966, s. 15, for “safety certificate” (w.e.f. 28-5-1966).


2)(2) The information shall be in such form as may be approved by the Central Government (which may approve the provision of the information in the form of a diagram or drawing only) and shall be suitably amended
whenever any alterations are made to the ship so as to materially affect such information.

(2A) The information shall be based on the determination of the ship's stability by means of an inclining test of the ship and any amendment thereto shall be effected, if necessary, after re-inclining the ship:

Provided that the Central Government may, by a general or special order —

(a) in the case of any ship, allow the information or an amendment thereto to be based on a similar determination of the stability of a sister-ship;

(b) in the case of a ship specially designed for the carriage of liquids or ore in bulk, or of any class of such ships, dispense with such tests if it is satisfied from the information available in respect of similar ship that the ship's proportions and arrangements are such as to ensure more than sufficient stability in all probable loading conditions.]

(3) When any information [including any amendment thereto] under this section is provided for any ship, the owner shall send a copy thereof to the Director-General.

(4) It is hereby declared that for the purpose of section 208 (which requires documents relating to navigation to be delivered by the master of a ship to his successor) information [including any amendment thereto] under this section shall be deemed to be a document relating to the navigation of the ship.

Safety certificates, safety equipment certificates, safety radio certificates, exemption certificates, etc.

299. Safety certificates and qualified safety certificates for passenger ships.—(1) Where, on receipt of a declaration of survey granted under Part VIII in respect of passenger ship, the Central Government is satisfied that the ship complies with the construction rules and with the provisions of this Act
and the rules made there under relating to life saving and fire appliances and 4[radio installation] applicable to such ship and is provided with lights and shapes and the means of making fog and distress signals required by the collision regulations, the Central Government may issue in respect of the ship a certificate in the prescribed form to be called a 5[passenger ship safety certificate].

(2) Where on receipt of a declaration of survey granted under Part VIII in respect of a passenger ship the Central Government is satisfied that there is in force in respect of the ship an exemption certificate granted under section 302 and that the ship complies with all the requirements referred to in sub-section (1) other than those from which the ship is exempt under that certificate, the Central Government may issue in respect of the ship a certificate in the prescribed form to be called a 6[qualified passenger ship safety certificate].

(3) Where on receipt of a declaration of survey granted under Part VIII in respect of a special trade passenger ship 2***, the Central Government is satisfied that the ship complies with the provisions of this Act and the rules made there under relating to construction, life saving appliances and space requirements, it may in addition to the certificates referred to in sub-sections (1) and (2), issue in respect of the ship a special trade passenger ship safety certificate and a special trade passenger ship space certificate.

1. Ins. by Act 69 of 1976, s. 22 (w.e.f. 1-12-1976).

2. The words “or a pilgrim ship” omitted by Act 63 of 2002, s. 8 (w.e.f. 1-2-2003).

3. Ins. by s. 8, ibid. (w.e.f. 1-2-2003).

4. Ins. by Act 21 of 1966, s. 16 (w.e.f. 28-5-1966).
5. The words “of five hundred tons gross or more” omitted by Act 41 of 1984, s. 18 (w.e.f. 15-7-1985).

6. Subs. by Act 63 of 2002, s. 9, for “the Central Government” (w.e.f. 1-2-2003).

7. Subs. by Act 41 of 1984, s. 18, for “if the ship performs international voyages” (w.e.f. 15-7-1985).

8 Subs. by Act 63 of 2002, s. 9, for “of the Act and the Central Government” (w.e.f. 1-2-2003).

9. Ins. by s. 9, ibid. (w.e.f. 1-12-2003).

3[(4) The certificates issued under sub-sections (1) and (2), sub-sections (1) and (2) of section 300 and section 301 shall be supplemented by a record of equipment in the prescribed form.]

4[299A. Safety construction certificates and construction certificates for cargo ships.—(1) Where in respect of any Indian cargo ship 5*** 6[the Central Government or any person authorised by by it in this behalf] is satisfied that the ship has been surveyed in the manner prescribed under section 299B and that she complies with the construction rules made under section 284, 6[that Government or the authorised person] may issue in respect of the ship—

(a) 7[if the ship is of five hundred tons gross or more and performs international voyages], a certificate in the prescribed form to be called a cargo ship safety construction certificate;

(b) in other cases, a certificate in the prescribed form, to be called a cargo ship construction certificate.

(2) Where in respect of any such ship as is referred to in sub-section (1) there is no force an exemption certificate granted under section 302 8[and the]
Central Government or any person authorised by it in this behalf] is satisfied that the ship complies with all the requirements referred to in that sub-section other than those from which the ship is exempt under that certificate, the 6[that Government or the authorised person] may issue in respect of the ship a certificate in the prescribed form to be called a qualified cargo ship safety construction certificate or a qualified cargo ship construction certificate.

9[(3) The owner of every ship in respect of which a certificate is issued under sub-section (1) or sub-section (2), sub-section (1) or sub-section (2) of section 300 or section 301 shall, so long as the certificate remains in force, cause the ship to be surveyed in the manner as specified in the Safety Convention or in cases where such specified manner is not applicable, in such manner as the rules made in this behalf prescribe, as the case may be.]

299B. Power to make rules.—(1) The Central Government may, subject to the condition of previous publication, make rules to regulate the making of surveys of cargo ships under this part.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: —

(a) the times and places at which, and the manner in which, surveys are to be made;

(b) the requirements as to construction, machinery, equipment and marking of sub-division load-lines which are to be fulfilled by cargo ships generally or by any class of cargo ships in particular;

(c) the duties of the surveyor making a survey;

(d) the rates according to which the fees payable in respect of surveys are to be calculated in the case of all or any of the places or ports of survey;
(e) the closing of and keeping closed, the openings in ships’ hulls and any water-tight bulkheads;

(f) the securing of and keeping in place, and the inspection of, contrivances for closing any such openings as aforesaid;

(g) the operation of mechanisms of contrivances for closing any such openings as aforesaid and the drills in connection with the operation thereof;

and

(h) the entries to be made in the official log book or other record to be kept of any of the matters aforesaid.

300. Cargo ship safety equipment and cargo ship equipment certificates for ships other than passenger ships.—(1) Where in respect of an Indian cargo ship the Central Government or any person authorised by it in this behalf is satisfied that the ship complies with the provisions of this Act and the rules made thereunder relating to life saving and fire appliances applicable to such ship and is provided with lights and shapes and the means of making fog and distress signals required by the collision regulations, that Government or the authorised person may issue in respect of the ship—

1. Subs. by Act 63 of 2002, s. 10, for section 300 (w.e.f. 1-2-2003).

2. Subs. by s. 11, ibid., for section 301 (w.e.f. 1-2-2003).

(a) if the ship is of five hundred tons gross or more and performs international voyages, a certificate in the prescribed form to be called a cargo ship safety equipment certificate;

(b) in other cases, a certificate in the prescribed form to be called a cargo ship equipment certificate.
(2) Where, in respect of a ship referred to in sub-section (1), there is in force an exemption certificate granted under section 302 and the Central Government or any person authorised by it in this behalf is satisfied that the ship complies with all the requirements referred to in that sub-section, other than, those from which the ship is exempt under that certificate, that Government or the authorised person may issue a certificate in the prescribed form to be called a qualified cargo ship safety equipment certificate or a qualified cargo ship equipment certificate, as the case may be.

2[301. Cargo ship safety radio certificate and qualified cargo ship safety radio certificate, etc.—The owner or master of any Indian cargo ship, which is required by the provisions of section 291 to be provided with a radio installation shall, if the Central Government or any person authorised by it in this behalf is satisfied that the ship complies with all the provisions of this Act and the rules made thereunder relating to radio installation applicable to such ship, receive—

(a) in the case of a ship of three hundred tons gross or more, a certificate in the prescribed form to be called a cargo ship safety radio certificate;

(b) in the case of a ship of three hundred tons gross or more but less than three thousand tons gross performing voyages only between ports or places in India, a certificate in the prescribed form to be called a qualified cargo ship safety radio certificate; and

(c) in other cases, a certificate in the prescribed form to be called a cargo ship radio certificate.]

302. Exemption certificates.—The owner or master of an Indian ship which is exempt from any of the provisions of the construction rules or of this Act and the rules made thereunder relating to life saving and fire appliances and radio telegraphy or radio telephony installation shall, on application to the officer appointed in this behalf by the Central Government receive from such
officer a certificate in the prescribed form to be called an exemption certificate.

1[303. Duration of certificates.—(1) A passenger ship safety certificate, a qualified passenger ship safety certificate, a special trade passenger ship safety certificate and a special trade passenger ship space certificate issued under this Part shall be in force for a period of twelve months from the date of its issue or for such shorter period as may be specified in the certificate.

1. Subs. by Act 63 of 2002, s. 12, for section 303 (w.e.f. 1-2-2003).

(2) A cargo ship safety equipment certificate, a qualified cargo ship safety equipment certificate, a cargo ship equipment certificate, a qualified cargo ship equipment certificate, a cargo ship safety construction certificate, a qualified cargo ship safety construction certificate, a cargo ship construction certificate, a qualified cargo ship construction certificate, a cargo ship safety radio certificate, a qualified cargo ship safety radio certificate and a cargo ship radio certificate issued under this Part shall be in force for a period of five years from the date of its issue or for such shorter period as may be specified in the certificate.

(3) An exemption certificate issued under section 302 shall be in force for the period for which the certificate to which it relates remains in force or for such shorter period as may be specified in the exemption certificate.

(4) Notwithstanding the requirements of sub-sections (1), (2) and (3) when the survey is completed within three months before the expiry date of the existing certificate, the new certificate may be valid from the date of completion of the survey,—

(a) for a passenger ship, a date not exceeding twelve months; and

(b) for a cargo ship, a date not exceeding five years,
from the date of expiry of the existing certificate.

(5) The Central Government or any person authorised by it in this behalf may grant an extension of any certificate issued under this Part in respect of an Indian ship—

(a) where the ship is not in a port in which it is to be surveyed, on the date when the certificate would, but for the extension, have expired, for such period not exceeding three months from the said date as may be sufficient to enable the ship to complete its voyage to the port in which it is to be surveyed;

(b) where the ship is engaged on a short voyage and whose certificate has not been extended under clause (a), for a period up to one month from the date when the certificate would have expired:

Provided that any extension granted under clause (a) shall cease to be operative upon the ship's arrival at the port referred to in that clause:

Provided further that no extension shall be granted under clause (b) in respect of a certificate extended under clause (a).

(6) Where an existing certificate of a ship has been extended under sub-section (5) and when survey is completed, the new certificate shall be valid up to,—

(a) for a passenger ship, a date not exceeding twelve months; or

(b) for a cargo ship, a date not exceeding five years,

from the date of expiry of the existing certificate.
(7) In special circumstances where the Central Government so determines, a new certificate, need not be dated from the date of expiry of the existing certificate, shall be valid up to,—

(a) for a passenger ship, a date not exceeding twelve months;

(b) for a cargo ship, a date not exceeding five years,

from the date of completion of the survey.

(8) Where a certificate referred to in sub-section (2) is issued for a period of less than five years, the Central Government or any person authorised by it in this behalf may extend the validity of the certificate beyond the expiry date to the maximum period specified in sub-section (2) if appropriate surveys, applicable when a certificate is issued for a period of five years, are carried out.

(9) If a survey has been completed and a new certificate cannot be issued or placed on board the ship before the expiry date of the existing certificate, the Central Government or any person authorised by it in this behalf may endorse the existing certificate and such certificate shall be in force for a further period which shall not exceed five months from the expiry date of the existing certificate.

(10) If annual, intermediate or periodical surveys in the manner as specified in the Safety Convention or in cases where such specified manner is not applicable, in such manner as the rules made in this behalf prescribe, as the case may be, are completed before the period stipulated therefore, then—

(a) the anniversary date mentioned on the relevant certificate shall be amended by endorsement to a date which shall not be more than three months later than the date on which the survey was completed;
(b) the subsequent surveys shall be completed at the stipulated intervals using the new anniversary date so endorsed;

(c) the expiry date may remain unchanged provided one or more annual, intermediate or periodical surveys, as the case may be, are carried out so that the maximum stipulated intervals between the surveys are not exceeded.

(11) A certificate issued under section 299A, section 300 or section 301 shall cease to be valid,

(a) if the relevant surveys specified in the Safety Convention or in cases where such specified manner is not applicable, in such manner as the rules made in this behalf prescribe, as the case may be, are not completed within the stipulated period;

(b) if the certificate is not endorsed; or

(c) if the ship ceases to be an Indian ship.]

304. Modification of safety convention certificates as respects life saving appliances.—(1) If an Indian ship in respect of which 1\[a passenger ship safety certificate\] 2\[or a special trade passenger ship safety certificate\] issued under section 299 is in force has on board in the course of a particular voyage a total number of persons less than the number stated in the certificate to be the number for which the life saving appliances on the ship provide, the owner or master of the ship may obtain from the authority issuing the certificate, or any person, authorised by the authority for the purpose, a memorandum to be attached to the certificate stating the total number of persons carried on the ship on that voyage, and the modifications which may be made for the purpose of that voyage in the particulars with respect to life saving appliances stated in the certificate.

1. Subs. by Act 21 of 1966, s. 20, for “a safety certificate” (w.e.f. 28-5-1966).
2. Ins. by Act 69 of 1976, s. 23 (w.e.f. 1-12-1976).

3. Subs. by s. 23, ibid., for “safety convention certificate” (w.e.f. 1-12-1976).

(2) Where a valid passenger ship safety certificate or special trade passenger ship safety certificate is produced in respect of a passenger ship other than an Indian ship and there is attached to the certificate a memorandum which—

(a) has been issued by or under the authority of the Government of the country in which the ship is registered, and

(b) modifies for the purpose of any particular voyage, in view of the number of persons actually carried on that voyage, the particulars stated in the certificate with respect to life saving appliances,

the certificate shall have effect for the purpose of that voyage as if it were modified in accordance with the memorandum.

305. Recognition of certificates issued outside India.—A valid safety convention certificate issued in respect of a ship other than an Indian ship by the Government of the country to which the ship belongs shall, subject to such rules as the Central Government may make in this behalf, have the same effect in India as the corresponding certificate issued in respect of an Indian ship under this Part.

306. Issue of certificates to foreign ships in India and Indian ships in foreign countries.—(1) The Central Government may, at the request of the Government of a country to which the Safety Convention applies, cause an appropriate safety convention certificate to be issued in respect of a ship registered or to be registered in that country, if it is satisfied in like manner as in the case of an Indian ship that such certificate can properly be issued, and, where a certificate is issued at such a request, it shall contain a statement that it has been so issued.
1. Subs. by Act 21 of 1966, s. 21, for “registered” (w.e.f. 28-5-1966).

2. Subs. by s. 21, ibid., for “in respect of an Indian ship” (w.e.f. 28-5-1966).

3. Subs. by Act 69 of 1976, s. 24, for sub-section (1) (w.e.f. 1-12-1976).

4. Subs. by Act 21 of 1966, s. 22, for “Indian ship of five hundred tons gross or more, not being a passenger ship” (w.e.f. 28-5-1966).

5. Subs. by s. 22, ibid., for clause (b) (w.e.f. 28-5-1966).

6. Subs. by Act 63 of 2002, s. 13, for “radio telegraphy certificate or a cargo ship safety radio telephony certificate” (w.e.f. 1-2-2003).

7. Subs. by Act 21 of 1966, s. 22, for “qualified safety equipment certificate” (w.e.f. 28-5-1966).

(2) The Central Government may request the Government of a country to which the Safety Convention applies, to issue an appropriate safety convention certificate in respect of a ship registered or to be registered in India and a certificate issued in pursuance of such a request and containing a statement that it has been so issued shall have effect for the purpose of this Act as if it had been issued by the Central Government.

307. Prohibition on proceeding to sea without certificates.—(1) No Indian passenger ship shall proceed on a voyage from any port or place in India to any port or place out side India—

(a) if the ship is a ship, other than a special trade passenger ship, unless there is in force in respect of the ship either—

(i) a passenger ship safety certificate issued under section 299; or

(ii) a qualified passenger ship safety certificate issued under section 299 and an exemption certificate issued under section 302;
(b) if the ship is a special trade passenger ship, unless there is in force in respect of the ship the certificate referred to in sub-clause (i) of clause (a) or the certificates referred to in sub-clause (ii) of that clause and a special trade passenger ship safety certificate and a special trade passenger ship space certificate, being in each case a certificate which by the terms thereof is applicable to the voyage on which the ship is about to proceed and to the trade in which she is for the time being engaged.]

(2) No sea-going 4[Indian cargo ship, of five hundred tons gross or more,] shall proceed on a voyage from any place in India to any place outside India unless there is in force in respect of the ship—

(a) such certificate or certificates as would be required in her case by the provisions of sub-section (1) if she were a passenger ship, or

4[(b) a cargo ship safety construction certificate issued under section 299A, a cargo ship safety equipment certificate issued under section 300 and a cargo ship safety 6[radio certificate] issued under section 301, or]

(c) a 7[qualified cargo safety equipment certificate] issued under section 300 and an exemption certificate issued under section 302 being certificates which by the terms thereof are applicable to the voyage on which the ship is about to proceed and to the trade in which she is for the time being engaged.

1[(2A) No sea-going Indian cargo ship, less than five hundred tons gross, shall proceed on a voyage from any port or place in India to any port or place in India or to any port or place outside India unless there is in force in respect of the ship a cargo ship construction certificate issued under section 299A and a cargo ship equipment certificate issued under section 300 and,—}
1. Subs. by Act 63 of 2002, s 13, for sub-section (2A) (w.e.f. 1-2-2003).

2. Subs. by Act 21 of 1966, s. 22, for “Indian ship of five hundred tons gross or more, not being a passenger ship,” (w.e.f. 28-5-1966).

3. Subs. by s. 22, ibid., for “an equipment certificate” (w.e.f. 28-5-1966).

4. Subs. by Act 63 of 2002, s. 13, for “equipment certificate issued under, section 300” (w.e.f. 1-2-2003).

5. Ins. by s. 13, ibid. (w.e.f. 1-2-2003).

6. Subs. by Act 21 of 1966, s. 22, for “qualified equipment certificate” (w.e.f. 28-5-1966).

7. Ins. by s. 22, ibid. (w.e.f. 28-5-1966).

8. Subs. by Act 63 of 2002, s. 22, for “radio telegraphy certificate or a cargo ship radio telephony certificate” (w.e.f. 1-2-2003).

9. Subs. by Act 21 of 1966, s. 23, for “every ship other than an Indian ship being a passenger ship of five hundred tons gross or more” (w.e.f. 28-5-1966).

10. The words “other than an Indian ship” omitted by s. 23, ibid. (w.e.f. 28-5-1966).

(i) a cargo ship safety radio certificate if the ship is three hundred tons gross or more;

(ii) a qualified cargo ship safety radio certificate if the ship is operating within ports or places in India and is of three hundred to five hundred tons gross; or

(iii) a cargo ship radio certificate if the ship is less than three hundred tons gross,
issued under section 301.]

(3) No sea-going 2[Indian cargo ship of the five hundred tons gross or more,] shall proceed on a voyage between ports or places in India unless there is in force in respect of the ship—

(a) 3[a cargo ship 4[safety construction certificate or cargo ship construction certificate issued under section 299A]

(b) a 5[cargo ship equipment certificate or a] 6[qualified cargo ship equipment certificate] issued under section 300 and an exemption certificate issued under section 302;

(c) a 7[cargo ship] 8[safety radio certificate or a qualified cargo ship safety radio certificate, if the ship operates between ports or places in India and is between five hundred to three thousand tons gross] issued under section 301 or an exemption certificate issued under section 302;

being a certificate which by the terms thereof is applicable to the voyage on which the ship is about to proceed and to the trade in which she is for the time being engaged.

(4) The master of every ship to which this section applies shall produce to the customs collector from whom a port clearance for the ship is demanded the certificate or certificates required by the foregoing provisions of this section to be in force when the ship proceeds to sea, and the port clearance shall not be granted and the ship may be detained until the said certificate or certificates are so produced.

308. Production of certificates by ships other than Indian ships.—(1) The master of 9[every ship, being a passenger ship or being a cargo ship of three hundred tons gross or more,] belonging to a country to which the Safety Convention applies, shall produce a valid safety convention certificate to the
customs collector from whom a clearance for the ship is demanded in respect of a voyage from a port or place in India to a port or place outside India and a clearance shall not be granted and the ship may be detained until such a certificate is so produced.

(2) Where a valid safety convention certificate is produced in respect of a ship, the ship, not be deemed to be unsafe for the purpose of section 342 by reason of the defective condition of her hull, equipment or machinery unless it appears that the ship cannot proceed to sea without danger to the passengers or crew owing to the fact that the actual condition of the ship does not correspond substantially with the particulars stated in the certificate.

1(3) Nothing in this section shall apply in respect of an Indian ship or a nuclear ship;

1. Ins. by Act 21 of 1966, s. 23 (w.e.f. 28-5-1966).
2. Ins. by s. 24, ibid. (w.e.f. 28-5-1966).
3. Ins. by s. 25, ibid. (w.e.f.28-5-1966).
4. Subs. by Act 25 of 1970, s. 5, for clause (a) (w.e.f. 21-7-1968).
5. Subs. by s. 5, ibid., for clause (d) (w.e.f. 21-7-1968).

309. Application of certain sections to certificates.—The provisions of sections 228 to 231 (inclusive) shall apply to and in relation to every certificate issued by the Central Government under sections 299, 299A, 300, 301 and 302 in the same manner as they apply to and in relation to a certificate of survey.

3[309A. Alterations pending issue of a safety convention certificate.—Where any survey of a ship for the purpose of issue under this Part of a safety
convention certificate has been completed, then, notwithstanding anything contained in this Act, the owner, agent or master of the ship shall not, until such certificate has been issued, make, or cause to be made, any alteration in the structural arrangements, machinery, equipment and other matters covered by the survey without the prior written permission of the Central Government or a person appointed by that Government in this behalf.]

Load lines

310. Ships exempt from provisions relating to load lines.—(1) Save as otherwise provided in this section, the provisions of this Part relating to load lines shall apply to all sailing vessels as they apply to ships, and accordingly, the expression “ship” in the said provisions of this Part shall be construed as including a sailing vessel.

(2) The provisions of this Part relating to load lines shall not apply to—

(a) any sailing vessel, being an existing vessel of less than one hundred and fifty tons gross, or a new vessel of less than twenty-four meters in length, and in either case employed in plying coastwise between ports situated within India, Pakistan, Burma and Ceylon;

(b) any ship solely engaged in fishing;

(c) any pleasure yacht.

(3) The Central Government may, on such conditions as it may think fit, exempt from the provisions of this Part relating to load lines—

(a) any ship plying between the near neighboring ports of two or more countries, if the Central Government and the Governments of those countries are satisfied that the sheltered nature and conditions of the voyages between those ports make it unreasonable or impracticable to apply to ships so plying the provisions of this Part relating to load lines;
(b) any ship plying between near neighbouring ports of the same country, if the Central Government is satisfied as aforesaid;

(c) wooden ships of primitive build, if the Central Government considers that it would be unreasonable or impracticable to apply the said provisions to them;

5[(d) any coasting ship, being an existing ship of less than one hundred and fifty tons gross or a new ship of less than twenty-four meters in length:

Provided that any such ship does not carry cargo;

(e) any ship which embodies features of a novel kind, if the Central Government is satisfied that the application of the provisions of this Part relating to load lines to such a ship might seriously impede research into development of such features and their incorporation in ships and

the Central Government and the Governments of the countries to be visited by the ship are satisfied that the ship complies with safety requirements which are adequate for the purposes for which the ship is intended and are such as to ensure the overall safety of the ship;

(f) any ship which is not normally engaged on voyages to ports outside India but which in exceptional circumstances is required to undertake such voyage if the Central Government is satisfied that the ship complies with safety requirements which are adequate for such voyage.]

311. Power to make rules as to load lines.—The Central Government may, subject to the condition of previous publication, make rules (hereafter in this Act referred to as the load line rules) regulating the survey of ships for the purpose of assignment and marking of load lines and prescribing the conditions (hereafter in this Act referred to as the conditions of assignment) on which load lines may be assigned.
312. Marking of deck line and load lines.—(1) No Indian ship, being a ship of which the keel was laid 1(on or after the 21st day of July, 1968), and not being exempt from the provisions of this Part relating to load lines, shall proceed to sea unless—

1. Subs. by Act 25 of 1970, s. 6, for “after the 30th day of June, 1932” (w.e.f. 21-7-1968).

2. Subs. by s. 6, ibid., for “before the 1st day of July 1932” (w.e.f. 21-7-1968).

3. Subs. by s. 6, ibid., for clause (c) (w.e.f. 21-7-1968).

4. Ins. by s.7, ibid. (w.e.f. 21-7-1968).

(a) the ship has been surveyed in accordance with the load line rules;

(b) the ship complies with the conditions of assignment;

(c) the ship is marked on each side with a mark (hereafter in this Act referred to as a deck line) indicating the position of the uppermost complete deck as defined by the load line rules and with marks (hereafter in this Act referred to as load lines) indicating the several maximum depths to which the ship can be safely located in various circumstances prescribed by the load line rules;

(d) the deck line and load lines are of the description required by the load line rules, the deck line is in the position required by those rules, and the load lines are of the number required by such of those rules as are applicable to the ship; and

(e) the load lines are in the position required by such of the load line rules as are applicable to the ship.
(2) No Indian ship, being a ship of which the keel was laid before the 21st day of July, 1968, and not being exempt from the provisions of this Part relating to load lines, shall proceed to sea unless—

(a) the ship has been surveyed and marked in accordance with clauses (a), (c) and (d) of sub-section (1);

(b) the ship complies with the conditions of assignment in principle and also in detail so far as, in the opinion of the Central Government, is reasonable and practicable having regard to the efficiency of the protection of openings, the guard rails, the freeing ports and the means of access to the crew's quarters provided by the arrangements, fittings and appliances existing on the ship at the time when she is first surveyed under this section; and

(c) the load lines are in the position required by clause (c) of sub-section (1).

(3) Any ship attempting to proceed to sea without being surveyed and marked as required by this section may be detained until she has been surveyed and marked, and any ship which does not comply with the conditions of assignment to the extent required in her case by this section shall be deemed to be unsafe for the purpose of section 336.

(4) Alterations after survey.—Where any survey under this Part of a ship for the purpose of assignment and marking of load lines has been completed then, notwithstanding anything contained in this Act, the owner, agent or master of the ship shall not make or cause to be made any alteration in the structure, equipment, arrangements, material or scantlings covered by the survey without the prior written permission of the Central Government or a person authorised by that Government in this behalf.]
313. Submersion of load lines.—(1) An Indian ship (not being exempt from the provisions of this Part relating to load lines) shall not be so loaded as to submerge in salt water, when the ship has no list, the appropriate load line on each side of the ship, that is to say, the load line indicating or purporting to indicate the maximum depth to which the ship is for the time being entitled under the load line rules to be loaded.

(2) Without prejudice to any other proceedings under this Act, any ship which is loaded in contravention of this section may be detained until she ceases to be so loaded.

314. Maintenance of load line marks.—(1) No owner or master of an Indian ship which has been marked in accordance with the foregoing provisions of this Part, shall without reasonable cause, fail to keep the ship so marked.

(2) No person shall conceal, remove, alter, deface or obliterate, or suffer any person under his control to conceal, remove, alter, deface or obliterate any mark placed on any such ship in accordance with the foregoing provisions of this Part except with the authority of a person entitled under the load line rules to authorise the alteration of the mark or except for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right.

315. Inspection of ships with respect to load lines.—A surveyor may inspect any Indian ship for the purpose of seeing that the provisions of this Part relating to load lines have been complied with and for this purpose may go on board the ship at all reasonable times and do all things necessary for the proper inspection of the ship and may also require the master of the ship to supply him with any information which it is in the power of the master to supply for that purpose, including the production of any certificate granted under this Part in respect of the ship.

Load line certificates
316. Issue of load line certificates and effect thereof.—(1) Where an Indian ship has been surveyed and marked in accordance with the foregoing provisions of this Part and complies with the conditions of assignment to the extent required in her case by those provisions, there shall be issued to the owner of the ship on his application and on payment of the prescribed fee,—

1[(a) in the case of an existing ship which is of one hundred and fifty tons gross or more or a new ship of twenty-four meters or more in length, and which in either case carries cargo or passengers, a certificate to be called “an international load line certificate”;

1. Subs. by Act 25 of 1970, s. 8, for clause (a) (w.e.f. 21-7-1968).

(aa) in the case of a ship which is exempted under clause (e) or clause (f) of sub-section (3) of section 310, a certificate to be called “an international load line exemption certificate”; and,

(b) in the case of any other ship, a certificate to be called “an Indian load line certificate”.

(2) Every such certificate shall be issued either by the Central Government or by such other person as may be authorised in that behalf by the Central Government and shall be issued in such form and manner as may be prescribed by the load line rules.

(3) The Central Government may request the Government of a country to which the Load Line Convention applies, to issue a load line certificate in the form of an international load line certificate under that Convention in respect of an Indian ship and a certificate issued in pursuance of such a request and containing a statement that it has been so issued shall have effect for the purposes of this Part as if it had been issued by the Central Government.
(4) Where a load line certificate, issued in pursuance of this section and for the time being in force, is produced in respect of a ship, the ship shall, for the purposes of the foregoing provisions of this Part, be deemed to have been surveyed as required by those provisions, and if the deck line and load lines on the ship are of the number and description required by the load line rules and the position of the deck line and load lines corresponds with the position specified in the certificate, the ship shall be deemed to be marked as required by those provisions.

1[317. Duration and cancellation of certificates.—(1) Every certificate issued in respect of a ship under clause (a) or clause (b) of sub-section (1) of section 316 and every certificate issued under clause (aa) of that sub-section to a ship referred to in clause (e) of sub-section (3) of section 310 shall be in force for a period of five years from the date of its issue or for such shorter period as may be specified in the certificate but subject to the provisions of this Part, a new certificate may be issued in respect of such ship:

1. Subs. by Act 25 of 1970, s. 9, for section 317 (w.e.f. 21-7-1968).


Provided that where it is not possible to issue such new certificate to any ship before the expiry of its existing certificate, the Central Government or any other person authorised by it to issue such certificate may, on being satisfied that no alterations affecting the ship's free board have been made in the structure, equipment, arrangements, material or scantlings, after the last survey of the ship under sub-section (5), extend the validity of the existing
certificate for such period not exceeding five months as the Central Government or such person may deem fit.

2[Provided further that when the survey for the purpose of issue of certificate under sub-section (1) of section 316 is completed within three months before the expiry date of the existing certificate, the new certificate may be valid from the date of completion of such survey to a date not exceeding five years from the date of expiry of the existing certificate.]

(2) Every certificate issued under clause (aa) of sub-section (1) of section 316 to a ship referred to in clause (f) of sub-section (3) of section 310 shall cease to be valid upon the completion of the voyage in respect of which such certificate was issued.

(3) Notwithstanding anything contained in the foregoing provisions of this section, any certificate issued in respect of a ship under sub-section (1) of section 316 shall cease to be valid when—

(a) the ship ceases to be an Indian ship;

(b) material alterations such as would necessitate the assignment of an increased free board have taken place in the hull or superstructure of the ship;

(c) the fittings and appliances for the protection of openings, the guard rails, freeing ports, or the means of access to the crew's quarters are not maintained in an effective condition;

(d) the structural strength of the ship is lowered to such an extent as to render the ship unsafe;

(e) the certificate is not endorsed to prove that the ship has been surveyed as required under sub-section (5); or
(f) the marking of the deck line and load lines on the ship have not been properly maintained].

4* * * * *

(5) The owner of every ship in respect of which any certificate has been issued under sub-section (1) of section 316 shall, so long as the certificate remains in force, cause the ship to be surveyed in the prescribed manner 3[and the certificate endorsed once at least in each year during the period commencing three months before and ending three months after the anniversary date of expiry of the certificate for the purpose of ensuring that—

(a) alterations have not been made to the hull or superstructure which would affect the calculations determining the position of the load lines;

(b) the fittings and the appliances for the protection of openings, the guard rails, freeing ports, or the means of access to the crew's quarters are maintained in an effective condition;

(c) the free board marks are correctly and permanently marked; and

(d) the stability information required under section 298 is readily available on board]

1[(6) If an annual survey is completed before the period specified in sub-section (5) then,—

1. Subs. by Act 63 of 2002, s. 14, for sub-sections (6) and (7) (w.e.f. 1-2-2003).

(a) the anniversary date mentioned on the certificate shall be amended by endorsement to a date which shall not be more than three months later than the date on which the survey was completed;
(b) the subsequent annual survey required by sub-section (5) shall be completed using the new anniversary date;

(c) the expiry date of the certificate may remain unchanged provided one or more annual survey is carried out so that the maximum interval between the surveys specified under sub-section (5) is not exceeded.

(7) If a certificate under sub-section (1) of section 316 is issued for a period of less than five years, the Central Government or any person authorised by it in this behalf, may extend the validity of the certificate beyond the expiry date to a maximum period specified in sub-section (1):

Provided that, annual surveys referred to in sub-section (5) are carried out as may be appropriate.

(7A) If a ship at the time when a certificate expires is not in a port at which it is to be surveyed, the Central Government or any person authorised by it in this behalf may extend the period of validity of the certificate, but this extension shall be granted only for the purpose of allowing the ship to complete the voyage to the port in which it is to be surveyed and also only in cases where it appears proper and reasonable to do so:

Provided that no certificate shall be extended for a period longer than three months and the ship to which an extension is granted shall not on its arrival at the port in which it is to be surveyed leave that port without having a new certificate:

Provided further that when the survey is completed, the new certificate shall be valid to a date not exceeding five years from the date of expiry of the existing certificate.

(7B) A certificate, issued to a ship engaged in short voyage which has not been extended under sub-section (7A), may be extended by the Central
Government or any person authorised by it in this behalf for a period up to one month from the date of expiry and when the survey is completed, the new certificate shall be valid up to a date not exceeding five years from the date of expiry of the existing certificate.

(7C) In special circumstances where the Central Government so determines a new certificate, need not be dated from the date of expiry of the existing certificate, shall be valid up to a date not exceeding five years from the date of completion of the survey.

(8) Where any certificate has ceased to be valid or been cancelled under this section, the Central Government may require the owner or master of the ship to which the certificate relates to deliver up the certificate as it directs and the ship may be detained until such Requirement has been complied with.

(9) On the survey of any ship in pursuance of this section, there shall be paid by the owner of the ship such fee as may be prescribed.

318. Ships not to proceed to sea without certificate.—(1) No Indian ship shall proceed to sea unless there is in force in respect of the ship a load line certificate issued under the provisions of section 316.

(2) The master of every Indian ship shall produce to the customs collector, from whom a port clearance for the ship is demanded, the certificate which is required by the foregoing provisions of this section to be in force when the ship proceeds to sea, and the port clearance shall not be granted, and the ship may be detained, until that certificate is so produced.

319. Publication of load line certificate and particulars relating to depth of loading.—(1) When a load line certificate has been issued in pursuance of the foregoing provisions of this Part in respect of an Indian ship other than a home-trade ship of less than two hundred tons gross—
(a) the owner of the ship shall forthwith on the receipt of the certificate cause it to be posted up in some conspicuous place on board the ship and to be kept so posted up and legible so long as the certificate remains in force and the ship is in use; and

(b) the master of the ship, before making any other entry in any official log book, shall enter or cause to be entered therein the particulars as to the position of the deck line and load lines specified in the certificate.

(2) Before any such ship leaves any dock, wharf, harbour or other place for the purpose of proceeding to sea, the master thereof shall—

(a) enter or cause to be entered in the official log book such particulars relating to the depth to which the ship is for the time being loaded as the Central Government may by rules made in this behalf prescribe; and

(b) cause a notice in such form and containing such of the said particulars as may be required by the said rules, to be posted up in some conspicuous place on board the ship and to be kept so posted up and legible until the ship arrives at some other dock, wharf, harbour or place:

Provided that the Central Government may by the said rules exempt home-trade ships or any class of home-trade ships from the requirements of clause (b) of this sub-section.

320. Insertion of particulars as to load lines in agreements with crew.—(1) Before an agreement with the crew of any ship in respect of which a load line certificate is in force, is signed by any member, of the crew, the master of the ship shall insert in the agreement the particulars as to the position of the deck line and load lines specified in the certificate.
(2) In the case of a ship required by this Act to engage its crew before a shipping master, the shipping master shall not proceed with the engagement of the crew until—

(a) there is produced to him a load line certificate for the time being in force in respect of the ship; and

(b) he is satisfied that the particulars required by this section have been inserted in the agreement with the crew.

Special provisions as to ship other than Indian ships

321. Issue of load line certificates to foreign ships in India and Indian ships in foreign countries.—1[(1)] The Central Government may, at the request of a country to which the Load Line Convention applies, issue an international load line certificate in respect of a ship 2[registered or to be registered] in that country if it is satisfied in like manner as in the case of an Indian ship that it can properly issue the certificate and where the certificate is issued at such a request, it shall contain a statement that it has been so issued.

1. Section 321 renumbered as sub-section (1) thereof by Act 25 of 1970, s.10 (w.e.f. 21-7-1968).

2. Subs. by s. 10, ibid., for the word “registered” (w.e.f. 21-7-1968).

3. Ins. by s. 10, ibid. (w.e.f. 21-7-1968).

3[(2) The Central Government shall, as soon as may be, after the issue of a certificate in respect of a ship under sub-section (1), forward to the Government at whose request such certificate was issued a copy each of the certificate, the survey report used in computing the free, board of the ship and of the computations.]
322. Recognition of load line certificates issued outside India.—An international load line certificate or, as the case may be, an international load line exemption certificate issued in respect of any ship other than an Indian ship by the Government of the country to which the ship belongs shall, subject to such rules as the Central Government may make in this behalf, have the same effect in India as a load line certificate or, as the case may be, an international load line exemption certificate issued in respect of an Indian ship under this Part.

1. Subs. by Act 25 of 1970, s. 11, for “load line certificate” (w.e.f. 21-7-1968).

2. Subs. by s. 12, ibid., for sub-section (1) (w.e.f. 21-7-1968).

3. Subs. by s. 12, ibid., for clause (c) (w.e.f. 21-7-1968).

4. Subs. by s. 12, ibid., for certain words (w.e.f. 21-7-1968).

5. Ins. by s. 12, ibid. (w.e.f. 21-7-1968).

6. Subs. by s. 12, ibid., for “on any such inspection” (w.e.f. 21-7-1968).

323. Inspection and control of Load Line Convention ships other than Indian ships.—2[(1) A surveyor may, at any reasonable time, go on board any ship (other than an Indian ship) carrying cargo or passengers and registered in a country to which the Load Line Convention applies, when such ship is within any port in India, for the purpose of demanding the production of any international load line certificate or, as the case may be, international load line exemption certificate for the time being in force in respect of the ship:

Provided that such ship is an existing ship of one hundred and fifty tons gross or more or a new ship of twenty-four meters or more in length.]
(2) If a valid international load line certificate is produced to the surveyor on any such demand, the surveyor's powers of inspecting the ship with respect to load line shall be limited to seeing—

(a) that the ship is not loaded beyond the limits allowed by the certificate;

(b) that the position of the load lines on the ship corresponds with the position specified in the certificate;

(c) that no material alterations as would necessitate the assignment of an increased free board have taken place in the hull or superstructures of the ship;

(d) that the fittings and appliances for the protection of openings, the guard rails, the freeing ports and the means of access to the crew's quarters have been maintained on the ship in an effective condition.

(2A) If a valid international load line exemption certificate is produced to the surveyor on demand made under sub-section (1), the surveyor's powers of inspecting the ship with respect to load lines shall be limited to seeing that the conditions stipulated in the certificate are complied with.

(3) If it is found on any inspection under sub-section (2) or, as the case may be, sub-section (2A) that the ship is loaded beyond the limits allowed by the certificate, the ship may be detained and the provisions of section 342 shall apply.

(4) If it is found on any inspection under sub-section (2) or, as the case may be, sub-section (2A) that the load lines on the ship are not in the position specified in the certificate, the ship may be detained until the matter has been rectified to the satisfaction of the surveyor.

(5) If it is found on any inspection under sub-section (2) or, as the case may be, sub-section (2A) that the ship has been so materially altered in respect of
the matters referred to in clauses (c) and (d) of sub-section (2) that the ship is manifestly unfit to proceed to sea without danger to human life, the ship shall be deemed to be unsafe for the purpose of section 336 (in the case of an Indian ship) or for the purpose of section 342 (in the case of any other ship):

Provided that where the ship has been detained under either of the last-mentioned sub-sections, the Central Government shall order the ship to be released as soon as, it is satisfied that the ship is fit to proceed to sea without danger to human life.

(6) If a valid international load line certificate or, as the case may be, international load line exemption certificate is not produced to the surveyor on such demand as aforesaid the surveyor shall have the same power of inspecting the ship, for the purpose of seeing that the provisions of this Part relating to load lines have been complied with as if the ship were an Indian ship.

1. Ins. by Act 25 of 1970, s.12 (w.e.f. 21-7-1968).

2. Ins. by s. 13, ibid. (w.e.f. 21-7-1968).

(7) For the purposes of this section a ship shall be deemed to be loaded beyond the limits allowed by the certificate if she is so loaded as to submerge in salt water, when the ship has no list, the appropriate load line on each side of the ship, that is to say, the load line appearing by the certificate to indicate the maximum depth to which the ship is for the time being entitled under the Load Line Convention, to be loaded.

324. Certificate of Load Line Convention ships other than Indian ships to be produced to customs.—The master of every ship other than an Indian ship being a ship of one hundred and fifty tons gross or more carrying cargo or passengers, and belonging to a country to which the Load Line Convention
applies, shall produce to the Customs Collector from whom a port clearance for the ship from any port of India is demanded—

(a) in a case where port clearance is demanded in respect of a voyage to a port outside India, a valid international load line certificate;

(b) in a case where port clearance is demanded in respect of any other voyage, either a valid international load line certificate or a valid Indian load line certificate;

and the port clearance shall not be granted, and the ship may be detained, until the certificate required by this section is so produced.

325. Marking of deck line and load lines of ships other than Indian ships.—The provisions of section 312 shall apply to ships other than Indian ships proceeding or attempting to proceed to sea from ports in India as they apply to Indian ships subject to the following modifications, namely:—

(a) the said section shall not apply to a ship other than an Indian ship if a valid international load line certificate is produced in respect of the ship; and

(b) subject to the provisions of clause (a), a ship other than an Indian ship which does not comply with the conditions of assignment to the extent required in her case by section 323 shall be deemed to be unsafe for the purpose of section 342.

326. Submersion of load line of ships other than Indian ships.—The provisions of section 313 shall apply to ships other than Indian ships, while they are within any port in India as they apply to Indian ships subject to the following modifications, namely:—

2[(a) no ship belonging to a country to which the Load Line Convention applies being an existing ship of one hundred and fifty tons gross or more or being a new ship of twenty-four metres or more in length shall be detained
and no proceedings shall be taken against the owner or master thereof by virtue of the said section except after an inspection by a surveyor as provided by section 323; and]

(b) the expression “the appropriate load line” in relation to any ship other than an Indian ship shall mean—

(i) in the case of a ship in respect of which there is produced on such, an inspection as aforesaid a valid international load line certificate, or, as the case may be, an international load line exemption certificate] the load line appearing by the certificate to indicate the maximum depth to which the ship is for the time being entitled under the Load Line Convention, to be loaded;

(ii) in any other case, the load line which corresponds with the load line indicating the maximum depth to which the ship is for the time being entitled under the load line rules to be loaded, or, if no load line on the ship corresponds as aforesaid, the lowest load line thereon.

327. Inspection of ships other than Indian ships belonging to non-Convention countries.—The provisions of section 315 shall apply, in the same manner as they apply to Indian ships, to all ships registered in a country to which the Load Line Convention does not apply while they are within Indian jurisdiction.

328. Load line certificates and international load line exemption certificates of ships other than Indian ships.—(1) The provisions of this Part relating to the issue, effect, duration, and cancellation of Indian load line certificates or, as the case may be, international load lines exemption certificates] shall apply to ships other than Indian ships as they apply to Indian ships subject to the following modifications, namely:—

1. Subs. by Act 25 of 1970, s. 14, for the words “renewal and cancellation of Indian load line certificates” (w.e.f. 21-7-1968).
2. Subs. by s. 14, ibid., for “any such certificate issued in respect of a ship of 150 tons gross or more carrying cargo or passengers” (w.e.f. 21-7-1968).

3. Subs. by s. 14, ibid., for the proviso (w.e.f. 21-7-1968).

(a) any such certificate may be issued in respect of any such ship as in respect of an Indian ship provided that any such certificate issued in respect of a ship carrying cargo or passengers being an existing ship of one hundred and fifty tons gross or more or being a new ship of twenty-four metres or more in length and registered, in a country to which the Load Line Convention applies, shall only be valid so long as the ship is not plying on voyages from or to any port in India to or from any place outside India and shall be endorsed with a statement to that effect and shall be cancelled by the Central Government if it has reason to believe that the ship is so plying; and

(b) the survey required for the purpose of seeing whether the certificate should remain in force shall take-place when required by the Central Government.

(2) If the Central Government is satisfied—

(a) that provisions has been made for the fixing, marking and certifying of load lines by the law in force in any country outside India with respect to ships (or any class or description of ships) of that country and has also been so made (or has been agreed to be so made) for recognising Indian load line certificates as having the same effect in ports of that country as certificates issued under the said provision; and

(b) that the said provision for fixing, marking and certifying of load lines is based on the same principles as the corresponding provisions of this Part relating to load lines and is equally effective,
it may, by notification in the Official Gazette, direct that load line certificates issued in pursuance of the said provision or in respect of ships (or that class or description of ships) of that country, shall have the same effect for the purpose of this Part as Indian load line certificates:

3[Provided that such direction shall not apply to any ship carrying cargo or passengers being an existing ship of one hundred and fifty tons gross or more or being a new ship of twenty-four metres or more in length if such ship is registered in a country to which the Load Line Convention applies, and is engaged in plying on voyages from or to any port in India to or from any port outside India.]

329. Certificates to be produced to customs by ships other than Indian ships registered in non-Convention countries.—The master of every ship registered in a country to which the Load Line Convention does not apply shall produce to the customs collector from whom a port clearance for the ship from any port in India is demanded, either an Indian load line certificate or a certificate having effect under this Act as such a certificate, being a certificate for the time being in force in respect of the ship, and the port clearance shall not be granted and the ship may be detained until the certificate required by this section is so produced.

Loading of timber

330. Power to make rules as to timber cargo.—(1) The Central Government shall, subject to the condition of previous publication, make rules (hereafter in this section referred to as the timber cargo rules) as to the conditions on which timber may be carried as cargo in any uncovered space on the deck of any Indian ship.

(2) The timber cargo rules may prescribe a special load line to be used only when the ships carrying timber as cargo on deck and the conditions on which such special load line may be assigned, and may further prescribe either
generally or with reference to particular voyages and seasons the manner and position in which such timber is to be stowed and the provisions which are to be made for the safety of the crew.

(3) Any surveyor may at any reasonable time, inspect any Indian ship carrying a timber as cargo in any uncovered space on her deck for the purpose of seeing whether the timber cargo rules have been complied with.

(4) The foregoing provisions of this section and the timber cargo rules shall apply to ships other than Indian ships while they are within Indian jurisdiction as they apply to Indian ships.

Dangerous goods and grain cargoes

331. Carriage of dangerous goods.—(1) The Central Government may make rules for regulating in the interests of safety the carriage of dangerous goods in ships.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for the classification, packing, labelling and marking of such goods or any class of such goods, stowing of such goods (whether with or without other cargo) including plans for stowing, the fixing of the maximum quantity of any such class of goods which may be carried in different ships or classes of ships, and such other matters relating to dangerous goods as required to be provided for implementing the provisions of the Safety Convention.

1. Subs. by Act 21 of 1966, s. 26, for sub-section (2) (w.e.f. 28-5-1966).

2. Subs. by s. 26, ibid., for certain words (w.e.f. 28-5-1966).

(3) The owner, master or agent of a ship carrying or intending to carry any dangerous goods as cargo and about to make a voyage from a port in India
shall furnish in advance the prescribed particulars of the ship and the cargo to such authority as may be prescribed for the purpose.

(4) A surveyor may inspect the ship for the purpose of securing that any rules under this section are complied with.

(5) If any of the rules made in pursuance of this section is not complied with in relation to any ship, the ship shall be deemed for the purpose of this Part to be an unsafe ship.

(6) This section shall apply, in the same manner as it applies to Indian ships, to ships other than Indian ships while they are within any port in India or are embarking or disembarking passengers or are loading or discharging cargo or fuel within Indian jurisdiction.

Explanation.— In this section the expression “dangerous goods” means goods which by reasons of the nature, quantity or mode of stowage are either singly or collectively liable to endanger the life or the health of persons on or near the ship or to imperil the ship, and includes all substances within the meaning of the expression “explosive” as defined in the Indian Explosives Act, 1884, and any other goods which the Central Government may by notification in the Official Gazette specify as dangerous goods but shall not include,—

(a) any fog or distress signals or other stores or equipment required to be carried by the ship under this Act or the rules or regulations thereunder;

(b) particular cargoes carried in ships specially built or converted as a whole for that purpose, such as tankers.]

1[331A. Grain loading plan.—(1) No grain shall be loaded on board any Indian ship anywhere unless there is in force in respect of such ship a grain-loading plan approved under sub-section (3) or sub-section (4).]
1. Ins. by Act 21 of 1966, s. 27 (w.e.f. 28-5-1966).

2. Ins. by s. 28, ibid. (w.e.f. 28-5-1966).

3. The word “and” omitted by s. 28, ibid. (w.e.f. 28-5-1966).

4. Subs. by s. 28, ibid., for clause (b) (w.e.f. 28-5-1966).

(2) The grain-loading plan shall be in such form and contain such particulars as to the stability of the ship, circumstances of loading on departure and arrival, the main characteristics of the fittings used to prevent the shifting of cargo and such other matters as may be prescribed, having regard to the rules made under sub-section (5) of section 332.

(3) Save as otherwise provided in sub-section (4), the grain-loading plan shall be submitted to the Central Government for approval and that Government may, having regard to the rules made under sub-section (5) of section 332, the stability of the ship and the circumstances of loading on departure and arrival, approve the plan with such modifications, if any, as it may deem necessary.

(4) The Central Government may request the Government of a country to which the Safety Convention applies to approve the grain-loading plan of an Indian ship and an approval given in pursuance of such a request and containing a statement that it has been so given shall have effect for the purposes of this section as if the approval had been given by the Central Government.

(5) The Central Government may, at the request of the Government of a country to which the Safety Convention applies approve the grain-loading plan of a ship registered in that country if the Central Government is satisfied, in the like manner as in the case of an Indian ship, that such approval can properly be given and where approval is given at such a request, it shall contain a statement that it has been so given.
(6) It is hereby declared that for the purposes of section 208 (which requires
document relating to navigation to be delivered by the master of a ship to his
successor) the plan shall be deemed to be a document relating to the
navigation of the ship.]

332. Carriage of grain.—(1) Where grain is loaded on board any Indian ship
anywhere or is loaded within any port in India on board any other ship, all
necessary and reasonable precautions shall be taken to prevent the grain from
shifting; and if such precautions as aforesaid are not taken, the owner or the
master of the ship or any agent of the owner who was charged with the
loading or with sending the ship to sea laden with grain shall be guilty of an
offence under this sub-section and the ship shall be deemed for the purposes
of this Part to be unsafe by reason of improper loading.

(2) Where any ship which is loaded with grain outside India without all
necessary and reasonable precautions having been taken to prevent the grain
from shifting, enters any port in India so laden, the owner or master of the
ship shall be guilty of an offence under this sub-section and the ship shall be
deemed for the purposes of this Part to be unsafe by reason of improper
loading.

(2A) Where grain is loaded on board an Indian ship in accordance with a
grain loading plan approved under section 331A or where grain is loaded on
board any other ship in accordance with a grain-loading plan approved by or
on behalf of the Government of the country in which that ship is registered,
the ship shall be deemed, for the purposes of sub-sections (1) and (2), to have
been loaded with all necessary and reasonable precautions.

(3) On the arrival at a port in India from a port outside India of any ship
carrying a cargo of grain, the master shall cause to be delivered at the port to
such customs or other officer as may be specified by the Central Government
in this behalf, a notice stating—
(a) the draught of water and free board of the said ship after the loading of
the cargo was completed at the final port of loading; 3***

4[(b) the kind of grain carried and quantity thereof stated in cubic feet,
quarters, bushels or tons weight; and

(c) the mode in which the grain is stowed and the precautions taken to
prevent the grain from shifting and where the grain has been stowed in
accordance with the ship’s "grain-loading plan, if any, that it has been so
stowed.]

1[(4) any person authorised in this behalf, by general or special order of the
Central Government may, for securing the observance of the provisions of
this section, go on board a ship carrying a cargo of grain and require the
production of the grain-loading plan of the ship and inspect the mode in
which the cargo is stowed in the ship.]

1. Subs. by Act 21 of 1966, s. 28, for sub-section (4) (w.e.f. 28-5-1966).

2. Subs. by s. 28, ibid., for “make rules in relation to the loading of ships”
(w.e.f. 28-5-1966).

3. Subs. by s. 28, ibid., for “this section” (w.e.f. 28-5-1966).

(5) The Central Government may, subject to the condition of previous
publication, 2[make rules in relation to grain-loading plans and the loading of
ships] with grain generally or of ships of any class specifying the precautions
to be taken, and when such precautions have been prescribed, they shall be
treated for the purposes of this section to be included in the expression
necessary and reasonable precautions”.

(6) In 3[section 331A and this section,] the expression “gram” includes wheat,
maize, oats, rye, barley, rice, pulses and seeds, and the expression “ship
carrying a cargo of grain” means a ship carrying a quantity of grain exceeding
one-third of the ship's registered tonnage reckoning one hundred cubic feet or two tons of weight of grain as equivalent to one ton of registered tonnage.

Sub-division load lines

333. Submersion of sub-division load lines in case of passenger ships.—(1) Where—

(a) an Indian passenger ship has been marked with sub-division load lines, that is to say, load lines indicating the depth to which the ship may be loaded having regard to the extent to which she is sub-divided and to the space for the time being allotted to passengers, and

(b) the appropriate sub-division load line, that is to say, the sub-division load line appropriate to the space for the time being allotted to passengers on the ship, is lower than the load line indicating the maximum depth to which the ship is for the time being entitled under the provisions of this Part to be loaded,

the ship shall not be so loaded as to submerge in salt water the appropriate sub-division load line on each side of the ship when the ship has no list.

(2) Without prejudice to any other proceedings under this Act, any such ship which is loaded in contravention of this section may be detained until she ceases to be so loaded.

Unseaworthy ships

334. Unseaworthy ship not to be sent to sea.—(1) Every person who sends or attempts to send an Indian ship to sea from any port in India in such an unseaworthy state that the life of any person is likely to be thereby endangered shall, unless he proves that he used all reasonable means to insure her being sent to sea in a seaworthy state or that her going to sea in such
unseaworthy state was under the circumstances, reasonable and justifiable, be guilty of an offence under this sub-section.

(2) Every master of an Indian ship who knowingly takes such ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered shall, unless he proves that her going to sea in such unseaworthy state was, under the circumstances, reasonable and justifiable, be guilty of an offence under this sub-section.

(3) For the purpose of giving such proof, every person charged under this section may give evidence in the same manner as any other witness.

(4) No prosecution under this section shall be instituted except by, or with the consent of, the Central Government.

(5) A ship is “unseaworthy” within the meaning of this Act when the materials of which she is made, her construction, qualifications of the master, the number, description and qualifications of the crew including officers, the weight, description and stowage of the cargo and ballast, the condition of her hull and equipment, boilers and machinery are not such as to render her in every respect fit for the proposed voyage or service.

335. Obligation of owner to crew with respect to seaworthiness.—(1) In every contract of service, express or implied between the owner of an Indian ship and the master or any seaman thereof, and in every contract of apprenticeship whereby any person is bound to serve as an apprentice on board any such ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner that such owner and the master, and every agent charged with the loading of such ship or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to ensure the seaworthiness of such ship for the voyage at the time when such voyage commences, and to keep her in a seaworthy state during the voyage.
(2) For the purpose of seeing that the provisions of this section have been complied with, the Central Government may, either at the request of the owner or otherwise, arrange for a survey of the hull, equipment or machinery of any sea-going ship by a surveyor.

Detention of unsafe ships by the Central Government

336. Power to detain unsafe ship and procedure for detention.—(1) Where an Indian ship in any port to which the Central Government may specially extend this section is an unsafe ship, that is to say, is by reason of the defective condition of her hull, equipment or machinery, or by reason of overloading or improper loading, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended, such ship may be provisionally detained for the purpose of being surveyed and either finally detained or released as follows, namely:—

(a) The Central Government, if it has reason to believe, on complaint or otherwise, that any such ship is unsafe, may order the ship to be provisionally detained as an unsafe ship for the purpose of being surveyed.

(b) A written statement of the grounds of such detention shall be forthwith served on the master of such ship.

(c) When the Central Government provisionally orders the detention of a ship, it shall either refer the matter to the Court of survey for the port where the ship is detained, or forthwith appoint some competent person to survey such ship and report thereon; and, on receiving the report, may either order the ship to be released or if in its opinion the ship is unsafe, may order her to be finally detained, either absolutely or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, as the Central Government thinks necessary for the protection of human life.
(d) Before an order for final detention is made, a copy of the report shall be served upon the master of the ship, and within seven days after such service the owner or master may appeal against such report, in the manner prescribed, to the court of survey for the port where the ship is detained.

(e) Where a ship has been provisionally detained and a person has been appointed under this section to survey such ship, the owner or master of the ship, at any time before such person makes that survey, may require that he shall take with him as assessor such person as the owner or master may select, being a person named in the list of assessors for the Court of survey or, if there is no such list, or if it is impracticable to procure the attendance of any person named in such list, a person of nautical engineering or other special skill and experience. If the surveyor and assessor agree that the ship should be detained or released, the Central Government shall cause the ship to be detained or released accordingly, and the owner or master shall have no right of appeal. If the surveyor and assessor differ in their report, the Central Government may act as if the requisition had not been made, and the owner or master shall have a right of such appeal touching the report of the surveyor as is hereinbefore provided in this section.

(f) Where a ship has been provisionally detained, the Central Government may at any time if it thinks it expedient, refer the matter to the Court of survey for the port where the ship is detained.

(g) The Central Government may at any time, if satisfied that a ship detained under this section is not unsafe, order her to be released either upon or without any conditions.

(2) Any person appointed by the Central Government for the purpose (in this Act referred to as a detaining officer) shall have the same power as the Central Government has under this section of provisionally ordering the detention of a ship for the purpose of being surveyed, and of appointing a person to
survey her, and if he thinks that a ship so detained by him is not unsafe, may order her to be released.

(3) A detaining officer shall forthwith report to the Central Government any order made by him for the detention or release of a ship.

(4) A ship detained under this section shall not be released by reason of her Indian register being subsequently closed.

Costs of detention and damages incidental thereto

337. Liability of Central Government for costs and damage when ship wrongly detained.—If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner or the master, for the provisional detention of a ship, the Central Government shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey.

338. Liability of ship owner for costs when ship rightly detained.—If a ship is finally detained under this Part, or if it appears that a ship provisionally detained was at the time of such detention unsafe, or if a ship is detained in pursuance of any provision of this Part which provides for the detention of a ship until a certain event occurs, the owner of the ship shall be liable to pay to the Central Government its costs of and incidental to the detention and survey of the ship; and the ship shall not be released until such costs are paid.

339. Method of calculating costs of detention and survey.—For the purposes of this Act, the costs of and incidental to any proceeding before a Court of survey, and a reasonable amount in respect of the remuneration of the surveyor or any person appointed to represent the Central Government before the Court, shall be deemed to be part of the costs of the detention and survey of the ship.
340. Power to require from complainant security for costs, etc.—When a complaint is made to the Central Government or a detaining officer that an Indian ship is unsafe, it shall be in the discretion of the Central Government or the detaining officer, as the case may be, to require the complainant to give security to the satisfaction of the Central Government or the detaining officer for the costs and compensation which such complainant may become liable to pay as hereinafter mentioned:

Provided that, where the complaint is made by one-fourth, being not less than three, of the seamen belonging to the ship, and is not in the opinion of the Central Government or the detaining officer frivolous or vexatious, such security shall not be required; and the Central Government or the detaining officer shall, if the complaint is made insufficient time before the sailing of the ship, take proper steps to ascertain whether the ship ought to be detained under this Part.

341. Costs, etc., payable by Central Government recoverable from complainant.—Where a ship is detained in consequence of any complaint and the circumstances are such that the Central Government is liable under this Part to pay to the owner of the ship any costs or compensation, the complainant shall be liable to pay to the Central Government all such costs and compensation as the Central Government incurs, or is liable to pay, in respect of the detention and survey of the ship.

342. Application to ships other than Indian ships of provisions as to detention.—When a ship other than an Indian ship is in a port in India and is, whilst at that port, unsafe by reason of the defective condition of her hull, equipment or machinery, or by reason of overloading or improper loading, the provisions of this Part with respect to the detention of ships shall apply to that ship as if she were an Indian ship with the following modifications, namely: —
(a) a copy of the order for the provisional detention of the ship shall forthwith be served on the consular officer for the country to which the ship belongs at or nearest to the port in which such ship is detained;

(b) the consular officer, at the request of the owner or master of the ship, may require that the person appointed by the Central Government to survey the ship shall be accompanied by such person as the consular officer may select, and in that case, if the surveyor and that person agree, the Central Government shall cause the ship, to be detained or released accordingly, but, if they differ, the Central Government may act as if the requisition had not been made, and the owner and master shall have the like right of appeal to a Court of survey touching the report of the surveyor as is hereinbefore provided in the case of an Indian ship; and

(c) where the owner or master of the ship appeals to the Court of survey, the consular officer, at the request of the owner or master, may appoint a competent person to be assessor in the case in lieu of the assessor who, if the ship were an Indian ship, would be appointed otherwise than by the Central Government.

343. Exemption of ships from certain provisions of this Part.—(1) Nothing in this Part—

(a) prohibiting a ship from proceeding to sea unless there are in force in relation to the ship, or are produced the appropriate certificates issued under this Part or the appropriate safety convention certificates;

(b) requiring information about a ship's stability to be carried on board,

shall, unless in the case of information about a ship's stability the Central Government otherwise orders, apply to any troopship, pleasure yacht or fishing vessel or to any cargo ship of less than three hundred tons gross] or to any ship not fitted with mechanical means of propulsion.
1. Subs. by Act 21 of 1966, s. 29, for “any ship of less than five hundred tons gross other than a passenger ship” (w.e.f. 28-5-1966).

2. Subs. by Act 63 of 2002, s.15, for clause (a) (w.e.f. 1-2-2003).

(2) Nothing in the preceding sub-section shall affect the exemption conferred by any other provision of this Act.

(3) Nothing in this Part shall apply to any ship other than an Indian ship while it is within any port in India if it would not have been within such port but for stress of weather or any other circumstance that neither the master nor the owner nor the charterer, if any, of the ship could have prevented or forestalled.

344. Power to make rules respecting certificates under this Part.—(1) The Central Government may, subject to the condition of previous publication, make rules to carry out the purposes of this Part relating to certificates granted under this Part.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

2[(a) the form of any certificate and record of equipment issued under this Part;

(aa) the manner of surveys required to be made in respect of ships to which the manner of surveys specified in the Safety Convention is not applicable;]

(b) the circumstances in which a certificate purporting to have been issued outside India in accordance with the provisions of the Safety Convention or the Load Line Convention shall be recognised in India;

(c) the fees to be charged in respect of any certificate issued under this Part and the manner in which such fees may be recovered.
(d) the fees to be charged for the survey or inspection of hull, machinery, boilers, electrical appliances and other fittings and the materials used for their construction, fire appliances, life-saving appliances, radio communications equipment, radar, echo sounding device and gyro compass, or testing or approval of any of the foregoing equipments or materials used for their manufacture, or examination of plans of construction of any part of ships' hull, machinery, electrical appliances and other equipment aforesaid and the manner in which such fees may be recovered.

1. Ins. by Act 12 of 1983, s. 9 (w.e.f. 18-5-1983).

2. Ins. by Act 21 of 1966, s. 30 (w.e.f. 28-5-1966).

PART IXA

NUCLEAR SHIPS

344A.Application of Act to nuclear ships.—(1) This Part applies only to nuclear ships.

(2) Notwithstanding anything contained in this Act, a nuclear ship shall not be required to obtain or produce any certificate referred to in sub-clauses (i) to (ix) of clause (38) of section 3 or, as the case may be, any like valid safety convention certificate.

(3) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act (other than the provisions of this Part and the provisions of section 456) specified in the notification—

(a) shall not apply to nuclear ships; or

(b) shall apply to nuclear ships, only with such exceptions, modifications and adaptations as may be specified in the notification.
(4) A copy of every notification proposed to be issued under sub-section (3) shall be laid in draft before both Houses of Parliament for a period of not less than thirty days while they are in session and it shall not be issued until it has been approved, whether with or without modification, by each House of Parliament.

344B. Nuclear passenger ship safety certificates and nuclear cargo ship safety certificates.—(1) If in respect of any Indian nuclear passenger or cargo ship the Central Government is satisfied that the ship has been surveyed in accordance with this Act and has been inspected by a person appointed in this behalf by the Central Government and has complied with such special requirements, if any, as that person has, after such inspection, specified, the Central Government may issue—

(a) in the case of a passenger ship, a nuclear passenger ship safety certificate;

(b) in the case of a cargo ship, a nuclear cargo ship safety certificate.

(2) A certificate issued under sub-section (1) shall be in force for a period of twelve months from the date of issue or for such shorter period as may be specified in the certificate.

344C. Prohibition of proceeding to sea without certificates.—(1) No Indian nuclear ship shall proceed on a voyage from any port or place in India to any port or place outside India unless there is in force in respect of the ship—

(a) a nuclear passenger ship safety certificate, if she is a passenger ship;

(b) a nuclear cargo ship safety certificate, if she is a cargo ship.

(2) The master of a ship to which this section applies shall produce to the customs collector from whom a port clearance for the ship is demanded the certificate required by sub-section (1) when the ship proceeds to sea and the
port clearance shall not be granted and the ship may be detained until the said certificate is so produced.

344D. Safety assessment and operating manual.—(1) Every Indian nuclear ship shall have on board a safety assessment and an operating manual in such form and containing such particulars and approved by such authority as may be prescribed.

(2) The safety assessment and the operating manual shall be prepared, maintained and kept up-to-date in such manner as may be prescribed.

344E. Foreign nuclear ships to give advance notice of arrival.—(1) No nuclear ship, other than an Indian ship, shall enter the territorial waters of India unless the master, owner or agent thereof has given such advance notice of the ship's intended arrival in India as may be prescribed, to such authority as may be specified by the Central Government, and has forwarded along with the notice a true copy of the ship's safety assessment to that authority.

(2) If on the examination and evaluation of the ship's safety assessment the authority referred to in sub-section (1) is of opinion that the entry of the ship will involve unreasonable radiation or other hazards to the crew, passengers, members of the public, waterways, food or water resources, he may direct the nuclear ship not to enter the territorial waters of India and the ship shall comply with such direction.

344F. Control on arrival of nuclear ships.—(1) The master of every nuclear ship shall, on arrival at a port in India, give notice of the ship's arrival in the prescribed form to such authority as the Central Government may specify in this behalf.

(2) Any person authorised in this behalf (hereinafter referred to as the authorised person), by general or special order of the Central Government, may go on board such ship for the purpose of verifying that she has on board
a valid nuclear passenger ship safety certificate or, as the case may be, nuclear cargo ship safety certificate and for the purpose of satisfying himself after examining the safety assessment and operating manual and such other things as he deems fit that there are no unreasonable radiation or other hazards to the crew, passengers members of the public, waterways, food or water resources.

(3) If the authorised person is satisfied after such examination that there are no unreasonable radiation or other hazards to the crew, passengers, members of the public, waterways, food or water resources, he may issue a certificate to that effect.

344G. Notice of accidents to nuclear ships.—(1) Where an Indian nuclear ship meets with an accident and such accident is likely to lead to environmental hazards, the master of the ship shall forthwith give notice of the accident—

(a) to such officer or authority as may be specified in this behalf by the Central Government; and

(b) if the ship is in or intends to enter the territorial water of a foreign State, also to the appropriate Government authority of the State.

(2) Where a nuclear ship other than an Indian ship meets with an accident of the nature specified in sub-section (1) while she is in the territorial waters of, or at a port in, India, the master of the ship shall forthwith give notice of the accident to the officer or authority specified under clause (a) of sub-section (1).

(3) On receipt of a notice under sub-section (1) or sub-section (2), the officer or authority specified under clause (a) of sub-section (1) shall issue such directions as he thinks necessary and expedient in the circumstances of the case and investigate into the causes of the accident in such manner as may be prescribed.
(4) A copy of the directions issued under sub-section (3) and a report of the findings of the investigation shall be sent to the Central Government within such time as may be prescribed.

(5) Where a nuclear ship other than an Indian ship meets with an accident of the nature specified in sub-section (1) at any port or place outside India and intends to enter the territorial waters of India in a damaged condition, the master of such ship shall give notice of the nature of the accident and the condition of the ship in such form as may be prescribed to the officer or authority specified under clause (a) of sub-section (1) and shall comply with such directions as that officer or authority may give.

(6) The provisions of this section are in addition to and not in derogation of the provisions, of Part XII of this Act.

344H. Application of certain sections to or in relation to certain certificates under section 344B.—(1) The provisions of sections 228 to 231 (inclusive) shall, so far as may be, apply to and in relation to every certificate issued by the Central Government under section 344B in the same manner as they apply to and in relation to a certificate of survey.

(2) The provisions of section 309 A shall apply to and in relation to a nuclear ship surveyed for the purpose of issue of a certificate under section 344B as they apply to and in relation to a ship surveyed for the purpose of issue of a safety convention certificate under Part IX.

344-I. Power to make rules.— (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Part.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
(a) the design, construction and standards of inspection and assembly of the reactor installations of nuclear ships;

(b) the standards of safety of nuclear ships;

(c) the manner of survey of nuclear ships;

(d) the forms in which certificates under this Part may be issued;

(e) the form and manner in which the safety assessment and operating manual of a nuclear ship are to be prepared, maintained and kept up-to-date and the particulars to be contained therein;

(f) the form of notices under this Part and the time when such notices should be given;

(g) the manner in which investigations may be made into causes of accidents to a nuclear ship;

(h) the special precautions to be taken against unreasonable radiation or other nuclear hazards to the crew, passengers and other persons, to waterways and to food and water resources;

(i) the manner in which radioactive waste from nuclear ships is to be stowed and disposed of;

(j) the manner in which the reactor fuelling, defuelling and refuelling and maintenance of nuclear ships are to be carried out;

(k) the special training for and qualifications of, masters and seamen of nuclear ships;

(l) the special requirements relating to approach, entry into, stay in or departure from, an Indian port of a nuclear ship;
(m) the procedure to be followed for determining the operational conditions of a nuclear ship;

(n) the protection and closure of the reactor installation of nuclear ships in the case of a collision, grounding, fire, leakage of radio-active material or other accident;

(o) the fees to be charged for any inspection survey or certificate under this Part;

(p) any other matter which has to be or may be prescribed.]

1[PART IXB

1. Ins. by Act 40 of 2007, s. 6 (w.e.f. 1-3-2008).

SECURITY OF SHIPS AND PORT FACILITIES

344]. Application.—(1) Subject to sub-section (2), this Part shall apply to—

(a) the following types of ships engaged on international voyages, namely:—

(i) passenger ships including high speed passenger craft;

(ii) cargo ships including high speed craft of five hundred gross tonnage and above;

(iii) mobile offshore drilling units:

Provided that the Central Government may extend the application of this Part to those ships which are exclusively engaged on coastal voyages;

(b) the port facilities serving ships referred to in clause (a):

Provided that the Central Government may, after taking decision, on the basis of port facility security assessment having carried out under this Part, extend
the application of this Part to those port facilities which, although used primarily by ships not engaged on international voyages, are occasionally required, to serve ships arriving or departing on international voyages.

(2) This Part shall not apply to war ships, naval auxiliaries, or other ships owned or operated by the Central Government and used only for non-commercial service by that Government.

344K. Definitions.—In this Part, unless the context otherwise requires,—

(a) “company” means the owner of the ship who, or any organisation which has assumed the responsibility of operation of the ship from the owner of such ship and who or which has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code;

(b) “declaration of security” means an agreement between ships or a ship and a port facility specifying therein the security measures to be complied with;

(c) “designated authority” means such authority as the Central Government may, by notification in the Official Gazette, specify;

(d) “International Ship and Port Facility Security Code” means the code for the security of ships and port facilities provided in the Safety Convention;

(e) “port facility” means any location or area including anchorages or waiting berths or approaches from seaward and determined by the Central Government or the designated authority, as the case may be, where interface between ships or a ship and a port takes place;

(f) “recognised security organisation” means any organisation, company, firm or body of individuals having expertise in matters relating to security and knowledge of ship, and port operations, which or who are authorised by the Central Government by notification in the Official Gazette, to carry out
assessment or verification or approval or certification required by this Part or by the International Ship and Port Facility Code;

(g) “security level” means the qualification of the degree of risk associated with the threat or an unlawful act against a ship, or against a port facility or any other area connected therewith;

(h) words and expressions used in this Part but not defined in this Part shall have the respective meanings as assigned to them in the Safety Convention.

344L. Ship identification number.—(1) The Central Government or the designated authority, as the case may be, shall provide every Indian ship of one hundred gross tonnage and above and every Indian cargo ship of three hundred gross tonnage and above, a ship identification number, which conforms to the relevant scheme formulated by the International Maritime Organisation.

(2) All the certificates issued under this Act and all certified copies thereof shall bear the ship identification number.

344M. Security measures.—(1) The Central Government or the designated authority, as the case may be, shall set security levels taking into consideration human element such as shore leave and provide information thereof to all the Indian ships, as may be prescribed.

(2) The Central Government or the designated authority, as the case may be, shall set security levels and provide information thereof to port facilities within India and to every ship prior to entering an Indian port or while in a port within India, as may be prescribed:

Provided that the Central Government may authorise any recognised security organisation to carry out any of the security measures under this section, on behalf of it, with such conditions as may be prescribed.
344N. Port facility assessment.—The Central Government shall carry out port facility assessment in the manner as may be prescribed.

344-O. Obligations of companies, etc.—Every company, ship or port facility shall comply with the relevant requirements under the Safety Convention and the International Code for the Security of Ships and Port Facility.

344P. Obligations of port facility.—Every port facility in India shall comply with the requirement of this Part or the rules made thereunder.

344Q. International Ship Security Certificate.—The Central Government or the designated authority or the authorised person, as the case may be, shall issue every Indian ship to which this Part applies, an International Ship Security Certificate or an Interim International Ship Security Certificate, as the case may be, in the form and manner as may be prescribed.

344R. Ship Security Alert System.—Every Indian ship shall be provided with such Ship Security Alert System, as may be prescribed.

344S. Control measures.—Every ship to which this Part applies shall be subject to such control measures as may be prescribed.

344T. Power to make rules.—(1) The Central Government may, having regard to the provisions of the Safety Convention, make rules to carry out the purposes of this Part.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such rules may provide—

(a) for alternative or equivalent security levels;

(b) fee to be levied for any service rendered;

(c) any other matter which by this Part is to be, or may be, prescribed.
PART X

COLLISIONS, ACCIDENTS AT SEA AND LIABILITY


345. Division of loss in case of collision.—(1) Whenever by the fault of two or more ships damage or loss is caused to one or more of them or to the cargo of one or more of them or to any property on board one or more of them, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was at fault:

Provided that—

(a) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally;

(b) nothing in this section shall operate so as to render any ship liable for any loss or damage to which her fault has not contributed;

(c) nothing in this section shall affect the liability of any person under any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.

(2) For the purposes of this Part, references to damage or loss caused by the fault of a ship shall be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable in law by way of damages.

346. Damages for personal injury.—(1) Whenever loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that
ship and of any other ship or ships, the liability of the owners of the ships concerned shall be joint and several.

(2) Nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured, or any person entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

347. Right of contribution.—(1) Whenever loss of life or personal injuries are suffered by a person on board a ship owing to the fault of that ship and of any other ship or ships, and a proportion of the damages is recovered from the owner of one of the ships which exceeds the proportion in which she was in fault, the said owner may recover by way of contribution the amount of the excess from the owners of the other ship or ships to the extent to which those ships were respectively in fault:

Provided that no amount shall be so recovered which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

(2) In addition to any other remedy provided by law, the person entitled to any contribution under sub-section (1) shall, for the purpose of recovering the contribution, have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

348. Duty of master of ship to assist in case of collision.—In every case of collision between two ships it shall be the duty of the master or person in charge of each ship, if and so far as he can do so without danger to his own ship, crew and passengers, if any—
(a) to render to the other ship, her master, crew and passengers, if any, such assistance as may be practicable and may be necessary to save them from any danger caused by the collision and to stay by the other ship until he has ascertained that she has no need of further assistance, and

(b) to give to the masters or persons in-charge of the other ships the name of his own ship and of the port to which she belongs and also the names of the ports from which she comes and to which she is bound.

349. Collision to be entered in official log.—In every case of collision in which it is practicable so to do, the master of every ship concerned shall, immediately after the occurrence, cause a statement thereof and of the circumstances under which the same occurred to be entered in the official log book, if any, and the entry shall be signed by the master and also by the mate or one of the crew.

350. Report to Central Government of accidents to ships.—When a ship has sustained or caused any accident occasioning loss of life or any serious injury to any person or has received any material damage affecting her seaworthiness or her efficiency either in her hull or is so altered in any part of her machinery as not to correspond with the particulars contained in any of the certificates issued under this Act in respect of the ship, the owner or master shall, within twenty-four hours after the happening of the accident or damage or as soon thereafter as possible, transmit to the Central Government or the nearest principal officer a report of the accident or damage and of the probable cause thereof stating the name of the ship, her official number, if any, her port of registry and the place where she is.

351. Notice of loss of Indian ship to be given to Central Government.—If the owner or agent of any Indian ship has reason, owing to the non-appearance of the ship or to any other circumstance, to apprehend that the ship has been wholly lost, he shall, as soon as conveniently may be, send to the Central Government notice in writing of loss and of the probable cause thereof.
stating the name of the ship, her official number, if any, and her port of registry.

1|PART XA


2. Subs. by Act 63 of 2002, s. 16, for clause (b) (w.e.f. 1-2-2003).

3. Ins. by s. 16, ibid. (w.e.f. 1-2-2003).


LIMITATION OF LIABILITY

352. Definitions.—In this Part, unless the context otherwise requires,—

(a) “claim” means a personal claim or property claim;

(b) “Convention” means the Convention on Limitation of Liability for Maritime Claims, 1976 as amended from time to time;

(c) “Fund”, in relation to a vessel, means the limitation Fund constituted under section 352C;

(d) “liability”, in relation to owner of a vessel, includes liability of the vessel herself;

(e) “occurrence” means an occurrence referred to in sub-section (1) of section 352A;

(f) “personal claim” means a claim resulting from loss of life or personal injury;

(g) “property claim” means any claim other than a personal claim arising from an occurrence.
3[(h) “salvor” means any person rendering services in direct connection with salvage operations.

Explanation.—For the purpose of this clause, “salvage operations” includes—

(i) the raising, removal, destruction or the rendering a ship harmless which is sunk, wrecked, stranded or abandoned including anything that is or has been on board such ship;

(ii) the removal, destruction or rendering the cargo of a ship harmless; and

(iii) the measures taken to avert or minimise loss to a ship or its cargo or both;

(i) “ship owner” means owner, charterer, manager, and operator of a sea going ship;

(j) “Special Drawing Rights” means Special Drawing Rights as determined by the International Monetary Fund.]

4[352A. Limitation of liability for damages in respect of certain claims.—(1) The ship owner, salvor, any person for whose act, neglect or default the ship owner or salvor, as the case may be, is responsible, and an insurer of liability for claims to the same extent as the assured himself, may limit his liability as provided under section 352B in respect of,—

(a) claims arising from loss of life of or personal injury to, or loss of or damage to, property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;

(b) claims arising out of loss resulting from delay in the carriage by sea of cargo and passengers or their luggage;]
(c) claims arising out of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;

(d) claims of a person other than the person liable in respect of measures taken in order to avert or minimise loss for which the person liable may limit his liability in accordance with the provisions of the Convention or the rules made in this behalf prescribe, as the case may be, and such further loss caused by such measures;

(e) claims for the loss of life or personal injury to passengers of a ship brought by or on behalf of any person,—

(i) under the contract of passenger carriage; or

(ii) who, with the consent of the carrier, is accompanying a vehicle for live animals which are covered by a contract for the carriage of goods,

provided in that ship:

Provided that the limits for passengers claim specified in the rules made under this Part shall not be applicable to the passengers carried in and around the coast of India in respect of whom separate limits shall be prescribed.

(2) Claims set out in sub-section (1) shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise:

Provided that claims set out in clause (d) of sub-section (1) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable. (3) Nothing in this section shall apply to—

(a) claims for salvage or contribution in general average;
(b) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, 1992 as amended from time to time;

(c) claims by servants of the ship owner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependents or other persons entitled to make such claims, if under the law governing the contract of service between the ship owner or salvor and such servants of the ship owner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in the provision of the Convention or the rules made under this Part prescribe;

(d) claims subject to any International Convention or any law for the time being in force in India governing or prohibiting limitation of liability for nuclear damage;

(e) claims against the ship owner of a nuclear ship for nuclear damage.

Explanation 1.—For the purpose of this section, the act of involving limitation of liability shall not constitute an admission of liability.

Explanation 2.—For the purpose of this Part, the liability of a ship owner shall include liability in an action brought against the ship herself.

1[352B. Limitation of liability.—The amount to which any person referred to in sub-section (1) of section 352A may limit his liability in accordance with the provisions of the Convention and in cases where the provisions of the Convention are not applicable, the limit shall be in accordance with the rules made in this behalf prescribe.]

1. Subs. by Act 63 of 2002, s. 18, for section 352B (w.e.f. 1-2-2003).

2. The words “against owner” omitted by s. 19, ibid. (w.e.f. 1-2-2003).

352C. Limitation Fund and consolidation of claims

(1) Where any liability is alleged to have been incurred by a person referred to in sub-section (1) of section 352A in respect of claims arising out of an occurrence, and legal proceedings are instituted in respect of claims subject to limitation, then such person may apply to the High Court for the setting up of a limitation Fund for the total sum representing the amounts set out in the Convention or the rules made in this behalf under this Part applicable to claims for which that person may be liable together with interest thereon from the date of occurrence giving rise to the liability until the date of the constitution of the Fund.

(2) The High Court to which the application is made under sub-section (1) may determine the amount of the owner's liability and require him to deposit such amount with the High Court or produce a guarantee acceptable or produce a bank guarantee in respect of the amount as in the opinion of the High Court is satisfactory and the amount so deposited or guarantee so given shall constitute a limitation Fund for the purposes of the claims referred to in sub-section (1) and shall be utilised only for the payment of such claims.

1. Subs. by Act 63 of 2002, s. 19, for certain words (w.e.f. 1-2-2003).

2. Subs. by s. 19, ibid., for sub-sections (5) and (6) (w.e.f. 1-2-2003).

(3) After the Fund has been constituted, no person entitled to claim against it shall be entitled to exercise any right against any other assets of the owner in respect of his claim against the Fund, if that Fund is actually available for the benefit of the claimant.

(4) Subject to the provisions of this Part, the High Court may distribute the amount constituting the Fund rateably amongst the several claimants and may
stay any proceedings pending in any other court in relation to the same matter and may proceed in such manner and subject to such rules of the High Court as to making persons interested parties to the proceedings, and as to the exclusion of any claims which do not come in within a certain time, and as to requiring security from the owner, and as to payment of any costs, as the High Court thinks fit.

2[(5) Where the person referred to in sub-section (1) or his insurer establishes that he has paid in whole or in part any claims in respect of which he can limit his liability under this Part, the High Court shall place him in the same position and to the same extent in relation to the Fund as the claimant whose claim has been paid and allow to acquire by subrogation the rights which the person so compensated would have enjoyed under this Part:

Provided that the right of subrogation provided for in this sub-section may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they might, have paid to that extent if prescribed by the rules made in this behalf under this Part.

(6) Where the person liable or any other person has established that he may at a later date be required to pay in whole or in part, any of the claims under this Part, which could be settled from the Fund, the High Court may notwithstanding the foregoing provisions of this section order that a sufficient sum may be provisionally set aside for the purpose to enable the person to enforce his claim against the Fund at a later date in accordance with the provisions of sub-section (5).]

(7) If the owner is entitled to make a claim against a claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Part shall only apply to the balance, if any.

352D. Release of ship, etc.—(1) Where a vessel or other property is detained in connection with a claim which appears to the High Court to be founded on
a liability to which a limit set by section 352B applies, or security is given to prevent or obtain release from such detention, the High Court may, and in the circumstances mentioned in sub-section (3) of this section shall, order the release of the vessel, property or security if the conditions specified in sub-section (2) are satisfied; and where the release is ordered, the person on whose application it is ordered shall be deemed to have submitted to the jurisdiction of the High Court to adjudicate upon the claim.

(2) The conditions referred to in sub-section (1) are—

(a) that security which in the opinion of the High Court is satisfactory (in this section referred to as “guarantee”) has previously been given whether in India or elsewhere, in respect of the said liability or any other liability incurred on the same occasion and the High Court is satisfied that if the claim is established, the amount for which the guarantee was given or such part thereof as corresponds to the claim will be actually available to the claimant; and

(b) that either the guarantee is for an amount not less than the said limit or further security is given which, together with the guarantee, is for an amount not less than that limit.

(3) The circumstances referred to in sub-section (1) are that the guarantee was given in a port which, in relation to the claim, is the relevant port (for as the case may be, a relevant port) and that port is in a convention country.

(4) For the purposes of this section—

(a) a guarantee given by the giving of security in more than one country shall be deemed to have been given in the country in which security was last given
(b) any question whether the amount of any security is (either by itself or together with any other amount) not less than any limit set by section 352B shall be decided as at the time at which the security is given;

(c) where part only of the amount for which a guarantee was given will be available to a claimant that part shall not be taken to correspond to his claim if any other part may be available to a claimant in respect of a liability to which no limit is set as mentioned in sub-section (1).

(5) In this section—

1[(a) “Convention country” means a country in which the Convention on Limitation of Liability for Maritime Claims, 1976 as amended from time to time is for the time being in force;

1. Subs. by Act 63 of 2002, s. 20, for clause (a) (w.e.f.1-2-2003).

2. Ins. by s. 20, ibid. (w.e.f. 1-2-2003).

3. Subs. by s. 21, ibid., for section 352E (w.e.f. 1-2-2003).

(b) “relevant port”, in relation to any claim, means a port where the event giving rise to the claim occurred, or if that event did not occur in that port, the first port of call after the event-occurred and includes in relation to a claim for loss of life or personal injury or for damage to cargo, the port of disembarkation or discharge.

2[(6) Notwithstanding anything contained in sub-sections (1) to (4), the vessels or other property referred to in sub-section (1) shall be ordered to be released if the limitation Fund has been constituted,—

(a) in the port where the occurrence took place, or, if it took place out of port, in the first port of call thereafter;]
(b) in the port of disembarkation in respect of claims for loss of life or personal injury; or

(c) in the port of discharge in respect of damage to cargo.

(7) The provision of sub-section (6) shall apply only if the claimant brings a claim against the limitation Fund before the High Court administering the Fund and the Fund is actually available and freely transferable in respect of that claim.]

3[352E. Scope of application.—(1) The provisions of this Part shall apply whenever any person referred to in sub-section (1) of section 352A seeks to limit his liability before the Court or seeks to procure the release of a ship or other property or the discharge of any guarantee given within the Indian jurisdiction but any person referred to in sub-section (1) of section 352A who at the time when the provisions under this Part are invoked before any Court in India does not have his habitual residence in India or does not have his principal place of business in India or any ship in relation to which the right of limitation is invoked or whose release is sought and which does not at the time specified above fly the flag of the State, which is a party to the Convention, is wholly excluded from the provisions of this Part.

(2) The provisions of this Part shall not be applicable to the following vessels unless the Central Government, by notification, specify otherwise,—

(a) ships intended for navigation on or around coast of India and registered as coastal vessels under the provisions of this Act;

(b) ships less than three hundred tons;

(c) air-cushion vehicles;

(d) floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof.]
352F. Application of this Part to charterer, manager, etc., of a vessel.—(1) Subject to the provisions of sub-section (2), the provisions of this Part relating to limitation of liability of an owner of a vessel in respect of claims arising out of an occurrence shall apply to the charterer, manager and operator of the vessel and to the master, members of the crew and other servants of the owner, charterer, manager or operator acting in the course of their employment in the same manner as they apply in relation to the owner.

Provided that the total limits of liability of the owner and all other persons referred to in this sub-section in respect of personal claims and property claims arising on a distinct occasion shall not exceed the amounts determined in accordance with the provisions of section 352B.

(2) The master or a member of the crew of a vessel may limit his liability under subsection (1) even if the occurrence which gives rise to a claim against him resulted from the actual fault or privity of the master and the members of the crew or any one or more of them:

Provided that where the master or a member of the crew is at the same time the owner, co-owner, charterer, manager or operator of a vessel, the provisions of this sub-section shall only apply where such occurrence resulted from any act, neglect or default committed by the master or, as the case may be, the member of the crew in his capacity as master, or, as the case may be, us a member of the crew.

1[352FA. Power to make rules.—The Central Government may make rules to carry out the purposes of this Part:

1. Ins. by Act 63 of 2002, s. 22 (w.e.f. 1-2-2003).

2. Ins. by Act 12 of 1983, s. 10 (w.e.f. 18-5-1983).

3. Subs. by Act 63 of 2002, s. 23, for section 352H (w.e.f. 1-2-2003).]
Provided that the rules under this Part shall be made having regard to the provisions of the Convention.]

2[PART XB

CIVIL LIABILITY FOR OIL POLLUTION DAMAGE

352G. Application.—This Part applies to—

(a) every Indian ship wherever it is; and

(b) every foreign ship while it is at a port or place in India or within the territorial waters of India or any marine areas adjacent thereto over which India has, or may hereafter have, exclusive jurisdiction in regard to control of marine pollution under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, or any other law for the time being in force.

3[352H. Definitions.—In this Part, unless the context otherwise requires,—

(a) “incident” means any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage;

(b) “liability convention” means the International Convention on Civil Liability for Oil Pollution Damage, 1992 as amended from time to time;

(c) “oil” means any persistent hydro carbon mineral oil such as crude oil, fuel oil, heavy diesel oil, lubricating oil whether carried on board a ship as cargo or in the bunker of such ship;

(d) “owner” means—

(i) the person registered as owner of the ship;
(ii) in the absence of registration, the person owning the ship; or

(iii) in the case of a ship owned by a foreign State, the person registered in that State as operator of the ship;

(e) “person” means any individual or partnership or any public or private body, whether corporate or not, including a state or any of its constituent subdivisions;

(f) “pollution damage” means—

(i) loss or damage caused outside the ship by contamination resulting from escape or discharge of oil from the ship, wherever such escape or discharge occurs, provided that compensation for impairment of the environment other than losses or profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;

(ii) the costs of preventive measures and further loss or damage caused by such measures;

(g) “preventive measures” means any reasonable measures taken by any person after the incident to prevent or minimise pollution damage;

(h) “ship” means any sea-going vessel and sea borne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard;

(i) “State of the ship’s registry”, in relation to registered or unregistered ships, means the State of registration of the ship, or as the case may be, the State whose flag the ship is flying.]
I. Liability of owner.—(1) Save, as otherwise provided in sub-sections (2), (3) and (4), the owner at the time of an incident, or, where the incident consists of a series of occurrence at the time of first of such occurrences, shall be liable for any pollution damage caused by oil which has escaped or been discharged from the ship as a result of the incident.

(2) No liability for pollution damage shall attach to the owner under sub-section (1), if he proves that the pollution damage—

(a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) was wholly caused by an act or omission done with intent to cause such damage by any other person; or

(c) was wholly caused by the negligence or the wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids in exercise of its functions in that behalf.

(3) Where, with respect to any incident the owner proves that the pollution damage resulted, either wholly or partially, from an act or omission done, with intent to cause such damage, by the person who suffered damage, or from the negligence of that person, the owner shall be exonerated wholly or, as the case may be, partially, from liability to that person.

(4) When any incident involving two or more ships occurs and pollution damage results therefrom, the owners of all the ships concerned, unless exonerated under sub-section (3), shall be jointly and severally liable for such damage which is not reasonably separable.


(5) No claim for pollution damage shall be made against any owner otherwise than in accordance with the provisions of this section.
1[(6) Without prejudice to any right of recourse of the owner against third parties, no claim for compensation for pollution damage may be made against—


2. Subs. by s. 25, ibid., for section 352J (w.e.f. 1-2-2003).

3. Subs. by Act 55 of 1988, s. 4, for sub-section (3) (w.e.f. 1-7-1989).

(a) the servants or agents of the owner or the members of the crew;

(b) the pilot or any other person who, without being a member of the crew, renders services for the ship;

(c) any charterer (howsoever described, including a bare-boat charterer), manager or operator of the ship;

(d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;

(e) any person taking preventive measures;

(f) all servants or agents of persons mentioned in clauses (c), (d) and (e), unless the incident causing such damage occurred as a result of their personal act or omission committed or made with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.]

2[352J. Limitation of liability.—(1) The owner shall be entitled to limit his liability under this Part, in respect of any one or more incident, as may be prescribed.

(2) The owner shall not be entitled to limit his liability if it is proved that the incident causing pollution damage occurred as a result of his personal act or
omission committed or made with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.]

352K. Constitution of limitation fund.—(1) (a) Any owner desiring to avail of the benefit of limitation of his liability under sub-section (1) of section 352J shall make an application to the High Court for constitution of a limitation fund (hereafter in this Part referred to as fund).

(b) Such fund may be constituted either by depositing the sum with the High Court or by furnishing bank guarantee or such other security as, in the opinion of the High Court, is satisfactory.

(2) (a) The insurer or any other person providing financial security to the owner may apply to the High Court for constitution of the fund under sub-section (1) and any fund so constituted shall have the same effect as it were constituted “by the owner.

(b) Such fund may be constituted even in cases where sub-section (2) of section 352J applies but in any such event constitution of the fund shall not prejudice the rights of any claimant against the owner for full compensation exceeding the amount deposited or secured in the fund.

3[(3) The amount in Special Drawing Rights to be deposited or secured in the fund under sub-section (1) shall be converted in rupees on the basis of official value in rupees of the Special Drawing Rights as determined by the Reserve Bank of India on the date of constitution of the fund.]

352L. Acquisition of right for compensation by subrogation.—(1) Where the owner or any of his servants or agents or any other person providing him insurance or other financial security has, as a result of incident in question, paid any compensation to any claimant, such person shall, up to the amount so paid by him, be entitled to acquire by subrogation the rights to which the claimant so compensated would be entitled to.
(2) Where the owner or any other person providing him insurance or other financial security establishes that he may, at a later date, be compelled to pay to any person, in whole or in part, any amount by way of compensation for pollution damage caused by the incident with respect to which he would have been entitled to acquire by subrogation the right of the claimant had the compensation been paid before the fund was distributed, the High Court may order that sufficient amount from the fund may provisionally be set aside to enable the owner or such other person to enforce his claim against the fund at a later date.

352M. Consolidation of claim and distribution of fund.—(1) The High Court shall consolidate all claims against the fund including those arising under section 352L.

(2) Any claim in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimise pollution damage shall rank equally with other claims against the fund.

(3) Subject to the provisions of sub-section (2) of section 352L, the High Court shall distribute the amount in the fund among all claimants in proportion to their established claims.

352N. Compulsory insurance or other financial guarantee.—(1) The owner of every Indian ship which carries 2000 tons or more oil in bulk as cargo shall, in respect of such ship, maintain an insurance or other financial security for an amount equivalent to—

1[(a) one hundred and thirty-three Special Drawing Rights for each ton of the ship's tonnage; or

1. Subs. by Act 55 of 1988, s. 5, for clauses (a) and (b) (w.e.f. 1-7-1989).

2. Ins. by s. 5, ibid. (w.e.f. 1-7-1989).]
3. Ins. by s. 6, ibid. (w.e.f. 1-7-1989).

(b) fourteen million Special Drawing Rights,

whichever is lower.

(2) In respect of every Indian ship which maintains insurance or other financial security under sub-section (1), there shall be issued by the Director-General a certificate in such form and giving such particulars as may be prescribed.

(3) On an application by the owner or agent of any foreign ship, the Director-General may issue a certificate under sub-section (2) in respect of such foreign ship on production of satisfactory evidence relating to maintenance of insurance or other financial security in accordance with the provisions of the International Convention on Civil Liability for Oil Pollution Damage signed at Brussels on the 29th day of November, 1969 [as amended from time to time].

(4) For every certificate issued under sub-sections (2) and (3) there shall be charged such fee as may be prescribed.

352-O. Acceptance of certificates issued outside India.—Any certificate issued by a competent authority in any country outside India to a ship registered in that country or any certificate issued by a competent authority of any country which is a contracting party to the International Convention on Civil Liability for Oil Pollution Damage signed at Brussels on the 29th day of November, 1969 [as amended from time to time] to any ship wherever registered, shall be accepted at any port or place in India as if it were issued under this Act.

352P. Ban on entering or leaving an Indian port without certificate.—(1) No Indian ship, which has on board 2000 tons or more oil in bulk as cargo shall enter or leave or attempt to enter or leave any port or place in India unless it
carries on board a certificate issued under sub-section (2) of section 352N or a certificate accepted under section 352-O.

(2) No ship other than an Indian ship carrying 2000 tons or more oil in bulk as cargo, wherever registered, shall enter or leave or attempt to enter or leave any port or place in India, unless it carries on board a certificate issued under sub-section (3) of section 352N or a certificate accepted under section 352-O.

(3) No customs officer shall grant inward entry or outward clearance to any ship to which sub-section (1) or, as the case may be, sub-section (2) applies, unless its master produces a certificate required under the respective sub-section.

352Q. Government ships.—Nothing in this Part shall apply to any ship of war or any ship for the time being used by the Government of any country for purposes other than commercial purposes.

352R. Power to make rules.—The Central Government may make rules prescribing—

(a) the form of certificate to be issued by the Director-General under sub-section (2) of section 352N and the particulars which it may contain;

(b) fees which may be charged for issue of certificates under section 352N.

1[(c) the limits of liability of owner in respect of one or more incident of pollution damage or other requirements having regard to the provisions of the Liability Convention.]

1. Ins. by Act 63 of 2002, s. 26 (w.e.f. 1-2-2003).

2. Ins. by s. 27, ibid. (w.e.f. 1-2-1993).

2[PART XC]
INTERNATIONAL OIL POLLUTION COMPENSATION FUND

352S. Definitions.—In this Part, unless the context otherwise requires,—

(a) “contributing oil” means crude oil and fuel oil.

Explanation.—For the purposes of this clause,—

(i) “crude oil” means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation and includes crude oils from which certain distillate fractions have been removed or to which certain distillate fractions have been added;

(ii) “fuel oil” means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the “American Society for Testing and Materials” Specification for Number Four Fuel Oil (Designation D 396 - 69'), or heavier;

(b) “discharge or escape”, in relation to pollution damage, means the discharge or escape of oil carried by the ship;

(c) “Fund” means the International Oil Pollution Compensation Fund established by the Fund Convention;

(d) “Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 as amended from time to time;

(e) “Fund Convention country” means a country in which the Fund Convention is for the time being in force;

(f) “guarantor” means any person providing insurance or other financial security to cover the owner's liability;
(g) “terminal installation” means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated off-shore and linked to such site;

(h) “ton”, in relation to oil, means a metric ton.

352T. Contribution to the Fund.—(1) Contributions to the Fund, in respect of contributing oil carried by sea to ports or terminal installations in India, shall be payable in accordance with Articles 10 and 12 of the Fund Convention.

(2) Sub-section (1) shall apply whether or not the contributing oil is imported, and notwithstanding that contributions are payable to the Fund in respect of carriage of the same contributing oil on a previous voyage.

(3) Contributions shall also be payable to the Fund in respect of contributing oil when first received in any installation in India after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention country.

(4) The person liable to pay contributions to the Fund shall be—

(a) in case of contributing oil which is being imported into India, the importer; or

(b) in any other case, the person by whom the oil is received in India.

(5) A person shall not be liable to pay contributions to the Fund in respect of the contributing oil imported or received by him in any year if the quantity of contributing oil so imported or received in the year does not exceed one hundred and fifty thousand tones or as may be specified from time to time in the Fund Convention.

352U. Contribution payable by persons to the Fund.—(1) The contributions payable to the Fund by a person for any year shall be,—
(a) such amount as may be determined by the Assembly of the Fund under Articles 10 and 12 of the Fund Convention;

(b) in such installments, becoming due at such dates,

as may be notified and if any amount due from such person remains unpaid after the date on which it became due, it shall from that due date bear interest at a rate determined by the said Assembly until it is paid.

(2) The Central Government may require persons, who are or may be liable to pay contributions to the Fund under section 352T, to give financial security for payment of contributions to that Government or the Fund.

352V. Power to call for information.—(1) The Central Government may, for the purpose of transmitting to the Fund the names and addresses of the persons who under section 352T are liable to make contributions to the Fund every year and the quantity of contributing oil in respect of which they are so liable, by notice require any such person to furnish such information as may be specified therein.

(2) A notice under this section may require a person to give such information as may be required to ascertain whether he is liable to contribute to the Fund.

(3) A notice under this section may specify the manner in which, and the time within which, such notice is to be complied with.

(4) In proceedings by the Fund against any person to recover any amount due under section 352T, particulars contained in any list transmitted by the Central Government to the Fund shall, so far as those particulars are based on information obtained under this section, be admissible as evidence of the facts stated in the list; and so far as particulars which are so admissible are based on information given by the person against whom the proceedings are
brought, those particulars shall be presumed to be accurate until the contrary is proved.

(5) No person shall disclose any information which has been furnished to or obtained by him under this section unless the disclosure is made,

(a) with the consent of the person from whom the information was obtained;

(b) in connection with the compliance of this section;

(c) for the purpose of any legal proceedings arising out of this section or of any report of such proceedings.

(6) A person who,—

(a) refuses or willfully neglects to comply with a notice under this section; or

(b) makes, while furnishing any information in compliance with a notice under this section, any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

shall be guilty of an offence punishable under this Act.

352W. Liability of the Fund.—Where any person suffering pollution damage has been unable to obtain the full and adequate compensation for the damage under the terms of the Liability Convention on any of the grounds specified in Article 4 of the Fund Convention, the Fund shall be liable for pollution damage in accordance with the provisions of the Fund Convention.

352X. Jurisdiction of Courts.—(1) Any action for a claim against the Fund for compensation under section 352W shall be brought before the High Court.

(2) The Fund shall have the right to intervene as a party to any legal proceedings instituted in the High Court against the owner or his guarantor.
(3) Where an action for compensation for pollution damage has been brought against the owner or his guarantor before the High Court each party to the proceedings may notify the Fund of the proceedings.

(4) Where such notice of proceedings has been given to the Fund, any judgment given in the proceedings shall, after it has become final and enforceable, become binding upon the Fund in the sense that the facts and evidence in that judgment may not be disputed by the Fund on the ground that it has not intervened in the proceedings.

352Y. Extinguishment of claims.—Notwithstanding anything contained in any other law for the time being in force, no action to enforce a claim against the Fund under this Part shall be entertained by a High Court unless—

(a) the action to enforce is commenced; or

(b) notice of action to enforce a claim against the owner or his guarantor in respect of the same pollution damage is given to the Fund,

within three years from the date when the damage occurred:

Provided that in no case an action to enforce a claim shall be brought after six years from the date of the incident that caused such damage.

352Z. Subrogation and right of recourse.—In respect of any sum paid by a public authority in India or the Fund, as the case may be, as compensation for pollution damage, that authority shall acquire by subrogation any rights which the person so compensated would have enjoyed under the Fund Convention.

352ZA. Power to make rules.—The Central Government may make such rules as may be required to carry out the purposes of the Fund Convention.

PART XI
NAVIGATION

353. Method of giving helm orders.—No person on any Indian ship shall, when the ship is going ahead, give a helm or steering order containing the word “starboard” or “right” or any equivalent of “starboard” or “right” unless he intends that the head of the ship shall move to the “right” or give a helm or steering order containing the word “port” or “left” or any equivalent of “port” or “left” unless he intends that the head of the ship shall move to the left.

354. Duty to report dangers to navigation.—The master of any Indian ship on meeting with dangerous ice, a dangerous derelict, a tropical storm or any other direct danger to navigation 1[or on

1. Ins. by Act 21 of 1966, s. 31 (w.e.f. 28-5-1966).

encountering sub-freezing air temperatures associated with gale-force winds, causing severe ice accretions on super structures or strong gales for which no storm warning has been received by him] shall send information accordingly by all means of communication at his disposal and in accordance with such rules as the Central Government may make in this behalf to ships in the vicinity and to such authorities on shore as may be prescribed by those rules.

Explanation.—For the purpose of this section the expression “tropical storm” means a hurricane typhoon, cyclone or other storm of a similar nature, and the master of a ship shall be deemed to have met with a tropical storm if he has reason to believe that there is such a storm in the vicinity.

1[354A. Communication of intelligence regarding dangers to navigation.—(1) Where an authority prescribed under section 354 receives intelligence from any source of any danger to navigation mentioned in that section, that authority shall, as soon as possible, communicate such intelligence to such ships and authorities as he may deem proper.
1. Ins. by Act 21 of 1966, s. 32 (w.e.f. 28-5-1966).

2. Ins. by s. 33, ibid. (w.e.f. 28-5-1966).

(2) The intelligence shall be communicated in such manner and subject to such terms and conditions as may be prescribed:

Provided that no fees shall be levied for communicating any intelligence under this section to a ship.

355. Obligation to render assistance on receiving signal of distress.—(1) The master of an Indian ship on receiving at sea a signal of distress or information from any source that a vessel or aircraft is in distress shall proceed with all speed to the assistance of the persons in distress (informing them if possible that he is doing so) unless he is unable or in the special circumstances of the case considers it unreasonable or unnecessary to do so or unless he is released from such obligation under the provisions of sub-section (3) or sub-section (4).

(2) Where the master of any ship in distress has requisitioned any Indian ship that has answered his call, it shall be the duty of the master of the requisitioned ship to comply with the requisition by continuing to proceed with all speed to the assistance of the persons in distress unless he is released from the obligation under the provisions of sub-section (4).

(3) The master shall be released from the obligation imposed by sub-section (1) as soon as he is informed of the requisition of one or more ships other than his own and that the requisition is being complied with by the ship or ships requisitioned.

(4) The master shall be released from the obligation imposed by sub-section (1), and if his ship has been requisitioned, from the obligation imposed by sub-section (2), if he is informed by the persons in distress or by the master of
any ship that has reached the persons in distress that assistance is no longer required.

(5) If the master of an Indian ship on receiving at sea a signal of distress or information from any source that a vessel or aircraft is in distress is unable or in the special circumstances of the case considers it unreasonable or unnecessary to go to the assistance of the persons in distress, he shall forthwith cause a statement to be entered in the official log book or, if there is no official log book, cause other record to be kept of his reasons for not going to the assistance of those persons.

(6) The master of every Indian ship for which an official log is required shall enter or cause to be entered in the official log book every signal of distress or message that a vessel, aircraft or person is in distress at sea.

2[355A. Obligation to render assistance to persons in danger.—(1) The master of every Indian ship shall render assistance to every person found at sea in danger of being lost, unless he is unable or, in the special circumstances of the case, considers that such assistance cannot be rendered without serious danger to his ship, or the persons thereon.

(2) If the master of an Indian ship is unable or consider it unreasonable to go to the assistance of a person found at sea in danger of being lost, the master shall forthwith cause a statement to be entered in the official log book or, if there is no official log book, cause other record to be kept of his reasons for not going to the assistance of that person.]

356. Power to make rules as to signals.—The Central Government may, subject to the condition of previous publication, make rules prescribing—

(a) the manner of communicating information regarding dangers to navigation, and the authorities on shore to whom, such information is to be communicated;
(aa) the manner of communicating intelligence regarding dangers to navigation, the terms and conditions subject to which such intelligence may be communicated and the fees which may be levied for the communication of intelligence;

1. Ins. by Act 21 of 1966, s. 34 (w.e.f. 28-5-1966).

2. Subs. by s. 34, ibid., for “signals of distress and of urgency” (w.e.f. 28-5-1966).

3. Subs. by s. 34, ibid., for “radio telegraphy” (w.e.f. 28-5-1966).

4. Subs. by Act 12 of 1983, s. 11, for PART XIA (w.e.f. 18-5-1983).

5. Subs. by Act 59 of 2003, s. 2, for sections 356A to 356H (w.e.f. 1-3-2004).

(b) the signals which shall be signals of distress, urgency and of safety, respectively;

(c) the circumstances in which, and the purposes for which, any such signal is to be used, and the circumstances in which it is to be revoked; and

(d) the speed at which any message sent by radio telegraphy or telephony in connection with such signal is to be transmitted.

4[PART XIA

PREVENTION AND CONTAINMENT OF POLLUTION OF THE SEA BY OIL

5[356A. Application.—(1) Save as otherwise provided, this Part shall apply to—

(a) oil tankers of one hundred and fifty tons gross or more, other ships of four hundred tons gross or more and off-shore installations; and
(b) incidents of marine casualty or acts relating to such casualty occurring with grave and imminent danger to Indian coast line or related interests from pollution or threat of pollution in the sea by deliberate, negligent or accidental release of oil, ballast water, noxious liquid and other harmful substances into sea including such incidents occurring on the high seas.

(2) This Part shall not apply to any war ships or other ships owned or operated by the Government and used for the time being on Government non-commercial service.

356B. Definitions.—In this Part, unless the context otherwise requires,—

(a) “ballast” means any solid or liquid placed in a ship to increase the draft to change the trim, to regulate the stability, or to maintain stress load within such limits as may be prescribed;

(b) “cargo” includes ballast and ship's stores and fuel;

(c) “coasts” has the meaning assigned to it in section 357;

(d) “coastal waters” means any part of the territorial waters of India, or any marine areas adjacent thereto over which India has, or, may hereafter have, exclusive jurisdiction in regard to control of marine pollution under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976), or any other law for the time being in force;

(e) “Convention” means the International Convention for the Prevention of Pollution from Ships, 1973, including its Protocol of 1978, as amended from time to time in the manner specified therein;

(f) “international pollution prevention certificate” means any certificate issued in accordance with the provisions of Pollution Prevention Conventions and Protocols thereto which are acceded to by India;
(g) “mile” means a nautical mile of 1,852 meters;

(h) “noxious liquid substance” means any substance which has been designated as such by rules made under this Part;

(i) “off-shore installation” means an installation, whether mobile or fixed, which is used or is intended to be used for under-water exploration or exploitation of crude oil, petroleum or other similar mineral oils, under lease, licence or any other form of contractual arrangement and includes—

(a) any installation which could be moved from place to place under its own motive power or otherwise; and

(b) a pipe-line;

(j) “oil” means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products;

(k) “oily mixture” means a mixture with any oil content;

(l) “oil tanker” means a ship constructed or adapted primarily to carry oil in bulk in its cargo spaces and includes any combination carrier or any chemical tanker when it is carrying a cargo or part cargo of oil in bulk;

(m) “reception facilities”, in relation to a port, means facilities for enabling tankers or ships using the port to discharge or deposit residue or mixture of any substance subject to control by the Convention;

(n) “ship” means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms.

356C. Issue of pollution prevention certificate.—(1) No Indian oil tanker or other Indian ship shall proceed to sea unless there is in force, in respect of
that ship, a certificate issued by the Central Government, to be called an international oil pollution prevention certificate, in such form, for such duration and subject to such conditions as may be prescribed.

(2) No Indian oil tanker or other Indian ship carrying noxious liquid substances in bulk shall proceed to sea except with a certificate issued by the Central Government, to be called an international pollution prevention certificate, in such form, for such duration and subject to such conditions as may be prescribed for the carriage of noxious liquid substances in bulk.

(3) No Indian oil tanker or other Indian ship to which Annexure IV of the Convention applies shall proceed to sea except with a certificate issued by the Central Government, to be called an international sewage pollution prevention certificate, in such form, for such duration and subject to such conditions as may be prescribed.

Explanation.—For the purposes of this sub-section, “sewage” means—

(i) drainage and other waste from any form of toilets, urinals and water closet scuppers;

(ii) drainage from medical premises (dispensary, sick bay and other like places) via wash basins, wash tubs and scuppers located in such premises;

(iii) drainage from spaces containing living animals; or

(iv) other waste water when mixed with the drainages specified above.

(4) A valid international pollution prevention certificate issued in respect of an oil tanker or a ship, other than an Indian ship, by the Government of the country to which the ship belongs shall,
subject to such rules as the Central Government may make in this behalf, have the same effect in India as the corresponding certificate issued in respect of an Indian ship has under this Part.

356D. Issue of certificates for foreign ships in India and Indian ships in foreign countries.—(1) The Central Government may, at the request of the Government of a country to which the Convention applies, cause any international pollution prevention certificate to be issued in accordance with the Convention in respect of an oil tanker or other ship in that country, if it is satisfied that such certificate can properly be issued, and where a certificate is so issued, it shall contain a statement that it has been issued on request.

(2) The Central Government may request the Government of a country to which the Convention applies, to issue any international pollution prevention certificate in accordance with the Convention in respect of a ship and the certificate issued in pursuance of such a request containing a statement that it has been so issued shall have the same effect as if it had been issued by the Central Government under this Act.

356E. Requirement for construction and equipment in ships to prevent pollution.—For the purpose of preventing or reducing discharges of harmful substances or mixtures containing such substances from the oil tankers or other ships, the Central Government may make rules requiring Indian oil tankers and other Indian ships to be fitted with such equipment and to comply with such requirements for construction, survey of equipment and structure of such oil tankers or other ships and specifying conditions for making of surveys of all oil tankers or other ships, as may be prescribed, prior to issuing an international pollution prevention certificate.

Explanation.—For the purposes of this section, “harmful substance” means any substance which, if introduced into the sea, is liable to create hazards to human health, harm living resources and marine life, damage amenities or
interfere with other legitimate uses of the sea, and includes any substance subject to control by the Convention.

356F. Record books.—(1) Every Indian oil tanker or other Indian ship which carries a substance subject to control by the Convention shall maintain, as may be required, record books in the prescribed forms, on board the oil tanker or other ship.

(2) The manner in which record books shall be maintained, the nature of entries to be made therein, the custody and disposal thereof, and all other matters relating thereto shall be such as may be prescribed having regard to the provisions of the Convention.

356G. Inspection and control of oil tankers and other ships to which this Part applies.—(1) A surveyor or any person authorised in this behalf may go, at any reasonable time, on board an oil tanker or other ship to which any of the provisions of this Part applies, for the purposes of—

(a) ensuring that the prohibitions, restrictions and obligations imposed by or under this Part are complied with;

(b) satisfying himself about the adequacy of the measures taken to prevent pollution;

(c) ascertaining the circumstances relating to an alleged discharge of a substance which is subject to control by the Convention from the oil tanker or other ship in contravention of the provisions of this Part;

(d) inspecting any record required to be maintained on board; and

(e) checking the validity of the international pollution prevention certificate.

(2) The surveyor or any such person may, if necessary, make, without unduly delaying the oil tanker or the other ship, a true copy of any record of the oil
tanker or the other ship and may require the master of such tanker or ship to certify the copy to be a true copy and such copy shall be admissible as evidence of the facts stated therein.

356H. Information regarding contravention of provisions of Convention.—(1) If, on report from a surveyor or other person authorised to inspect an oil tanker or other ship under section 356G, the Director-General is satisfied that any provision of the Convention has been contravened by such oil tanker or other ship within the coastal waters, the Director-General or any officer authorised by him in this behalf, may—

(a) detain the oil tanker or other ship until the causes of such contravention are removed to the satisfaction of the Director-General or the officer authorised by him; and

(b) proceed against such oil tanker or other ship for recovery of cost of pollution damage, if any, and the cost of prevention of pollution damage and cleaning of such pollution;

Provided that where the Director-General deems it necessary, he may request the Indian Navy or the Coast Guard for preventing the oil tanker or other ship from proceeding to sea, and the Indian Navy or the Coast Guard, as the case may be, shall take action as requested by the Director-General:

(2) On receipt of information from the Government of any country to which the Convention applies that an Indian oil tanker or other ship has contravened any provision of the Convention, the Central Government may, if it deems it necessary so to do, request such Government to furnish further details of the alleged contravention and if satisfied that sufficient evidence is available to establish contravention of any of the provisions of this Part or the rules made thereunder, take appropriate action against the owner or master of
the concerned oil tanker or other ship and intimate the reporting Government of the action so taken.]

356-I. Oil reception facilities at ports in India.—(1) Notwithstanding anything contained in any other law for the time being in force, in respect of every port in India, the powers of the port authority shall include the power to provide 1[reception facilities].

1. Subs. by Act 59 of 2003, s. 3, for “oil reception facilities” (w.e.f. 1-3-2004).

2. Subs by s. 4, ibid., for “oil” (w.e.f. 1-3-2004).

(2) A port authority providing 1[reception facilities] or a person providing such facilities by arrangement with the port authority, may make charges for the use of the facilities at such rates and may impose such conditions in respect of the use thereof as may be approved, by notification in the Official Gazette, by the Central Government in respect of the port.

(3) Where the Central Government is satisfied that there are no 1[reception facilities] at any port in India or that the facilities available at such port are not adequate for enabling ships calling at such port to comply with the requirements of the Convention, the Central Government may, after consultation with the port authority in charge of such port, direct, by order in writing, such authority to provide or arrange for the provision of such 1[reception facilities] as may be specified in the order.

(4) The Central Government may, by notification in the Official Gazette, specify the ports in India having 1[reception facilities] in accordance with the requirements of the Convention.

Explanation.—For the purpose of this section, “port authority” means,—

(a) in relation to any major port, the Board of Trustees in respect of that port constituted under any law for the time being in force;
(b) in relation to any other port, the Conservator of the Port, within the meaning of section 7 of the Indian Ports Act, 1908 (15 of 1908).

PROVISIONS FOR CONTAINMENT OF ACCIDENTAL POLLUTION

356J. Power to give a notice to owner, etc., of polluting ship.—(1) Where the Central Government is satisfied that—

(a) [oil or noxious liquid substance] is escaping or is likely to escape from a tanker, a ship other than a tanker or any off-shore installation; and

(b) the [oil or noxious liquid substance] so escaped or likely to escape is causing or threatens to cause pollution of any part of coasts or coastal waters of India,

it may, for the purpose of minimising the pollution already caused, or, for preventing the pollution threatened to be caused, require—

(i) the owner, agent, master or charterer of the tanker,

(ii) the owner, agent, master or charterer of the ship other than a tanker,

(iii) the owner, agent, master, charterer or operator of a mobile off-shore installation,

(iv) the owner, operator, lessee or licensee of off-shore installation of any other type,

or all or any of them, by notice served on him or as the case may be on them, to take such action in relation to the tanker, ship other than a tanker, mobile off-shore installation, or, as the case may be, off-shore installation of any other type or its cargo or in relation to both, as may be specified in such notice.
(2) Without prejudice to the generality of sub-section (1), the notice issued under that sub-section may require the person or persons on whom such notice is served to take action relating to any or all of the following matters, namely:—

(a) action for preventing the escape of 1[oil or noxious liquid substance] from the tanker, ship other than a tanker mobile off-shore installation or off-shore installation of any other type;

1. Subs. by Act 59 of 2003, s. 5, for “oil” (w.e.f.1-3-2004).

(b) action for removing 1[oil or noxious liquid substance] from the tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type in such manner, if any, and to such place, if any, as may be specified in the notice;

(c) action for removal of the tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type to a place, if any, as may be specified in the notice;

(d) action for removal of the 1[oil or noxious liquid substance] slicks on the surface of the sea in such manner, if any, as may be specified in the notice;

(e) action to disperse the 1[oil or noxious liquid substance] slicks on the surface of the sea in such manner, if any, as may be specified in the notice.

(3) The Central Government may, by any notice issued under sub-section (1), prohibit the removal—

(a) of the tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type, from a place specified in the notice;
(b) from the tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type, of any cargo or stores as may be specified in the notice,

except with its previous permission and upon such conditions, if any, as may be specified in the notice.

(4) Notwithstanding anything contained in sub-section (2), the Central Government may, if it is of the opinion that the pollution caused or likely to be caused has or may present a grave emergency, proceed to take such measures as may be deemed necessary and any measures so taken shall be deemed to have been taken under section 356K.

356K. Powers to take measures for preventing or containing 1[oil or noxious liquid substance] pollution.—(1) Where any person fails to comply, or fails to comply in part, with any notice served on him under section 356J, the Central Government may, whether or not such person is convicted of an offence under this Part by reason of his having so failed to comply, cause such action to be taken as it may deem necessary for—

(i) carrying out the directives given in the notice issued under section 356J; and

(ii) containing the pollution already caused or preventing the pollution threatened to be caused, of coastal waters or, as the case may be, of any part of the coast of India by 2[oil or noxious liquid substance] escaped or threatening to escape from the tanker, a ship other than a tanker, a mobile off-shore installation or off-shore installation of any other type.

(2) Subject to the provisions of Part XB, any expenditure or liability incurred by the Central Government in, or by reason of, the exercise of powers under sub-section (1) in relation to any tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type in respect of
which a notice had been issued under section 356J, or its cargo of oil or noxious liquid substance that had escaped or was discharged into the sea, shall be a debt due to the Central Government by the person or persons on whom the notice was served and may be recovered from that person, or as the case may be, from all or any of those persons and shall be a charge upon all or any tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type owned by that person or persons which may be detained by the Central Government until the amount is paid:

1. Subs. by Act 59 of 2003, s. 5, for “oil” (w.e.f. 1-3-2004).

Provided that provisions of Part XB of this Act shall not apply to measures taken in respect of any off-shore installation which is not a ship within the meaning of this Act except that in the event of pollution damage caused by any such off-shore installation the person who is liable for the damage may claim exoneration from any liability if he proves that such damage—

(a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) was wholly caused by an act or omission done with intent to cause that damage by any other person; or

(c) was wholly caused by the negligence or other wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids in exercise of its functions in that behalf.

356L. Power of the Central Government to give directions to certain ships to render certain services.—(1) Where for the purposes of taking any measures under sub-section (1) of section 356K, services of any Indian ship becomes necessary for—
(i) lightening or transporting any cargo or equipment from or to the polluting ship; or

(ii) providing any assistance to any other ship or equipment engaged in rendering services under clause (i),

the Central Government may, if it deems it necessary so do, direct, by an order in writing, the owner of any Indian ship, tug, barge or any other equipment to provide such services or assistance as may be specified in that order.

(2) The owner of any ship, tug, barge or any other equipment with respect to which an order under sub-section (1) has been made shall be entitled to tariff rates of freight and charter hire at reasonable rates having regard to current market conditions:

Provided that where tariff rates of freight are not fixed or where there is any dispute about reasonable rate of charter hire, the freight or, the case may be, charter hire, shall be paid at such rates as may be fixed by the Director-General by an order in writing.

(3) Where in pursuance of the proviso to sub-section (2), the Director-General makes any order fixing rates of freight or charter hire, he shall determine reasonability of such rates of freight or charter hire by examining such witnesses, documents and accounts as he may deem necessary.

[356M. Oil pollution cess.][Rep. by the Finance Act, 2016 (28 of 2016), section 239 and the Fifteenth Schedule (w.e.f.14-5-2016)].

[356N. Refusal of port clearance.][Rep. by the Finance Act, 2016 (28 of 2016), section 239 and the Fifteenth Schedule (w.e.f.14-5-2016)].
356-O. Power to make rules.—(1) The Central Government may, having regard to the provisions of the Convention, make rules to carry out the purposes of this Part.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), such rules may—

1[(a) prescribe the limits of ballast, and designate noxious liquid substances, under clauses (a) and (h), respectively, of section 356B;

1. Subs. by Act 59 of 2003, s. 6, for clauses (a) and (b) (w.e.f. 1-3-2004).

2. Subs. by s. 6, ibid., for “oil record books” (w.e.f. 1-3-2004).

3. Subs. by s. 6, ibid., for certain words (w.e.f. 1-3-2004).

4. Clause (e) repealed by Act 28 of 2016, s. 239 and the Fifteenth Schedule (w.e.f. 14-5-2016).

5. Ins. by Act 59 of 2003, s. 6 (w.e.f. 1-3-2004).

6. Ins. by Act 31 of 2014, s. 2 (w.e.f. 9-12-2014).

(b) prescribe the forms in which, the duration for which and the conditions subject to which, various international pollution prevention certificates shall be issued under section 356PC;

(bb) prescribe the period within which, the manner in which and the conditions for making surveys of oil tankers or other ships prior to issuing an international pollution prevention certificate and the requirements as to equipment which are to be fitted for prevention of pollution by an oil tanker and other ship under section 356E;

(c) prescribe the forms of [record books] for tankers and other Ships the manner in which such books shall be maintained, the nature of the entries to
be made therein, the time and circumstances in which such entries shall be
made, the custody and disposal thereof and all other matters relating thereto
for the purposes of section 356F;

(d) prescribe the fees which may be levied for inspection of 3[various
equipments required under the Convention] and the manner in which such
fees may be collected;

4* ***

5[(ee) any other matter which, for the implementation of the Convention, has
to be or may be prescribed.]

6[PART XIB

CONTROL OF HARMFUL ANTI-FOULING SYSTEMS ON SHIPS

356P. Application.—(1) Save as otherwise provided in this Part, this Part shall
apply to—

(a) every Indian ship, wherever it is;

(b) ships not entitled to fly the flag of India, but which operate under the
authority of India; and

(c) ships that enter a port, shipyard, or offshore terminal or place in India or
within the territorial waters of India or any marine areas adjacent thereto over
which India has, or may hereafter have, exclusive jurisdiction in regard to
control of pollution under the Territorial Waters, Continental Shelf, Exclusive
Economic Zone and other Maritime Zones Act, 1976 (80 of 1976) or any
other law for the time being in force.
(2) This Part shall not apply to any warship, naval auxiliary or other ship owned or operated by or under the authority of India and used, for the time being, only on Government non-commercial service:

Provided that in case of such ships, the Government shall ensure by the adoption of appropriate measures not impairing operations or operational capabilities of such ship that such ships are operated in a prescribed manner consistent with this Part.

356Q. Definitions.—In this Part, unless the context otherwise requires,—

(a) “anti-fouling system” means a coating, paint, surface treatment, surface, or device that is used on a ship to control or prevent attachment of unwanted organisms;

(b) “authority” means—

(i) the Government of India under whose authority the ship is operating;

(ii) with respect to a ship entitled to fly a flag of any other country, the Government of that country; and

(iii) with respect to floating platforms engaged in exploration and exploitation of the sea-bed and subsoil thereof adjacent to Indian coast over which Government of India exercises sovereign rights for the purposes of exploration and exploitation of its natural resources (including Floating Storage Units and Floating Production Storage and Offloading Units), the Government of India;

(c) “Committee” means the Marine Environment Protection Committee of the Organisation;

(d) “Convention” means the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001;
(e) “gross tonnage” means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 to the International Convention on Tonnage Measurement of Ships, 1969, or any successor Convention as ratified or acceded to or adopted by the Government of India;

(f) “international voyage” means a voyage by a ship entitled to fly the flag of one State to or from a port, shipyard, or offshore terminal under the jurisdiction of another State;

(g) “length” means the length as defined in the International Convention on Load Lines, 1966, as modified by the Protocol of 1988 relating thereto, or any successor Convention as ratified or acceded to or adopted by the Government of India;

(h) “Organisation” means the International Maritime Organisation;

(i) “port” shall have the same meaning as assigned to it in the Indian Port Act, 1908 (15 of 1908), the Major Port Trusts Act, 1963 (38 of 1963), or under any other law for the time being in force and shall include any terminal, either within the port limits or otherwise;

(j) “ship” means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft, fixed or floating platforms, floating storage units and floating production storage and off-loading units.

356R. Control of anti-fouling systems.—(1) Every Indian ship and other ships which are not entitled to fly Indian flag but operating under the authority of India, shall comply with the requirements set forth in this Part, including the applicable standards and requirements as prescribed from time to time as well as effective measures to ensure that such ships comply with the requirements, as may be prescribed from time to time.
(2) All other vessels to which this Part applies shall comply with requirements of the anti-fouling systems as prescribed from time to time.

356S. Issuance of International Anti-Fouling System Certificate.—(1) No Indian ship or other ships entitled to fly Indian flag or operating under its authority, which is of 400 gross tonnage and above shall engage in International Voyage unless there is on-board, in respect of that ship, a certificate issued by the Director-General, to be called as International Anti-Fouling System Certificate, in such form, for such duration and subject to such procedures and conditions as may be prescribed, from time to time.

(2) No Indian ship or other ships entitled to fly Indian flag or operating under its authority excluding fixed or floating platforms, Floating Storage Units and Floating Production Storage and Offloading Units which is of 24 meters or more in length, but less than 400 gross tonnage, shall engage in international voyage unless there is on board a declaration in such form and subject to such procedures and conditions as may be prescribed, from time to time.

(3) Indian ships entitled to fly Indian flag which are of 400 gross tonnage and above, with appropriate conditions as applicable for each type of ships and not engaged in international voyage and are required to be registered under this Act, shall be issued an Indian Anti-Fouling System Certificate, as may be prescribed from time to time.

356T. Issue of Anti-Fouling System Certificate for foreign ships in India and Indian ships in foreign countries.—(1) The Central Government may, at the request of the Government of a country to which the Convention applies, cause an International Anti-Fouling System Certificate to be issued in accordance with the Convention in respect of any ship of that country to which the Convention applies, if it is satisfied that such certificate can properly be issued, and where a certificate is so issued, it shall contain a
statement that it has been so issued on a request, as per the procedure
prescribed in this behalf from time to time.

(2) The Central Government may request the Government of a country to
which the Convention applies, to issue an International Anti-Fouling System
Certificate in accordance with the Convention in respect of a ship to which
this Part applies and the certificate so issued in pursuance of such a request
shall contain a statement that it has been so issued and shall have the same
effect as if it had been issued by the Central Government under this Act.

356U. Controls of waste materials.—Taking into account the international
rules, standards and requirements, the Central Government shall prescribe the
rules and take appropriate measures in its territory to require that wastes from
the application or removal of an anti-fouling system, are collected, handled,
treated and disposed of in a safe and environmentally sound manner, by any
person in India, to protect human health and the environment.

356V. Record of anti-fouling systems.—(1) Every ship to which this Part
applies shall maintain, a record of anti-fouling systems in the prescribed form.

(2) The manner, in which the record of anti-fouling systems to be maintained
shall be prescribed having regard to the provisions of the Convention and this
Part.

356W. Inspection and control of all ships above 400 gross tonnage.—(1) Any
person authorised by the Director-General as Surveyor in this behalf may
inspect, at any reasonable time, any ship to which any of the provisions of this
Part applies, for the purposes of—

(a) ensuring that the prohibitions, restrictions and obligations imposed by or
under this Part are complied with;
(b) verifying that, where required, there is on-board a valid International Anti-
Fouling System Certificate or a declaration on anti-fouling system; or

c) brief sampling of the ship's anti-fouling system that does not affect the
integrity, structure, or operation of the anti-fouling system taking into account
the procedures as prescribed from time to time; and

d) verifying any record required to be maintained on-board.

(2) For the purposes of clause (c) of sub-section (1), the time required to
process the results of such sampling shall not be used as a basis for
preventing the movement and departure of the ship.

(3) Any person authorised by the Director-General as surveyor in this behalf,
may, certify any matter referred to in sub-section (1) in respect of such ship as
a copy of the records of the ship to be a true copy and such copy shall be
admissible as evidence of the facts stated therein.

356X. Information regarding contravention of the provisions of
Convention.—(1) If, on receipt of a report from a surveyor or other person
authorised to inspect a ship, the Director-General is satisfied that any
provision of this Part has been contravened by such ship within the coastal
waters, the Director-General or any officer authorised by him in this behalf,
may—

(a) detain the ship until the causes of such contravention are removed to the
satisfaction of the Director-General or the officer authorised by him; and

(b) levy penalty on such ship as specified in section 436:

Provided that where the Director-General deems it necessary, he may request
the Indian Navy or the Coast Guard for preventing the ship from proceeding
to sea and the Indian Navy or the Coast Guard, as the case may be, shall take
action as requested by the Director-General.
(2) On receipt of information from the Government of any country to which the Convention applies that a ship has contravened any provision of the Convention, the Central Government may, if it deems it necessary so to do, request such Government to furnish further details of the alleged contravention and, if satisfied that sufficient evidence is available, conduct investigation of the alleged violations and take appropriate measures in respect thereof.

356Y. Power to make rules.—(1) The Central Government may, having regard to the provisions of the Convention, make rules to carry out the provisions of this Part.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), such rules may provide for all or any of the following matters, namely:—

(a) appropriate measures for operation of ships under the proviso to sub-section (2) of section 356P;

(b) the standards, requirements and measures to ensure compliance under section 356R;

(c) procedure and conditions and the fees which may be levied for inspection and issuance of international Anti-Fouling Systems Certificate under section 356S;

(d) procedure and the fees which may be levied for issuance of Anti-Fouling Systems Certificate for foreign ships in India and Indian ships in foreign countries under section 356T;

(e) procedure for collection, handling and disposal of wastes under section 356U;
(f) the format of record of Anti-Fouling Systems, the manner in which such record shall be maintained under section 356V;

(g) any other matter which is required to be or may be prescribed.]

PART XII

INVESTIGATIONS AND INQUIRIES

357. Definition of “coasts”.—In this Part, the word “coasts” includes the coasts of creeks and tidal rivers.

358. Shipping casualties and report thereof.—(1) For the purpose of investigations and inquiries under this Part, a shipping casualty shall be deemed to occur when—

(a) on or near the coasts of India, any ship is lost, abandoned, stranded or materially damaged;

(b) on or near the coasts of India, any ship causes loss or material damage to any other ship;

(c) any loss of life ensues by reason of any casualty happening to or on board any ship on or near the coasts of India;

(d) in any place, any such loss, abandonment, stranding, material damage or casualty as above mentioned occurs to or on board any Indian ship, and any competent witness thereof is found in India;

(e) any Indian ship is lost or is supposed to have been lost, and any evidence is obtainable in India as to the circumstances under which she proceeded to sea or was last heard of.

(2) In the cases mentioned in clauses (a), (b) and (c) of sub-section (1), the master, pilot, harbour master or other person in charge of the ship, or (where
two ships are concerned) in charge of each ship at the time of the shipping casualty, and

in the cases mentioned in clause (d) of sub-section (1), where the master of the ship concerned or (except in the case of a loss) where the ship concerned proceeds to any place in India from the place where the shipping casualty has occurred, the master of the ship,

shall, on arriving in India, give immediate notice of the shipping casualty to the officer appointed in this behalf by the Central Government.

359. Report of shipping casualties to Central Government.—(1) Whenever any such officer as is referred to in sub-section (2) of section 358 receives credible information that a shipping casualty has occurred, he shall forthwith report in writing the information to the Central Government; and may proceed to make a preliminary inquiry into the casualty.

(2) An officer making a preliminary inquiry under sub-section (1) shall send a report thereof to the Central Government or such other authority as may be appointed by it in this behalf.

360. Application to court for formal investigation.—The officer appointed under sub-section (2) of section 358, whether he has made a preliminary inquiry or not, may, and, where the Central Government so directs, shall make an application to a court empowered under section 361, requesting it to make a formal investigation into any shipping casualty, and the court shall thereupon make such investigation.

361. Court empowered to make formal investigation.—1[A Judicial Magistrate of the first class] specially empowered in this behalf by the Central Government and a 2[Metropolitan Magistrate] shall have jurisdiction to make formal investigation into shipping casualties under this Part.
1. Subs. by Act 12 of 1983, s. 17 and the Schedule, for “A magistrate of the first class” (w.e.f. 18-5-1983).

2. Subs. by s. 17 and the Schedule, ibid., for “presidency magistrate” (w.e.f. 18-5-1983).

3. Section. 365 renumbered as sub-section (1) thereof by Act 41 of 1984, s. 19 (w.e.f. 15-7-1985).

362. Power of court of investigation to inquire into charges against master, mates and engineers.—(1) Any court making a formal investigation into a shipping casualty may inquire into any charge of in competency or misconduct arising, in the course of the investigation, against any master, mate or engineer, as well as into any charge of a wrongful act or default on his part causing the shipping casualty.

(2) In every case in which any such charge, whether of in competency or misconduct, or of a wrongful act or default, as aforesaid, arises against any master, mate or engineer, in the course of an investigation, the court shall, before the commencement of the inquiry, cause to be furnished to him a statement of the case upon which the inquiry has been directed.

363. Power of Central Government to direct inquiry into charges of in competency or misconduct.—(1) If the Central Government has reason to believe that there are grounds for charging any master, mate or engineer with in competency or misconduct, otherwise than in the course of a formal investigation into a shipping casualty, the Central Government,—

(a) if the master, mate or engineer holds a certificate under this Act, in any case;
(b) if the master, mate or engineer holds a certificate under the law of any country outside India, in any case where the in competency or misconduct has occurred on board an Indian ship;

may transmit a statement of the case to any court having jurisdiction under section 361, which is at or nearest to the place where it may be convenient for the parties and witnesses to attend, and may direct that court to make an inquiry into that charge.

(2) Before commencing the inquiry, the court shall cause the master, mate or engineer so charged to be furnished with a copy of the statement transmitted by the Central Government.

364. Opportunity to be given to person to make defence.—For the purpose of any inquiry under this Part into any charge against a master, mate or engineer, the court may summon him to appear, and shall give him an opportunity of making a defence either in person or otherwise.

365. Power of court as to evidence and regulation of proceedings.—For the purpose of any investigation or inquiry under this Part, the court making the investigation or inquiry shall in respect of compelling the attendance and examination of witnesses and the production of documents and the regulation of the proceedings, have the same powers as are exercisable by that court in the exercise of its criminal jurisdiction.

1(2) Subject to any rules made in this behalf by the Central Government, the court making an investigation or inquiry under this Part may, if it thinks fit, order the payment, on the part of that Government, of the reasonable expenses of any witness attending for the purposes of such investigation or inquiry before such court.]

1. Ins. by Act 41 of 1984, s. 19 (w.e.f.15-7-1985).
366. Assessors.—(1) A court making a formal investigation shall constitute as its assessors not less than two and not more than four persons, of whom one shall be a person conversant with maritime affairs and the other or others shall be conversant with either maritime or mercantile affairs:

Provided that, where the investigation involves, or appears likely to involve, any question as to the cancellation or suspension of the certificate of a master, mate or engineer, two of the assessors shall be persons having also experience in the merchant service.

(2) The assessors shall attend during the investigation and deliver their opinions in writing, to be recorded on the proceedings, but the exercise of all powers conferred on the court by this Part or any other law for the time being in force shall rest with the court.

(3) The assessors shall be chosen from a list to be prepared from time to time by the Central Government.

367. Power to arrest witnesses and enter ships.—If any court making an investigation or inquiry under this Part thinks it necessary for obtaining evidence that any person should be arrested, it may issue a warrant for his arrest, and may, for the purpose of effecting the arrest, authorise any officer, subject, nevertheless, to any general or special instructions from the Central Government, to enter any vessel, and any officer so authorised may, for the purpose of enforcing the entry, call to his aid any officer of police or customs or any other person.

368. Power to commit for trial and bind over witnesses.—Whenever, in the course of any such investigation or inquiry, it appears that any person has committed in India an offence punishable under any law in force in India, the court making the investigation or inquiry may (subject to such rules consistent
with this Act as the High Court may from time to time make) cause him to be arrested, or commit him or hold him to bail to take his trial before the proper court, and may bind over any person to give evidence at the trial, and may, for the purposes of this section, exercise all its powers as a criminal court.

369. Report by court to Central Government.—(1) The court shall, in the case of all investigations or inquiries under this Part, transmit to the Central Government a full report of the conclusions at which it has arrived together with the evidence.

(2) Where the investigation or inquiry affects a master or an officer of a ship other than an Indian ship who holds a certificate under the law of any country outside India, the Central Government may transmit a copy of the report together with the evidence to the proper authority in that country.

2[(3) The Central Government shall, on receipt of the investigation report from the court, cause it to be published in the Official Gazette.]

370. Powers of court as to certificates granted by Central Government.—(1) A certificate of a master, mate or engineer which has been granted by the Central Government under this Act may be cancelled or suspended—

(a) by a court holding a formal investigation into a shipping casualty under this Part if the court finds that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been caused by the wrongful act or default of such master, mate or engineer;

(b) by a court holding an inquiry under this Part into the conduct of the master, mate or engineer if the court finds that he is incompetent or has been guilty of any gross act of drunkenness, tyranny or other misconduct or in a case of collision has failed to render such assistance or give such information as is required by section 348.
(2) At the conclusion of the investigation or inquiry, or as soon thereafter as possible, the court shall state in open sitting the decision to which it may have come with respect to the cancellation or suspension of any certificate and, if suspension is ordered, the period for which the certificate is suspended.

(3) Where the court cancels or suspends a certificate, the court shall forward it to the Central Government together with the report which it is required by this Part to transmit to it.

371. Power of court to censure master, mate or engineer.—Where it appears to the court holding an investigation or inquiry that having regard to the circumstances of the case an order of cancellation or suspension under section 370 is not justified, the court may pass an order censuring the master, mate or engineer in respect of his conduct.

372. Power of court to remove master and appoint new master.—(1) A 1[Judicial Magistrate of the first class] specially empowered in this behalf by the Central Government or a 2[Metropolitan Magistrate] may remove the master of any ship within his jurisdiction if the removal is shown to his satisfaction to be necessary.

1. Subs. by Act 12 of 1983, s. 17 and the Schedule, for “magistrate of the first class” (w.e.f. 18-5-1983).

2. Subs. by s. 17 and the Schedule, ibid., for “presidency magistrate” (w.e.f. 18-5-1983).

3. Subs. by s. 17 and the Schedule, ibid., for “magistrate” (w.e.f. 18-5-1983).

(2) The removal may be made upon the application of the owner of any ship or his agent, or of the consignee of the ship or of any certificated officer or of one-third or more of the crew of the ship.
(3) The Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be, may appoint a new master instead of the one removed, but where the owner, agent or consignee of the ship is within his jurisdiction, such an appointment shall not be made without the consent of that owner, agent or consignee.

(4) The Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be, may also make such order and require such security in respect of the cost of the matter as he thinks fit.

Marine Board

373. Convening of Marine Boards outside India.—Whenever—

(a) a complaint is made to an Indian consular officer or a senior officer of any ship of the Indian Navy in the vicinity (hereinafter referred to as naval officer) by the master or any member of the crew of an Indian ship and such complaint appears to the Indian consular officer or naval officer, as the case may be, to require immediate investigation; or

(b) the interest of the owner of an Indian ship or of the cargo thereof appears to an Indian consular officer or naval officer, as the case may be, to require it; or

(c) an allegation of incompetency or misconduct is made to an Indian consular officer or a naval officer against the master or any of the officers of an Indian ship; or

(d) any Indian ship is lost, abandoned or stranded at or near the place where an Indian consular officer or naval officer may be or whenever the crew or part of the crew of any Indian ship which has been lost, abandoned or stranded arrives at that place; or
(e) any loss of life or any serious injury to any person has occurred on board an Indian ship at or near that place;

the Indian consular officer or the naval officer, as the case may be, may, in his discretion, convene a Board of Marine Inquiry to investigate the said complaint or allegation or the matter affecting the said interest or the cause of the loss, abandonment or the stranding of the ship or of the loss of life or of the injury to the person.

374. Constitution and procedure of Marine Board.—(1) A Marine Board shall consist of the officer convening the Board and two other members.

(2) The two other members of the Marine Board shall be appointed by the officer convening the Marine Board from among persons conversant with maritime or mercantile affairs.

(3) The officer convening the Marine Board shall be the presiding officer thereof.

(4) A Marine Board shall, subject to the provisions of this Act, have power to regulate its own procedure.

375. Decisions of Marine Board to be by majority.— Where there is a difference of opinion among members of the Marine Board, the decision of the majority of the members shall be the decision of the Board.

376. Powers of Marine Board.—(1) A Marine Board may, after investigating and hearing the case—

(a) if it is of opinion that the safety of an Indian ship or her cargo or crew or the interest of the owner of an Indian ship or of the owner of the cargo thereof requires it, remove the master and appoint another qualified person to act in his stead;
(b) if it is of opinion that any master or officer of an Indian ship is incompetent or has been guilty of any act of misconduct or in a case of collision has failed to render such assistance or give such information as is required by section 348 or that loss, abandonment or stranding of or serious damage to any ship, or loss of life or serious injury to any person has been caused by the wrongful act or default of any master or ship’s officer of an Indian ship, suspend the certificate of that master or ship's officer for a stated period:

Provided that no such certificate shall be suspended unless the master or officer concerned has been furnished with a statement of the case in respect of which investigation has been ordered and he has also been given an opportunity of making a defence either in person or otherwise;

(c) discharge a seaman from an Indian ship and order the wages of any seaman so discharged or any part of those wages to be forfeited;

(d) decide any questions as to wages, fines or forfeitures arising between any of the parties to the proceedings;

(e) direct that any or all of the costs incurred by the master or owner of an Indian ship or on the maintenance of a seaman or apprentice while in prison outside India shall be paid out of, and deducted from, the wages of that seaman or apprentice, whether earned or subsequently earned;

(f) if it considers such a step expedient, order a survey to be made of any Indian ship which is the subject of investigation;

(g) order the costs of proceedings before it or any part of those costs, to be paid by any of the parties thereto, and may order any person making a frivolous or unjustified complaint to pay compensation for any loss or delay caused thereby; and any costs or compensation so ordered to be paid by any person shall be paid by that person accordingly and may be recovered in the
same manner in which wages of seaman are recoverable or may be deducted from the wages due to that person.

(2) All orders made by a Marine Board shall, whenever practicable, be entered in the official log book of the ship which is the subject of investigation or on board which the casualty or occurrence or conduct investigated took place, and be signed by the presiding officer of the Board.

Miscellaneous provisions relating to cancellation and suspension of certificates

377. Powers of Central Government to cancel, suspend, etc., certificate of master, mate or engineer.—(1) Any certificate which has been granted by the Central Government under this Act to any master, mate or engineer, may be cancelled or suspended for any specified period, by the Central Government in the following cases, that is to say,—

(a) if, on any investigation or inquiry made by any court, tribunal or other authority for the time being authorised by the legislative authority in any country outside India, the court, tribunal or other authority reports that the master, mate or engineer is incompetent or has been guilty of any gross act of misconduct, drunkenness or tyranny, or in a case of collision has failed to render assistance, or to given such information as is referred to in section 348, or that the loss, stranding or abandonment of, or damage to, any ship or loss of life has been caused by his wrongful act or default;

(b) if the master, mate or engineer is proved to have been convicted—

(i) of any offence under this Act or of any non-bailable offence committed under any other law for the time being in force in India; or

(ii) of an offence committed outside India, which, if committed in India, would be a non-bailable offence;
(c) if (in the case of a master of an Indian ship) he has been superseded by the order of any court of competent jurisdiction in India or outside India.

1[(1A) Any certificate within the meaning of clause (b) of section 87A may be cancelled or suspended for any specified period by the Central Government if the person to whom such certificate has been granted has contravened the provisions of sub-section (1) or sub-section (2) of section 87B:

1. Ins. by Act 20 of 1979, s. 3 (w.e.f. 4-5-1979).

2. Subs. by s. 3, ibid., for “sub-section (1) or” (w.e.f. 4-5-1979).

Provided that no order under this sub-section shall be passed by the Central Government unless the person concerned has been given an opportunity of making a representation against the order proposed.]

(2) The Central Government may at any time, if it thinks the justice of the case so requires,—

(a) revoke any order of cancellation or suspension made by it under 2[sub-section (1) or sub-section (1A) or] set aside any order of cancellation or suspension made by a court under section 370 or any order of suspension made by a Marine Board under clause (b) of sub-section (1) of section 376 or any order of censure made by a court under section 371; or

(b) shorten or lengthen the period of suspension ordered by it under 2[sub-section (1) or sub-section (1A) or] by a court under section 370 or by a Marine Board under clause (b) of sub-section (1) of section 376 or cancel a certificate suspended by a Marine Board under that clause; or

(c) grant without examination a new certificate of the same or any lower grade in the case of any certificate cancelled or suspended by it under 2[sub-section (1) or sub-section (1A) or] by a court under section 370 or any certificate
suspended by a Marine Board under clause (b) of sub-section (1) of section 376:

Provided that no order under clause (b) either lengthening the period of suspension of or cancelling a certificate shall be passed by the Central Government unless the person concerned has been given an opportunity of making a representation against the order proposed.

(3) A certificate granted under clause (c) of sub-section (2) shall have the same effect as if it had been granted after examination.

378. Delivery of Indian certificate cancelled or suspended.—A master or ship’s officer who is the holder of a certificate issued under this Act shall, if such certificate has been cancelled or suspended by the Central Government or by a court or suspended by a Marine Board, deliver his certificate to the Central Government, court or Marine Board on demand or if it is not so demanded by the Central Government or court or Board, to the Director-General.

379. Effect of cancellation or suspension of certificate.—The cancellation or suspension of a certificate by the Central Government or by a court or the suspension of a certificate by a Marine Board, shall—

(a) if the certificate was issued under this Act, be effective everywhere and in respect of all ships; and

(b) if the certificate was issued outside India, be effective—

(i) within India and the territorial waters of India, in respect of all ships; and

(ii) outside India, in respect of Indian ships only.
380. Suspended certificate not to be endorsed.—If the certificate of a master or ship’s officer is suspended under this Part by the Central Government or by a court or a Marine Board, no endorsement shall be made to that effect on the said certificate.

381. Power of Central Government to cancel or suspend other certificates.—Notwithstanding anything contained in this Act, the Central Government may, at any time, without any formal investigation or inquiry, cancel or suspend any certificate granted by it under this Act, other than a certificate granted to a master, mate or engineer, if, in its opinion, the holder is, or has become, unfit to act in the grade for which the certificate was granted to him:

Provided that no order under this section shall be passed by the Central Government unless the person concerned has been given an opportunity of making a representation against the order proposed.

Re-hearing of cases

382. Re-hearing.—(1) Whenever an investigation or inquiry has been held by a court or by a Marine Board under this Part, the Central Government may order the case to be reheard either generally or as to any part thereof, and shall so order—

(a) if new and important evidence which could not be produced at the investigation has been discovered, or

(b) if for any other reason there has, in its opinion, been a miscarriage of justice.

(2) The Central Government may order the case to be reheard by the court or Marine Board as the case may be consisting of the same members or other members as the Central Government may deem fit.
Courts of survey


(2) The Judge shall be a District Judge, Judge of a court of small causes, 1[Metropolitan Magistrate, Judicial Magistrate of the first class] or other fit person appointed in this behalf by the Central Government either generally or for any specified case.

1. Subs. by Act 12 of 1983, s. 17 and the Schedule, for “presidency magistrate, magistrate of the first class” (w.e.f. 18-5-1983).

(3) The assessors shall be persons of nautical, engineering or other special skill or experience.

(4) Subject to the provisions of Part IX as regards ships other than Indian ships, one of the assessors shall be appointed by the Central Government either generally or in each case and the other shall be summoned by the Judge in the manner prescribed out of a list of persons from time to time prepared for the purpose by the Central Government or, if there is no such list or if it is impracticable to procure the attendance of any person named in such list, shall be appointed by the Judge.

384. Appeal from surveyor to court of survey.—(1) If a surveyor authorised to inspect a ship—

(a) makes a statement in his report of inspection with which the owner or his agent or the master of the ship is dissatisfied, or

(b) gives notice under this Act of any defect in any ship, or

(c) declines to give any certificate under this Act,
the owner, master or agent, as the case may be, may, subject to the provisions of sub-section (2) and of section 387, appeal to a court of survey.

(2) Whenever a surveyor inspects any ship, he shall, if the owner, master or agent of the ship so requires, be accompanied on the inspection by some person nominated by the owner, master or agent, as the case may be, and if the person so nominated agrees with the surveyor as to the statement made or the notice given by the surveyor or the refusal by the surveyor to give a certificate, there shall be no appeal to a court of survey from that statement, notice or refusal.

385. Powers and procedure of court of survey.—(1) The Judge shall on receiving notice of appeal or a reference from the Central Government immediately summon the assessors to meet forthwith in the prescribed manner.

(2) The court of survey shall hear every case in open court.

(3) The Judge may appoint any competent person to survey the ship and report thereon to the court.

(4) The Judge shall have the same powers as the Central Government has to order the ship to be released or finally detained; but unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.

(5) The owner and master of the ship and any person appointed by the owner or master and also any person appointed by the Central Government may attend any inspection or survey made in pursuance of this section.

(6) The Judge shall report the proceedings of the court in each case to the Central Government in the manner prescribed and each assessor shall either
sign such report or report to the Central Government the reasons for his dissent.

386. Power to make rules.—The Central Government may make rules for carrying out the purposes of this Part with respect to a court of survey and in particular, and without prejudice to the generality of the foregoing power, with respect to—

(a) the procedure of the court;

(b) the requiring, on an appeal, of security for costs and damages;

(c) the amount and application of fees; and

(d) the ascertainment, in case of dispute, of the proper amount of costs

Scientific referees

387. Reference in difficult cases to scientific persons.—(1) If the Central Government is of opinion that an appeal to a court of survey involves a question of construction or design or a scientific difficulty or important principle, it may refer the matter to such one or more out of a list of scientific referees to be from time to time prepared by the Central Government as may appear to possess the special qualifications necessary for the particular case and may be selected by agreement between a person duly appointed by the Central Government in this behalf and the appellant, or in default of any such agreement, by the Central Government; and thereupon the appeal shall be determined by the referee or referees instead of by the court of survey.

(2) The Central Government, if the appellant in any such appeal so requires and gives security to its satisfaction to pay the costs of and incidental to the reference, shall refer such appeal to a referee or referees selected as aforesaid.
(3) The referee or referees shall have the same powers as a Judge of the court of survey.

Investigations into explosions or fires on board ships

388. Power to investigate causes of explosion or fire on board ship.—Whenever any explosion or fire occurs on board any ship on or near the coasts of India, the Central Government may direct that an investigation into the causes of explosion or fire be made by such person or persons as it thinks fit.

389. Report to be made regarding cause of explosion or fire.—The person or persons referred to in section 388 may go on board the ship on which the explosion or fire has occurred with all necessary workmen and labourers, and remove any portion of the ship, or of the machinery thereof, for the purpose of the investigation, and shall report to the Central Government or the person duly appointed by it, as the case may be, what in his or their opinion was the cause of the explosion or fire.

PART XIII

WRECK AND SALVAGE WRECK

390. Definition of “coasts”.—In this Part, the word “coasts” includes the coasts of creeks and tidal rivers.

391. Receivers of wreck.—(1) The Central Government may, by notification in the Official Gazette, appoint any person to be a receiver of wreck (in this Part referred to as receiver of wreck) to receive and take possession of wreck and to perform such duties connected therewith as are hereinafter mentioned, within such local limits as may be specified in the notification.

(2) A receiver of wreck may, by order in writing, direct that all or any of his functions under this Part shall, in such circumstances and subject to such
conditions, if any, as may be specified in the order, be discharged by such person as may be specified therein and any person while discharging any such functions shall be deemed to be a receiver of wreck for the purposes of this Act.

392. Duty of receiver where vessel is in distress.—Where any vessel is wrecked, stranded or in distress at any place on or near the coasts of India, the receiver of wreck, within the limits of whose jurisdiction the place is situate, shall, upon being made acquainted with the circumstances, forthwith proceed there, and upon his arrival shall take command of all persons present and shall assign such duties and give such directions to each person as he thinks fit for the preservation of the vessel and of the lives of the person's belonging to the vessel and of its cargo and equipment:

Provided that the receiver shall not interfere between the master and the crew of the vessel, in reference to the management thereof unless he is requested to do so by the master.

393. Power to pass over adjoining lands.—(1) Whenever a vessel is wrecked, stranded or in distress as aforesaid, all persons may, for the purpose of rendering assistance to the vessel or of saving the lives of the shipwrecked persons, or of saving the cargo or equipment of the vessel, unless there is some public road equally convenient, pass and repass, either with or without vehicles or animals, over any adjoining lands without being subject to interruption by the owner or occupier, so that they do as little damage as possible and may also on the like condition, deposit on these lands any cargo or other article recovered from the ship.

(2) Any damage sustained by an owner or occupier in consequence of the exercise of the rights given by this section, shall be a charge on the vessel, cargo or articles in respect of or by which the damage is occasioned and the amount payable in respect of the damage shall, in case of dispute, be determined by a Magistrate on application made to him in this behalf.
394. Power of receiver of wreck to suppress, plunder and disorder by force.—Whenever a vessel is wrecked, stranded or in distress as aforesaid, and any person plunders, creates disorder or obstructs the preservation of the vessel or of the shipwrecked persons or of the cargo or equipment of the vessel, the receiver of wreck may take such steps and use such force as he may consider necessary for the suppression of any such plundering, disorder or obstruction, and may for that purpose command any person to assist him.

395. Procedure to be observed by persons finding wreck.—Any person finding and taking possession of any wreck within any local limits for which there is a receiver of wreck, or bringing within such limits any wreck which has been found and taken possession of elsewhere, shall, as soon as practicable—

(a) if he be the owner thereof, give the receiver of wreck notice in writing of the finding thereof and of the marks by which such wreck is distinguished;

(b) if he be not the owner of such wreck, deliver the same to the receiver of wreck.

396. Investigation of certain matters in respect of vessels wrecked, etc.—Whenever any vessel is wrecked, stranded or in distress as aforesaid, the receiver of wreck within the local limits of whose jurisdiction the vessel is wrecked, stranded or in distress may conduct an investigation into all or any of the following matters, that is to say,—

(a) the name and description of the vessel;

(b) the names of the master and of the owners;

(c) the names of the owners of the cargo;

(d) the ports from and to which the vessel was bound;
(e) the occasion of the wrecking, stranding, or distress of the vessel;

(f) the services rendered; and

(g) such other matters or circumstances relating to the vessel, the cargo or the equipment, as the receiver thinks necessary.

397. Notice to be given by receiver.—The receiver of wreck shall as soon as may be after taking possession of any wreck, publish a notification in such manner and at such place as the Central Government may, by general or special order, direct, containing a description of the wreck and the time at which and the place where it was found.

398. Immediate sale of wreck by receiver in certain cases.—A receiver of wreck may at any time sell any wreck in his custody if, in his opinion,—

(a) it is under the value of five hundred rupees; or

(b) it is so much damaged or of so perishable a nature that it cannot with advantage be kept; or

(c) it is not of sufficient value for warehousing;

and the proceeds of the sale shall, after defraying the expenses thereof, be held by the receiver for the same purposes and subject to the same claims, rights and liabilities as if the wreck had remained unsold.

399. Claims of owners to wreck.—(1) The owner of any wreck in the possession of the receiver upon establishing his claim to the same to the satisfaction of the receiver within one year from the time at which the wreck came into the possession of the receiver shall, upon paying the salvage and other charges, be entitled to have the wreck or the proceeds thereof delivered to him.
(2) Where any articles belonging to or forming part of a vessel other than an Indian vessel which has been wrecked or belonging to and forming part of the cargo of such vessel, are found on or near the coasts of India or are brought into any port in India, the consular officer of the country in which the vessel is registered or, in the case of cargo, the country to which the owners of the cargo may have belonged shall, in the absence of the owner and of the master or other agent of the owner, be deemed to be the agent of the owner, with respect to the custody and disposal of the articles.

(3) Where the owner of the wreck does not appear and claim the balance of the proceeds of sale within one year from the date of sale, the said balance shall become the property of the Central Government.

400. Prohibition of certain acts in respect of wreck.—No person shall—

(a) without the leave of the master board or attempt to board any vessel which is wrecked, stranded or in distress as aforesaid, unless the person is, or acts by command of, the receiver of wreck; or

(b) impede or hinder or attempt in any way to impede or hinder the saving of any vessel stranded or in danger of being stranded or otherwise in distress on or near the coasts of India or of any part of the cargo or equipment of the vessel, or of any wreck; or

(c) secrete any wreck or deface or obliterate any marks thereon; or

(d) wrongfully carry away or remove any part of a vessel stranded or in danger of being stranded or otherwise in distress, on or near the coasts of India, or any part of the cargo or equipment of the vessel or any wreck.

401. Search warrants where wreck is concealed—Where a receiver of wreck suspects or receives information that any wreck is secreted or is in the possession of some person who is not the owner thereof or that any wreck is
otherwise improperly dealt with, he may apply to the nearest 1[Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be,] for a search warrant, and that 1[Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be,] shall have power to grant such warrant and the receiver of wreck by virtue thereof may enter any house or other place wherever situate and also any vessel and search for, seize and detain any such wreck there found.

1. Subs. by Act 12 of 1983, s. 17 and the Schedule, for “magistrate” (w.e.f. 18-5-1983).

2. Ins. by Act 41 of 1984, s. 20 (w.e.f.15-7-1985).

Salvage

402. Salvage payable for saving life, cargo or wreck.—(1) Where services are rendered—

(a) wholly or in part within the territorial waters of India in saving life from any vessel, or elsewhere in saving life from a vessel registered In India; or

(b) in assisting a vessel or saving the cargo or equipment of a vessel which is wrecked, stranded or in distress at any place on or near the coasts of India; or

(c) by any person other than the receiver of wreck in saving any wreck;

there shall be payable to the salvor by the owner of the vessel, cargo, equipment or wreck, a reasonable sum for salvage having regard to all the circumstances of the case.

(2) Salvage in respect of the preservation of life when payable by the owner of the vessel shall be payable in priority to all other claims for salvage.
(3) Where salvage services are rendered by or on behalf of the Government or by a vessel of the Indian Navy [or of the Coast Guard] or the commander or crew of any such vessel, the Government, the commander or the crew, as the case may be, shall be entitled to salvage and shall have the same rights and remedies in respect of those services as any other salvor.

2[Explanation.—“Coast Guard” means the Coast Guard constituted under section 3 of the Coast Guard Act, 1978 (30 of 1978).]

(4) Any dispute arising concerning the amount due under this section shall be determined upon application made by either of the disputing parties—

(a) to a 1[Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be,] where the amount claimed does not exceed ten thousand rupees; or

(b) to the High Court, where the amount claimed exceeds ten thousand rupees.

(5) Where there is any dispute as to the persons who are entitled to the salvage amount under this section, the 1[Judicial Magistrate of the first class or the Metropolitan Magistrate or the High Court as the case may be,] shall decide the dispute and if there are more persons than one entitled to such amount, 2[such magistrate] or the High Court shall apportion the amount thereof among such persons.

1. Subs. by Act 12 of 1983, s. 17 and the Schedule, for “the magistrate or the High Court, as the case may be” (w.e.f. 18-5-1983).

2. Subs. by s. 17 and the Schedule, ibid., for “the magistrate” (w.e.f. 18-5-1983).

3. Subs. by s. 17 and the Schedule, ibid., for “a magistrate” (w.e.f. 18-5-1983).

(6) The costs of and incidental to all proceedings before 3[a Judicial Magistrate of the first class or Metropolitan Magistrate] or the High Court under this section shall be in the discretion of 2[such magistrate] or the High Court, and 2[such magistrate] or the High Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid and to give all necessary directions for the purpose aforesaid.

403. Savings.—Nothing in this Part shall—

(a) affect any treaty or arrangement with any foreign country to which India is a party with reference to the disposal of the proceeds of wrecks on their respective coasts; or

(b) affect the provisions of section 29 of the Indian Ports Act, 1908 (15 of 1908), or entitle any person to salvage in respect of any property recovered by creeping or sweeping in contravention of that section.

404. Power to make rules respecting wreck and salvage.—(1) The Central Government may make rules to carry out the purposes of this Part.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the procedure to be followed by a receiver of wreck in respect of the taking possession of wrecks and their disposal;

(b) the fees payable to receivers in respect of the work done by them;

(c) the procedure to be followed for dealing with claims relating to ownership of wrecks;
(d) the appointment of valuers in salvage cases;

(e) the principles to be followed in awarding salvage and the apportioning of salvage;

(f) the procedure to be followed for dealing with claims for salvage;

(g) the detention of property in the custody of a receiver of wreck for the purpose of enforcing payment of salvage.

PART XIV

CONTROL OF INDIAN SHIPS AND SHIPS ENGAGED IN COASTING TRADE

405. Application of Part.—This Part applies only to sea-going ships fitted with mechanical means of propulsion of not less than one hundred and fifty tons gross, but the Central Government may, by notification in the Official Gazette, fix any lower tonnage for the purposes of this Part.

406. Indian ships and Chartered ships to be licensed.—(1) No Indian ship and no other ship chartered by a citizen of India or a company [or a co-operative Society] shall be taken to sea from a port or place within or outside India except under a licence granted by the Director-General under this section:

Provided that the Central Government, if it is of opinion that it is necessary or expedient in the public interest so to do, may, by notification in the Official Gazette, exempt any class of ships chartered by a citizen of India or a company [or a co-operative Society] from the provisions of this sub-section.

(2) A licence granted under this section may be

(a) a general licence;
(b) a licence for the whole or any part of the coasting trade of India; or

(c) a licence for a specified period or voyage.

(3) A licence granted under this section shall be in such form and shall be valid for such period as may be prescribed, and shall be subject to such conditions as may be specified by the Director-General.

407. Licensing of ships for coasting trade.—(1) No ship other than an Indian ship or a ship chartered by a citizen of India (or a company or a co-operative society which satisfies the requirements specified in clause (b) or, as the case may be, clause (c) of section 21), shall engage in the coasting trade of India except under a licence granted by the Director-General under this section.

1. Subs. by Act 43 of 1981, s. 8, for “or a company which satisfies the requirements specified in clause (b) of section 21” (w.e.f. 28-9-1981).

(2) A licence granted under this section may be for a specified period or voyage and shall be subject to such conditions as may be specified by the Director-General.

(3) The Central Government may, by general or special order, direct that the provisions of sub-section (1) shall not apply in respect of any part of the coasting trade of India or shall apply subject to such conditions and restrictions as may be specified in the order.

408. Revocation or modification of licence.—(1) The Director-General may, at any time if the circumstances of the case so require, revoke or modify a licence granted under section 406 or section 407.

(2) No licence shall be revoked or modified under this section unless the person concerned has been given a reasonable opportunity of making a representation against such revocation or modification, as the case may be.
409. Licences to be surrendered when they cease to be valid.—When a licence under section 406 or section 407 ceases to be valid, the person to whom it was granted shall, without unreasonable delay, return it or cause it to be returned to the Director-General.

410. No port clearance until licence is produced.—No customs collector shall grant a port clearance to a ship in respect of which a licence is required under this Part until after production by the owner, master or agent of such a licence.

411. Power to give directions.—The Director-General may, if he is satisfied that in the public interest or in the interests of Indian shipping it is necessary so to do, give, by order in writing, such directions as he thinks fit—

(a) in the case of a ship which has been granted a licence under section 406, with respect to all or any of the following matters:—

(i) the ports or places whether in or outside India, to which, and the routes by which, the ship shall proceed for any particular purpose;

(ii) the diversion of any ship from one route to another for any particular purpose;

(iii) the classes of passengers or cargo which may be carried in the ship;

(iv) the order of priority in which passengers or cargo may be taken on or put off the ship at any port or place, whether in or outside India;

(b) in the case of a ship which has been granted a licence under section 407 with respect to the order of priority in which passengers or, cargo may be taken on the ship at any port or place in India from which she is about to proceed for any port or place on the continent of India at which she is to call in the course of her voyage.
1411A. Powers of the Central Government to protect interests of Indian shipping from undue foreign intervention.—(1) If it appears to the Central Government—

1. Ins. by Act 12 of 1983, s. 12 (w.e.f. 18-5-1983).

(a) that measures have been taken by or under the law of any foreign country for regulating or controlling the terms or conditions upon which goods or passengers may be carried by sea, or the terms or conditions of contracts or arrangements relating to such carriage; and

(b) that such measures, in so far as they apply to things done or to be done outside the territorial jurisdiction of that country by persons carrying on lawful business in India, constitute an infringement of the jurisdiction which belongs to India,

it may, by an order in writing, direct that this section shall apply to those measures either in whole or to such extent as may be specified in the order.

(2) Where an order issued under sub-section (1) is in force in relation to any measures, it shall be the duty of every person in India who carries on business consisting or comprising of the carriage of goods or passengers by sea to give notice to the Central Government of any requirement or prohibition imposed or threatened to be imposed on him pursuant to such measures so far as this section applies to him, including any requirement to submit any contractor other document for approval thereunder.

(3) Where a notice under sub-section (2) is received from any person or there are grounds to believe that a notice is likely to be received; the Central Government may, by an order in writing, give to such person directions prohibiting compliance with any such requirement or prohibition as it considers proper for maintaining the jurisdiction of India.
(4) Any directions given by the Central Government under sub-section (3) may be either general or special and may prohibit compliance with any requirement or prohibition either absolutely or in such cases or subject to such conditions, as to consent or otherwise, as may be specified in the order.

(5) If it appears to the Central Government that any person in India has been or may be required to produce or furnish to any court, tribunal or authority of a foreign country any commercial document which is not within the territorial jurisdiction of that country or any commercial information to be compiled from documents not within the territorial jurisdiction of that country and that the requirement constitutes or would constitute an infringement of the jurisdiction which belongs to India, the Central Government may, by an order in writing, give directions to that person, prohibiting him from complying with the requirement except to such extent or subject to such conditions as may be specified in the order.

412. [Power to fix shipping rates.] Omitted by the Merchant Shipping (Amendment) Act, (68 of 1993), s. 6 (w.e.f. 27-10-1993).

413. Power of Director-General to call for information.—The Director-General may, by notice, require—

(a) the owner, master or agent of any ship in respect of which a licence granted by the Director-General under this Act is in force; or

(b) the owner, master or agent of any ship in respect of which any directions have been or may be given under clause (b) of section 411;

to furnish within the period specified in the notice information as to—

(i) the classes of passengers and cargo which the ship is about to carry or is capable of carrying or has carried during any specified period;

(ii) the rates of passenger fares and freight charges applicable to the ship;
(iii) any other matter which may be prescribed.

414. Power to make rules. (1) The Central Government may make rules for carrying out the purposes of this Part.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the form in which, the period or voyage for which, and the conditions subject to which licences under this Part may be granted, the particulars to be included therein and the fees payable therefor;

1* * * *

1 Clauses (b) and (c) omitted by Act 68 of 1993, s. 7 (w.e.f. 27-10-1993).

2. Subs. by Act 43 of 1981, s. 9, for “or a company which satisfies the requirements specified in clause (b) of section 21” (w.e.f. 28-9-1981).

3. Ins. by Act 12 of 1983, s. 13 (w.e.f. 18-5-1983).

(d) the matters regarding which information may be required to be furnished under section 413.

PART XV

SAILING VESSELS

415. Application of Part.—Save as otherwise provided, this Part applies to every sea-going sailing vessel owned by a citizen of India or a company or a co-operative society which satisfies the requirements specified in clause (b) or, as the case may be, clause (c) of section 21.]
416. Decision of question whether a vessel is a sailing vessel.—If any question arises whether a vessel is a sailing vessel or not for the purposes of this Part, it shall be decided by the Director-General and his decision thereon shall be final.

417. Certificate of registry.—(1) Every sailing vessel 3[(other than a sailing vessel solely engaged in fishing for profit)] shall be registered in accordance with the provisions of this section.

(2) The owner of every sailing vessel shall make an application in the prescribed form to a registrar for the grant to him of a certificate of registry in respect of the vessel.

(3) The owner of every sailing vessel in respect of which an application under sub-section (2) is made, shall cause the tonnage of the vessel to be ascertained in the prescribed manner.

(4) The registrar may make such inquiry as he thinks fit with respect to the particulars contained in such application and shall enter in a register to be kept for the purpose (hereinafter referred to as sailing vessels register) the following particulars in respect of the vessel, namely:—

(a) the name of the sailing vessel, the place where she was built, and the port to which she belongs;

(b) the right type and tonnage of the vessel;

(c) the name, occupation and residence of the owner of the vessel;

(d) the number assigned to the vessel;

(e) the mortgages, if any, effected by the owner in respect of the vessel;

(f) such other particulars as may be prescribed.
(5) After the particulars in respect of the vessel have been entered in the sailing vessels register under sub-section (4), the registrar shall grant to the applicant a certificate of registry in the prescribed form.

(6) The owner of every sailing vessel shall pay for each certificate of registry a fee according to such scale as may be prescribed by the Central Government, having regard to the tonnage of the vessel, but in no case exceeding one rupee per ton of its gross tonnage.

(7) A sailing vessel requiring to be registered under this Part but not so registered may be detained by a proper officer until the owner or tindal produces a certificate of registry in respect of the vessel.

418. Particulars relating to sailing vessel to be painted.—The owner of every sailing vessel so registered shall, before the vessel begins to take any cargo or passengers, paint or cause to be painted permanently in the prescribed manner on some conspicuous part of the sailing vessel, the name by which the vessel has been registered, the number assigned to the vessel by the registrar and the port to which she belongs, and shall take all steps to ensure that the vessel remains painted as required by this section.

419. Change of name of sailing vessel.—A change shall not be made in the name of a sailing vessel registered under this Part except in accordance with the rules made in this behalf.

420. Prevention of overloading or overcrowding.—(1) The Central Government may make rules regulating the carriage of cargo or passengers in sailing vessel and the protection of life and property on board such vessels.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
(a) the assignment of free board to sailing vessel;

(b) the marking of such free board on such vessels and the maintenance of such markings;

(c) the survey of the space allotted to passengers on board such vessels;

(d) the scale and type of accommodation to be provided for each passenger.

(3) Any sailing vessel attempting to ply or proceed to sea without free board markings or any sailing vessel which has been so loaded as to submerge such marking may be detained by a proper officer until free board markings are made in accordance with the rules made in this behalf or the vessel is so loaded that such markings are not submerged.

(4) Nothing in this section relating to free board, shall apply to any sailing vessel in respect of which a load line has been assigned under Part IX.

421. Certificate of inspection.—(1) No sailing vessel shall ply or proceed to sea unless there is in force in respect of that vessel a certificate of inspection granted under this Part, the same being applicable to the voyage on which she is about to ply or proceed.

(2) A certificate of inspection in respect of a sailing vessel shall specify—

(a) the name and tonnage of the vessel;

(b) the names of the owner and tindal of the vessel;

(c) the maximum number of the crew and the maximum number of passengers which the vessel is fit to carry;

(d) the limits within which the vessel may be used for the purpose of trading and the terms and conditions subject to which she may be used for such trading;
(e) the particulars of the free board assigned to the vessel;

and shall contain a statement to the effect that her hull, rigging and equipment (including auxiliary machinery, if any) are in good condition.

(3) Every certificate of inspection shall be in force from the date of issue for a period of one year or for such shorter period as may be specified therein:

Provided that where a sailing vessel is on a voyage outside India at the time of expiry of the certificate, the certificate shall continue to be valid until her first arrival at a port in India after the expiry of such period.

(4) No customs collector shall grant a port clearance to a sailing vessel registered under this Part until after the production by the owner or tindal thereof of a certificate of inspection granted under this Part in respect of the vessel.

422. Cancellation, re-issue, etc. of certificate of inspection.—(1) Where at any time subsequent to the issue of a certificate of inspection in respect of a sailing vessel, the Director-General has reason to believe that the vessel is not fit to ply or proceed to sea, he may, after giving the owner an opportunity of making a representation, cancel such certificate.

(2) Where at any time subsequent to the issue of a certificate of inspection a sailing vessel has undergone material alteration or has met with accident or, where the certificate of inspection of a sailing vessel has been cancelled under sub-section (1) and an application is made for the re-issue of such certificate or for the grant of a fresh certificate, the registrar may, before re-issuing the certificate or issuing a fresh certificate, as the case may be, cause such vessel to be inspected; and if the authority inspecting the vessel reports that she is not fit to ply or proceed to sea or that her hull, rigging and equipment (including auxiliary machinery, if any) are defective, such certificate shall not be re-issued or issued until the vessel is, in the opinion of such authority, fit to
ply or proceed to sea or the defect is rectified to the satisfaction of such authority.

423. Registry of alterations.—When a sailing vessel is so altered as not to correspond with the particulars relating to her entered in the certificate of registry, the owner of such vessel shall make a report of such alteration to the registrar of the port where the vessel is registered, and the registrar shall either cause the alteration to be registered, or direct that the vessel be registered anew, in accordance with such rules as may be made in this behalf.

424. Transfer of registry.—The registry of a sailing vessel may be transferred from one port to another in India on the application of the owner or tindal of the vessel in accordance with such rules as may be made in this behalf.

425. Closure of registry.—If a sailing vessel is lost, destroyed or rendered permanently unfit for service, the owner of such vessel shall with the least practicable delay report the fact to the registrar of the port where the vessel is registered and also forward to him along with the report, the certificate of registry in respect of the vessel; and thereupon the registrar shall have the registry of the vessel closed.

426. Restrictions on transfer of sailing vessel.—No person shall transfer or acquire any sailing vessel registered under this Part or any interest therein without the previous approval of the Central Government; and any transaction effected in contravention of this section shall be void and unenforceable.

427. Mortgages of sailing vessels.—(1) Every mortgage of a sailing vessel or of any interest therein effected after the date on which this Part comes into force shall be registered with the registrar.
(2) Every mortgage of a sailing vessel or any interest therein effected before the date on which this Part comes into force shall, if subsisting on that date, be registered with the registrar within three months of that date.

(3) The registrar shall enter every such mortgage in the sailing vessels register in the order in which it is registered with him.

(4) If there are more mortgages than one recorded in respect of the same sailing vessel or interest therein, the mortgages shall, notwithstanding any express, implied or constructive notice, have priority according to the date on which each mortgage is registered with the registrar and not according to the date of each mortgage itself:

Provided that nothing contained in this sub-section shall affect the relative priorities as they existed immediately before the date on which this Part comes into force as between mortgages of the same vessel or interest therein effected before such date which are registered in accordance with the provisions of sub-section (2).

428. Fraudulent use of certificate of registry or certificate of inspection, etc., prohibited.—(1) No person shall use or attempt to use the certificate of registry or the certificate of inspection granted in respect of a sailing vessel for any purpose other than the lawful navigation of the vessel.

(2) No person shall use or attempt to use for the navigation of a sailing vessel a certificate of registry or a certificate of inspection not granted in respect of that vessel.

(3) No person who has in his possession or under his control the certificate of registry or the certificate of inspection of a sailing vessel shall refuse or omit without reasonable cause to deliver such certificate on demand to the owner of the vessel.
429. Statement relating to crew of sailing vessel to be maintained.—(1) Every owner or tindal of a sailing vessel shall maintain or cause to be maintained in the prescribed a form a statement of the crew of the vessel containing with respect to each member thereof—

(a) his name;

(b) the wages payable to him;

(c) the names and addresses of his next-of-kin;

(d) the date of commencement of his employment; and

(e) such other particulars as may be prescribed.

(2) Every change in the crew of the vessel shall be entered in the statement under sub-section (1).

(3) A copy of such statement and of every change entered therein shall be communicated as soon as possible to the registrar of the port of registry of the vessel concerned.

430. Inquiry into jettisoning of cargo.—(1) If any owner or tindal of a sailing vessel in the course of her voyage, has jettisoned or claims to have jettisoned the whole or any part of the cargo of the vessel on account of abnormal weather conditions or for any other reason, he shall immediately after arrival of the vessel at any port in India give notice of such jettisoning to the proper officer at such port; and such notice shall contain full particulars of the cargo jettisoned and the circumstances under which such jettisoning took place.

(2) When any such officer receives notice under sub-section (1) or has reason to believe that the cargo of any sailing vessel in his port has been jettisoned, he shall forthwith report in writing to the Central Government the
information he has received and may proceed to make an inquiry into the matter.

431. Non-Indian sailing vessels not to engage in coasting trade without permission.—(1) A sailing vessel not owned by a citizen of India 1[or a company or a co-operative society which satisfies the requirements specified in clause (b) or, as the case may be, clause (c) of section 21,] shall not engage in the coasting trade of India without the written permission of the Director-General.

1. Subs. by Act 43 of 1981, s. 10, for “or a company which satisfies the requirements specified in clause (b) of section 21” (w.e.f. 28-9-1981).

(2) The Director-General may, when granting such permission, impose such terms and conditions as he thinks fit and may require the owner or other person in charge of the vessel to deposit with him such amount as he thinks necessary for the due fulfilment of such terms and conditions.

(3) No customs collector shall grant a port clearance to a sailing vessel not registered under this Part which engages or attempts to engage in the coasting trade of India until after the production by the owner or person in charge thereof of the written permission of the Director-General.

432. Detention of overloaded non-Indian sailing vessels.—(1) If any sailing vessel registered in any country outside India arrives in or proceeds from a port or place in India in an overloaded condition, the person in charge of the vessel shall be guilty of an offence under this section.

(2) A sailing vessel shall be deemed to be in an overloaded condition for the purposes of this section—

(a) where the vessel is loaded beyond the limit specified in any certificate issued in the country in which she is registered; or
(b) in case no such certificate has been issued in respect of the vessel, where the actual free board of the vessel is less than the free board which would have been assigned to her had she been registered under this Part.

(3) Any sailing vessel which is in an overloaded condition and is about to proceed from a port or place in India may be detained until she ceases to be in an overloaded conditions; but nothing herein contained shall affect the liability of the person in charge of the vessel in respect of such overloading under any other provision of this Act.

433. Power of courts to rescind contracts between owner and tindal.—Where a proceeding is instituted in any court in respect of any dispute between the owner of a sailing vessel and the tindal arising out of or incidental to their relation as such, or is instituted for the purpose of this section, the court, if having regard to all the circumstances of the case it thinks it just to do so, may rescind any contract between the owner and the tindal upon such terms as the court may think just and this power shall be in addition to any other jurisdiction which the court can exercise independently of this section.

434. Application to sailing vessels of other provisions relating to ships.—The Central Government may, by notification in the Official Gazette, direct that any provisions of this Act other than those contained in this Part which do not expressly apply to sailing vessels shall also apply to sailing vessels subject to such conditions, exceptions and modifications as may be specified in the notification.

1[434A. Insurance of members of crew of a sailing vessel.—(1) Subject to the other provisions of this section and the scheme framed under sub-section (3), the owner of every sailing vessel shall take and keep in force, in accordance with the provisions of the said scheme, a policy of insurance whereby all the members of the crew of such vessel are insured against death or personal injury caused by accident in the course of employment as such members.
1. Ins. by Act 41 of 1984, s. 21 (w.e.f. 15-7-1985).

(2) It shall be the responsibility of the owner of every sailing vessel to bear the expenses incidental to the taking of the policy of insurance referred to in sub-section (1) and to pay the premiums for keeping it in force:

Provided that the maximum amount which the owner of the sailing vessel shall be liable to pay by way of premiums per year shall not exceed—

(a) where the number of members of the crew is not more than ten, one hundred and fifty rupees.

(b) where the number of members of the crew is more than ten, a sum calculated at the rate of fifteen rupees for each member of the crew.

(3) The Central Government may, by notification in the Official Gazette, frame a scheme providing for the insurance of all persons employed as members of the crew of sailing vessels against death or personal injury caused by accident arising in the course of their employment as such members.

(4) Without prejudice to the generality of the provisions of sub-section (3), a scheme framed under that sub-section may provide for—

(a) the amount which should be payable in the case of personal injury resulting in the death of a member of the crew of a sailing vessel due to accident and in the case of other injuries:

Provided that different amounts may be provided in respect of different personal injuries not resulting in death;

(b) the procedure for payment of such amounts; and

(c) all other matters necessary for giving effect to the scheme.
(5) Where, under the provisions of any other law for the time being in force compensation is payable in respect of death or personal injury sustained by a member of the crew of a sailing vessel as a result of an accident in the course of his employment as such member, then if the amount payable in respect of such death or personal injury in accordance with the scheme framed under this section—

(a) is equal to or more than, the compensation payable under such other law, no compensation shall be payable under such other law;

(b) is less than the compensation payable under such other law, the compensation payable under such other law shall be reduced by the said amount.

(6) Every scheme framed by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree that the scheme should not be made, the scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that scheme.

434B. Policy of insurance.—(1) No sailing vessel shall ply or proceed to sea unless there is in force in respect of the members of the crew of the vessel a policy of insurance complying with the requirements of section 434-A and the scheme framed thereunder.

(2) No customs collector shall grant a port clearance to a sailing vessel until after production by the owner of such a policy of insurance.]
435. Power to make rules respecting sailing vessels.—(1) The Central Government may make rules to carry out the purposes of this Part.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form in which applications for certificates of registry shall be made and the particulars which such applications should contain;

(b) the manner in which the tonnage of sailing vessels shall be ascertained;

(c) the manner in which free board is to be assigned to sailing vessels and the free board markings are to be made;

(d) the form in which certificates of registry and certificates of inspection may be issued;

(e) the issue of duplicate copies of certificates of registry and certificates of inspection where the originals are destroyed, lost, mislaid, mutilated or defaced;

(f) the manner in which, and the time within which, applications for the registry of alterations in the certificates of registry of sailing vessels shall be reported, the endorsement of the particulars of alteration on the certificates of registry, the grant of provisional certificates in cases where sailing vessels are directed to be registered anew, the period for which provisional certificates shall be valid and all other matters ancillary to the registry of alterations;

(g) the manner in which applications for the transfer of registry of sailing vessels from one port to another in India shall be made and the procedure to be followed by the registrar in connection with such transfer;
(h) the authorities by which sailing vessels are to be inspected and certificates of inspection are to be issued under this Part;

(i) the criteria by which sailing vessels may be classified for the purpose of determining the limits within which they may be used for purposes of trading;

(j) the fixing of the rates of freight which may be charged by sailing vessels for specified goods or for any class of goods in relation to the coasting trade of India;

(k) the equipment which sailing vessels or any class of sailing vessels should carry including equipment relating to life saving and fire appliances, lights, shapes and signals required by the collision regulations;

(l) the survey of space provided for passengers of sailing vessels and the scale and type of accommodation to be provided for such passengers;

(m) the authority to which information regarding certificates of registry, registry of alterations and issue of fresh certificates of registry under this Part is to be sent by registrars;

(n) the qualifications to be possessed by tindals and other members of the crew of sailing vessels, the issue of permits to tindals and of identity cards to other members of the crew, the conditions for the issue of such permits and identity cards and the cancellation or suspension thereof;

1[(o) the fees which may be levied for the issue or re-issue of certificates of registry, for the survey or inspection of sailing vessels before issue of such certificates, for the inspection of sailing vessels and for all other purposes of this Part and the manner in which such fees may be recovered.]

1. Subs. by Act 12 of 1983, s. 14, for clause (o) (w.e.f. 1983).

2. Ins. by s. 15, ibid. (w.e.f. 18-5-1983).
(p) the form in which a contract of chartering a sailing vessel shall be executed;

(q) the form in which a contract for the carriage of goods by sailing vessels shall be executed;

(r) the reservation, in the public interest or in the interest of sailing vessels, of specified commodities for transport by sailing vessels either generally or in specified sectors of the coasting trade or between specified ports and the conditions subject to which such reservation may be made;

(s) any other matter which has to be or may be prescribed.

2|PART XVA

FISHING BOATS

435A. Application of Part.—Save as otherwise provided, this Part applies to every Indian fishing boat.

435B. Definition.—For the purposes of this Part, “Indian fishing boat” means—

(a) every fishing vessel as defined in clause (12) of section 3;

(b) every sailing vessel, whether or not fitted with mechanical means of propulsion, solely engaged in fishing for profit;

(c) every boat or craft of any other type used solely for fishing which the Central Government may, by notification in the Official Gazette, specify to be a fishing boat for the purpose of this section,

which is owned wholly by persons to each of whom any of the descriptions specified in clause (a) or in clause (b) or in clause (c), as the case may be, of
section 21 applies or which satisfies such other requirements as the Central Government may, by notification in the Official Gazette, specify.

435C. Obligation to register.—Every Indian fishing boat shall be registered under this Part:

Provided that any Indian fishing boat registered at the commencement of this Part under Part V or Part XV of this Act or any other law for the time being in force in India shall be deemed to have been registered under this Part:

Provided further that every Indian fishing boat so deemed to have been registered shall be re-registered under this Part within such period from the commencement of this Part as the Central Government may, by notification in the Official Gazette, specify:

Provided also that registration of non-mechanised sailing vessels will commence in different ports on such dates as the Central Government may, by notification in the Official Gazette, specify.

435D. Port of registry.—(1) The ports at which registration of Indian fishing boats shall be made shall be such ports or places in India as the Central Government may, by notification in the Official Gazette, declare to be ports or places of registry under this Part.

(2) The port or place at which an Indian fishing boat is registered for the time being under this Part, shall be deemed to be her port or place of registry and the port or place to which she belongs.

435E. Registrars of Indian fishing boats.—The Central Government may, by notification in the Official Gazette, appoint an officer to be registrar of Indian fishing boats (hereafter in this Part referred to as registrar) at every port or place declared as a port or place of registry under sub-section (1) of section 435D.
435F. Application for registry.—An application for the registry of an Indian fishing boat shall be made—

(a) in the case of an individual, by the person requiring to be registered as owner or by his agent;

(b) in the case of more than one individual requiring to be so registered, by one or more of the persons so requiring or by his or their agent or agents, as the case may be; and

(c) in the case of a company or a co-operative society requiring to be so registered, by its agents;

and the authority of the agent shall be testified in writing, if appointed by an individual under the hand of the person appointing him and, if appointed by a company or a co-operative society under its common seal.

435G. Certificate of registry.—(1) The owner of every Indian fishing boat required to be registered under this Part shall make an application in the prescribed form to the registrar for the grant to him of a certificate of registry in respect of the fishing boat.

(2) The owner of every Indian fishing boat in respect of which an application under sub-section (1) is made, shall cause the tonnage of the fishing boat to be ascertained in the prescribed manner.

(3) The registrar may make such inquiry as he thinks fit with respect to the particulars contained in such application and shall enter in a register to be kept for the purpose (hereinafter referred to as fishing boats register) the following particulars in respect of the Indian fishing boat, namely:—

(a) the name of the fishing boat, the place where she was built and the port to which she belongs;
(b) the rig, type and tonnage of the fishing boat;

(c) the number assigned to the fishing boat;

(d) the name, occupation and residence of the owner of the fishing boat;

(e) the mortgages, if any, effected by the owner in respect of the fishing boat; and

(f) such other particulars as may be prescribed.

(4) After the particulars in respect of the Indian fishing boat have been entered in the fishing boats register under sub-section (3), the registrar shall grant to the applicant a certificate of registry in the prescribed form.

(5) The owner of every Indian fishing boat shall pay for each certificate of registry a fee according to such scale as may be prescribed by the Central Government having regard to the tonnage of the fishing boat, but in no ease exceeding one rupee per ton of its gross tonnage.

(6) An Indian fishing boat required to be registered under this Part but not so registered may be detained by a proper officer until the owner, skipper, tindal or other person in charge of the fishing boat produces a certificate of registry in respect of the fishing boat.

435H. Particular relating to Indian fishing boats to be painted.—The owner of every Indian fishing boat so registered shall, before commissioning the fishing boat into service, paint or cause to be painted permanently in the prescribed manner on some conspicuous part of the fishing boat, the name by which the fishing boat has been registered, the number assigned to the fishing boat by the registrar and the port or place to which she belongs, and shall take all steps to ensure that the fishing boat remains painted as required by this section.
435-I. Change of name of Indian fishing boat.—A change shall not be made in the name of an Indian fishing boat registered under this Part except in accordance with rules made in this behalf.

435J. Special provision for Indian fishing boats.—Every Indian fishing boat registered under this Part shall carry on board such life saving appliances and fire appliances as are prescribed by rules made under sections 288, 289 and 457 or under any other provision of this Act, subject to such exemptions as may be specially granted in respect of such fishing boat.

435K. Certificate of inspection.—(1) No Indian fishing boat shall ply or proceed to sea unless there is in force in respect of that fishing boat a certificate of inspection granted under this Part.

(2) A certificate of inspection in respect of an Indian fishing boat shall specify—

(a) the name and tonnage of the fishing boat;

(b) the name of skipper, tindal or other person in charge of the fishing boat;

(c) the maximum number of members of crew the fishing boat is certified to carry;

(d) the safety equipments and appliances the fishing boat is required to carry on board;

(e) such other matters as the Central Government may think fit to specify,

and shall contain a statement to the effect that her hull, rigging, equipment and machinery where fitted are in good condition.

(3) Every certificate of inspection shall be in force from the date of issue for a period of one year or for such shorter period as may be specified therein:
Provided that when an Indian fishing boat is at sea at the time of expiry of the certificate, the certificate shall continue to be valid until her first arrival at a port or place in India.

435L. Cancellation, re-issue, etc., of certificate of inspection.—(1) Where at any time subsequent to the issue of a certificate of inspection in respect of an Indian fishing boat, the registrar has reason to believe that the fishing boat is not fit to proceed to sea, he may, after giving the owner an opportunity of making a representation, cancel such certificate.

(2) Where at any time subsequent to the issue of a certificate of inspection an Indian fishing boat has undergone material alteration or has met with accident or, where the certificate of inspection has been cancelled under sub-section (1) and the application is made for the re-issue of such certificate or for the grant of a fresh certificate, the registrar may, before re-issuing the certificate or issuing a fresh certificate, as the case may be, cause such fishing boat to be inspected; and if the authority inspecting the fishing boat reports that she is not fit to proceed to sea or that her hull, rigging or equipment are defective, such certificate shall not be re-issued or issued until the fishing boat is in the opinion of such authority, fit to proceed to sea or the defect is rectified to the satisfaction of that authority.

435M. Inspection of safety equipments and appliances.—(1) Any surveyor appointed under section 9, any registrar appointed under section 435E or any other officer appointed by the Central Government in this behalf by notification in the Official Gazette may at any reasonable time inspect any Indian fishing boat for the purpose of seeing that she is properly provided with safety equipments and appliances in conformity with the rules referred to in section 435J.

(2) If the surveyor, or, as the case may be, the registrar or other officer appointed under sub-section (1) finds that the Indian fishing boat is not provided with the aforesaid equipments and appliances, he shall give to the
owner, skipper or tindal or any other person in charge of the fishing boat a 
notice in writing pointing out the deficiency and also what in his opinion is 
requisite to remedy the said deficiency.

(3) No Indian fishing boat served with a notice under sub-section (2) shall 
proceed to sea until it obtains a certificate signed by the surveyor, registrar or 
other officer appointed under sub-section (1) to the effect that it is properly 
provided with safety equipments and appliances in conformity with the 
aforesaid rules.

435N. Registration of alteration.—When an Indian fishing boat is so altered us 
not to correspond with the particulars relating to her entered in the certificate 
of registry, the owner of such fishing boat shall make a report of such 
alterations to the registrar of the port or place where the fishing boat is 
registered, and the registrar shall either cause the alterations to be registered, 
or direct that the fishing boat may be registered anew, in accordance with 
such rules as may be made in this behalf.

435-O. Transfer of registry.—The registry of an Indian fishing boat may be 
transferred from one port or place to another port or place in India on the 
application of the owner of the fishing boat, in accordance with such rules as 
may be made in his behalf.

435P. Closure of registry.—If an Indian fishing boat is lost, destroyed or 
rendered permanently unfit for service, the owner of such fishing boat shall, 
with the least possible delay, report the fact to the registrar of the port or 
place where the fishing boat is registered and also forward to him certificate 
of registry in respect of the fishing boat; and thereupon the registrar shall 
have the registry of the fishing boat closed.

435Q. Restriction on Transport of Indian fishing boats.—No person shall 
transfer or acquire any Indian fishing boat registered under this Part or any 
interest therein without the previous approval of the Central Government;
and any transaction effected in contravention of this section shall be void and unenforceable.

435R. Mortgage of Indian fishing boats.—(1) Every mortgage of an Indian fishing boat or any interest therein effected after the date on which this Part comes into force shall be registered with the registrar.

(2) Every mortgage of an Indian fishing boat or any interest therein effected before the date on which this Part comes into force shall, if subsisting on that date, be registered with the registrar within three months from that date.

(3) The registrar shall enter every such mortgage in the fishing boats register in the order in which it is registered with him.

(4) If there are more mortgages than one recorded in respect of the same Indian fishing boat or interest therein, the mortgages shall, notwithstanding any express, implied or constructive notice, have priority according to the date on which each mortgage is registered with the registrar and not according to the date of each mortgage itself:

Provided that nothing contained in this sub-section shall affect the relative priorities as they existed immediately before the date on which this Part comes into force as between mortgages of the same fishing boat or interest therein effected before such date which are registered in accordance with the provisions of sub-section (2).

435S. Fraudulent use of certificate of registry or certificate of inspection, etc., prohibited.—(1) No person shall use or attempt to use the certificate of registry or the certificate of inspection granted in respect of an Indian fishing boat for any purpose other than the lawful operation of that fishing boat.
(2) No person shall use or attempt to use for the operation of an Indian fishing boat, a certificate of registry or a certificate of inspection not granted in respect of that fishing boat.

(3) No person who has in his possession or under his control the certificate of registry or the certificate of inspection of an Indian fishing boat shall refuse or omit without reasonable cause to deliver such certificate on demand to the owner of the fishing boat.

435T. Statement relating to crew of Indian fishing boat to be maintained.—(1) Every owner, skipper, tindal or other person in charge of a mechanised Indian fishing boat of 25 registered tons and above shall maintain or cause to be maintained in the prescribed form a statement of the crew of the fishing boat containing the following particulars with respect to each member thereof, namely:—

(a) his name

(b) the wages payable to him;

(c) the names and addresses of his next-of-kin;

(d) the date of commencement of his employment; and

(e) such other particulars as may be prescribed:

Provided that the Central Government may, if it is of opinion that it is necessary or expedient so to do, and for reasons to be recorded in writing, exempt, by general or special order, any Indian fishing boat or class of Indian fishing boats from the provisions of this sub-section.

(2) Every change in the crew of the Indian fishing boat shall be entered in the statement under sub-section (1).
(3) A copy of such statement and of every change entered therein shall be communicated as soon as possible to the registrar of the port or place of registry of the Indian fishing boat concerned.

435U. Power to make rules respecting Indian fishing boats.—(1) The Central Government may make rules to carry out the provisions of this Part.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form in which applications for certificates of registry shall be made and the particulars which such applications should contain;

(b) the manner in which tonnage of an Indian fishing boat shall be ascertained;

(c) the form in which fishing boats register shall be maintained;

(d) the forms in which certificates of registry and certificates of inspection may be issued;

(e) the fees which may be levied for the issue or re-issue of certificates of registry or certificates of inspection and for all other purposes of this Part;

(f) the manner in which the name, number assigned to the Indian fishing boat and name of the port or place to which she belongs shall be painted;

(g) the manner in which any change may be made in the name of an Indian fishing boat;

(h) any exemption from the requirements relating to carriage of safety equipment and appliances by an Indian fishing boat that may be specially granted under section 435J in respect of such fishing boat;
(i) the manner in which alterations in Indian fishing boats shall be reported and applications for the registry of such alterations in the certificates of registry of Indian fishing boats shall be made, the endorsement of the particulars of alterations on the certificates of registry, the grant of provisional certificates in cases where Indian fishing boats are directed to be registered anew, cases in which Indian fishing boats shall be registered anew, the period for which provisional certificates shall be valid and all other matters ancillary to the registry of alterations;

(j) the manner in which registry of an Indian fishing boat may be transferred from one port or place in India to another port or place in India;

(k) the form in which statement of members of crew of an Indian fishing boat may be maintained;

(l) any other matter which has to be or may be prescribed.

435V. Application to Indian fishing boats of other provisions relating to ships.—The Central Government may, by notification in the Official Gazette, direct that any provisions of this Act other than those contained in this Part which do not expressly apply to Indian fishing boats shall also apply to Indian fishing boats subject to such conditions, exceptions and modifications as may be specified in the notification.

435W. Fishery data to be furnished by Indian fishing boats.—The Central Government may, by notification in the Official Gazette, require every Indian fishing boat or any specified class of Indian fishing boats to furnish such fishery data to the registrar in such form and at such periodical intervals as may be specified in that notification.

435X. Power to exempt.—Notwithstanding anything contained in this Part, the Central Government may, by order in writing and upon such conditions as it may think fit to impose, exempt any Indian fishing boat or class of
PART XVI

PENALTIES AND PROCEDURE

Penalties

436. Penalties.—(1) Any person who contravenes any provision of this Act or fails to comply with any provision thereof which it was his duty to comply with, shall be guilty of an offence and if in respect of any such offence no penalty is specially provided in sub-section (2), he shall be punishable with fine which may extend to two hundred rupees.

(2) The offences mentioned in the second column of the following table shall be punishable to the extent mentioned in the fourth column of the same with reference to such offences respectively.

PART XVIII

REPEALS AND SAVINGS

461. Repeals and savings.—(1) The enactments specified in Part I of the Schedule are hereby repealed to the extent specified in the fourth column thereof.
(2) The enactments specified in Part II of the Schedule, in so far as they extend to and operate as part of the law of India, are hereby repealed.

(3) Notwithstanding the repeal of any enactment by sub-section (1) or sub-section (2),—

(a) any notification, rule, regulation, bye-law, order or exemption issued, made or granted under any enactment hereby repealed shall, until revoked, have effect as if it had been issued, made or granted under the corresponding provision of this Act;

(b) any officer appointed and anybody elected or constituted under any enactment hereby repealed shall continue and shall be deemed to have been appointed, elected or constituted, as the case may be, under this Act;

(c) any document referring to any enactment hereby repealed shall be construed as referring to this Act or to the corresponding provision of this Act;

(d) any fine levied under any enactment hereby repealed may be recovered as if it had been levied under this Act;

(e) any offence committed under any enactment hereby repealed may be prosecuted and punished as if it had been committed under this Act;

(f) sailing vessels registered under any enactment hereby repealed shall be deemed to have been registered under this Act;

(g) mortgages of ships recorded in any register book maintained at any port in India under any enactment hereby repealed shall be deemed to have been recorded in the register book under the corresponding provision of this Act;

(h) any licence, certificate of competency or service, certificate of survey, A or B certificate, safety certificate, qualified safety certificate, radio telegraphy
certificate, radio telephony certificate, safety equipment certificate, exemption certificate, international or Indian load line certificate or any other certificate or document issued, made or granted under any enactment hereby repealed and in force at the commencement of this Act shall be deemed to have been issued, made or granted under this Act and shall, unless cancelled under this Act, continue in force until the date shown in the certificate or document, as the case may be.

(4) The mention of particular matters in this section shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeals.
INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO THE ARREST OF SEAGOING SHIPS

Brussels, May 10, 1952
The High Contracting Parties

Having recognised the desirability of determining by agreement certain uniform rules of law relating to the arrest of seagoing ships, have decided to conclude a convention, for this purpose and thereto have agreed as follows:

Article 1

In this Convention the following words shall have the meanings hereby assigned to them:

(1) "Maritime Claim" means a claim arising out of one or more of the following:

(a) damage caused by any ship either in collision or otherwise;

(b) loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship;

(c) salvage;

(d) agreement relating to the use or hire of any ship whether by charterparty or otherwise;

(e) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;

(f) loss of or damage to goods including baggage carried in any ship;
(g) general average;

(h) bottomry;

(i) towage;

(j) pilotage;

(k) goods or materials wherever supplied to a ship for her operation or maintenance;

(l) construction, repair or equipment of any ship or dock charges and dues;

(m) wages of Masters, Officers, or crew;

(n) Master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;

(o) disputes as to the title to or ownership of any ship;

(p) disputes between co-owners of any ship as to the ownership, possession, employment or earnings of that ship;

(q) the mortgage or hypothecation of any ship.

(2) "Arrest" means the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment.

(3) "Person" includes individuals, partnerships, and bodies corporate, Governments, their Departments and Public Authorities.

(4) "Claimant" means a person who alleges that a maritime claim exists in his favour.

Article 2
A ship flying the flag of one of the Contracting States may be arrested in the jurisdiction of any of the Contracting States in respect of any maritime claim, but in respect of no other claim; but nothing in this Convention shall be deemed to extend or restrict any right or powers vested in any Governments or other Departments, Public Authorities, or Dock or Harbour Authorities under their existing domestic laws or regulations to arrest, detain or otherwise prevent the sailing of vessels within their jurisdiction.

Article 3

(1) Subject to the provisions of para (4) of this Article and of Article 10, a claimant may arrest either the particular ship in respect of which the maritime claim arose, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship, even though the ship arrested be ready to sail; but no ship, other than the particular ship in respect of which the claim arose, may be arrested in respect of any of the maritime claims enumerated in Article 1 (1) (o), (p) or (q).

(2) Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.

(3) A ship shall not be arrested, nor shall bail or other security be given more than once in any one or more of the jurisdictions of any of the Contracting States in respect of the same maritime claim by the same claimant: and, if a ship has been arrested in any one of such jurisdictions, or bail or other security has been given in such jurisdiction either to release the ship or to avoid a threatened arrest, any subsequent arrest of the ship or of any ship in the same ownership by the same claimant for the same maritime claim shall be set aside, and the ship released by the Court or other appropriate judicial authority of that State, unless the claimant can satisfy the Court or other appropriate judicial authority that the bail or other security had been finally released before the subsequent arrest or that there is other good cause for maintaining that arrest.
(4) When in the case of a charter by demise of a ship the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claims.

The provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.

Article 4

A ship may only be arrested under the authority of a Court or of the appropriate judicial authority of the Contracting State in which the arrest is made.

Article 5

The Court or other appropriate judicial authority within whose jurisdiction the ship has been arrested shall permit the release of the ship upon sufficient bail or other security being furnished, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in Article 1(1)(o) and (p). In such cases the Court or other appropriate judicial authority may permit the person in possession of the ship to continue trading the ship, upon such person furnishing sufficient bail or other security, or may otherwise deal with the operation of the ship during the period of the arrest.

In default of agreement between the parties as to the sufficiency of the bail or other security, the Court or other appropriate judicial authority shall determine the nature and amount thereof.
The request to release the ship against such security shall not be construed as an acknowledgment of liability or as a waiver of the benefit of the legal limitation of liability of the owner of the ship.

Article 6

All questions whether in any case the claimant is liable in damages for the arrest of a ship or for the costs of the bail or other security furnished to release or prevent the arrest of a ship, shall be determined by the law of the Contracting State in whose jurisdiction the arrest was made or applied for.

The rules of procedure relating to the arrest of a ship, to the application for obtaining the authority referred to in Article 4, and to all matters of procedure which the arrest may entail, shall be governed by the law of the Contracting State in which the arrest was made or applied for.

Article 7

(1) The Courts of the country in which the arrest was made shall have jurisdiction to determine the case upon its merits if the domestic law of the country in which the arrest is made gives jurisdiction to such Courts, or in any of the following cases namely:

(a) if the claimant has his habitual residence or principle place of business in the country in which the arrest was made;

(b) if the claim arose in the country in which the arrest was made;

(c) if the claim concerns the voyage of the ship during which the arrest was made;

(d) if the claim arose out of a collision or in circumstances covered by Article 13 of the International Convention for the unification of certain rules of law
with respect to collisions between vessels, signed at Brussels on September 23, 1910;

(e) if the claim is for salvage;

(f) if the claim is upon a mortgage or hypothecation of the ship arrested.

(2) If the Court within whose jurisdiction the ship was arrested has no jurisdiction to decide upon the merits, the bail or other security given in accordance with Article 5 to procure the release of the ship shall specifically provide that it is given as security for the satisfaction of any judgment which may eventually be pronounced by a Court having jurisdiction so to decide; and the Court or other appropriate judicial authority of the country in which the arrest is made shall fix the time within which the claimant shall bring an action before a Court having such jurisdiction.

(3) If the parties have agreed to submit the dispute to the jurisdiction of a particular Court other than within whose jurisdiction the arrest was made or to arbitration, the Court or other appropriate judicial authority within whose jurisdiction the arrest was made may fix the time within which the claimant shall bring proceedings.

(4) If, in any of the cases mentioned in the two proceeding paragraphs, the action or proceedings are not brought within the time so fixed, the defendant may apply for the release of the ship or of the bail or other security.

(5) This article shall not apply in cases covered by the provisions of the revised Rhine Navigation Convention of October 17, 1868.

Article 8

(1) The provisions of this Convention shall apply to any vessel flying the flag of a Contracting State in the jurisdiction of any Contracting State.
(2) A ship flying the flag of a non-Contracting State may be arrested in the jurisdiction of any Contracting State in respect of any of the maritime claims enumerated in Article 1 or of any other claim for which the law of the Contracting State permits arrest.

(3) Nevertheless any Contracting State shall be entitled wholly or partly to exclude from the benefits of this Convention any Government of a non-Contracting State or any person who has not, at the time of the arrest, his habitual residence or principal place of business in one of the Contracting States.

(4) Nothing in this Convention shall modify or affect the rules of law in force in the respective Contracting States relating to the arrest of any ship within the jurisdiction of the State of her flag by a person who has his habitual residence or principal place of business in that State.

(5) When a maritime claim is arrested by a third party other than the original claimant, whether by subrogation, assignment or otherwise, such third party shall for the purpose of this Convention, be deemed to have the same habitual residence or principal place of business as the original claimant.

Article 9

Nothing in this Convention shall be construed as creating a right of action, which, apart from the provisions of this Convention, would not arise under the law applied by the Court which had seisin of the case, nor as creating any maritime liens which do not exist under such law or under the Convention on Maritime Mortgages and Liens, if the latter is applicable.

Article 10

The High Contracting Parties may at the time of signature, deposit or ratification or accession, reserve
(a) the right not to apply this Convention to the arrest of a ship for any of the claims enumerated in paragraphs (o) and (p) of Article 1, but to apply their domestic laws to such claims;

(b) the right not to apply the first paragraph of Article 3 to the arrest of a ship, within their jurisdiction, for claims set out in Article 1, paragraph (1).

Article 11

The High Contracting Parties undertake to submit to arbitration any disputes between States arising out of the interpretation or application of this Convention, but this shall be without prejudice to the obligations of those High Contracting Parties who have agreed to submit their disputes to the International Court of Justice.

Article 12

This Convention shall be open for signature by the State represented at the Ninth Diplomatic Conference on Maritime Law. The protocol of signature shall be drawn up through the good offices of the Belgian Minister of Foreign Affairs.

Article 13

This Convention shall be ratified and the instruments of ratification shall be deposited with the Belgian Ministry of Foreign Affairs which shall notify all signatory and acceding States of the deposit of any such instruments.

Article 14

(a) This Convention shall come into force between the two States which first ratify it, six months after the date of the deposit of the second instrument of ratification.
(b) This Convention shall come into force in respect of each signatory State which ratifies it after the deposit of the second instrument of ratification six months after the date of the deposit of the instrument of ratification of that State.

Article 15

Any State not represented at the Ninth Diplomatic Conference on Maritime Law may accede to this Convention.

The accession of any State shall be notified to the Belgian Ministry of Foreign Affairs which shall inform through diplomatic channels all signatory and acceding States of such notification.

The Convention shall come into force in respect of the acceding State six months after the date of the receipt of such notification but not before the Convention has come into force in accordance with the provisions of Article 14(a).

Article 16

Any High Contracting Party may three years after the coming into force of this Convention in respect of such High Contracting Party or at any time thereafter request that a conference be convened in order to consider amendments to the Convention.

Any High Contracting Party proposing to avail itself of this right shall notify the Belgian Government which shall convene the conference within six months thereafter.

Article 17

Any High Contracting Party shall have the right to denounce this Convention at any time after the coming into force thereof in respect of such High
Contracting Party. This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government which shall inform through diplomatic channels all the other High Contracting Parties of such notification.

Article 18

(a) Any High Contracting Party may at the time of its ratification of or accession to this Convention or at any time thereafter declare by written notification to the Belgian Ministry of Foreign Affairs that the Convention shall extend to any of the territories for whose international relations it is responsible. The Convention shall six months after the date of the receipt of such notification by the Belgian Ministry of Foreign Affairs extend to the territories named therein, but not before the date of the coming into force of the Convention in respect of such High Contracting Party.

(b) A High Contracting Party which has made a declaration under paragraph (a) of this Article extending the Convention to any territory for whose international relations it is responsible may at any time thereafter declare by notification given to the Belgian Ministry of Foreign Affairs that the Convention shall cease to extend to such territory and the Convention shall one year after the receipt of the notification by the Belgian Ministry of Foreign Affairs cease to extend thereto.

(c) The Belgian Ministry of Foreign Affairs shall inform through diplomatic channels all signatory and acceding States of any notification received by it under this Article.

Done in Brussels, on May 10, 1952, in the French and English languages, the two texts being equally authentic.
Signatories: Federal Republic of Germany, Belgium, Brazil, Spain, France, Greece, Italy, Mohaco, Nicaragua, United Kingdom of Great Britain and Northern Ireland, Yugoslavia.

82 Ad referendum

83 For later ratification

Private Maritime Law, Miscellaneous Conventions, etc.

Ratifications and Accessions as on January 1, 1981

RATIFICATION
Belgium April 10, 1961
Egypt August 24, 1955
France May 25, 1957
Germany (F.R.) October 6, 1972
Great Britain and Northern Ireland March 18, 1959
Greece February 27, 1967
Holy See August 10, 1956
Italy November 9, 1979
Portugal May 4, 1957
Spain December 8, 1953
Yugoslavia July 25, 1967

ACCESSION
Algeria August 18, 1964
Bahamas May 12, 1965
Benin April 23, 1958
Cameroon April 23, 1958
Central African Republic April 23, 1958
Comoros April 23, 1958
Congo People's Republic April 23, 1958
Costa Rica July 13, 1955
Djibouti April 23, 1958
Dominican Republic May 12, 1965
Fiji October 10, 1970
France
Overseas Territories April 23, 1958
Gabon April 23, 1958
Germany
Land Berlin October 6, 1972
Great Britain and Northern Ireland
(Overseas Territories)
Antiqua, Cayman Islands, Montserrat
St. Cristopher Nevis, Anguilla May 12, 1965
St. Helena, St. Lucia, Belize,
Turk's Isles and Caecos September 21, 1965
Bermuda May 30, 1963
British Virgin Islands May 29, 1963
Falkland Islands and dependencies October 17, 1969
Gibraltar, Hong Kong March 29, 1963
Guernsey December 8, 1965
Grenada87 May 12, 1965
Guiana88 March 29, 1963
Guianea Republic86 April 23, 1958
HaÄƒÁ‘u November 4, 1954
Haute - Volta86 April 23, 1958
Ivory Coast86 April 23, 1958
Khmere Republic November 12, 1956
Kiribati88 September 2, 1965
Malgache Republic86, 87 April 23, 1958
Mauritania86 April 23, 1958
Mauritius88 March 29, 1963
Niger86 April 23, 1958
Nigeria November 7, 1963
North Borneo88 March 29, 1963
Paraguay November 22, 1967
Poland July 16, 1976
Sarawak88 September 28, 1962
Senegal86 April 23, 1958
Seychelles88 March 29, 1963
Solomon Isles88 September 21, 1965
St. Lucia88 May 12, 1965
Sudan86 April 23, 1958
Switzerland May 28, 1954
Syrian Arabic Republic February 3, 1972
Tchad86 April 23, 1958
Togo86 April 23, 1958
Tonga June 13, 1978
Tuvalu88 September 21, 1965
ZaÄƒÁ‘re Republic July 17, 1967
84 By the accession of France
85 By the accession of Great Britain
86 By the accession of France
87 Formal confirmation by the Malgache Rep. registered 13.7.65
88 By the accession of Great Britain.
INTERNATIONAL CONVENTION ON THE ARREST OF SHIPS

(Geneva, March 12, 1999)

The States Parties to this Convention, Recognizing the desirability of facilitating the harmonious and orderly development of world seaborne trade, Convinced of the necessity for a legal instrument establishing international uniformity in the field of arrest of ships which takes account of recent developments in related fields,

Have agreed as follows:

Article 1

Definitions

For the purposes of this Convention:

1. "Maritime Claim" means a claim arising out of one or more of the following:

(a) loss or damage caused by the operation of the ship;

(b) loss of life or personal injury occurring, whether on land or on 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 of or damage to or in connection with goods (including luggage) carried on board the ship;

(i) general average;

(j) towage;

(k) pilotage;

(l) goods, 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, brokerages 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.

2. "Arrest" means any detention or restriction on removal of a ship by order of a Court to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instrument.

3. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.

4. "Claimant" means any person asserting a maritime claim.

5. "Court" means any competent judicial authority of a State.
Article 2

Powers of arrest

1. A ship may be arrested or released from arrest only under the authority of a Court of the State Party in which the arrest is effected.

2. A ship may only be arrested in respect of a maritime claim but in respect of no other claim.

3. A ship may be arrested for the purpose of obtaining security notwithstanding that, by virtue of a jurisdiction clause or arbitration clause in any relevant contract, or otherwise, the maritime claim in respect of which the arrest is effected is to be adjudicated in a State other than the State where the arrest is effected, or is to be arbitrated, or is to be adjudicated subject to the law of another State.

4. Subject to the provisions of this Convention, the procedure relating to the arrest of a ship or its release shall be governed by the law of the State in which the arrest was effected or applied for.

Article 3

Exercise of right of arrest

1. Arrest is permissible of any ship in respect of which a maritime claim is asserted if:

   (a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected; or

   (b) the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or
(c) the claim is based upon a mortgage or a "hypothèque" or a charge of the same nature on the ship; or

(d) the claim relates to the ownership or possession of the ship; or

(e) the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for.

2. Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose:

(a) owner of the ship in respect of which the maritime claim arose; or

(b) demise charterer, time charterer or voyage charterer of that ship.

This provision does not apply to claims in respect of ownership or possession of a ship.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this article, the arrest of a ship which is not owned by the person liable for the claim shall be permissible only if, under the law of the State where the arrest is applied for, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that ship.

Article 4

Release from arrest

1. A ship which has been arrested shall be released when sufficient security has been provided in a satisfactory form, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in article 1, paragraphs 1 (s) and (t). In such cases, the Court may permit the person in
possession of the ship to continue trading the ship, upon such person providing sufficient security, or may otherwise deal with the operation of the ship during the period of the arrest.

2. In the absence of agreement between the parties as to the sufficiency and form of the security, the Court shall determine its nature and the amount thereof, not exceeding the value of the arrested ship.

3. Any request for the ship to be released upon security being provided shall not be construed as an acknowledgement of liability nor as a waiver of any defence or any right to limit liability.

4. If a ship has been arrested in a non-party State and is not released although security in respect of that ship has been provided in a State Party in respect of the same claim, that security shall be ordered to be released on application to the Court in the State Party.

5. If in a non-party State the ship is released upon satisfactory security in respect of that ship being provided, any security provided in a State Party in respect of the same claim shall be ordered to be released to the extent that the total amount of security provided in the two States exceeds:

(a) the claim for which the ship has been arrested, or

(b) the value of the ship, whichever is the lower. Such release shall, however, not be ordered unless the security provided in the non-party State will actually be available to the claimant and will be freely transferable.

6. Where, pursuant to paragraph 1 of this article, security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified, or cancelled.

Article 5
Right of rearrest and multiple arrest

1. Where in any State a ship has already been arrested and released or security in respect of that ship has already been provided to secure a maritime claim, that ship shall not thereafter be rearrested or arrested in respect of the same maritime claim unless:

(a) the nature or amount of the security in respect of that ship already provided in respect of the same claim is inadequate, on condition that the aggregate amount of security may not exceed the value of the ship; or

(b) the person who has already provided the security is not, or is unlikely to be, able to fulfil some or all of that person’s obligations; or

(c) the ship arrested or the security previously provided was released either:

(i) upon the application or with the consent of the claimant acting on reasonable grounds, or

(ii) because the claimant could not by taking reasonable steps prevent the release.

2. Any other ship which would otherwise be subject to arrest in respect of the same maritime claim shall not be arrested unless:

(a) the nature or amount of the security already provided in respect of the same claim is inadequate; or

(b) the provisions of paragraph 1 (b) or (c) of this article are applicable.

3. "Release" for the purpose of this article shall not include any unlawful release or escape from arrest.
Article 6

Protection of owners and demise charterers of arrested ships

1. The Court may as a condition of the arrest of a ship, or of permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of the ship the obligation to provide security of a kind and for an amount, and upon such terms, as may be determined by that Court for any loss which may be incurred by the defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to such loss or damage as may be incurred by that defendant in consequence of:

(a) the arrest having been wrongful or unjustified; or

(b) excessive security having been demanded and provided.

2. The Courts of the State in which an arrest has been effected shall have jurisdiction to determine the extent of the liability, if any, of the claimant for loss or damage caused by the arrest of a ship, including but not restricted to such loss or damage as may be caused in consequence of:

(a) the arrest having been wrongful or unjustified, or

(b) excessive security having been demanded and provided.

3. The liability, if any, of the claimant in accordance with paragraph 2 of this article shall be determined by application of the law of the State where the arrest was effected.
4. If a Court in another State or an arbitral tribunal is to determine the merits of the case in accordance with the provisions of article 7, then proceedings relating to the liability of the claimant in accordance with paragraph 2 of this article may be stayed pending that decision.

5. Where pursuant to paragraph 1 of this article security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified or cancelled.

Article 7

Jurisdiction on the merits of the case

1. The Courts of the State in which an arrest has been effected or security provided to obtain the release of the ship shall have jurisdiction to determine the case upon its merits, unless the parties validly agree or have validly agreed to submit the dispute to a Court of another State which accepts jurisdiction, or to arbitration.

2. Notwithstanding the provisions of paragraph 1 of this article, the Courts of the State in which an arrest has been effected, or security provided to obtain the release of the ship, may refuse to exercise that jurisdiction where that refusal is permitted by the law of that State and a Court of another State accepts jurisdiction.

3. In cases where a Court of the State where an arrest has been effected or security provided to obtain the release of the ship:

(a) does not have jurisdiction to determine the case upon its merits; or

(b) has refused to exercise jurisdiction in accordance with the provisions of paragraph 2 of this article, such Court may, and upon request shall, order a period of time within which the claimant shall bring proceedings before a competent Court or arbitral tribunal.
4. If proceedings are not brought within the period of time ordered in accordance with paragraph 3 of this article then the ship arrested or the security provided shall, upon request, be ordered to be released.

5. If proceedings are brought within the period of time ordered in accordance with paragraph 3 of this article, or if proceedings before a competent Court or arbitral tribunal in another State are brought in the absence of such order, any final decision resulting therefrom shall be recognized and given effect with respect to the arrested ship or to the security provided in order to obtain its release, on condition that:

(a) the defendant has been given reasonable notice of such proceedings and a reasonable opportunity to present the case for the defence; and

(b) such recognition is not against public policy (ordre public).

6. Nothing contained in the provisions of paragraph 5 of this article shall restrict any further effect given to a foreign judgment or arbitral award under the law of the State where the arrest of the ship was effected or security provided to obtain its release.

Article 8

Application

1. This Convention shall apply to any ship within the jurisdiction of any State Party, whether or not that ship is flying the flag of a State Party.
2. This Convention shall not apply to any warship, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on government non-commercial service.

3. This Convention does not affect any rights or powers vested in any Government or its departments, or in any public authority, or in any dock or harbour authority, under any international convention or under any domestic law or regulation, to detain or otherwise prevent from sailing any ship within their jurisdiction.

4. This Convention shall not affect the power of any State or Court to make orders affecting the totality of a debtor's assets.

5. Nothing in this Convention shall affect the application of international conventions providing for limitation of liability, or domestic law giving effect thereto, in the State where an arrest is effected.

6. Nothing in this Convention shall modify or affect the rules of law in force in the States Parties relating to the arrest of any ship physically within the jurisdiction of the State of its flag procured by a person whose habitual residence or principal place of business is in that State, or by any other person who has acquired a claim from such person by subrogation, assignment or otherwise.

Article 9

Non-creation of maritime liens

Nothing in this Convention shall be construed as creating a maritime lien.

Article 10

Reservations
1. Any State may, at the time of signature, ratification, acceptance, approval, or accession, or at any time thereafter, reserve the right to exclude the application of this Convention to any or all of the following:

(a) ships which are not seagoing;

(b) ships not flying the flag of a State Party;

(c) claims under article 1, paragraph 1 (s).

2. A State may, when it is also a State Party to a specified treaty on navigation on inland waterways, declare when signing, ratifying, accepting, approving or acceding to this Convention, that rules on jurisdiction, recognition and execution of court decisions provided for in such treaties shall prevail over the rules contained in article 7 of this Convention.

Article 11

Depositary

This Convention shall be deposited with the Secretary-General of the United Nations.

Article 12

Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature by any State at the Headquarters of the United Nations, New York, from 1 September 1999 to 31 August 2000 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:

(a) signature without reservation as to ratification, acceptance or approval; or
(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the depositary.

Article 13

States with more than one system of law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3. In relation to a State Party which has two or more systems of law with regard to arrest of ships applicable in different territorial units, references in this Convention to the Court of a State and the law of a State shall be respectively construed as referring to the Court of the relevant territorial unit within that State and the law of the relevant territorial unit of that State.

Article 14

Entry into force

1. This Convention shall enter into force six months following the date on which 10 States have expressed their consent to be bound by it.
2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect three months after the date of expression of such consent.

Article 15

Revision and amendment

1. A conference of States Parties for the purpose of revising or amending this Convention shall be convened by the Secretary-General of the United Nations at the request of one-third of the States Parties.

2. Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to the Convention, as amended.

Article 16

Denunciation

1. This Convention may be denounced by any State Party at any time after the date on which this Convention enters into force for that State.

2. Denunciation shall be effected by deposit of an instrument of denunciation with the depositary.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the depositary.

Article 17

Languages
This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT Geneva this twelfth day of March, one thousand nine hundred and ninety-nine.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.
SHIPPING GLOSSARY

AA
Always Afloat. A contract term requiring that the vessel not rest on the ground. In some ports the ship is aground when approaching or at berth.

AAR
Abbreviation for: Against All Risks (insurance clause).

Abaft
A point beyond the midpoint of a ship's length, towards the rear or stern.

Abandon
A proceeding wherein a shipper/consignee seeks authority to abandon all or parts of their cargo.

Abatement
A discount allowed for damage or overcharge in the payment of a bill.

Aboard
Referring to cargo being put, or laden, onto a means of conveyance.

Absorption
One carrier assumes the charges of another without any increase in charges to the shipper.

Acceptance
A time draft (or bill of exchange) that the drawee (payer) has accepted and is unconditionally obligated to pay at maturity.
Broadly speaking, any agreement to purchase goods under specified terms.

Accessorial Charges
Charges that are applied to the base tariff rate or base contract rate, e.g., bunkers, container, currency, destination/delivery.

Accommodation
The living place onboard the ship is called Accommodation.

Acquiescence
When a bill of lading is accepted or signed by a shipper or shippers agent without protest, the shipper is said to acquiesce to the terms, giving a silent form of consent.

Acquittance
A written receipt in full, in discharge from all claims.

Act of God
An act beyond human control, such as lightning, flood or earthquake.

Ad Valorem
A term from Latin meaning, according to value. Import duty applied as a percentage of the cargos dutiable value.

Admiralty (Adm.)
Refers to marine matters such as an Admiralty Court.

Advanced Charge
Transportation charge advanced by one carrier to another to be collected by the later carrier from the consignor or consignee.

Adventure
Shipment of goods on shippers own account. A bill of adventure is a document signed by the master of the ship that carries goods at owners risk. Also, a term used in some insurance policies to mean a voyage or a shipment.

Advice of Shipment
A notice sent to a local or foreign buyer advising that shipment has gone forward and containing details of packing, routing, etc. A copy of the invoice is often enclosed and, if desired, a copy of the bill of lading.

Advising Bank
A bank operating in the sellers country that handles letters of credit on behalf of a foreign bank.

Aframax Tanker
A vessel of 70,000 to 119,000 DWT capacity. The largest tanker size in the AFRA (average freight rate assessment) tanker rate system.

Affreightment, Contract of
An agreement by an ocean carrier to provide cargo space on a vessel at a specified time and for a specified price to accommodate an exporter or importer.

Aft
Movement toward the stern (back end) of a ship.

Agency Tariff
A tariff published by an agent on behalf of several carriers.

Agent (Agt.)
A person authorized to transact business for and in the name of another person or company. Types of agents are: (1) brokers, (2) commission merchants, (3) resident buyers, (4) sales agents, (5) manufacturers representatives.

Aggregate Shipment
Numerous shipments from different shippers to one consignee that are consolidated and treated as a single consignment.

Agreed valuation
The value of a shipment agreed upon in order to secure a specific freight rate.
Agreed Weight
The weight prescribed by agreement between carrier and shipper for goods shipped in certain packages or in a certain number.

Air Waybill
The forwarding agreement or carrying agreement between shipper and air carrier and is issued only in nonnegotiable form.

All In
The total price to move cargo from origin to destination, inclusive of all charges.

Allision
The striking by a moving vessel against a stationary object.

Alongside
A phrase referring to the side of a ship. Goods delivered alongside are to be placed on the dock or barge within reach of the transport ships tackle so that they can be loaded.

Alternative Rates
Privilege to use the rate producing the lowest charge.

Ambient Temperature
The temperature of a surrounding body. The ambient temperature of a container is the atmospheric temperature to which it is exposed.

AntiDumping Duty
A tariff imposed to discourage sale of foreign goods, subsidized to sell at low prices detrimental to local manufacturers.

Any Quantity (A.Q.)
Usually refers to a rating that applies to an article regardless of size or quantity.
Apparent Good Order
When freight appears to be free of damage so far as a general survey can determine.

Appraisers Stores
The warehouse or public stores to which samples of imported goods are taken to be inspected, analyzed, weighed, etc. by examiners or appraisers.

Arbitrary
A stated amount over a fixed rate to one point to make a rate to another point.

Arrival Notice
A notification by carrier of ships arrival to the consignee, the Notify Party, and when applicable the Also Notify Party. These parties in interest are listed in blocks 3, 4 and 10, respectively, of the Bill of Lading.

Assignment
A term commonly used in connection with a bill of lading. It involves the transfer of rights, title and interest in order to assign goods by endorsing the bill of lading.

A stern
Behind a vessel Move in a reverse direction.

ATDNSHINC
Any time Day or Night Sundays & Holidays Included. A chartering term referring to when a vessel will work.

Athwartships
A direction across the width of a vessel.

Automated Identification System (AIS)
It is a system used by ships and Vessel Traffic Service (VTS) principally for the identification and the locating of vessels. AIS provides a means for ships
to electronically exchange ship data including: identification, position, course, and speed, with other nearby ships and VTS stations.

Avoirdupois Pound
Same as 0.4535924277 kilograms.

AWWL
Always within Institute Warranties Limits (Insurance purpose).

BB
Abbreviation for:
- Ballast Bonus: Special payment above the Chartering price when the ship has to sail a long way on ballast to reach the loading port.
- Bareboat: Method of chartering of the ship leaving the charterer with almost all the responsibilities of the owner.

B/L
Abbreviation for Bill of Lading.

Backhaul
To haul a shipment back over part of a route it has traveled.

BAF
Abbreviation for Bunker Adjustment Factor. Used to compensate steamship lines for fluctuating fuel costs. Sometimes called Fuel Adjustment Factor or FAF.

Ballast Water Tank
Ballast Water Tanks are the tanks into which the Sea Water or any other Water is filled for improving the Stability of the ship. These tanks can be located anywhere on the Ship.

Balloon Freight
Light, bulky articles.
Bank Guarantee
Guarantee issued by a bank to a carrier to be used in lieu of lost or misplaced original negotiable bill of lading.

Barratry
An act committed by the master or mariners of a vessel, for some unlawful or fraudulent purpose, contrary to their duty to the owners, whereby the latter sustain injury. It may include negligence, if so gross as to evidence fraud.

Barrel (BBL)
A term of measure referring to 42 gallons of liquid at 600 degrees.

Base Rate
A tariff term referring to ocean rate less accessor ial charges, or simply the base tariff rate.

BCO
Abbreviation for Beneficial Cargo Owner. Refers to the importer of record, who physically takes possession of cargo at destination and does not act as a third party in the movement of such goods.

Beam
The width of a ship.

Belt Line
A switching railroad operating within a commercial area.

Beneficiary
Entity to whom money is payable.
The entity for whom a letter of credit is issued.
The seller and the drawer of a draft.

Berth Terms
Shipped under rate that includes cost from end of ships tackle at load port to end of ships tackle at discharge port.
Beyond
Used with reference to charges assessed for cargo movement past a linehaul terminating point.

Bilateral
A contract term meaning both parties agree to provide something for the other.

Bill of Exchange
In the United States, commonly known as a Draft. However, bill of exchange is the correct term.

Bill of Lading (B/L)
Bill of Lading is a document which shows that the cargo has been received on the ship by the Master or the Agent on behalf of the Ship Owner. It is also accepted as a Negotiable Document in case the Cargo is to be sold or transferred to the new buyer. This is a Contract between the Shipper and the Ship Owner, with the Terms and Conditions stated therein. A document that establishes the terms of a contract between a shipper and a transportation company. It serves as a document of title, a contract of carriage and a receipt for goods.

Amended B/L: B/L requiring updates that do not change financial status; this is slightly different from corrected B/L.

B/L Terms & Conditions: the fine print on B/L; defines what the carrier can and cannot do, including the carriers liabilities and contractual agreements.

B/Ls Status: represents whether the bill of lading has been input, rated, reconciled, printed, or released to the customer.

B/Ls Type: refers to the type of B/L being issued. Some examples are: a Memo (ME), Original (OBL), Nonnegotiable, Corrected (CBL) or Amended (AM) B/L.

Canceled B/L: B/L status; used to cancel a processed B/L; usually per shippers request; different from voided B/L.
Clean B/L:  A B/L which bears no superimposed clause or notation which declares a defective condition of the goods and/or the packaging.

Combined B/L:  B/L that covers cargo moving over various transports.

Consolidated B/L:  B/L combined or consolidated from two or more B/Ls.

Corrected B/L:  B/L requiring any update which results in money or other financially related changes.

Domestic B/L:  Nonnegotiable B/L primarily containing routing details; usually used by truckers and freight forwarders.

Duplicate B/L:  Another original Bill of Lading set if first set is lost. Also known as reissued B/L.

Express B/L:  Nonnegotiable B/L where there are no paper copies printed of originals.

Freight B/L:  A contract of carriage between a shipper and forwarder (who is usually a NVOCC); a nonnegotiable document.

Government B/L (GBL):  A bill of lading issued by the U.S. government.

Hitchment B/L:  B/L covering parts of a shipment which are loaded at more than one location. Hitchment B/L usually consists of two parts, hitchment and hitchment memo. The hitchment portion usually covers the majority of a divided shipment and carries the entire revenue.

House B/L:  B/L issued by a freight forwarder or consolidator covering a single shipment containing the names, addresses and specific description of the goods shipped.

Intermodal B/L:  B/L covering cargo moving via multimodal means. Also known as Combined Transport B/L, or Multimodal B/L.
Long Form B/L: B/L form with all Terms & Conditions written on it. Most B/Ls are short form which incorporate the long form clauses by reference.

Memo B/L: Unfreighted B/L with no charges listed.

Military B/L: B/L issued by the U.S. military; also known as GBL, or Form DD1252.

B/L Numbers: U.S. Customs standardized B/L numbering format to facilitate electronic communications and to make each B/L number unique.

Negotiable B/L: The B/L is a title document to the goods, issued to the order of a party, usually the shipper, whose endorsement is required to effect negotiation. Thus, a shippers order (negotiable) B/L can be bought, sold, or traded while goods are in transit and is commonly used for letterofcredit transactions. The buyer must submit the original B/L to the carrier in order to take possession of the goods.

Non-Negotiable B/L: See Straight B/L. Sometimes means a file copy of a B/L.

Onboard B/L: B/L validated at the time of loading to transport. Onboard Air, Boxcar, Container, Rail, Truck and Vessel are the most common types.

Optional Discharge B/L: B/L covering cargo with more than one discharge point option possibility.

Order B/L: See Negotiable B/L.

Original B/L: The part of the B/L set that has value, especially when negotiable; rest of set are only informational file copies. Abbreviated as OBL.

Received for Shipment B/L: Validated at time cargo is received by ocean carrier to commence movement but before being validated as Onboard.
Reconciled B/L: B/L set which has completed a prescribed number of edits between the shippers instructions and the actual shipment received. This produces a very accurate B/L.

Short Term B/L: Opposite of Long Form B/L, a B/L without the Terms & Conditions written on it. Also known as a Short Form B/L. The terms are incorporated by reference to the long form B/L.

Split B/L: One of two or more B/Ls which have been split from a single B/L.

Stale B/L: A late B/L; in banking, a B/L which has passed the time deadline of the Letter of Credit (L/C) and is void.

Straight (Consignment) B/L: Indicates the shipper will deliver the goods to the consignee. It does not convey title (nonnegotiable). Most often used when the goods have been prepaid.

To Order B/L: See Negotiable B/L.

Voided B/L: Related to Consolidated B/L; those B/Ls absorbed in the combining process. Different from Canceled B/L.

Bill of Lading Port of Discharge
Port where cargo is discharged from means of transport.

Bill of Sale
Confirms the transfer of ownership of certain goods to another person in return for money paid or loaned.

Bill to Party
Customer designated as party paying for services.

Billed Weight
The weight shown in a waybill and freight bill, i.e, the invoiced weight.

BIMCO
The Baltic and International Maritime Council, the world's largest private shipping organization.

Blanket Bond
A bond covering a group of persons, articles or properties.

Blanket Rate
A rate applicable to or from a group of points.
A special rate applicable to several different articles in a single shipment.

Blanket Waybill
A waybill covering two or more consignments of freight.

Blind Shipment
A B/L wherein the paying customer has contracted with the carrier that shipper or consignee information is not given.

Block Stowage
Stowing cargo destined for a specific location close together to avoid unnecessary cargo movement.

Blocked Trains
Railcars grouped in a train by destination so that segments (blocks) can be uncoupled and routed to different destinations as the train moves through various junctions. Eliminates the need to break up a train and sort individual railcars at each junction.

Blocking or Bracing
Wood or metal supports to keep shipments in place to prevent cargo shifting. See also Dunnage.

Bl’s
Abbreviation for Bales.

Board
To gain access to a vessel.
Board Feet
The basic unit of measurement for lumber. One board foot is equal to a one-inch board, 12 inches wide and 1 foot long. Thus, a board 10 feet long, 12 inches wide, and 1 inch thick contains 10 board feet.

Boat
A relatively small, usually open craft/vessel a small, often open vessel for traveling on water\An inland vessel of any size.

Bobtail
Movement of a tractor, without trailer, over the highway.

Bogie
A set of wheels built specifically as rear wheels under the container.

Bolster
A device fitted on a chassis or railcar to hold and secure the container.

Bond Port
Port of initial Customs entry of a vessel to any country. Also known as First Port of Call.

Bonded Warehouse
A warehouse authorized by Customs authorities for storage of goods on which payment of duties is deferred until the goods are removed.

Booking
Arrangements with a carrier for the acceptance and carriage of freight; i.e., a space reservation.

Booking Number
Reservation number used to secure equipment and act as a control number prior to completion of a B/L.
Bottom Side Rails
Structural members on the longitudinal sides of the base of the container.

Bottom Air Delivery
A type of air circulation in a temperature control container. Air is pulled by a fan from the top of the container, passed through the evaporator coil for cooling, and then forced through the space under the load and up through the cargo. This type of airflow provides even temperatures.

Bow
The front of a vessel.

Boxcar
A closed rail freight car.

Break Bulk
To unload and distribute a portion or all of the contents of a rail car, container, trailer, or ship.
Loose, noncontainerized mark and count cargo.
Packaged cargo that is not containerized.

Bridge
The place from where the ship is Navigated as well as where the Chart Room and Wheel House are are situated is called Bridge.

Bridge Point
An inland location where cargo is received by the ocean carrier and then moved to a coastal port for loading.

Bridge Port
A port where cargo is received by the ocean carrier and stuffed into containers but then moved to another coastal port to be waded on a vessel.

Broken Stowage
The space left between cargo due to the Shape of Cases or Packages or because of uneven shape of the Cargo Hold or space in which the cargo is being loaded is called the Broken Stowage. This is given in percentage of Stowage Factor for different Cargo.

Broker
A person who arranges for transportation of loads for a percentage of the revenue from the load.

Brokerage
Freight forwarder/broker compensation as specified by ocean tariff or contract.

Bulk Cargo
Not in packages or containers; shipped loose in the hold of a ship without mark and count. Grain, coal and sulfur are usually bulk freight.

BulkFreight Container
A container with a discharge hatch in the front wall; allows bulk commodities to be carried.

Bulkhead
A partition separating one part of a ship, freight car, aircraft or truck from another part.

Bull Rings
Cargosecuring devices mounted in the floor of containers; allow lashing and securing of cargo.

Bunker Charge
An extra charge sometimes added to steamship freight rates; justified by higher fuel costs. Also known as Fuel Adjustment Factor or FAF.

Bunkers
A maritime term referring to fuel used aboard the ship. In the past, fuel coal stowage areas aboard a vessel were in bins or bunkers, means the oil or Fuel
which a ship needs for running its engines to move from one place to another or within the Port.

Bureau Veritas
A French classification society which certifies seagoing vessels for compliance to standardized rules regarding construction and maintenance.

C&F Terms of Sale, or INCOTERMS
Obsolete, although heavily used, term of sale meaning cargo and freight whereby Seller pays for cost of goods and freight charges up to destination port. In July, 1990 the International Chamber of Commerce replaced C&F with CFR.

Cabotage
Water transportation term applicable to shipments between ports of a nation; commonly refers to coastwise or intercoastal navigation or trade. Many nations, have cabotage laws which require national flag vessels to provide domestic interport service.

CAF
Abbreviation for Currency Adjustment Factor. A charge, expressed as a percentage of a base rate, that is applied to compensate ocean carriers of currency fluctuations.

Grain Capacity
Space available from ship side to ship side and from Double Bottom Top to under the Deck and Hatch Covers MINUS space occupied by Beams, Wooden Battens, Frames, Stiffners, and Wooden sheathing is called GRAIN SPACE. Cargo loaded to Grain Capacity are:- Grain in Bulk, Fertilizers in Bulk etc.

Bale Capacity
Space available between the Wooden Sheathing, side battens and under side of the Beams and Stiffners is called the Bale capacity. Cargo loaded to Bale Capacity are:- Cases, Cartons, Drums etc.

Capacity of a Hold
The amount of Cargo a "Cargo Hold" can accommodate is called the Capacity of the Cargo Hold. It may be expressed in Cu. M. or in m.t.

Capesize Vessel
A dry bulk vessel above 80,000dwt or whose beam precludes passage via the Panama Canal and thus forces them to pass around Cape Horn or the Cape of Good Hope.

Captains Protest
A document prepared by the captain of a vessel on arriving at port; shows conditions encountered during voyage, generally for the purpose of relieving ship owner of any loss to cargo and shifting responsibility for reimbursement to the insurance company.

Car Pooling
Use of individual carrier/rail equipment through a central agency for the benefit of carriers and shippers.

Car Seal
Metal strip and lead fastener used for locking freight car or truck doors. Seals are numbered for record purposes.

Carfloat
A barge equipped with tracks on which up to approximately 12 railroad cars are moved in harbors or inland waterways.

Cargo Battens
These are removable wooden battens fitted across the inner edges of frames in a cargo hold to prevent contact between cargo and the shipside. They also provide flow of air (ventilation) cargo and shipside, thus preventing the damages to the cargo by sweat.

Cargo
Freight loaded into a ship.

Cargo Deadweight
The weight expressed in tonnes of any cargo, package or parcel.

Cargo Hold

The space on the Ship for stowage of Cargo for earning Freight is Called Cargo Hold.

Cargo Manifest

This is a document which shows the list of Cargo on board the Ship indicating Marks and Numbers, Quantity, Weight Place of storage and is called the Cargo Manifest. This is prepared from the Bill of Lading. For Dangerous Cargo a separate Cargo Manifest has to be prepared. A manifest that lists all cargo carried on a specific vessel voyage.

Cargo NOS

Cargo Not Otherwise Specified. Usually the rate entry in a tariff that can apply to commodities not covered under a specific item or sub item in the applicable tariff.

Cargo Preference

Cargo reserved by a Nations laws for transportation only on vessels registered in that Nation. Typically the cargo is moving due to a direct or indirect support or activity of the Government.

Cargo Space

Commercial purpose.

Cargo Tonnage

Most ocean freight is billed on the basis of weight or measurement tons (W/M). Weight tons can be expressed in short tons of 2000 pounds, long tons of 2240 pounds or metric tons of 1000 kilos (2204.62 pounds). Measurement tons are usually expressed as cargo measurement of 40 cubic feet (1.12 meters) or cubic meters (35.3 cubic feet).

Carload Rate

A rate applicable to a carload of goods.
A customs document permitting the holder to temporarily carry or send merchandise into certain foreign countries (for display, demonstration or similar purposes) without paying duties or posting bonds. Any of various Customs documents required for crossing some international borders.

Carrier

Any person or entity who, in a contract of carriage, undertakes to perform or to procure the performance of carriage by rail, road, sea, air, inland waterway or by a combination of such modes.

Carriers Certificate

A certificate required by U.S. Customs to release cargo properly to the correct party.

Cartage

Usually refers to intracity hauling on drays or trucks. Same as drayage.

Cartment

Customs form permitting inbond cargo to be moved from one location to another under Customs control, within the same Customs district. Usually in motor carriers possession while draying cargo.

Cash Against Documents (CAD)

Method of payment for goods in which documents transferring title are given the buyer upon payment of cash to an intermediary acting for the seller, usually a commission house.

Cash in Advance (CIA)

A method of payment for goods in which the buyer pays the seller in advance of the shipment of goods. Usually employed when the goods, such as specialized machinery, are built to order.

Cash With Order (CWO)

A method of payment for goods in which cash is paid at the time of order and the transaction becomes binding on both buyer and seller.

CBM (CM)
Abbreviation for Cubic Meter.

Cells
The construction system employed in container vessels; permits ship containers to be stowed in a vertical line with each container supporting the one above it.

Center of Gravity
The point of equilibrium of the total weight of a containership, truck, train or a piece of cargo.

Certificate of Inspection
A document certifying that merchandise (such as perishable goods) was in good condition immediately prior to its shipment.
Flag vessels compliance with applicable laws and regulations.

Certificate of Origin
A certified document showing the origin of goods; used in international commerce.

CFS
Abbreviation for Container Freight Station. A shipping dock where cargo is loaded (stuffed) into or unloaded (stripped) from containers. Generally, this involves less than containerload shipments, although small shipments destined to same consignee are often consolidated. Container reloading from/to rail or motor carrier equipment is a typical activity. These facilities can be located in container yards, or off dock.

Chart Room
This is situated on the Bridge Deck. Chart Room is the place where the Navigational Charts are kept and the ship's position is plotted from time to time by the Navigating Officer while maneuvering.

Charter Party
A written contract between the owner of a vessel and the person desiring to employ the vessel (charterer); sets forth the terms of the arrangement, such as duration of agreement, freight rate and ports involved in the trip.
Chassis
A frame with wheels and container locking devices in order to secure the container for movement.

Chock
A piece of wood or other material placed at the side of cargo to prevent rolling or moving sideways.

CCC Mark
A mark or label indicating the cargo conforms to standards required by China for certain products.

CE Mark
A mark or label indicating the cargo conforms to standards required by the European Union for certain products.

CI
Abbreviation for Cost and Insurance. A price that includes the cost of the goods, the marine insurance and all transportation charges except the ocean freight to the named point of destination.

CIF (Named Port)
Abbreviation for Cost, Insurance, Freight. (Named Port) Same as C&F or CFR except seller also provides insurance to named destination.

CIF&C
Price includes commission as well as CIF.

CIF&E
Abbreviation for Cost, Insurance, Freight and Exchange.

CIFCI
Abbreviation for Cost, Insurance, Freight, Collection and Interest.
CIFI&E
Abbreviation for Cost, Insurance, Freight, Interest and Exchange.

CKD
Abbreviation for Completely Knocked Down. Parts and subassemblies being transported to an assembly plant.

CL
Abbreviation for Carload and Containerload.

Claim
A demand made upon a transportation line for payment on account of a loss sustained through its alleged negligence.

Classification
A publication, such as Uniform Freight Classification (railroad) or the National Motor Freight Classification (motor carrier), that assigns ratings to various articles and provides bill of lading descriptions and rules.

Classification Rating
The designation provided in a classification by which a class rate is determined.

Classification Society
An organization maintained for the surveying and classing of ships so that insurance underwriters and others may know the quality and condition of the vessels offered for insurance or employment. See also ABS, BV, DNV, LR and NK.

Classification Yard
A railroad yard with many tracks used for assembling freight trains.
Clean Bill of Lading
A receipt for goods issued by a carrier with an indication that the goods were received in apparent good order and condition, without damage or other irregularities. If no notation or exception is made, the B/L is assumed to be cleaned.

Cleaning in Transit
The stopping of articles, such as peanuts, etc., for cleaning at a point between the point of origin and destination.

Clearance Limits
The size beyond which cars or loads cannot use bridges, tunnels, etc.

Cleat
A strip of wood or metal used to afford additional strength, to prevent warping, or to hold in place.

ClipOn
Refrigeration equipment attachable to an insulated container that does not have its own refrigeration unit.

CM
Abbreviation for Cubic Meter (capital letters).

cm
Abbreviation for centimeter.

Coastwise
Water transportation along the coast.

COD
Abbreviation for: Collect (cash) on Delivery. Carried on Docket (pricing).

COFC
Abbreviation for the Railway Service Container On Flat Car.

COGSA

Collecting
A bank that acts as an agent to the sellers bank (the presenting bank). The collecting bank assumes no responsibility for either the documents or the merchandise.

Collection
A draft drawn on the buyer, usually accompanied by documents, with complete instructions concerning processing for payment or acceptance.

Combination Export Mgr.
A firm that acts as an export sales agent for more than one noncompeting manufacturer.

Combination Rate
A rate made up of two or more factors, separately published.

Commercial Invoice
Represents a complete record of the transaction between exporter and importer with regard to the goods sold. Also reports the content of the shipment and serves as the basis for all other documents relating to the shipment.

Commercial Transport Vessel
Any ship which is used primarily in commerce (1) For transporting persons or goods to or from any harbor(s) or port(s) or between places within a harbor area;(2) In connection with the construction, change in construction, servicing, maintenance, repair, loading, unloading, movement, piloting, or salvaging of any other ship or vessel.

Commodity
Article shipped. For dangerous and hazardous cargo, the correct commodity identification is critical.

Commodity Rate
A rate published to apply to a specific article or articles.

Common Carrier
A transportation company which provides service to the general public at published rates.

Common Law
Law that derives its force and authority from precedent, custom and usage rather than from statutes, particularly with reference to the laws of England and the United States.

Company Security Officer
Is the person designated by the company for ensuring that a ship security assessment is carried out and that a ship security plan is developed, submitted for approval and thereafter implemented and maintained for liaison with port facility security officers and the ship security officer.

Compulsory Ship
Any ship which is required to be equipped with radio telecommunication equipment in order to comply with the radio or radio-navigation provisions of a treaty or statute to which the vessel is subject.

Concealed Damage
Damage that is not evident from viewing the unopened package.

Conference
An association of ship owners operating in the same trade route who operate under collective conditions and agree on tariff rates.

Confirmed Letter of Credit
A letter of credit, issued by a foreign bank, whose validity has been confirmed by a domestic bank. An exporter with a confirmed letter of credit is assured of payment even if the foreign buyer or the foreign bank defaults.

Confirming Bank
The bank that adds its confirmation to another banks (the issuing banks) letter of credit and promises to pay the beneficiary upon presentation of documents specified in the letter of credit.

Connecting Carrier
A carrier which has a direct physical connection with, or forms a link between two or more carriers.

Consignee
A person or company to whom commodities are shipped.

Consignee Mark
A symbol placed on packages for identification purposes; generally a triangle, square, circle, etc. with letters and/or numbers and port of discharge.

Consignment
(1) A stock of merchandise advanced to a dealer and located at his place of business, but with title remaining in the source of supply.(2) A shipment of goods to a consignee.

Consignor
A person or company shown on the bill of lading as the shipper.

Connecting Carrier Agreement
A connecting carrier agreement is a contract between the originating carrier and a second party, where the second party agrees to carry goods to a final destination on a through Bill of Lading.

Consolidation
Cargo containing shipments of two or more shippers or suppliers. Containerload shipments may be consolidated for one or more consignees, often in containerload quantities.

Consolidator
A person or firm performing a consolidation service for others. The consolidator takes advantage of lower full carload (FCL) rates, and passes on the savings to shippers.

Consul
A government official residing in a foreign country who represents the interests of her or his country and its nationals.

Consular Declaration
A formal statement describing goods to be shipped; filed with and approved by the consul of the country of destination prior to shipment.

Consular Invoice
A document, certified by a consular official, is required by some countries to describe a shipment. Used by Customs of the foreign country, to verify the value, quantity and nature of the cargo.

Consular Visa
An official signature or seal affixed to certain documents by the consul of the country of destination.

Consumption Entry (CE)
The process of declaring the importation of foreignmade goods into the Country for use in that Country.

CONTAINERS Containers are the units of Standard Sizes of 20 ft., 40 ft. or 45 ft. used for carriage of cargo inside them. They are usually carried by the Container Vessels.

Container
A truck trailer body that can be detached from the chassis for loading into a vessel, a rail car or stacked in a container depot. Containers may be ventilated,
insulated, refrigerated, flat rack, vehicle rack, open top, bulk liquid or equipped with interior devices. A container may be 20 feet, 40 feet, 45 feet, 48 feet or 53 feet in length, 80 or 86 in width, and 86 or 96 in height.

Container Booking
Arrangements with a steamship line to transport containerized cargo.

Container Freight Station
See CFS.

Container Manifest
Document showing contents and loading sequence, point of origin, and point of destination for a container. Vessels are required by law to carry such a document for each container carried.

Container Pool
An agreement between parties that allows the efficient use and supply of containers. A common supply of containers available to the shipper as required.

Container Terminal
An area designated for the stowage of cargoes in container; usually accessible by truck, railroad and marine transportation. Here containers are picked up, dropped off, maintained and housed.

Container Yard (CY)
A materials handling/storage facility used for completely unitized loads in containers and/or empty containers. Commonly referred to as CY.

Containerizable Cargo
Cargo that will fit into a container and result in an economical shipment.

Containerization
Stowage of general or special cargoes in a container for transport in the various modes.
Container Load
A load sufficient in size to fill a container either by cubic measurement or by weight.

Contraband
Cargo that is prohibited.

Contract
A legally binding agreement between two or more persons/organizations to carry out reciprocal obligations or value.

Contract Carrier
Any person not a common carrier who, under special and individual contracts or agreements, transports passengers or property for compensation.

Controlled Atmosphere
Sophisticated, computer-controlled systems that manage the mixtures of gases within a container throughout an intermodal journey reducing decay.

Corner Posts
Vertical frame components fitted at the corners of the container, integral to the corner fittings and connecting the roof and floor structures. Containers are lifted and secured in a stack using the castings at the ends.

Correspondent Bank
A bank that, in its own country, handles the business of a foreign bank.

Cost, Insurance and Freight (CIF)
Cost of goods, marine insurance and all transportation (freight) charges are paid to the foreign point of delivery by the seller.

Countervailing Duty
An additional duty imposed to offset export grants, bounties or subsidies paid to foreign suppliers in certain countries by the government of that country for the purpose of promoting export.
Crane
These are used for lifting off and on of cargo from / to the jetty or the ship. Generally their capacity is much more than Derricks. They move with the cargo and are easy to handle.

Cross Member
Transverse members fitted to the bottom side rails of a container, which support the floor.

Cu.
An abbreviation for Cubic. A unit of volume measurement.

Cube Out
When a container or vessel has reached its volumetric capacity before its permitted weight limit.

Cubic Foot
1,728 cubic inches. A volume contained in a space measuring one foot high, one foot wide and one foot long.

Customhouse
A government office where duties are paid, import documents filed, etc., on foreign shipments.

Customhouse Broker
A person or firm, licensed by the treasury department of their country when required, engaged in entering and clearing goods through Customs for a client (importer).

Customs
Government agency charged with enforcing the rules passed to protect the country's import and export revenues.

Customs Bonded Warehouse
A warehouse authorized by Customs to receive dutyfree merchandise.

Customs Entry
All countries require that the importer make a declaration on incoming foreign goods. The importer then normally pays a duty on the imported merchandise. The importers statement is compared against the carriers vessel manifest to ensure that all foreign goods are properly declared.

Customs Invoice
A form requiring all data in a commercial invoice along with a certificate of value and/or a certificate of origin. Required in a few countries (usually former British territories) and usually serves as a sellers commercial invoice.

Customs of the Port (COP)
A phrase often included in charter parties and freight contracts referring to local rules and practices which may impact upon the costs borne by the various parties.

CutOff Time
The latest time cargo may be delivered to a terminal for loading to a scheduled train or ship.

Cwt.
Hundred weight (United States, 100 pounds; U.K.,112)

CY
Abbreviation for: Container Yard. The designation for full container receipt/delivery.

D&H
Abbreviation for Dangerous and Hazardous cargo.

DDC
Abbreviation for Destination Delivery Charge. A charge, based on container size, that is applied in many tariffs to cargo. This charge is considered accessorial and is added to the base ocean freight. This charge covers crane
lifts off the vessel, drayage of the container within the terminal and gate fees at the terminal operation.

Damages to Cargo Handling -
If the Cargo is damaged while handling due to improper slinging or using improper equipments or is not being handled as per the instructions indicated on the Cargo is termed as Handling Damages.

Dragging - When the Cargo is pulled out of its stowed space and is damaged the damage is termed as "Damages due to Dragging". This may also happen when the wires to drag out the Cargo are not placed properly or put at a wrong angle.

Crushing - When the Packages of fragile nature or week cases are over stowed by heavier goods are called Crushing Damage.

Sweat - When the Cargo is damaged due to the sweating of Cargo or the Ship due to change in internal and external temperature of the Cargo space is called Damage by Sweat.

Contamination - Some Cargoes can be damaged because of the strong smell of the other Cargoes, loaded in the same space. For example Tea loaded with Cloves or Turmeric, etc. It may also happen if the Cargo space is not cleaned and cleared up of the strong smell of previous cargo.

Deadhead
One leg of a move without a paying cargo load. Usually refers to repositioning an empty piece of equipment

Deadweight Cargo
A long ton of cargo that can be stowed in less than 40 cubic feet.

Deadweight Tonnage (DWT)
The number of tons of 2,240 pounds that a vessel can transport of cargo, stores and bunker fuel. It is the difference between the number of tons of water a vessel displaces light and the number of tons it displaces when submerged to the load line. An approximate conversion ratio is 1NT = 1.7GT and 1GT = 1.5DWT.

Deck
The Floors of the ship are called the Deck.
Deconsolidation Point
Place where loose or other noncontainerized cargo is ungrouped for delivery.

Deep Tank
Deep Tanks are situated in the Cargo Hold of the Ship. They are High Tanks and are usually utilised for Vegetable oils, fats, and any other consumable liquid products.

Deficit Weight
The weight by which a shipment is less than the minimum weight.

Delivery Instructions
Order to pick up goods at a named place and deliver them to a pier. Usually issued by exporter to trucker but may apply to a railroad, which completes delivery by land. Use is limited to a few major U.S. ports. Also known as shipping delivery order.

Demdes
Demurrage/Despatch money. (Under vessel chartering terms, the amount to be paid if the ship is loading/discharging slower/faster than foreseen.)

Demurrage
The amount paid to the Shipowner by a Charterer for any delays in loading or discharging of Cargo within stipulated time as mentioned in the Charter Party is called Demurrage. A penalty charge against shippers or consignees for delaying the carriers equipment or vessel beyond the allowed free time. The free time and demurrage charges are set forth in the charter party or freight tariff. See also Detention and Per Diem.

Density
The weight of cargo per cubic foot or other unit.

Depot, Container
Container freight station or a designated area where empty containers can be picked up or dropped off.
Derrick
The Equipments which lifts the cargo off or onto the ship is called Derrick. They are used in pairs. They are of smaller capacity than the cranes.

Despatch
An incentive payment paid by the vessel to the charterer for loading and unloading the cargo faster than agreed. Usually negotiated only in charter parties. Also called dispatch.

Despatch Money
A bonus paid by the Shipowner to the Charterer of his ship, if the loading or discharging of cargo is completed much earlier than the stipulated time as mentioned in the Charter Party is called Despatch money.

Destination
The place to which a shipment is consigned. The place where carrier actually turns over cargo to consignee or his agent.

Det Norske Veritas
A Norwegian classification society which certifies seagoing vessels for compliance to standardized rules regarding construction and maintenance.

Detention
A penalty charge against shippers or consignees for delaying carriers equipment beyond allowed time. Demurrage applies to cargo; detention applies to equipment. See Per Diem.

Devanning
The unloading of a container or cargo van.

DF Car
DamageFree Car. Boxcars equipped with special bracing material.

Differential
An amount added or deducted from base rate to make a rate to or from some other point or via another route.
Discrepancy Letter of Credit
When documents presented do not conform to the requirements of the letter of credit (L/C), it is referred to as a discrepancy. Banks will not process L/Cs which have discrepancies. They will refer the situation back to the buyer and/or seller and await further instructions.

Displacement
The weight, in tons of 2,240 pounds, of the vessel and its contents. Calculated by dividing the volume of water displaced in cubic feet by 35, the average density of sea water.

Diversion
A change made either in the route of a shipment in transit (see Reconsignment) or of the entire ship.

Division
Carriers practice of dividing revenue received from rates where joint hauls are involved. This is usually according to agreed formulae.

Dock
For ships, a cargo handling area parallel to the shoreline where a vessel normally ties up. For land transportation, a loading or unloading platform at an industrial location or carrier terminal.

Dock Receipt
A form used to acknowledge receipt of cargo and often serves as basis for preparation of the ocean bill of lading.

Dockage
Refers to the charge assessed against the vessel for berthing at the facility or for mooring to a vessel so berthed.

Docket
Present a rate proposal to a conference meeting for adoption as a conference group rate.
Documents Against Acceptance (D/A)
Instructions given by a shipper to a bank indicating that documents transferring title to goods should be delivered to the buyer only upon the buyers acceptance of the attached draft.

Documents Against Payment (D/P)
An indication on a draft that the documents attached are to be released to the drawee only on payment.

Dolly
A set of wheels that support the front of a container; used when the automotive unit is disconnected.

DoortoDoor
Through transportation of a container and its contents from consignor to consignee. Also known as House to House. Not necessarily a through rate.

Double Bottom Tank
The lower most Tanks under the Cargo Hold are called the Double Bottom Tanks. They are like double skin to the ship and protect ship's bottom.

Draft
The number of feet that the hull of a ship is beneath the surface of the water.
An unconditional order in writing, addressed by one party (drawer) to another party (drawee), requiring the drawee to pay at a fixed or determinable future date a specified sum in lawful currency to the order of a specified person.

Draft, Bank
An order issued by a seller against a purchaser; directs payment, usually through an intermediary bank. Typical bank drafts are negotiable instruments and are similar in many ways to checks on checking accounts in a bank.

Draft, Clean
A draft to which no documents are attached.
Draft, Date
A draft that matures on a fixed date, regardless of the time of acceptance.

Draft, Discounted
A time draft under a letter of credit that has been accepted and purchased by a bank at a discount.

Draft, Sight
A draft payable on demand upon presentation.

Draft, Time
A draft that matures at a fixed or determinable time after presentation or acceptance.

Drawback
A partial refund of an import fee. Refund usually results because goods are reexported from the country that collected the fee.

Drawee
The individual or firm that issues a draft and thus stands to receive payment.

Drayage
Charge made for local hauling by dray or truck. Same as Cartage.

DRFS
Abbreviation for Destination Rail Freight Station. Same as CFS at destination, except a DRFS is operated by the rail carrier participating in the shipment.

DSU
Delay in Startup Insurance is a policy to protect the seller of a construction project from penalties if the project is not completed on time. See Liquidated Damages.

Dry Cargo
Cargo that is not liquid and normally does not require temperature control.

**DryBulk Container**
A container constructed to carry grain, powder and other freeflowing solids in bulk. Used in conjunction with a tilt chassis or platform.

**Dumping**
Attempting to import merchandise into a country at a price less than the fair market value, usually through subsidy by exporting country.

**Dunnage**
These are the wooden planks or pieces generally used to avoid damages to the Cargo and also to prevent skidding of Packages while stored on-board the Ship. The Dunnage protects the Cargo as well as the various parts of the ship coming in direct touch with each other. Any material or objects utilized to protect cargo. Examples of dunnage are blocks, boards, burlap and paper.

**Dutiable Value**
The amount on which an Ad Valorem or customs duty is calculated.

**DWT**
See Deadweight Tonnage.

**Echosounder**
Echo Sounder is an equipment which runs electronically and indicates the depth of water below the ship’s bottom.

**Edge Protector**
An angle piece fitted over the edge of boxes, crates, bundles and other packages to prevent the pressure from metal bands or other types from cutting into the package.

**EDI**
Abbreviation for Electronic Data Interface. Generic term for transmission of transactional data between computer systems. EDI is typically via a batched transmission, usually conforming to consistent standards.
Embargo
Order to restrict the hauling of freight.

Empty Repo
Contraction for Empty Repositioning. The movement of empty containers.

Endorsement
A legal signature usually placed on the reverse of a draft; signifies transfer of rights from the holder to another party.

Entry
Customs documents required to clear an import shipment for entry into the general commerce of a country.

Equalization
A monetary allowance to the customer for picking up or delivering at a point other than the destination shown on the bill of lading. This provision is covered by tariff publication.

Equipment Interchange Receipt (EIR)
A document transferring a container from one carrier to another, or to/from a terminal.

ETA, C, D, R, S
Estimated Time of Arrival, Completion, Departure, Readiness, or Sailing Estimated Time of Availability. That time when a tractor/partner carrier is available for dispatch.

Ethylene
A gas produced by many fruits and vegetables that accelerates the ripening and aging processes.

E.W.I.B.
Eastern Weighing and Inspection Bureau.
Ex Dec
Contraction for Shippers Export Declaration.

Ex From
When used in pricing terms such as Ex Factory or Ex Dock, it signifies that the price quoted applies only at the point of origin indicated.

Exception
Notations made when the cargo is received at the carrier’s terminal or loaded aboard a vessel. They show any irregularities in packaging or actual or suspected damage to the cargo. Exceptions are then noted on the bill of lading.

Expiry Date
Issued in connection with documents such as letters of credit, tariffs, etc. to advise that stated provisions will expire at a certain time.

Export
Shipment of goods to a foreign country.

Export Declaration
A government document declaring designated goods to be shipped out of the country.

Export License
A government document which permits the Licensee to engage in the export of designated goods to certain destinations.

Export Rate
A rate published on traffic moving from an interior point to a port for transshipment to a foreign country.

Ex-Works
An Incoterm of sale meaning the seller delivers to the buyer at seller's named premises.

Factor
A factor is an agent who will, at a discount (usually five to 8% of the gross), buy receivables.

FAK
Abbreviation for Freight All Kinds. Usually refers to full container loads of mixed shipments.

False Billing
Misrepresenting freight or weight on shipping documents.

FAS
Abbreviation for Free Alongside Ship.

FCL
Abbreviation for Full Container Load.

FD
Abbreviation for Free Discharge.

F.D.A.
Food and Drug Administration.

Feeder Service
Cargo to/from regional ports are transferred to/from a central hub port for a longhaul ocean voyage.

Feeder Vessel
A shortsea vessel which transfers cargo between a central hub port and smaller spoke ports.
FEU
Abbreviation for FortyFoot Equivalent Units. Refers to container size standard of 40 feet. Two 20foot containers or TEUs equal one FEU.

Fifth Wheel
The semicircular steel coupling device mounted on a tractor which engages and locks with a chassis semitrailer.

FIO
See Free In and Out.

Fire Scape
Fire Scape is an exit from an enclosed area on board the ship, which can be used for getting out of the area in case of Fire or other emergencies.

Firkin
A capacity measurement equal to one-fourth of a barrel.

Fixed Costs
Costs that do not vary with the level of activity. Some fixed costs continue even if no cargo is carried. Terminal leases, rent and property taxes are fixed costs.

Flat Car
A rail car without a roof and walls.

Flat Rack/Flat Bed Container
A container with no sides and frame members at the front and rear. Container can be loaded from the sides and top.

FOB
See Free On Board. See also Terms of Sale, FOB.
FOR
Abbreviation for Free on Rail.

Force Majeure
The title of a common clause in contracts, exempting the parties for nonfulfillment of their obligations as a result of conditions beyond their control, such as earthquakes, floods or war.

Fore and Aft
The direction on a vessel parallel to the center line.

FPPI
Foreign Principal Party of InterestThe party to whom final delivery or end use of the exported goods will be made, usually the buyer.

Foreign Trade Zone
A free port in a country divorced from Customs authority but under government control. Merchandise, except that which is prohibited, may be stored in the zone without being subject to import duty regulations.

Fork Lift
A machine used to pick up and move goods loaded on pallets or skids.

Foul Bill of Lading
A receipt for goods issued by a carrier with an indication that the goods were damaged when received. Compare Clean Bill of Lading.

FourWay Pallet
A pallet designed so that the forks of a fork lift truck can be inserted from all four sides. See Fork lift.

Forwarder Compensation
See Brokerage.

F.P.A.
See Free of Particular Average.

Free Alongside (FAS)
The seller must deliver the goods to a pier and place them within reach of the ships loading equipment. See Terms of Sale.

Free Astray
An astray shipment (a lost shipment that is found) sent to its proper destination without additional charge.

Free Carrier (FCA)
An Incoterm of sale meaning the seller has delivered when the cargo is given to the carrier nominated by the buyer at the named place.

Free In and Out (FIO)
Cost of loading and unloading a vessel is borne by the charterer/shipper.

Free of Particular Average (FPA)
A marine insurance term meaning that the assurer will not allow payment for partial loss or damage to cargo shipments except in certain circumstances, such as stranding, sinking, collision or fire.

Free on Board (FOB U.S. Domestic Use)
Shipped under a rate that includes costs of delivery to and the loading onto a carrier at a specified point.

FOB Freight Allowed: The same as FOB named inland carrier, except the buyer pays the transportation charge and the seller reduces the invoice by a like amount.

FOB Freight Prepaid: The same as FOB named inland carrier, except the seller pays the freight charges of the inland carrier.

FOB Named Point of Exportation: Seller is responsible for the cost of placing the goods at a named point of exportation. Some European buyers use this form when they actually mean FOB vessel.
FOB Vessel: Seller is responsible for goods and preparation of export documentation until actually placed aboard the vessel.

Free on Board (Intl Use)
See Terms of Sale.

Free Out (FO)
Cost of unloading a vessel is borne by the charterer.

Free Port
A restricted area at a seaport for the handling of dutyexempted import goods. Also called a Foreign Trade Zone.

Free Time
That amount of time that a carrier’s equipment may be used without incurring additional charges. (See Storage, Demurrage or Per Diem.)

Free Trade Zone
A port designated by the government of a country for dutyfree entry of any nonprohibited goods. Merchandise may be stored, displayed, used for manufacturing, etc., within the zone and reexported without duties.

Freight
Refers to either the cargo carried or the charges assessed for carriage of the cargo.

Freight Bill
A document issued by the carrier based on the bill of lading and other information; used to account for a shipment operationally, statistically, and financially. An Invoice.

Freight Forwarder
A person whose business is to act as an agent on behalf of the shipper. A freight forwarder frequently makes the booking reservation. In the United States, freight forwarders are now licensed by the FMC as Ocean Intermediaries.

Freight Charges
The Charges levied on any Cargo for Carriage from one Port to another Port are Called the Freight Charges, these charges are charged on following:

Deadweight Cargo Freight: The Cargo which has the Freight Charges levied according to it's weight is called a Deadweight Cargo. Example - Steel.

Measurement Cargo Freight: The Cargo which has the Freight Charges levied according to it's measurement is called a Measurement Cargo. Example - cotton.

Freighters
See Ships.

Fresh Water Tank
The Tanks on the ship into which the Fresh Water for drinking or for human consumption is kept are called Fresh Water Tanks.

Full Shipload Lot
The amount of cargo a vessel carries or is able to carry. Practically, it is the amount of cargo which induces the specific voyage. While the cargo lot may take up the majority of the vessels space or tonnage capacity, it does not require a vessels volume and weight capacity to be fully utilized.

Full and Down
An expression to describe a loaded vessel carrying cargoes of such a volume and weight that it fills all the vessels spaces and also brings her down to her tonnage loadline. A rare but optimum revenue condition for a vessel operator.

Funnel
The Funnel is found on the top Deck connected to the Ship's Engine Room for the exhaust of Smoke, Gases & Shute.

Galley
The Kitchen of the ship is called Galley.

Gangway
The ladder leading from the Jetty to the ship Entrance is called the Gangway. It is the main ladder of a ship.

Gateway

Industry-related: A point at which freight moving from one territory to another is interchanged between transportation lines.

GATT

Abbreviation for General Agreement on Tariffs and Trade. A multilateral treaty to help reduce trade barriers between the signatory countries and to promote trade through tariff concessions. The World Trade Organization (WTO) superseded GATT in 1994.

GBL

Abbreviation for Government Bill of Lading.

GDSM

Abbreviation for General Department Store Merchandise. A classification of commodities that includes goods generally shipped by massmerchandise companies. This commodity structure occurs only in service contracts.

General Order (G.O.)

When U.S. Customs orders shipments without entries to be kept in their custody in a bonded warehouse.

Generator Set (Gen Set)

A portable generator which can be attached to a refrigerated container to power the refrigeration unit during transit.

Global Maritime Intelligence Integration (GMII)

It is within the Office of the Director of National Intelligence, with the mission to ensure governmentwide access to maritime information and data critical to intelligence production and to serve as the focal point and oversight agent for maritime specific information issues.

GoDown
In the Far East, a warehouse where goods are stored and delivered.

Gooseneck
The front rails of the chassis that raise above the plane of the chassis and engage in the tunnel of a container leading to the connection to tractor.

GRI
Abbreviation for General Rate Increase. Used to describe an across-the-board tariff rate increase implemented by conference members and applied to base rates.

Gross Tonnage (GT)
Applies to vessels, not to cargo, \((0.2+0.02 \log_{10}V)\) where \(V\) is the volume in cubic meters of all enclosed spaces on the vessel. Since 1994, it replaces Gross Registered Tonnage. An approximate conversion ratio is \(1\text{NT} = 1.7\text{GT}\) and \(1\text{GT} = 1.5\text{DWT}\).

Gross Weight
Entire weight of goods, packaging and freight car or container, ready for shipment. Generally, 80,000 pounds maximum container, cargo and tractor for highway transport. Gross weight is the weight of the packing or casing + the contents inside it.

Groupage
A consolidation service, putting small shipments into containers for shipment.

GVW
Abbreviation for Gross Vehicle Weight. The combined total weight of a vehicle and its container, inclusive of prime mover.

Hague Rules, The
A multilateral maritime treaty adopted in 1921 (at The Hague, Netherlands). Standardizes liability of an international carrier under the Ocean B/L. Establishes a legal floor for B/L. See COGSA.

Handymax Vessel
A dry bulk vessel of 35,000 to 49,000dwt. (Note that a Handy drybulk carrier is from 10,000 to 34,000dwt.) A Handymax Tanker is a liquid bulk carrier of 10,000 to 60,000dwt.

Harbor
Any place to which ships may resort for shelter, or to load or unload passengers or goods, or to obtain fuel, water, or supplies. This term applies to such places whether proclaimed public or not and whether natural or artificial.

Harbor Master
An official responsible for construction, maintenance, operation, regulation, enforcement, administration and management pertaining to marinas, ports and harbors.

Hatch
The opening in the deck of a vessel; gives access to the cargo hold. The place where the cargo is loaded or stowed is called Hatch.

Hatch Covers
The fixed or foldable type of covers of the Hatch on the deck are called Hatch Covers. These could be operated manually or mechanically. They make the Hatches water tight.

HAZ MAT
An industry abbreviation for Hazardous Material.

HeavyLift Charge
A charge made for lifting articles too heavy to be lifted by a ships normal tackle.

HighDensity Compression
Compression of a flat or standard bale of cotton to approximately 32 pounds per cubic foot. Usually applies to cotton exported or shipped coastwise.

Hitchment
The marrying of two or more portions of one shipment that originate at different locations, moving under one bill of lading, from one shipper to one consignee. Authority for this service must be granted by tariff publication. See Bill of Lading.

Hopper Barge
A barge which loads material dumped into it by a dredger and discharges the cargo through the bottom.

HousetoHouse
See DoortoDoor.

HousetoPier
Cargo loaded into a container by the shipper under shippers supervision. When the cargo is exported, it is unloaded at the foreign pier destination.

Humping
The process of connecting a moving rail car with a motionless rail car within a rail classification yard in order to make up a train. The cars move by gravity from an incline or hump onto the appropriate track.

I/A
Abbreviation for Independent Action. The right of a conference member to publish a rate of tariff rule that departs from the Agreements common rate or rule.

ICC
Abbreviation for: (1) Interstate Commerce Commission (2) International Chamber of Commerce

I.M.C.O.
International Maritime Consultative Organization. A forum in which most major maritime nations participate and through which recommendations for the carriage of dangerous goods, bulk commodities, and maritime regulations become internationally acceptable.
I.M.D.G. Code

Immediate Exportation
An entry that allows foreign merchandise arriving at one port to be exported from the same port without the payment of duty.

Import
To receive goods from a foreign country.

Import License
A document required and issued by some national governments authorizing the importation of goods.

In Bond
Cargo moving under Customs control where duty has not yet been paid.

In Gate
The transaction or interchange that occurs at the time a container is received by a rail terminal or water port from another carrier.

In Transit
In transit, or in passage.

In Transit Entry (I.T.)
Allows foreign merchandise arriving at one port to be transported in bond to another port, where a superseding entry is filed.

Incentive Rate
A lower than usual tariff rate assessed because a shipper offers a greater volume than specified in the tariff. The incentive rate is assessed for that portion exceeding the normal volume.
INCOTERMS
The recognized abbreviation for the International Chamber of Commerce Terms of Sale. These terms were last amended, effective July 1, 1990.

Indemnity Bond
An agreement to hold a carrier harmless with regard to a liability.

Independent Action
Setting rate within a conference tariff that is different from the rate(s) for the same items established by other conference members.

Independent Tariff
Any body of rate tariffs that are not part of an agreement or conference system.

Inducement
Placing a port on a vessel's itinerary because the volume of cargo offered at that port justifies the cost of routing the vessel.

Inherent Vice
An insurance term referring to any defect or other characteristic of a product that could result in damage to the product without external cause (for example, instability in a chemical that could cause it to explode spontaneously). Insurance policies may exclude inherent vice losses.

Inland Carrier
A transportation line that hauls export or import traffic between ports and inland points.

Inspection Certificate
A certificate issued by an independent agent or firm attesting to the quality and/or quantity of the merchandise being shipped. Such a certificate is usually required in a letter of credit for commodity shipments.

Installment Shipments
Successive shipments are permitted under letters of credit. Usually they must take place within a given period of time.

Insulated Container
A container insulated on the walls, roof, floor, and doors, to reduce the effect of external temperatures on the cargo.

Insulated Container Tank
The frame of a container constructed to hold one or more thermally insulated tanks for liquids.

Insurance with Average clause
This type of clause covers merchandise if the damage amounts to three percent or more of the insured value of the package or cargo. If the vessel burns, sinks, or collides, all losses are fully covered. In marine insurance, the word average describes partial damage or partial loss.

Insurance, Allrisk
This type of insurance offers the shipper the broadest coverage available, covering against all losses that may occur in transit.

Insurance, General Average
In water transportation, the deliberate sacrifice of cargo to make the vessel safe for the remaining cargo. Those sharing in the spared cargo proportionately cover the loss.

Insurance, Particular Average
A Marine insurance term which refers to partial loss on an individual shipment from one of the perils insured against, regardless of the balance of the cargo. Particular average insurance can usually be obtained, but the loss must be in excess of a certain percentage of the insured value of the shipment, usually three to five percent, before a claim will be allowed by the company.

Interchange Point
A location where one carrier delivers freight to another carrier.
Intercoastal
Water service between two coasts; in the U.S., this usually refers to water service between the Atlantic and Pacific or Gulf Coasts.

Interline Freight
Freight moving from origin to destination over the Freight lines of two or more transportation carriers.

Intermediate Point
A point located en route between two other points.

Intermodal
Used to denote movements of cargo containers interchangeably between transport modes, i.e., motor, rail, water, and air carriers, and where the equipment is compatible within the multiple systems.

International Ship and Port Security Code (ISPS)
It is an amendment to the Safety of Life at Sea (SOLAS) Convention (1974/1988) on minimum security arrangements for ships, ports and government agencies. Having come into force in 2004, it prescribes responsibilities to governments, shipping companies, shipboard personnel, and port/facility personnel to detect security threats and take preventative measures against security incidents affecting ships or port facilities used in international trade.

InTransit Entry (I.T.)
Allows foreign merchandise arriving at one port to be transported in bond to another port, where a superseding entry is filed.

Invoice
An itemized list of goods shipped to a buyer, stating quantities, prices, shipping charges, etc.

Inward Foreign Manifest (IFM)
A complete listing of all cargo entering the country of discharge. Required at all world ports and is the primary source of cargo control, against which duty is assessed by the receiving country.
IPI
Abbreviation for Inland Point Intermodal. Refers to inland points (nonports) that can be served by carriers on a through bill of lading.

Irrevocable Letter of Credit
Letter of credit in which the specified payment is guaranteed by the bank if all terms and conditions are met by the drawee and which cannot be revoked without joint agreement of both the buyer and the seller.

I.S.O.
International Standards Organization which deals in standards of all sorts, ranging from documentation to equipment packaging and labeling.

Issuing Bank
Bank that opens a straight or negotiable letter of credit and assumes the obligation to pay the bank or beneficiary if the documents presented are in accordance with the terms of the letter of credit.

Issuing Carrier
The carrier issuing transportation documents or publishing a tariff.

I.T.
Abbreviation for Immediate Transport. The document (prepared by the carrier) allows shipment to proceed from the port of entry in the U.S. to Customs clearing at the destination. The shipment clears Customs at its final destination. Also called an InTransit Entry.

Jacket
A wood or fiber cover placed around such containers as cans and bottles.

Jacobs Ladder
A rope ladder suspended from the side of a vessel and used for boarding.
Jettison
Act of throwing cargo or equipment (jetsam) overboard when a ship is in danger.

JIT
Abbreviation for Just In Time. In this method of inventory control, warehousing is minimal or nonexistent; the container is the movable warehouse and must arrive just in time; not too early nor too late.

Joint Rate
A rate applicable from a point on one transportation line to a point on another line, made by agreement and published in a single tariff by all transportation lines over which the rate applies.

Kilogram
1,000 grams or 2.2046 pounds.

King Pin
A coupling pin centered on the front underside of a chassis; couples to the tractor.

Knocked Down (KD)
Articles which are taken apart to reduce the cubic footage displaced or to make a better shipping unit and are to be reassembled

Knot
One nautical mile (6,076 feet or 1852 meters) per hour. In the days of sail, speed was measured by tossing overboard a log which was secured by a line. Knots were tied into the line at intervals of approximately six feet. The number of knots measured was then compared against time required to travel the distance of 1000 knots in the line.

Known Loss
A loss discovered before or at the time of delivery of a shipment.
L/C
Abbreviation for Letter of Credit.

Laden
Loaded aboard a vessel.

Lading
Refers to the freight shipped; the contents of a shipment.

Landbridge
Movement of cargo by water from one country through the port of another country, thence, using rail or truck, to an inland point in that country or to a third country. As example, a through movement of Asian cargo to Europe across North America.

Landed Cost
The total cost of a good to a buyer, including the cost of transportation.

Lanemeter
Primarily used to indicate the cargo capacity of a rollon/rolloff car carrier. It is one meter of deck with a width of 2.5 to 3.0 meters.

Landing Certificate
Certificate issued by consular officials of some importing countries at the point or place of export when the subject goods are exported under bond.

Landing Gear
A support fixed on the front part of a chassis (which is retractable); used to support the front end of a chassis when the tractor has been removed.

LASH
A maritime industry abbreviation for Lighter Aboard Ship. A specially constructed vessel equipped with an overhead crane for lifting specially designed barges and stowing them into cellular slots in an athwartship position.
Lay Days

The period agreed between Ship owner and the Charterer of the ship to load or discharge the cargo is called the Lay Days.

Laycan

Laydays/Cancelling (date): Range of dates within the hire contract must start.

LCL

Abbreviation for Less than Container Load. The quantity of freight which is less than that required for the application of a container load rate. Loose Freight.

Less Than Truckload

Also known as LTL or LCL.

Letter of Credit (L/C)

A document, issued by a bank per instructions by a buyer of goods, authorizing the seller to draw a specified sum of money under specified terms, usually the receipt by the bank of certain documents within a given time. Some of the specific descriptions are:

BacktoBack: A new letter of credit issued to another beneficiary on the strength of a primary credit. The second L/C uses the first L/C as collateral for the bank. Used in a threeparty transaction.

Clean: A letter of credit that requires the beneficiary to present only a draft or a receipt for specified funds before receiving payment.

Confirmed: An L/C guaranteed by both the issuing and advising banks of payment so long as sellers documents are in order, and the L/C terms are met. Only applied to irrevocable L/Cs. The confirming bank assumes the credit risk of the issuing bank.

Deferred Payment: A letter of credit issued for the purchase and financing of merchandise, similar to acceptance letter of credit, except that it requires presentation of sight drafts payable on an installment basis.
Irrevocable: An instrument that, once established, cannot be modified or cancelled without the agreement of all parties concerned.

Non cumulative: A revolving letter of credit that prohibits the amount not used during the specific period from being available afterwards.

Restricted: A condition within the letter of credit which restricts its negotiation to a named bank.

Revocable: An instrument that can be modified or cancelled at any moment without notice to and agreement of the beneficiary, but customarily includes a clause in the credit to the effect that any draft negotiated by a bank prior to the receipt of a notice of revocation or amendment will be honored by the issuing bank. Rarely used since there is no protection for the seller.

Revolving: An irrevocable letter issued for a specific amount; renews itself for the same amount over a given period.

Straight: A letter of credit that contains a limited engagement clause which states that the issuing bank promises to pay the beneficiary upon presentation of the required documents at its counters or the counters of the named bank.

Transferable: A letter of credit that allows the beneficiary to transfer in whole or in part to another beneficiary any amount which, in aggregate, of such transfers does not exceed the amount of the credit. Used by middlemen.

Unconfirmed: A letter of credit forwarded to the beneficiary by the advising bank without engagement on the part of the advising bank.

Letter of Indemnity
In order to obtain the clean bill of lading, the shipper signs a letter of indemnity to the carrier on the basis of which may be obtained the clean bill of lading, although the dock or mates receipt showed that the shipment was damaged or in bad condition.

Licenses
Some governments require certain commodities to be licensed prior to exportation or importation. Clauses attesting to compliance are often required on the B/L. Various types issued for export (general, validated) and import as mandated by government(s).

Lien
A legal claim upon goods for the satisfaction of some debt or duty.

Life Boat
A boat available on board the ship, to accommodate all the Passengers and the Crew in case of any Emergency is called a Life Boat.

Lightening
A vessel discharges part of its cargo at anchor into a lighter to reduce the vessel's draft so it can then get alongside a pier.

Lighter
An open or covered barge towed by a tugboat and used mainly in harbors and inland waterways to carry cargo to/from alongside a vessel.

Lighterage
Refers to carriage of goods by lighter and the charge assessed there from.

Liner
A vessel advertising sailings on a specified trade route on a regular basis. It is not necessary that every named port be called on every voyage.

LineHaul
Transportation from one city to another as differentiated from local switching service.

List
The amount in degrees that a vessel tilts from the vertical.
Liter
1.06 liquid U.S. quarts or 33.9 fluid ounces.

Liquidated Damages
The penalty a seller must pay if the construction project does not meet contractual standards or deadlines.

Lloyds Registry
An organization maintained for the surveying and classing of ships so that insurance underwriters and others may know the quality and condition of the vessels offered for insurance or employment.

LNG (Liquefied Natural Gas)
Natural gas will liquefy at a temperature of approximately -259 F or -160 C at atmospheric pressure. One cubic foot of liquefied gas will expand to approximately 600 cubic feet of gas at atmospheric pressure.

LNGC (LNG Carrier)
An ocean-going ship specially constructed to carry LNG in tanks at 160 C. Current average carrying capacity of LNGs is 125,000 cubic metres. Many LNGCs presently under construction or on order are in the 210,000 - 215,000 cubic metre range.

Load Density
Maximum Weight which can be loaded safely in an Area of 1 Sq. M. without causing any Damages to that area is called the Load Density of the area. It is given in Ship’s Stability Booklet and is expressed in m.t./Sq. M.

Load Line
The waterline corresponding to the maximum draft to which a vessel is permitted to load, either by freeboard regulations, the conditions of classification, or the conditions of service. See also Plimsoll Mark.

Local Cargo
Cargo delivered to/from the carrier where origin/destination of the cargo is in the local area.
Long Ton
2,240 pounds

Longshoreman
Individual employed in a port to load and unload ships.

Loose
Without packing.

LowBoy
A trailer or semitrailer with no sides and with the floor of the unit close to the ground.

Lower Hold
The lowest Compartment of a Hatch is called the Lower Hold. Generally it is on top of the Double Bottom Tanks.

Malpractice
A carrier giving a customer illegal preference to attract cargo. This can take the form of a money refund (rebate); using lower figures than actual for the assessment of freight charges (undercubing); misdeclaration of the commodity shipped to allow the assessment of a lower tariff rate; waiving published tariff charges for demurrage, CFS handling or equalization; providing specialized equipment to a shipper to the detriment of other shippers, etc.

Manifest
Document that lists in detail all the bills of lading issued by a carrier or its agent or master for a specific voyage. A detailed summary of the total cargo of a vessel. Used principally for Customs purposes.

Marine Insurance
Broadly, insurance covering loss or damage of goods at sea. Marine insurance typically compensates the owner of merchandise for losses sustained from fire, shipwreck, etc., but excludes losses that can be recovered from the carrier.
Maritime

Business pertaining to commerce or navigation transacted upon the sea or in seaports in such matters as the court of admiralty has jurisdiction.

Maritime Domain

It is all areas and things of, on, under, relating to, adjacent to, or bordering on a sea, ocean, or other navigable waterway, including all maritime related activities, infrastructure, people, cargo, and vessels and other conveyances.

Maritime Security and Safety Information System (MSSIS)

It shares and displays vessel Automated Identification System (AIS) data realtime with multiple international users through a webbased, passwordprotected system.

Marking

Letters, numbers, and other symbols placed on cargo packages to facilitate identification. Also known as marks.

Marlinespike

A pointed metal spike, used to separate strands of rope in splicing.

Mast

The tall post on which the Derricks or the Navigation lights are fitted are called Mast

Mates Receipt

An archaic practice. An acknowledgement of cargo receipt signed by a mate of the vessel. The possessor of the mates receipt is entitled to the bill of lading, in exchange for that receipt. This is a document signed by the Chief Officer or Cargo Officer or Mate of the Ship as the Receipt of Cargo which is loaded on board the ship. The Mate's Receipt contains the description of the Cargo which is to be loaded on board the Ship, and as a rule it should be made available to the Chief Officer before Cargo work starts. On the basis of this receipt they decide the stowage of the Cargo and also instruct the Duty Officer or the Ship Surveyor to check for the expected damages and the quality and quantity of the Cargo. These remarks are put by the Chief Officer while signing the Mate's Receipt as acceptance of Cargo on board the Ship.
This is exchanged by the Shipper for the Bill of Lading and handed over to the Agent.

MBM
1,000 board feet. One MBM equals 2,265 C.M.

MCFS
Abbreviation for Master Container Freight Station. See CFS.

Measurement Cargo
Freight on which transportation charges are calculated on the basis of volume measurement.

Measurement Ton
40 cubic feet.

Mechanically Ventilated Container
A container fitted with a means of forced air ventilation.

Megaports Initiative
It is a National Nuclear Security Administration (NNSA) initiative, started in 2003. It teams up with other countries to enhance their ability to screen cargo at major international seaports. The Initiative provides radiation detection equipment and trains their personnel to specifically check for nuclear or other radioactive materials. In return, NNSA requires that data be shared on detections and seizures of nuclear or radiological material that resulted from the use of the equipment provided.

Memorandum Bill of Lading
An inhouse bill of lading. A duplicate copy.

Memorandum Freight Bill
See Multiple Container load Shipment.

Meter
39.37 inches (approximately).

Metric Ton
2,204.6 pounds or 1,000 kilograms.

Microbridge
A cargo movement in which the water carrier provides a through service between an inland point and the port of load/discharge. The carrier is responsible for cargo and costs from origin on to destination. Also known as IPI or Through Service.

Mile
A unit equal to 5,280 feet on land. A nautical mile is 6076.115.

Mini Landbridge
An intermodal system for transporting containers by ocean and then by rail or motor to a port previously served as an allwater move (e.g., Hong Kong to New York over Seattle).

Minimum Bill of Lading
A clause in a bill of lading which specifies the least charge that the carrier will make for issuing a lading. The charge may be a definite sum or the current charge per ton for any specified quantity.

Minimum Charge
The lowest charge that can be assessed to transport a shipment.

Mixed Container Load
A container load of different articles in a single consignment.

MLB
Abbreviation for Mini Landbridge.

M.M.F.B.
Middlewest Motor Freight Bureau.

Modified Atmosphere
A blend of gases tailored to replace the normal atmosphere within a container.

MT
Abbreviation for Metric Ton.

Multimodal
Synonymous for all practical purposes with Intermodal.

MultiTank Container
A container frame fitted to accommodate two or more separate tanks for liquids.

Nautical Mile
Distance of one minute of longitude at the equator, approximately 6,076.115. The metric equivalent is 1852.

Navigation Charts
Navigation Charts are the Charts, which can be used for plotting the position of the Ship or can be used to know exact details of depths and locations.

Navigation Lights
The Lights exhibited during the night for Navigation purpose are the lights required as per the Rules are called the Navigation Lights.

N.C.I.T.D.
National Committee on International Trade Documentation.

NEC
Abbreviation for Not Elsewhere Classified.
Negotiable Instruments
A document of title (such as a draft, promissory note, check, or bill of lading) transferable from one person to another in good faith for a consideration. Nonnegotiable bills of lading are known as straight consignment. Negotiable bills are known as order b/l's.

NES
Abbreviation for Not Elsewhere Specified.

Nested
Articles packed so that one rests partially or entirely within another, thereby reducing the cubicfoot displacement.

Net Tare Weight
The weight of an empty cargocarrying piece of equipment plus any fixtures permanently attached.

Net Tonnage (NT)
The replacement, since 1994, for Net Register Tonnage. Theoretically the cargo capacity of the ship. Sometimes used to charge fees or taxes on a vessel. The formula is \( \text{Vc} = (0.2 + 0.02 \log_{10}(\text{Vc})) \times (4d/3D)^2 \), for passenger ships the following formula is added: \( 1.25 \times (\text{GT} + 10000)/10000 \times (N1+(N2/10)) \), where \( \text{Vc} \) is the volume of cargo holds, \( D \) is the distance between ships bottom and the uppermost deck, \( d \) is the draught, \( N1 \) is the number of cabin passengers, and \( N2 \) is the number of deck passengers.)

Ton  is figured as a 100 cubic foot ton. An approximate conversion ratio is 1NT = 1.7GT and 1GT = 1.5DWT.

Net Weight
Weight of the goods alone without any immediate wrappings, e.g., the weight of the contents of a tin can without the weight of the can. Weight of the contents packed inside a case or packing is called the Nett weight.

Neutral Body
An organization established by the members of an ocean conference acts as a selfpolicing force with broad authority to investigate tariff violations,
including authority to scrutinize all documents kept by the carriers and their personnel. Violations are reported to the membership and significant penalties are assessed.

Nippon Kaiji Kyokai (NK)
A Japanese classification society which certifies seagoing vessels for compliance to standardized rules regarding construction and maintenance.

N.M.F.C.
National Motor Freight Classification.

NOI
Abbreviation for Not Otherwise Indexed.

NOIBN
Abbreviation for Not Otherwise Indexed By Name.

NonDumping Certificate
Required by some countries for protection against the dumping of certain types of merchandise or products.

NonVessel Operating Common Carrier (NVOCC)
A cargo consolidator in ocean trades who will buy space from a carrier and subsell it to smaller shippers. The NVOCC issues bills of lading, publishes tariffs and otherwise conducts itself as an ocean common carrier, except that it will not provide the actual ocean or intermodal service.

NOR
Notice of Readiness (when the ship is ready to load.)

NOS
Abbreviation for Not Otherwise Specified.

Nose
Front of a container or trailer opposite the tail.
Noshow
Cargo which has been booked but does not arrive in time to be loaded before the vessel sails. See also Windy Booking.

N.P.C.F.B.
North Pacific Coast Freight Bureau.

NRT  Net Register Tons see Net Tonnage
Theoretically the cargo capacity of the ship. Sometimes used to charge fees or taxes on a vessel.

Ocean Bill of Lading (Ocean B/L)
A contract for transportation between a shipper and a carrier. It also evidences receipt of the cargo by the carrier. A bill of lading shows ownership of the cargo and, if made negotiable, can be bought, sold or traded while the goods are in transit.

OCP
See Overland Common Points.

On Board
A notation on a bill of lading that cargo has been loaded on board a vessel. Used to satisfy the requirements of a letter of credit, in the absence of an express requirement to the contrary.

On Deck
A notation on a bill of lading that the cargo has been stowed on the open deck of the ship.

Open Account
A trade arrangement in which goods are shipped to a foreign buyer without guarantee of payment.
Open Insurance Policy
A marine insurance policy that applies to all shipments made by an exporter over a period of time rather than to one shipment only.

Open Sea
The water area of the open coast seaward of the ordinary low-water mark, or seaward of inland waters.

Open Top Container
A container fitted with a solid removable roof, or with a tarpaulin roof so the container can be loaded or unloaded from the top.

Operating Ratio
A comparison of a carrier's operating expense with its net sales. The most general measure of operating efficiency.

Optimum Cube
The highest level of cube utilization that can be achieved when loading cargo into a container.

Optional Cargo
It is the cargo loaded on a ship, having an option of offloading at any one of the port which is decided from the list of optional port by the Consignee. Is called Optional Cargo.

OrderNotify (O/N)
A bill of lading term to provide surrender of the original bill of lading before freight is released; usually associated with a shipment covered under a letter of credit.

ORFS
Abbreviation for Origin Rail Freight Station. Same as CFS at origin except an ORFS is operated by the rail carrier participating in the shipment.

Origin
Location where shipment begins its movement.
Original Bill of Lading (OBL)
A document which requires proper signatures for consummating carriage of contract. Must be marked as original by the issuing carrier.

OS&D
Abbreviation for Over, Short or Damaged Usually discovered at cargo unloading.

Out Gate
Transaction or interchange that occurs at the time a container leaves a rail or water terminal.

Over Carried Cargo
A cargo not discharged at the destination port and is carried by mistake or oversight to other port is called Over carried cargo.

Overcharge
To charge more than the proper amount according to the published rates.

Overheight Cargo
Cargo more than eight feet high which thus cannot fit into a standard container.

Owner Code (SCAC)
Standard Carrier Abbreviation Code identifying an individual common carrier. A three letter carrier code followed by a suffix identifies the carriers equipment. A suffix of U is a container and C is a chassis.

P&I
Abbreviation for Protection and Indemnity, an insurance term.

Packing List
Itemized list of commodities with marks/numbers but no cost values indicated.

PADAG
Abbreviation for Please Authorize Delivery Against Guarantee. A request from the consignee to the shipper to allow the carrier or agent to release cargo against a guarantee, either bank or personal. Made when the consignee is unable to produce original bills of lading.

Pallet
A platform with or without sides, on which a number of packages or pieces may be loaded to facilitate handling by a lift truck. A tray generally made out of wood, on which the various packages, cases, bags are stacked for easy quantity handling of cargo to avoid damages is called Pallet.

Panamax Tanker
A liquid cargo vessel of 50,000 to 70,000dwt.

Panamax Vessel
The largest size vessel that can traverse the Panama Canal. Current maximum dimensions are: Length 294.1 meters (965 feet); width 32.3 meters (106 feet); draft 12.0 meters (39.5 feet) in tropical fresh water; height 57.91 meters (190 feet) above the water.

Paper Ramp
A technical rail ramp, used for equalization of points not actually served.

Paper Rate
A published rate that is never assessed because no freight moves under it.

Parcel Receipt
An arrangement whereby a steamship company, under rules and regulations established in the freight tariff of a given trade, accepts small packages at rates below the minimum bill of lading, and issues a parcel receipt instead of a bill of lading.

Partial Shipments
Under letters of credit, one or more shipments are allowed by the phrase partial shipments permitted.

Particular Average
See Insurance, Particular Average.

Payee
A party named in an instrument as the beneficiary of the funds. Under letters of credit, the payee is either the drawer of the draft or a bank.

Payer
A party responsible for the payment as evidenced by the given instrument. Under letters of credit, the payer is the party on whom the draft is drawn, usually the drawee bank.

Per Diem
A charge, based on a fixed daily rate.

Perils of the Sea
Those causes of loss for which the carrier is not legally liable. The elemental risks of ocean transport.

Pickup
The act of calling for freight by truck at the consignors shipping platform.

Pier
The structure perpendicular to the shoreline to which a vessel is secured for the purpose of loading and unloading cargo.

PiertoHouse
A shipment loaded into a container at the pier or terminal, thence to the consignees facility.

PiertoPier
Containers loaded at port of loading and discharged at port of destination.
Piggy Packer
A mobile container handling crane used to load/unload containers to/from railcars.

Piggyback
A transportation arrangement in which truck trailers with their loads are moved by train to a destination.
Also known as Rail Pigs.

Pilot Ladder
Pilot Ladder is a ladder which is of a particular specification as per specification, and is kept tied to a safe landing place on board the ship, specially for Pilot's Boarding & leaving Ship.

Place of Delivery
Place where cargo leaves the care and custody of carrier.

Place of Receipt
Location where cargo enters the care and custody of carrier.

Plimsoll Mark
A series of horizontal lines, corresponding to the seasons of the year and fresh or saltwater, painted on the outside of a ship marking the level which must remain above the surface of the water for the vessel's stability.

POD
Abbreviation for: Port of Discharge. Port of Destination. Proof of Delivery. A document required from the carrier or driver for proper payment.

Point of Origin
The place at which a shipment is received by a carrier from the shipper.

POL
Abbreviation for: Port of Loading. Petroleum, Oil, and Lubricants.
Port
Harbor with piers or docks. Left side of a ship when facing forward. Opening in a ship's side for handling freight.

Port of Call
Port where a ship discharges or receives traffic.

Port of Entry
Port where cargo is unloaded and enters a country.

Port of Exit
Place where cargo is loaded and leaves a country.

Port Security
It is the defense, law and treaty enforcement, and counterterrorism activities that fall within the port and maritime domain. It includes the protection of the seaports themselves, the protection and inspection of the cargo moving through the ports, and maritime security.

Pratique Certificate
Lifts temporary quarantine of a vessel; granted pratique by Health Officer.

Precooling
A process employed in the shipment of citrus fruits and other perishable commodities. The fruit is packed and placed in a cold room from which the heat is gradually extracted. The boxes of fruit are packed in containers that have been thoroughly cooled and transported through to destination without opening the doors.

Prepaid (Ppd.)
Freight charges paid by the consignor (shipper) prior to the release of the bills of lading by the carrier.

Product Tanker
A liquid cargo vessel of 10,000 to 60,000dwt. Also referred to as a Handymax Tanker. Often built with many segregated cargo tanks and thus sometimes called a drugstore tanker.

Pro Forma
A Latin term meaning For the sake of form.

Pro Forma Invoice
An invoice provided by a supplier prior to the shipment of merchandise, informing the buyer of the kinds and quantities of goods to be sent, their value, and specifications (weight, size, etc.).

Pro Rata
A Latin term meaning In proportion.

Project Rate
Single tariff item, established to move multiple commodities needed for a specified project, usually construction.

Public Service Commission
A name usually given to a State body having control or regulation of public utilities.

Publishing Agent
Person authorized by transportation lines to publish tariffs or rates, rules, and regulations for their account.

Pulp Temperature
Procedure where carrier tests the temperature of the internal flesh of refrigerated commodities to assure that the temperature at time of shipment conforms to prescribed temperature ranges.

Pup
A short semitrailer used jointly with a dolly and another semitrailer to create a twin trailer.
Quarantine
A restraint placed on an operation to protect the public against a health hazard. A ship may be quarantined so that it cannot leave a protected point. During the quarantine period, the Q flag is hoisted.

Quoin
A wedgeshaped piece of timber used to secure barrels against movement.

Quota
The quantity of goods that may be imported without restriction during a set period of time.

Quotation
An offer to sell goods at a stated price and under stated terms.

Quay
A structure attached to land to which a vessel is moored. See also Pier and Dock.

Radar
Radar is an equipment which shows the objects above water on its screen giving the Bearing and the distance from the ship or between the objects.

Rag Top
A slang term for an opentop trailer or container with a tarpaulin cover.

Rail Division
The amount of money an ocean carrier pays to the railroad for overland carriage.

Rail Grounding
The time that the container was discharged (grounded) from the train.
Ramp
Railroad terminal where containers are received or delivered and trains loaded or discharged. Originally, trailers moved onto the rearmost flatcar via a ramp and driven into position in a technique known as circus loading. Most modern rail facilities use lifting equipment to position containers onto the flatcars.

RamptoDoor
A movement where the load initiates at an origin rail ramp and terminates at a consignees door.

RamptoRamp
A movement of equipment from an origin rail ramp to a destination rail ramp only.

Rate Basis
A formula of the specific factors or elements that control the making of a rate. A rate can be based on any number of factors (i.e., weight, measure, equipment type, package, box, etc.).

Reasonableness
Under ICC and common law, the requirement that a rate not be higher than is necessary to reimburse the carrier for the actual cost of transporting the traffic and allow a fair profit.

Rebate
An illegal form of discounting or refunding that has the net effect of lowering the tariff price. See also Malpractice.

Reconsignment
Changing the consignee or destination on a bill of lading while shipment is still in transit. Diversion has substantially the same meaning.

Recourse
A right claim against the guarantors of a loan or draft or bill of exchange.
Red Label
A label required on shipments of flammable articles.

Reefer
Refrigerated container.

Refrigerated Space
Refrigerated Space is a place where, any cargo which needs cooling below the normal temperature can be maintained. The temperature of this space can be brought down as per the cargo carriage requirements.

Related Points
A group of points to which rates are made the same as or in relation to rates to other points in group.

RFP
Request for Proposal

RFQ
Request for quotation.

Relay
To transfer containers from one ship to another when both vessels are controlled by the same network (carrier) manager.

Remittance
Funds sent by one person to another as payment.

Restricted Articles
Articles handled only under certain conditions.

Revenue Ton (RT)
A ton on which the shipment is freighted. If cargo is rated as weight or measure (W/M), whichever produces the highest revenue will be considered the revenue ton. Weights are based on metric tons and measures are based on cubic meters. RT = 1 MT or 1 CBM.

Reverse IPI
An inland point provided by an allwater carriers through bill of lading in the U.S. by first discharging the container in an East Coast port.

Ro/Ro
A shortening of the term, Roll On/Roll Off. A method of ocean cargo service using a vessel with ramps which allows wheeled vehicles to be loaded and discharged without cranes. Also refers to any specialized vessel designed to carry Ro/Ro cargo.

Roll
To rebook cargo to a later vessel.

Rolling
The sidetoside (athwartship) motion of a vessel.

Route
The manner in which a shipment moves; i.e., the carriers handling it and the points at which the carriers interchange.

Running Gear
Complementary equipment for terminal and overtheroad handling containers.

RVNX
Abbreviation for Released Value Not Exceeding. Usually used to limit the value of goods transported. The limitation refers to carrier liability when paying a claim for lost or damaged goods.

Sanction
An embargo imposed by a Government against another country.
S/D
Abbreviation for: Sight draft. Sea damage.

SeaBee Vessels
Ocean vessels constructed with heavy-duty submersible hydraulic lift or elevator system at the stern of the vessel. The SeaBee system facilitates forward transfer and positioning of barges. SeaBee barges are larger than LASH barges. The SeaBee system is no longer used.

Sea Waybill
Document indicating the goods were loaded onboard when a document of title (b/L) is not needed. Typically used when a company is shipping goods to itself.

Seawaymax Vessel
The largest vessel that can transit the locks of the St. Lawrence Seaway. Length is 226 meters (740 feet); Beam is 24 meters (78 feet); Draft is 7.92 meters (26 feet).

Seaworthiness
The fitness of a vessel for its intended use.

Separation
This is used to separate cargo with different marks, port, shipper or consignee. It is also used for separating cargo to avoid contamination.

Ship
(1) A vessel of considerable size for deep-water navigation. (2) A sailing vessel having three or more square-rigged masts.

Ship Chandler
An individual or company selling equipment and supplies for ships.

Ship Demurrage
A charge for delaying a steamer beyond a stipulated period.
Ships Bells
Measure time onboard ship. One bell sounds for each half hour. One bell means 12:30, two bells mean 1:00, three bells mean 1:30, and so on until 4:00 (eight bells). At 4:30 the cycle begins again with one bell.

Ship Load
The amount of cargo a ship carries or is able to carry. See also Full Shipload Lot and Full and Down.

Ships Manifest
A statement listing the particulars of all shipments loaded for a specified voyage.

Shipment
The tender of one lot of cargo at one time from one shipper to one consignee on one bill of lading.

Ship Security Officer
Is the person on board the vessel, accountable to the master, designated by the Company as responsible for the security of the ship, including implementation and maintenance of the ship security plan and for the liaison with the company security officer and the port facility security officers.

Ship Security Plan
Is a plan developed to ensure the application of measures on board the ship and designed to protect persons on board, cargo, cargo transport units, ships stores or the ship from the risks of a security incident.

Ship Types
Barge Carriers: Ships designed to carry barges; some are fitted to act as full containerships and can carry a varying number of barges and containers at the same time. At present this class includes two types of vessels LASH and Sea-Bee.
Bulk Carriers: All vessels designed to carry bulk homogeneous cargo without mark and count such as grain, fertilizers, ore, and oil.
Combination Passenger and Cargo Vessels: Ships with a capacity for 13 or more passengers and any form of cargo or freight.

Freighters: Breakbulk vessels both refrigerated and unrefrigerated, containerships, partial containerships, roll-on/roll-off vessels, and barge carriers. A general cargo vessel designed to carry heterogeneous mark and count cargoes.

Full Containerships: Ships equipped with permanent container cells, with little or no space for other types of cargo.

General Cargo Carriers: Breakbulk freighters, car carriers, cattle carriers, pallet carriers and timber carriers. A vessel designed to carry heterogeneous mark and count cargoes.

Partial Containerships: Multipurpose containerships where one or more but not all compartments are fitted with permanent container cells. Remaining compartments are used for other types of cargo.

Roll-on/Roll-off vessels: Ships specially designed to carry wheeled containers or trailers using interior ramps. Includes all forms of car and truck carriers.

Tankers: Ships fitted with tanks to carry liquid bulk cargo such as crude petroleum and petroleum products, chemicals, Liquefied gasses (LNG and LPG), wine, molasses, and similar product tankers.

Ships Tackle
All rigging, cranes, etc., utilized on a ship to load or unload cargo.

Shipper
The person or company who is usually the supplier or owner of commodities shipped. Also called Consignor.

Shippers Association
A nonprofit entity that represents the interests of a number of shippers. The main focus of shippers associations is to pool the cargo volumes of members to leverage the most favorable service contract rate levels.

Shippers Instructions
Shippers communication(s) to its agent and/or directly to the international watercarrier. Instructions may be varied, e.g., specific details/clauses to be printed on the B/L, directions for cargo pickup and delivery.

Shippers Letter of Instructions for issuing an Air Waybill
The document required by the carrier or freight forwarders to obtain (besides the data needed) authorization to issue and sign the air waybill in the name of the shipper.

Shippers Load & Count (SL&C)
Shipments loaded and sealed by shippers and not checked or verified by the carriers.

Shipping Order
Shippers instructions to carrier for forwarding goods; usually the triplicate copy of the bill of lading.

Ships
Bulk Carriers: All vessels designed to carry bulk homogeneous cargo without mark and count such as grain, fertilizers, ore, and oil.

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Tankers: Ships fitted with tanks to carry liquid bulk cargo such as: crude petroleum and petroleum products, chemicals, Liquefied gasses (LNG and LPG), wine, molasses, and similar product tankers.
Shore
A prop or support placed against or beneath anything to prevent sinking or sagging.

Short Ton (ST)
A weight unit of measure equal to 2,000 pounds.

Shrink Wrap
Polyethylene or similar substance heat treated and shrunk into an envelope around several units, thereby securing them as a single pack for presentation or to secure units on a pallet.

Side Loader
A lift truck fitted with lifting attachments operating to one side for handling containers.

Side Door Container
A container fitted with a rear door and a minimum of one side door.

Sight Draft
A draft payable upon presentation to the drawee.

SIGTTO
Society of International Gas Transport and Terminal Operators, an industry organization promoting the exchange of safety information concerning the processing, transporting and handling of liquefied gases.

Skids
Battens, or a series of parallel runners, fitted beneath boxes or packages to raise them clear of the floor to permit easy access of forklift blades or other handling equipment.

SL/W
Shippers load and count. All three clauses are used as needed on the bill of lading to exclude the carrier from liability when the cargo is loaded by the shipper.

Sleepers
Loaded containers moving within the railroad system that are not clearly identified on any internally generated reports.

Sling
A wire or rope contrivance placed around cargo and used to load or discharge it to/from a vessel.

Slip
A vessel's berth between two piers.

SPA
Abbreviation for Subject to Particular Average. See also Particular Average.

Spine Car
An articulated fiveplatform railcar. Used where height and weight restrictions limit the use of stack cars. It holds five 40foot containers or combinations of 40 and 20foot containers.

Spotting
Placing a container where required to be loaded or unloaded.

Spreader
A piece of equipment designed to lift containers by their corner castings.

SSHEX
Abbreviation for Saturdays, Sundays and Holidays Excepted. Refers to loading and discharging of cargo as agreed to in the charter party. This indicates when time does not count in the calculation of demurrage and despatch.
Stability
The force that holds a vessel upright or returns it to upright position if keeled over. Weight in the lower hold increases stability. A vessel is stiff if it has high stability, tender if it has low stability. In a ship, stability is indicated by several characteristics. Initial stability is measured by the metacentric height; also known as GM. If GM is low, the vessel makes long slow rolls, and is considered tender. When GM is too high, the vessel is considered stiff, and may return violently to the upright position when rolling, with possible damage to cargo and injury to passengers and crew. Other stability considerations include the vessels range of stability, maximum righting arm, and the angle of heel at which the maximum righting arm occurs.

Stack Car
An articulated fiveplatform rail car that allows containers to be double stacked. A typical stack car holds ten 40foot equivalent units (FEUs).

Stacktrain
A rail service whereby rail cars carry containers stacked two high on specially operated unit trains. Each train includes up to 35 articulated multiplatform cars. Each car is comprised of 5 welltype platforms upon which containers can be stacked. No chassis accompany containers.

Standard Industrial Classification (SIC)
A standard numerical code used by the U.S. Government to classify products and services.

Standard International Trade Classification (SITC)
A standard numeric code developed by the United Nations to classify commodities used in international trade, based on a hierarchy.

Starboard
The right side of a ship when facing the bow.

Statute Of Limitation
A law limiting the time in which claims or suits may be instituted.

STCC
Abbreviation for Standard Transportation Commodity Code.

Steamship Conference
A group of vessel operators joined together for the purpose of establishing freight rates.

Steamship Guarantee
An indemnity issued to the carrier by a bank; protects the carrier against any possible losses or damages arising from release of the merchandise to the receiving party. This instrument is usually issued when the bill of lading is lost or is not available.

Stern
The end of a vessel. Opposite of bow. The after most part of the ship is called Stern.

Stevedore
Individual or firm that employs longshoremen and who contracts to load or unload the ship. The persons in port handling loading and discharging of cargo on ship are called Stevedores.

StoreDoor Pickup Delivery
A complete package of pick up or delivery services performed by a carrier from origin to final consumption point.

Stowage
A marine term referring to loading freight into ships holds.

Stowage Plan
A plan of the ship showing various cargo compartment position along with the cargo loaded on the ship for various ports. This also shows the space occupied as well as the quantity and the weight of the stowed cargo in the space.

Stowage Factor
It is the Space Occupied by one m.t. of Cargo and is expressed in m³ / m.t. Each cargo has a different Stowage Factor (SF). Lighter Cargo has a larger SF than that of a Cargo which is Heavier than it. For Example Stowage Factor of Cotton is much more than Steel.

**STC**
Said to contain.

**Straddle Carrier**
Mobile truck equipment with the capacity for lifting a container within its own framework.

**Straight Bill of Lading**
A nonnegotiable bill of lading which states a specific identity to whom the goods should be delivered. See Bill of Lading.

**Stripping**
Removing cargo from a container (devanning).

**Stuffing**
Putting cargo into a container.

**STW**
Said to weigh.

**Subrogate**
To put in place of another; i.e., when an insurance company pays a claim it is placed in the same position as the payee with regard to any rights against others.

**Suezmax Tanker**
A tanker of 120,000 to 199,000dwt.

**Sufferance Wharf**
A wharf licensed and attended by Customs authorities.
Super Cargo
A person in charge appointed by Shipowner or Charterer to supervise handling of cargo in a port is called Supercargo or Cargo Superintendent.

Supply Chain
A logistical management system which integrates the sequence of activities from delivery of raw materials to the manufacturer through to delivery of the finished product to the customer into measurable components. Just in Time is a typical value added example of supply chain management.

Surcharge
An extra or additional charge

Surtax
An additional extra tax.

Kilogram
1,000 grams or 2.2046 pounds.

T.&E.
Abbreviation for Transportation and Exportation. Customs form used to control cargo movement from port of entry to port of exit, meaning that the cargo is moving from one country, through the United States, to another country.

Tail
Rear of a container or trailer opposite the front or nose.

Tare Weight
In railcar or container shipments, the weight of the empty railcar or empty container.

Tariff (Trf.)
A publication setting forth the charges, rates and rules of transportation companies.
Tally Clerk
The cargo when loaded or discharged has to be counted, so that the number of packages can be compared with number mentioned in shipping bell etc. to find out Over landing or Short Landing of cargo. The person who does the work of counting is called Tally Clerk.

Telex
Used for sending messages to outside companies. Messages are transmitted via Western Union, ITT and RCA. Being replaced by fax and internet.

Temperature Recorder
A device to record temperature in a container while cargo is en route.

Tender
The offer of goods for transportation or the offer to place cars or containers for loading or unloading.

Tenor
Time and date for payment of a draft.

Terminal
An assigned area in which containers are prepared for loading into a vessel, train, truck, or airplane or are stacked immediately after discharge from the vessel, train, truck, or airplane.

Terminal Charge
A charge made for a service performed in a carriers terminal area.

Terms of Sale
The point at which sellers have fulfilled their obligations so the goods in a legal sense could be said to have been delivered to the buyer. They are shorthand expressions that set out the rights and obligations of each party when it comes to transporting the goods. Following, are the thirteen terms of sale in international trade as Terms of Sale reflected in the recent amendment to the International chamber of Commerce Terms of Trade (INCOTERMS),
effective July 1990: exw, fca, fas, fob, cfr, cif, cht, cip, daf, des, deq, ddu and ddp.

EXW (Ex Works) (...Named Place): A Term of Sale which means that the seller fulfills the obligation to deliver when he or she has made the goods available at his/her premises (i.e., works, factory, warehouse, etc.) to the buyer. In particular, the seller is not responsible for loading the goods in the vehicle provided by the buyer or for clearing the goods for export, unless otherwise agreed. The buyer bears all costs and risks involved in taking the goods from the sellers premises to the desired destination. This term thus represents the minimum obligation for the seller.

FCA (Free Carrier) (... Named Place): A Term of Sale which means the seller fulfills their obligation when he or she has handed over the goods, cleared for export, into the charge of the carrier named by the buyer at the named place or point. If no precise point is indicated by the buyer, the seller may choose, within the place or range stipulated, where the carrier should take the goods into their charge.

FAS (Free Alongside Ship) (...Named Port of Shipment): A Term of Sale which means the seller fulfills his obligation to deliver when the goods have been placed alongside the vessel on the quay or in lighters at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that moment.

FOB (Free On Board) (...Named Port of Shipment): An International Term of Sale that means the seller fulfills his or her obligation to deliver when the goods have passed over the ships rail at the named port of shipment. This means that the buyer has to bear all costs and risks to loss of or damage to the goods from that point. The FOB term requires the seller to clear the goods for export. (Note: The U.S. Government sometimes uses a madeup term FOB Destination to require the seller to take responsibility for delivering the goods at destination rather than the correct Incoterm of DDP.)

CFR (Cost and Freight) (...Named Port of Destination): A Term of Sale where the seller pays the costs and freight necessary to bring the goods to the named port of destination, Terms of Sale but the risk of loss of or damage to the goods, as (continued) well as any additional costs due to events occurring after the time the goods have been delivered on board the vessel, is transferred from the seller to the buyer when the goods pass the ships rail in the port of shipment. The CFR term requires the seller to clear the goods for export.

CIF (Cost, Insurance and Freight) (...Named Place of Destination): A Term of Sale where the seller has the same obligations as under the CFR but also
has to procure marine insurance against the buyers risk of loss or damage to
the goods during the carriage. The seller contracts for insurance and pays the
insurance premium. The CIF term requires the seller to clear the goods for
export.

CPT (Carriage Paid To) (...Named Place of Destination): A Term of Sale
which means the seller pays the freight for the carriage of the goods to the
named destination. The risk of loss of or damage to the goods, as well as any
additional costs due to events occurring after the time the goods have been
delivered to the carrier, is transferred from the seller to the buyer when the
goods have been delivered into the custody of the carrier. If subsequent
carriers are used for the carriage to the agreed upon destination, the risk
passes when the goods have been delivered to the first carrier. The CPT term
requires the seller to clear the goods for export.

CIP (Carriage and Insurance Paid To) (...Named Place of Destination): A
Term of Sale which means the seller has the same obligations as under CPT,
but with the addition that the seller has to procure cargo insurance against the
buyers risk of loss of or damage to the goods during the carriage. The seller
contracts for insurance and pays the insurance premium. The buyer should
note that under the CIP term the seller is required to obtain insurance only on
minimum coverage. The CIP term requires the seller to clear the goods for
export.

DAF (Delivered At Frontier) (...Named Place): A Term of Sale which means
the sellers
fulfill their obligation to deliver when the goods have been made available,
cleared for export, at the named point and placed at the frontier, but before
the customs Terms of Sale border of the adjoining country.

DDU (Delivered Duty Unpaid) (...Named Port of Destination): A Term of
Sale where the seller fulfills his obligation to deliver when the goods have
been made available at the named place in the country of importation. The
seller has to bear the costs and risks involved in bringing the goods thereto
(excluding duties, taxes and other official charges payable upon importation)
as well as the costs and risks of carrying out customs formalities.

The buyer has to pay any additional costs and to bear any risks caused by
failure to clear the goods for in time.

DDP (Delivered Duty paid) (...Named Port of Destination): Delivered Duty
Paid means that the seller fulfills his obligation to deliver when the goods
have been made available at the named place in the country of importation.
The seller has to bear the risks and costs, including duties, taxes and other
charges of delivering the goods thereto, clear for importation. While the
EXW term represents the minimum obligation for the seller, DDP represents
the maximum.
DES (Delivered Ex Ship) (...Named Port of Destination): A Term of Sale where the seller fulfills his/her obligation to deliver when the goods have been made available to
the buyer on board the ship, uncleared for import at the named port of
destination. The seller has to bear all the costs and risks involved in bringing
the goods to the named port destination.

DEQ (Delivered Ex Quay, [Duty Paid]) (...Named Port of Destination): A
Term of Sale which means the DDU term has been fulfilled when the goods
have been available to the buyer on the quay (wharf) at the named port of
destination, cleared for importation.
The seller has to bear all risks and costs including duties, taxes and other
charges of delivering the goods thereto.

TBN
To Be Nominated (when the name of a ship is still unknown).

TEU
Abbreviation for Twenty foot Equivalent Unit.

Third Party Logistics (3PL)
A company that provides logistics services to other companies for some or all
of their logistics needs. It typically includes warehousing and transportation
services. Most 3PLs also have freight forwarding licenses.

Tonnage
100 cubic feet.

Through Rate
The total rate from the point of origin to final destination.

Throughput Charge
The charge for moving a container through a container yard off or onto a
ship.

Tide Tables
The tables stipulated by Hydrographic Surveyors, giving Time & Height of
Low & High Tides of any Port on any Given day of the Year, are called Tide
Tables.
Time Charter
A contract for leasing between the ship owners and the lessee. It would state, e.g., the duration of the lease in years or voyages.

Time Draft
A draft that matures either a certain number of days after acceptance or a certain number of days after the date of the draft.

TIR
Transport International par la Route.
Road transport operating agreement among European governments and the United States for the international movement of cargo by road. Display of the TIR carnet allows sealed containerloads to cross national frontiers without inspection.

TL
Abbreviation for Trailer Load.

TOFC
Abbreviation for Trailer on Flat Car. The movement of a highway trailer on a railroad flatcar. Also known as Piggyback.

TonMile
A unit used in comparing freight earnings or expenses. The amount earned from the cost of hauling a ton of freight one mile. The movement of a ton of freight one mile.

Tonnage
Generally refers to freight handled.

TopAir Delivery
A type of air circulation in a container. In top air units, air is drawn from the bottom of the container, filtered through the evaporator for cooling and then forced through the ducted passages along the top of the container. This type of airflow requires a special loading pattern.
Towage
The charge made for towing a vessel.

Tractor
Unit of highway motive power used to pull one or more trailers/containers.

Trade Acceptance
A time or a date draft that has been accepted by the buyer (the drawee) for payment at maturity.

Traffic
Persons and property carried by transport lines.

Trailer
The truck unit into which freight is loaded as in tractor trailer combination. See Container.

Tramp Line
An ocean carrier company operating vessels not on regular runs or schedules. They call at any port where cargo may be available.

Transport
To move cargo from one place to another.

Transship
To transfer goods from one transportation line to another, or from one ship to another.

Transshipment Port
Place where cargo is transferred to another carrier.

Trust Receipt
Release of merchandise by a bank to a buyer while the bank retains title to the merchandise. The goods are usually obtained for manufacturing or sales
purposes. The buyer is obligated to maintain the goods (or the proceeds from their sales) distinct from the remainder of the assets and to hold them ready for repossession by the bank.

Turnaround
In water transportation, the time it takes between the arrival of a vessel and its departure.

Tween Deck
The Compartment below Main Deck and above Lower Hold of the Hatch is called the Tween Deck.

Twist Locks
A set of four twistable bayonet type shear keys used as part of a spreader to pick up a container or as part of a chassis to secure the containers.

TwoWay Pallet
A pallet so designed that the forks of a fork lift truck can be inserted from two sides only.

UCP
Abbreviation for the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce. This is the most frequently used standard for making payments in international trade; e.g., paying on a Letter of Credit. It is most frequently referred to by its shorthand title: UCP No. 500. This revised publication reflects recent changes in the transportation and banking industries, such as electronic transfer of funds.

UFC
Abbreviation for Uniform Freight Classification.

ULCC
Ultra Large Crude Carrier. A tanker in excess of 320,000dwt.

Ullage
The space not filled with liquid in a drum or tank. The distance between the upper level of any liquid in a tank or in a can or in a barrel and the inside of the tank or the can or the barrel is called Ullage. On a ship mostly the tanks which carry liquid have Ullage Tables.

UN/EDIFACT

United Nations EDI for Administration, Commerce and Transport. EDI Standards are developed and supported by the UN for electronic message (data) interchange on an international level.

Unclaimed Freight

Freight that has not been called for or picked up by the consignee or owner.

Undercharge

To charge less than the proper amount.

Underway

A vessel is underway when it is not at anchor, made fast to the shore, or aground.

Uniform Customs and Practices for Documentary Credits (UCP)

Rules for letters of credit drawn up by the Commission on Banking Technique and Practices of the International Chamber of Commerce in consultation with the banking associations of many countries.

See Terms of Payment.

Unit Load

Packages loaded on a pallet, in a crate or any other way that enables them to be handled at one time as a unit.

Unit Train

A train of a specified number of railcars, perhaps 100, which remain as a unit for a designated destination or until a change in routing is made.

Unitization
The consolidation of a quantity of individual items into one large shipping unit for easier handling. Loading one or more large items of cargo onto a single piece of equipment, such as a pallet.

Unloading
Removal of a shipment from a vessel.

USPPI  United States Principal Party of Interest
The party that receives the primary benefit from an export transaction, usually the seller of the goods.

Validation
Authentication of B/L and when B/L becomes effective

Vanning
A term for stowing cargo in a container.

Variable Cost
Costs that vary directly with the level of activity within a short time. Examples include costs of moving cargo inland on trains or trucks, stevedoring in some ports, and shortterm equipment leases. For business analysis, all costs are either defined as variable or fixed. For a business to break even, all fixed costs must be covered. To make a profit, all variable and fixed costs must be recovered plus some extra amount.

Ventilated Container
A container designed with openings in the side and/or end walls to permit the ingress of outside air when the doors are closed.

Vessel Supplies for Immediate Exportation (VSIE)
Allows equipment and supplies arriving at one port to be loaded on a vessel, aircraft, etc., for its exclusive use and to be exported from the same port.

Vessel Manifest
The international carrier is obligated to make declarations of the ships crew and contents at both the port of departure and arrival. The vessel manifest lists various details about each shipment by B/L number. Obviously, the B/L serves as the core source from which the manifest is created.

**VLCC**

Very Large Crude Carrier. A tanker of 200,000 to 319,000dwt. It can carry about 2 million barrels of crude oil.

**VLFO Vessel Load Free Out**

The loading and discharge terms for the cargo to be shipped, as agreed to in the charter party. The vessel (carrier) pays for the loading of the cargo on board the ship and the receiver pays for the discharge of the cargo from the ship to the pier.

**Voluntary Ship**

Any ship which is not required by treaty or statute to be equipped with radiotelecommunication equipment.

**War Risk**

Insurance coverage for loss of goods resulting from any act of war.

**Warehouse**

A place for the reception, delivery, consolidation, distribution, and storage of goods/cargo.

**Warehouse Entry**

Document that identifies goods imported when placed in a bonded warehouse. The duty is not imposed on the products while in the warehouse but will be collected when they are withdrawn for delivery or consumption.

**Warehouse Withdrawal for Transportation Immediate Exportation (WDEX)**

Allows merchandise that has been withdrawn from a bonded warehouse at one U.S. port to be exported from the same port exported without paying duty.
Warehouse Withdrawal for Transportation (WDT)
Allows merchandise that has been withdrawn from a bonded warehouse at one port to be transported in bond to another port, where a superseding entry will be filed.

Warehouse Withdrawal for Transportation Exportation (WDT&E)
Allows merchandise that has been withdrawn from a bonded warehouse at one port to be transported in bond through the U.S. to be exported from another port, without paying duty.

Warehousing
The storing of goods/cargo.

Waybill (WB)
A document prepared by a transportation line at the point of a shipment; shows the point of the origin, destination, route, consignor, consignee, description of shipment and amount charged for the transportation service. It is forwarded with the shipment or sent by mail to the agent at the transfer point or waybill destination. Abbreviation is WB. Unlike a bill of lading, a waybill is NOT a document of title.

Weight Cargo
A cargo on which the transportation charge is assessed on the basis of weight.

Weights and Measures/Measurement ton:
40 cubic ft or one cubic meter
Net ton/short ton  2,000 lbs
Gross ton/long ton  2,240 lbs
Metric ton/kilo ton  2,204.6 lbs
Cubic meter  35.314 cubic ft

Well Car
Also known as stack car. A dropframe rail flat car.

Wharf
A structure built on the shore of a harbor extending into deep water so that vessels may lie alongside. See also Dock and Pier.

Wharfage (Whfge.)
Charge assessed by a pier or dock owner against freight handled over the pier or dock or against a steamship company using the pier or dock.

WIBON
Whether In Berth or Not.

Wheel House
This is generally situated on the Bridge of the ship. The Steering Wheel is fitted in this space, and the ship is maneuvered from here. This space is called the Wheel House.

Windy Booking
A freight booking made by a shipper or freight forwarder to reserve space but not actually having a specific cargo at the time the booking is made. Carriers often overbook a vessel by 10 to 20 percent in recognition that windy booking cargo will not actually ship.

Without Recourse
A phrase preceding the signature of a drawer or endorser of a negotiable instrument; signifies that the instrument is passed onto subsequent holders without any liability to the endorser in the event of nonpayment or nondelivery.

W.M. (W/M)
Abbreviation for Weight or Measurement; the basis for assessing freight charges. Also known as worm. The rate charged under W/M will be whichever produces the highest revenue between the weight of the shipment and the measure of the shipment. The comparison is based on the number of metric tons the cargo weights compared to the number of cubic meters of space the cargo measures. The prior English method was one long ton compared to forty cubic feet.

WPA
Abbreviation for With Particular Average.

W.T.L.
Western Truck Lines.

WWD
Weather Working Days.

Yard
A classification, storage or switching area.

YorkAntwerp Rules of 1974
Established the standard basis for adjusting general average and stated the rules for adjusting claims.

Zulu Time
Time based on Greenwich Mean Time.
FREQUENTLY ASKED QUESTIONS ON SHIP ARREST OR RELEASE (FAQ’S)

1. Is India a signatory to any of the International Conventions on ship arrest? If so, which one? Is there a legislature for ship arrest?

   The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 was brought in force on April 1, 2018 repealing the obsolete Admiralty Courts Act of 1861 although the act had received the assent of the President on the 9th August, 2017. The jurisdiction with respect to maritime claims under the act vest with the respective High Courts and extends up to the territorial waters of their respective jurisdictions.

   No, Although the Brussel convention has not been adopted by legislation, the principles incorporated in the International Convention relating to the Arrest of Seagoing Ships, Brussels, 10 May 1952 are part of the common law of India and applicable for the enforcement of maritime claims against foreign ships as is held by the Supreme Court of India in m.v Elisabeth v Harwan Investment & Trading Pvt Ltd., Goa. The Supreme Court of India in the matter of m.v. Sea Success I has also held that the principles underlying the 1999 Geneva Arrest Convention were applicable for ship arrest in India.

   With the new act, the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 coming in force, the act shall apply for ship arrest or release.

2. For what types of claims can you arrest a ship?

   Section 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 sets out a list of maritime claims in respect whereof,
the High Courts can exercise their Admiralty Jurisdiction. The lists of maritime claims are similar to the maritime claims defined under the International Convention in relation to the Arrest of Sea-Going Ships 1952, Brussels and the International Convention on the Arrest of Ships, 1999, Geneva. However, the Admiralty (Jurisdiction & Settlement of Maritime Claims) Act, 2017 incorporates the following additional claims as maritime claims in relation to which a vessel can be proceeded against and arrested. They are claims related to port or harbor dues, canal, dock or light tolls, waterway charges and such like; particular average claims; claims by master or crew or their heirs, dependents for wages, cost of repatriation or social insurance contributions; insurance premiums, mutual insurance calls; commission/brokerage agency fees payable by vessel owner or demise charterer; environment damage claims or threat thereof; and wreck removal claims.

The enforcement of the maritime claims by an action in rem has been narrowed down. Arrest of vessels owned by Time Charterers and Voyage charterers in respect of Maritime claims against them is conspicuously absent from the Admiralty Act (2017); i.e. Article 3 (2) of the 1999 Arrest Convention, does not find a place in the Admiralty Act; which gives rise to issues in this behalf and in relation to enforcements of maritime claims against time and voyage charterers in India.

Section 5. (1) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017: The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding, where the court has reason to believe that—
(a) the person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected; or

(b) the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected; or

(c) the claim is based on a mortgage or a charge of the similar nature on the vessel; or

(d) the claim relates to the ownership or possession of the vessel; or

(e) the claim is against the owner, demise charterer, manager or operator of the vessel and is secured by a maritime lien as provided in section 9.

The above provision of the Admiralty Act (2017) and its divergence from the Arrest Conventions has led to questions/ issues relating to arrest of ships and sister ships for claims against time charterers, which issue is presently pending for decision before the Bombay High Court.

Section 5(2) permits sister-ship arrests. But, what a sister-ship is, would be subject to Section 5(1).

Section 6 of the Admiralty Act also confers Admiralty Jurisdiction in personam in respect of certain Maritime claims, subject to certain restrictions as contained in Section 7. Under Section 7, for claims arising out of a collision and related claims, an in personam action can be initiated against the Defendant only if the cause of action, wholly or in part arises in India, or if the Defendant, at the time of commencement of the action actually and voluntarily resides or carries on business or personally works for gain in India.
The Admiralty Act (2017) defines ‘maritime lien’ under section 2(1)(g) and recognizes certain claims as Maritime Liens; and sets out their priorities in Section 9. The Admiralty Act also specifies the period of limitation for Maritime Lien, and states that the maritime lien shall stand extinguished after expiry of one year unless the vessel is arrested and seized and such arrest and seizure has led to a forced sale by the High Court. However, in respect of Maritime Liens relating to claims for wages or other employment related payments, including cost of repatriation and social insurance contributions, the limitation period is two years. The period of limitation would run continuously without any suspension or interruption, except the period during which the vessel was under arrest or seizure which time is to be excluded.

Likewise, the Admiralty Act (2017) also provides for priority of Maritime Claims in Admiralty proceedings in Section 10. Maritime Liens have the highest priority, followed by registered mortgages and charges, and thereafter all other claims. If there are more than one claim in any single category of priority, they shall rank equally and salvage claims rank in inverse order of time to when the claims accrued.

The Conventions are inconsistent with the Municipal Law as found in Section 433 of the MS Act and Rule 954 of the Original Side Rules of this Court. Hence, the Municipal Law will apply and not the convention. Therefore, as per the settled legal position, in case of such inconsistency or conflict, it is the Municipal law which will prevail and not the International Convention. There is no controversy about the proposition that in case of conflict between municipal law and an International 1999 Convention, the Court will have to apply the municipal law therefore it makes it clear that in case of conflict between the municipal law and the international law or conventions, the court
will have to apply the municipal law. However, when there is no conflict between the two then all just principles of international law or conventions could be legitimately applied unless either they are in conflict with any statute or are prohibited by any municipal law.

The observation of the Supreme Court (m.v. Sea Success) clearly suggest that unless there is any prohibition by the municipal laws the principles of trans-national law or international conventions could be applied for affording remedy for the satisfaction or realisation of maritime claim.

The Supreme Court held that though the Merchant Shipping Act provides a detailed code of substantive and procedural law regulating shipping as an industry and the control exercised over it by the competent authorities, the jurisdictional questions concerning arrest of foreign ships are in many respects left unregulated by the Indian legislation. While the provisions of various international conventions concerning arrest of ships, civil and penal jurisdiction in matter of collision, maritime liens and mortgages etc. have been incorporated in the Municipal Laws in many maritime States, India lags behind them in adopting these unified rules. In the absence of specific statutory provisions, can be adopted and adapted by courts to supplement and complement national statutes on the subject.

The list of maritime claims is a closed list, the claim must fall within one or more of the categories of claims listed the Admiralty Act (2017). If it does not, then it cannot be the subject of an action in rem and a ship or other property cannot be arrested in the enforcement of that claim. The claims listed are all claims that are expressed to or impliedly concern or relate to ‘a ship’. They therefore contemplate some connection between the claim and a particular ship or ships. That being so, it is not sufficient for the pursuit of an action in rem that the
intended claim be one against a ship owner either generally or in respect of its ships or operations generally. Nor is it sufficient that the person who is alleged to be liable for that claim happens to own a ship. It is therefore not possible to pursue as an action in rem against a ship in a claim that is not related to or concerns that ship, or in the case of sister ship arrest, a maritime claim that is not related to or concerns some other ship that was at the time the cause of action arose owned or chartered by or in the possession or control of the owner of the sister ship.

Accordingly, in order to pursue a claim as an action in rem against a ship or other property, there must be some connection between that claim and either the ship that is intended to be the subject of the in rem proceeding or of which the ship the subject of the in rem proceeding is intended to be a sister ship.

3. What is the procedure for an arrest?

a. Claimant executes a Power of Attorney normally to a person as may be suggested by the Claimants solicitor to act on behalf of the Claimant. A format of the said Power of Attorney is normally forwarded by the Claimants solicitor with the name of the Constituted attorney. The said Power of Attorney is properly executed, notarised and legalised/ apostiled and the original is couriered to the constituted attorney, normally they are employed by the solicitors. Since time is of essence the Power of Attorney when executed and notarized (pending legalization or apostilisation) is scanned and forwarded for further action. At the time of filing of the Plaint in the court solicitors give an undertaking to the court to produce the original when received from the Claimant. The Original Power of Attorney is required to be stamped under the laws of India.
b. Claimants solicitor takes search of the caveat book for caveats against arrest.

c. Notice is given to the Consul General as per High Court Rules, where required.

d. Claimants files the Plaint, Undertaking, draft Judges Order/ Interim Application, Draft Warrant of Arrest and its affidavit to the court under Admiralty jurisdiction. All the Exhibits and the documents relied are normally filed by way of a separate Compilation of Documents at the time of making an application for Arrest.

e. Urgent application for obtaining order of arrest is moved before the Admiralty Judge, at the time of making the said application Plaint and other pleadings including the draft Judges Order should be produced before the Judge. The Caveat book for caveat against arrest is also produced. Admiralty Judge passes an order in terms of the Judges Order given to court. In some cases Admiralty Judge dictates a separate order for arrest of a vessel. Sometimes Warrant of Arrest is dispensed with and also an order is obtained to complete service of the court order by fax or email to all concerned authorities.

f. If Warrant of Arrest is not dispensed with then the court issues the same signed by the Court.

g. The Bailiff effects or completes the service of the Warrant of Arrest or the Order of the court upon all the concerned authorities.
4. How is the Defendant named in an Admiralty Suit?

M. V. XXXXXXXX, vessel flying a xxxxx flag together with her hull, tackle, engines, machinery, paraphernalia and all her appurtenant on board presently lying and being at stream/port and harbour/jetty of xxxx, xxxxx and all persons claiming to be interested in the vessel ...DEFENDANT.

5. Is it necessary that the ship should be in Indian waters for filing of an Admiralty Suit?

Yes. It is not necessary that the vessel should take berth, the vessel can be anywhere in the Indian territorial waters within 12 nautical miles from the shore.

6. Can a ship be arrested if she is already beached for demolition?

Section 2 (l) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 defines vessel which includes any ship, boat, sailing vessel or other description of vessel used or constructed for use in navigation by water, whether it is propelled or not, and includes a barge, lighter or other floating vessel, a hovercraft, an off-shore industry mobile unit, a vessel that has sunk or is stranded or abandoned and the remains of such a vessel.

Explanation.—A vessel shall not be deemed to be a vessel for the purposes of the clause, when it is broken up to such an extent that it cannot be put into use for navigation, as certified by a surveyor.
The ship is no longer considered as a ship and therefore Admiralty action cannot be initiated.

7. Which are the High Courts in India that are vested with Admiralty jurisdiction and which court is most preferred for ship arrest?

The jurisdiction of the High Courts of Bombay, Calcutta, Madras, Gujarat, Hyderabad Telangana, Karnataka, Kerala, and Odisha have Admiralty actions

8. Can a Indian flag vessel be arrested?

Ship flying any flag can be arrested.

9. Can a vessel be detained without going to Court?

Under section 443 (2) of the Indian Merchant Shipping Act a foreign ship can be detained that has occasioned damage. This is to temporarily detain the vessel from departing from Indian waters but an application should be made to the High Court obtaining order to that effect.

10. What is action in rem and action in personam?

Section 5 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 sets out action in rem

5. (1) The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding, where the court has reason to believe that—

(a) the person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected; or
(b) the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected; or

c) the claim is based on a mortgage or a charge of the similar nature on the vessel; or

d) the claim relates to the ownership or possession of the vessel; or

e) the claim is against the owner, demise charterer, manager or operator of the vessel and is secured by a maritime lien as provided in section 9.

(2) The High Court may also order arrest of any other vessel for the purpose of providing security against a maritime claim, in lieu of the vessel against which a maritime claim has been made under this Act, subject to the provisions of subsection (1):

Provided that no vessel shall be arrested under this sub-section in respect of a maritime claim under clause (a) of sub-section (1) of section 4.

Section 6 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 sets out action in personam

6. Subject to section 7, the High Court may exercise admiralty jurisdiction by action in personam in respect of any maritime claim referred to in clauses (a) to (w) of sub-section (1) of section 4.

Section 7 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 sets out the restrictions on actions in personam in certain cases.
7. (1) Where any maritime claim arising in respect of a damage or loss of life or personal injury arising out of any—

(i) collision between vessels,

(ii) the carrying out of or omission to carry out, a manoeuvre in the case of one or more vessels,

(iii) non-compliance, on the part of one or more vessels, with the collision regulations made in pursuance of section 285 of the Merchant Shipping Act, 1958, the High Court shall not entertain any action under this section against any defendant unless—

(a) the cause of action, wholly or in part, arises in India; or

(b) the defendant, at the time of commencement of the action by the High Court, actually and voluntarily resides or carries on business or personally works for gain in India:

Provided that an action may be entertained in a case, where there are more defendants than one and where one of the defendants who does not actually and voluntarily reside or carry on business or personally work for gain in India is made a party to such action either with the leave of the court, or each of the defendants acquiesces in such action.

(2) The High Court shall not entertain any action in personam to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside India against the same defendant in respect of the same incident or series of incidents have been discontinued or have otherwise come to an end.

(3) The provisions of sub-section (2) shall apply to counter-claims as they apply to actions except counter-claims in proceedings arising out of the same incident or series of incidents.
(4) A reference to the plaintiff and the defendant for the purpose of sub-section (3) shall be construed as reference to the plaintiff in the counter-claim and the defendant in the counter-claim respectively.

(5) The provisions of sub-sections (2) and (3) shall not apply to any action or counterclaim if the defendant submits or agrees to submit to the jurisdiction of the High Court.

(6) Subject to the provisions of sub-section (2), the High Court shall have jurisdiction to entertain an action in personam to enforce a claim to which this section applies whenever any of the conditions specified, in clauses (a) and (b) of sub-section (1) is satisfied and any law for the time being in force relating to the service of process outside the jurisdiction shall apply.

An action in rem is directed towards a ship rather than against a person (which is an in personam or personal action).

A personal action may be brought against the defendant if he is either present in the country or submits to the jurisdiction. If the foreign owner of an arrested ship appears before the court and deposits security as bail for the release of his ship against which proceedings in rem have been instituted, he submits himself to jurisdiction.

An action in rem is directed against the ship itself to satisfy the claim of the plaintiff out of the res. The ship is for this purpose treated as a person. Such an action may constitute an inducement to the owner to submit to the jurisdiction of the court, thereby making himself liable to be proceeded against by the plaintiff in personam. It is however, imperative in an action in rem that the ship should be within jurisdiction at the time the proceedings are started. A decree of the court in such an action binds not merely the parties to the writ but everybody in the world at large who might dispute the plaintiff’s claim.
It is by means of an action in rem that the arrest of a particular ship is secured by the plaintiff. He does not sue the owner directly and by name; but the owner or any one interested in the proceedings may appear and defend. The writ is issued to the "owner and parties interested in the property proceeded against." A maritime lien is a privileged claim against the ship or a right to a part of the property in the ship, and it "travels" with the ship. Because the ship has to "pay for the wrong it has done", it can be compelled to do so by forced sale. In addition to maritime liens, a ship is liable to be arrested in enforcement of statutory rights in rem. If the owner does not submit to the jurisdiction and appear before the court to put in bail and release the ship, she is liable to be condemned and sold to satisfy the claims against her. If, however, the owner submits to jurisdiction and obtains the release of the ship by depositing security, he becomes personally liable to be proceeded against in personam in execution of the judgment if the amount decreed exceeds the amount of the bail. The arrest of the foreign ship by means of an action in rem is thus a means of assuming jurisdiction by the competent court.

The admiralty action in rem, is unknown to the civil law. In countries following the civil law, all proceedings are initiated by actions in personam. The Court having competence in the matter has the power to order an attachment of the ship if it is convinced that the plaintiff is likely to lose his security unless the ship is detained within the jurisdiction. Its hands are not fettered by the technicalities of an action in rem and the scopes of the proceedings are not limited to maritime liens or claims. According to the French law, arrest of a ship is allowed even in respect of non-maritime claims and whether or not the claimant is a secured or unsecured creditor. A vessel may be arrested either for the purpose of immobilising the vessel as security (Saisie Conservatoire) or in execution of judgment (Saisie Execution) whether or not the claim has any relation to the vessel. Arrest of the vessel has
the advantage of forcing the owner to furnish security to guarantee satisfaction of any decree that may be passed against him. On furnishing sufficient security with the Court, he is usually allowed to secure the release of the vessel.

The real purpose of arrest is to obtain security as a guarantee for satisfaction of the decree, although arrest is the basis of assumption of jurisdiction, unless the owner has submitted to jurisdiction. In any event, once the arrest is made and the owner has entered his appearance, the proceedings continue in personam. All actions in the civil law—whether maritime or not—are in personam, and arrest of a vessel is permitted under the provision of the act, and the vessel is treated as any other property of the owner, and its very presence within jurisdiction is sufficient to clothe a competent high court with admiralty jurisdiction over the owner in respect of any claim. Admiralty actions, whether in rem or in personam, are confined to well defined maritime liens or claims and directed against the res (ship, cargo and freight) which is the subject-matter of the dispute or any other ship in the same beneficial ownerships as the res in question.

Where statutes are silent and remedy has to be sought by recourse to basic principles, it is the duty of the court to devise procedural rules by analogy and expediency. Action in rem, as seen above, were resorted to by courts as a devise to overcome the difficulty of personal service on the defendant by compelling him to enter appearance and accept service of summons with a view to furnish security for the release of the res; or, in his absence, proceed against the res itself, by attributing to it a personality for the purpose of entering a decree and executing the same by sale of the res. This is a practical procedural device developed by the courts with a view to rendering justice in accordance with substantive law not only in cases of collision and salvage, but also in cases of other maritime liens and claims arising by reason of breach
of contract for the hire of vessels or the carriage of goods or other maritime transactions, or tortious acts, such as conversion or negligence occurring in connection with the carriage of goods. Where substantive law demands justice for the party aggrieved, and the statute has not provided the remedy, it is the duty of the court to devise procedure by drawing analogy from other systems of law and practice. To the courts of the "civil law countries" in Europe and other places, like problems seldom arise, for all persons and things within their territories (including their waters) fall within their competence to deal with. They do not have to draw any distinction between an action in rem and an action in personam.

It is likewise within the competence of the appropriate Indian Courts to deal, in accordance with the general principles of maritime law and the applicability of provisions of statutory law, with all persons and things found within their jurisdiction. The power of the court is plenary and unlimited unless it is expressly or by necessary implication curtailed. In the absence of such curtailment of jurisdiction, all remedies, which are available to the courts to administer justice, are available to a claimant against a foreign ship and its owner found within the jurisdiction of the concerned High Court. This power of the court to render justice must necessarily include the power to make interlocutory orders for arrest and attachment before judgment.

The High Courts in India are superior courts of record. They have original and appellate jurisdiction. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate or discretionary jurisdiction of the Court, the High Courts have unlimited jurisdiction, including the jurisdiction to determine their own power.
A person who, maliciously and without reasonable and probable cause procures the arrest of a ship by Admiralty proceedings is liable to pay damages to the person aggrieved. A separate suit has to be filed for wrongful arrest proving malicious cause. Wrongful arrest may result in the condemnation of the claimant for damages only where the court is satisfied that the arrest was motivated by mala fides (bad faith) or crassa negligentia (gross negligence). Merely unjustified (i.e. erroneous) arrest would not normally entitle the defendant to claim damages, although he might then be able to recover costs.

The safeguarding of ownership/private property rights when ships are arrested in rem by the Admiralty Court are built into the rules of the High Court having admiralty jurisdiction for ship arrest. For example, a party wishing to prevent the arrest of property in an action in rem may, by filing a praecipe in the prescribed form, obtain the entry of a caveat against arrest in the caveat book kept in the Admiralty Registry/Prothonotary & Senior Master of the High Court. Although the entry of the caveat does not prevent arrest of the res, the caveator, on a subsequent motion after arrest, may obtain the discharge of the arrest warrant and the condemnation of the arresting party in damages, if the latter is unable to show "good and sufficient reason" for having arrested.

Where a foreign ship registered in a port of a country having a consulate in jurisdiction of the High Court where arrest application is sought /is to be arrested in India in an action in rem for wages, prior notice of the arrest must be given to the consul concerned.

In the decision of the Supreme Court in Videsh Sanchar Nigam Limited -vs- m.v. Kapitan Kud (1986) the court observed that the admiralty action is an action in rem and that there is strong triable case. The ship is a foreign ship and if it leaves the shores of Indian territorial
waters it is difficult to get hold of it and it may not return to the jurisdiction of Indian courts. The claim thereby, even if successful, would remain unexecuable or land in trouble in private international law in its enforcement. Under these circumstances, we are of the firm opinion that the vessel may be released on the certain conditions..., viz., [i] the respondent shall deposit a sum of Rs.10 crores; [ii] the Ukrainian Government shall give an undertaking through its accredited authority, more particularly may be its Ambassador attached to its Embassy in India in writing duly undertaking that in the event of the suit being decreed they would comply with the decree without reference to the execution; [iv] the undertaking should be for balance amount of Rs.18 crores and towards costs and other expenses roughly put at Rs.25 crores. It would be open to them to comply with these directions at any time. We are not fixing any time limit because it would be open to them to comply with it at any time and until then the ship shall remain arrested and shall not leave the shores of the Indian territorial waters. On deposit of Rs.10 crores and on furnishing of undertakings to the satisfaction of the Division Bench of the High Court, as stated above, the High Court would give appropriate direction for releasing the vessel in accordance with law.

In m.v. Kapitan Kud the Supreme court also observed that whether the appellant (VSNL) has made out prima facie case. Rules on Admiralty Jurisdiction in Part III were framed by Bombay High Court to regulate the procedure and practice thereof on the original side of the Bombay High Court. Equally, Original Side Rule 941 is relevant in this regard which provides that party applying under this rule in a suit in rem for arrest of the property shall give an undertaking in writing or through advocate to pay such sum by way of damages as the court may award as compensation in the event of a party affected sustaining prejudice by such order. In Mahadeo Savlaram Shelke & Ors. v. Pune Municipal Corporation & Anr. [ (1995) 3 SCC 33], even in case of civil court,
exercising its power under order 39 Rule 1, this Court held that while granting interim injunction, the Civil Court or Appellate Court is enjoined to impose as a condition that in the event of the plaintiff failing to prove the case set up and if damages are caused to the defendant due to the injunction granted by the court, the court would first ascertain whether the plaintiff would adequately be compensated by damages if injunction is not granted. Equally the court should also impose condition for payment of damages caused to the defendant in the same proceeding without relegating the parties for a separate suit. The plaintiff should give such an undertaking as a part of the order itself. Rule 954 of Admiralty Rules provides that subject to the provisions of Rule 952 [caveat property not to be released unless notice is given to the caveator], property arrested under a warrant may be ordered to be released - [i] at the request of the plaintiff, before an appearance in person or a vakalatnama is filed by the defendant; or [ii] on the defendant paying into Court the amount claimed in the suit; or [iii] on the defendant giving such security for the amount claimed in the suit as the Court may direct; or [iv] on any other ground that the Court may deem just. Thus a ship arrested under warrant maybe released on fulfillment of any of the conditions mentioned hereinbefore. This could be done on the plaintiff showing prima facie best case.

Action in rem is an action against a thing, good or against certain property (ship or cargo) rather than a person. By proceeding against a res a plaintiff obtains security for his claim, the res may be arrested by the court and sold to satisfy a judgment in rem against it. An action may be brought in rem provided the property proceeded against (the res) is within the jurisdiction.

The jurisdiction conferred by this Act on the High Court of Admiralty may be exercised either by proceedings in rem or by proceedings in personam.
An action in personam is an ordinary action as in common law courts.

In Halsbury's Laws of England, the nature of action in rem and the nature of action in personam at para 310 is stated to be as -Nature of actions in rem and actions in personam. An action in rem is an action against the ship itself but the view that if the owners of the vessel do not enter an appearance in the suit in order to defend their property no personal liability can be established against them has recently been questioned. It has been stated that, if the defendant enters an appearance, an action in rem becomes, or continues also as, an action in personam; but the Admiralty jurisdiction of the High Court may now in all cases be invoked by an action in personam, although this is subject to certain restrictions in the case of collision and similar cases, except where the defendant submit or agrees to submit to the jurisdiction of the Court.

The foundation of an action in rem is the lien resulting from the personal liability of the owner of the res. Thus an action in rem cannot be brought to recover damages for injury caused to a ship by the malicious act of the master of the defendant's ship, or for damage done at a time when the ship was in the control of third parties by reason of compulsory requisition. On the other hand, in several cases, ships allowed by their owners to be in the possession and control of charterers have been successfully proceeded against to enforce liens which arose whilst the ships were in control of such third parties.

The defendant in an Admiralty action in personam is liable, as in other actions in the High Court, for the full amount of the plaintiff's proved claim. Equally in an action in rem a defendant who appears is now liable for the full amount of the judgment even though it exceeds the value of the res or of the bail provided. The right to recover damages
may however be affected by the right of the defendant to the benefit of statutory provisions relating to limitation of liability."

11. What is maritime lien?

A maritime lien is a species of charge that attaches to property and follows the property – most commonly a ship – to secure certain types of claims. It is inchoate from the time of the events giving rise to it, attaching to the ship, travelling with the ship into anyone’s possession even a bona fide purchaser for value without notice, except a purchaser at an admiralty court sale and perfected by legal process. Only a limited class of maritime liens are recognised under section 9 (1) of the Admiralty Act (2017).

Maritime lien means a maritime claim as recognised under section 4 (1) (w) of the Admiralty Act (2017) against the owner, demise charterer, manager or operator of the vessel referred to in clauses (a) to (e) of sub-section (1) of section 9, which shall continue to exist under sub-section (2) of that section;

Maritime lien and its characteristics are:—

(a) claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;

(b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;

(c) claims for reward for salvage services including special compensation relating thereto;
(d) claims for port, canal, and other waterway dues and pilotage dues and any other statutory dues related to the vessel;

(e) claims based on tort arising out of loss or damage caused by the operation of the vessel other than loss or damage to cargo and containers carried on the vessel.

The maritime lien shall continue to exist on the vessel notwithstanding any change of ownership or of registration or of flag and shall be extinguished after expiry of a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized and such arrest or seizure has led to a forced sale by the High Court. Provided that for a claim for wages and other sum due to the master, officers and other members of the vessel, the period shall be two years from the date on which the wage, sum, cost of repatriation or social insurance contribution, falls due or becomes payable.

In admiralty law, a maritime lien is a privileged claim upon sea-connected property, such as a ship, for services rendered to, or the injuries caused by that property. In common law, a lien is the right of the creditor to retain the properties of his debtor until the debt is paid.

It is a proprietary lien where interest is about the property. It should be understood that “res” may be the vessel including its appurtenances and equipment, the cargo, the freight or even the proceeds of sale. The rights include jus in re (right on the property) and jus in rem (right against the property). The doctrine of maritime lien is that a ship will be treated as a wrongdoer, not the owner, that the loss, damage or harm is caused by the maritime property, itself, and it has to make good for the loss. The attachment of maritime lien will start when the cause of action arises and will not be eliminated even by change of ownership in a good faith purchase.
Two significant differences between maritime liens, which only exist in admiralty law, and the right to keep that exist in general civil law are that in general civil law, "Prior in time is prior in right", i.e., the rights of the lien holder with the earliest lien are superior to those of later lien holders, whereas in maritime law the rights of the most recent lien holder are superior, and all maritime liens are superior to all non-maritime liens.

12. What do you mean by a ship and sistership?

Section 2 (l) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 defines vessel which includes any ship, boat, sailing vessel or other description of vessel used or constructed for use in navigation by water, whether it is propelled or not, and includes a barge, lighter or other floating vessel, a hovercraft, an off-shore industry mobile unit, a vessel that has sunk or is stranded or abandoned and the remains of such a vessel.

Explanation.—A vessel shall not be deemed to be a vessel for the purposes of the clause, when it is broken up to such an extent that it cannot be put into use for navigation, as certified by a surveyor.

The word "vessel" was substituted for "ship" and is defined as including "any ship or boat, or any other description of vessel used in navigation," whilst "ship" includes any description of vessel used in navigation not propelled by oars. This latter definition does not exclude things not specified, so that it will include any vessel used in navigation not habitually propelled by oars, and will include a hopper barge not navigable without external assistance where it was held that a hopper barge with rudder and navigating lights but without means of propulsion, has been held to be a "ship".
In Steedman v Scofield [1992] 2 Lloyd's Rep 163 (Sheen J.) Mr. Justice Sheen said, "To my mind the word "boat" conveys the concept of a structure, whether it be made of wood, steel or fiberglass, which by reason of its concave shape provides buoyancy for the carriage of persons or goods. Thus a lifeboat differs from a life raft in that the boat derives its buoyancy from its shape, whereas a raft obtains its buoyancy from some method of utilizing air receptacles." "A vessel is usually a hollow receptacle for carrying goods or people. In common parlance "vessel" is a word used to refer to craft larger than rowing boats and it includes every description of watercraft used or capable of being used as a means of transportation on water."

In Steedman v Scofield Mr. Justice Sheen considered what was meant by the phrase "used in navigation" and he said "Navigation is the nautical art or science of conducting a ship from one place to another. The navigator must be able to determine the ship's position and to determine the future course or courses to be steered to reach the intended destination. The word "navigation" is also used to describe the action of navigating or ordered movement of ships on water. Hence "navigable waters" means waters on which ships can be navigated. To my mind the phrase "used in navigation" conveys the concept of transporting persons or property by water to an intended destination. A fishing vessel may go to sea and return to the harbour from which she sailed, but that vessel will nevertheless be navigated to her fishing grounds and back again. "Navigation" is not synonymous with movement on water. Navigation is planned or ordered movement from one place to another."

Under the so called "Dead vessel" doctrine, a vessel permanently withdrawn from use for navigational purposes is not a vessel, in terms of admiralty jurisdiction. However, a vessel is not a "dead vessel" merely because it is not actively engaged in trade or commerce, where
arrangements have been made to alter it to fit it for an intended maritime service. In addition, a ship may be a "live ship," not a "dead vessel," when it is in dry dock.

Sistership is a ship in the same beneficial ownership as the ship in regard to which the claim arose.

In m.v. Mariner IV -v- Videsh Sanchar Nigam Limited decided on 15th December 1997 by the appeal court of the Bombay High Court observed that "In view of the decision of the in m. v. Elizabeth, we are of the clear view that the High Court does have jurisdiction to arrest a "sister ship" for securing any maritime claim.".

The Appeal Court of the Bombay High Court in m.v. Sea Success I -v- Liverpool and London Steamship Protection and Indemnity Association Ltd., are of the view that a subsidiary company and a parent company of the subsidiary company are two separate entity. The Appeal court has the following view, "In maritime law worldwide ownership of a ship is denoted by the concept of the owner of the shares in a ship...... Fundamentally each company incorporated in law is a distinct legal entity and mere incorporation of 100% subsidiary company by its parent Company cannot lead to the conclusion that the assets of the former belong to and are owned by parent company. .............The action in rem under admiralty jurisdiction has been initiated by the plaintiffs against the defendant no.1 vessel Sea Success - I on the basis of allegations of it being a sister ship i.e. a ship in the same beneficial ownership as the ships " Sea Glory" and " Sea Ranger" in regard to which the claim arose. In case of m.v.Mariner IV, 1998 (1) Mah. L.J. 751, the Division Bench of this Court held, "The admiralty jurisdiction could be invoked not only against the offending ship in question but also against a sister ship in regard to which the claim arose". The ships are deemed to be in the same ownership when all the
shares are owned by the same person or persons (Article 3(2) of 1952 Brussels Arrest Convention).

The Appeal Court further viewed that "....the defendant no. 1 vessel is a sister ship of the two vessels "Sea Glory" and "Sea Ranger" in view of the beneficial ownership, management and control of all three vessels having vested in defendant no. 2. The basis of this deduction by the plaintiff in the plaint is that the defendant no. 1 vessel is owned by defendant no. 2 through its 100% subsidiary S.S. Shipping Corporation Inc., Monrovia"....the law permits the plaintiff to arrest a ship which is beneficially owned by the defendant no. 2 then the plaintiff is required to plead the material facts which discloses the beneficial ownership of the defendant no. 2 over the ship which is to be arrested and an inference drawn by itself in the pleading about beneficial ownership which is legally unsustainable cannot be said to disclose a cause of action. It is true that while ascertaining whether the plaint discloses a cause of action or not, the court is not required to make any enquiry into doubtful or complicated questions of fact or law and that the court proceeds with the assumption that the facts stated therein true but then those facts as they stand must disclose plaintiffs right to sue".

The Supreme Court of India in the matter of m.v. Sea Success I has stated that "...we do not intend to delve deep into the questions as to whether the two ships named hereinabove are the sister ships of the respondent No. 1 Vessel or whether the requirement of law as regard ownership of a ship in the Respondent No. 1 as beneficial owner has been fulfilled or not. Such issues must be considered at an appropriate stage".
13. What is the limit of Indian territorial waters?

Under section 3 (2) of The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act 1976, the limit of the territorial waters is the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate baseline.

Territorial waters shall have the same meaning as assigned to it in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976;

14. What do you mean by necessaries supplied on ship?

Section 4 (1) (l) maritime claim includes goods, materials, perishable or non-perishable provisions, bunker fuel, equipment (including containers), supplied or services rendered to the vessel for its operation, management, preservation or maintenance including any fee payable or leviable.

"Necessaries" is not defined but falls within the purview of this section.

15. What do you mean by one-ship company?

It has long been the practice in the shipping business to arrange for several ships which are financed by a common source and managed or operated as a fleet, to be registered in the names of separate companies whose only asset is the particular ship registered in its name. Often such companies will be registered in a country where the identification of shareholders in companies is not a matter of public record. This arrangement has become known colloquially as the "one-ship-company" and has been a source of irritation to cargo interests and others who consider that they are thereby deprived of the benefit of
the sister ship provisions. However, it is clear that the courts have recognised that the "one-ship company" is a legitimate business arrangement, and in the absence of evidence of fraud it is not permissible to lift the corporate veil in order to look behind the "one-ship company" structure for the purposes of identifying the beneficial owner of the company and say that the beneficial owner of the company is the beneficial owner of the ship. In law the beneficial owner of the ship is the company, which is a separate and distinct legal entity or person from the beneficial owner of the company."

16. Can an Admiralty court pass an order of arrest even if the vessel is outside that state jurisdiction but within Indian territorial waters?

Yes, High Court having admiralty jurisdiction has reservations that the ship should be in their respective jurisdiction to file an Admiralty suit.

17. What is the Effect of arrest of ship?

The effect of arrest is that it constitutes the ship or other property as security in the hands of the court for the claim in the action and this security cannot be defeated by the subsequent insolvency of the owner of the arrested property. The arrest enables the Court to keep the property as security to answer the judgment, and unaffected by chance events which may happen between the arrest and the judgment.

Once the warrant for arrest has been executed, the property is arrested and is in the custody of the Sheriff/ Marshall on behalf of the court. Interference by any party with the arrest process such as removing the property to be arrested with knowledge that an arrest has been issued is a contempt of court, this includes any interference with the custody of the property after arrest such as moving the property within the jurisdiction without authority, or removing it from the jurisdiction, as
was held in The "Jarlinn" [1965] 1 W.L.R. 1098 and also in The "Abodi Mendi" [1939] 178.

The arrest of a ship is a defining moment in its life. Immediately upon arrest the ship becomes security in the custody of the court to abide the result of the proceedings giving rise to the arrest. Once arrested, the ship remains in the custody of the court until released upon the provision of alternative security or sale by the court. As Sheen J explained in The Falcon:

A ship is usually arrested in order to provide security for the plaintiffs claim. The extent of that security is measured by the net proceeds of the sale of the vessel. The amount of the net proceeds of sale is arrived at by deducting from the gross proceeds of sale the expenses of that sale and other expenses incurred by the Sheriff/ Marshal and the necessary costs of the plaintiff in whose action the ship was arrested up to the moment of arrest and all subsequent expenses of maintaining the arrest up to and including the completion of the sale of the ship.

A warrant of arrest on a ship covers everything belonging to it as part of its equipment, even items which are physically detached from it, but not items which do not belong to the ship owner such as the personal property of the master and crew or the luggage of a passenger.

A ship may be arrested but the cargo on board her is not under arrest, or cargo is arrested but the ship in which it is laden is not. If a ship is to be arrested while she is in the course of discharging her cargo, the Sheriff/ Marshal will not stop the discharge operations unless the arrest is in respect of the cargo. When cargo is arrested the ship owners can request the Sheriff/ Marshal to take the appropriate steps to enable the ship to be discharged.
When arrest of a ship in a port causes considerable and continuing disruption to the operation of the port and the port authority had to turn away other ships so harming its reputation and causing its financial loss in such circumstances the court has inherent jurisdiction to allow a party to intervene if the effect of an arrest is to cause that party serious hardship or difficulty or danger. The court may pass directions to remove the ship to a safe berth in such other place as he shall think appropriate.

A ship is arrested by the Sheriff/ Marshal acting as an officer of the court. The ship comes into the custody, but not the possession, of the Sheriff/ Marshal. The position was described by Lord Atkin in Government of the Republic of Spain v SS "Arantzazu Mendi".

The ship arrested does not by the mere fact of arrest pass from the possession of its then possessors to a new possession of the Sheriff/ Marshal. His right is not possession but custody. Any interference with his custody will be properly punished as a contempt of the Court which ordered arrest, but, subject to his complete control of the custody, all the possessory rights which previously existed continue to exist, including all remedies which are based on possession.

Once arrested, a ship cannot be moved from the place of arrest without the authority of the Sheriff/ Marshal. To move the ship without such authority, whether to another place within the jurisdiction or to flee the jurisdiction, constitutes contempt of court. Similarly, any interference with the ship while under arrest, whether or not it involves any movement or attempted movement of the ship, will constitute contempt.

The duty of the Sheriff/ Marshal is to ensure the safe custody and preservation of the ship.
The Sheriff/ Marshal shall, unless the court otherwise orders, take all appropriate steps to retain safe custody of, and to preserve, the ship or property, including removing from the ship, or storing, cargo that is under arrest; removing cargo from a ship that is under arrest and storing it; removing, storing or disposing of perishable goods that are under arrest or are in a ship that is under arrest; and moving the ship that is under arrest.

The Sheriff/ Marshal owes no duty to the crew on board as such.

18. How quickly can an arrest be effected?

If court passes an order allowing that service can be effected by fax or email then in such case all concerned authorities such as ports and customs are notified the same day by fax or email depending on availability of the order passed by the Judge, but the authenticated copy of the order of arrest should be hand-delivered by the Bailiff of the court with a cover letter. Normally a junior lawyer or an office clerk is accompanied by the Bailiff for service on all concerned authorities and on the vessel.

19. What expenses are incurred?

Court fees: variable but the maximum in the Bombay High Court is ₹3,00,000 (approx USD 4300) exact amount can be calculated using the link

http://bruschambers.com/info/calculator.htm

The Court has a discretionary power to accept or reject legal expenses incurred prior to filing of the claim; it is therefore advisable to add approx USD 8000 - 10000 to the Particulars of Claim.

Lawyers fees: variable
There are expenses/disbursements such as institution fees, photocopying, transport, travel and stay (if required), expenses at the department, port and bailiff and other miscellaneous expenses.

20. How do you obtain a ships release?

   i. at the request of the claimant, before an appearance in person or a vakalatnama (appearance) is filed by the opponent; or
   
   ii. on the opponent paying into Court the amount claimed in the suit; or
   
   iii. on the opponent giving such security for the amount claimed in the suit as the Court may direct; or
   
   iv. on any other ground that the Court may deem just.

   A release can usually be obtained promptly provided the requirements for release are satisfied. If the matter is settled out of court without opponents appearance then in such case depending on the Claimants instruction to Claimants Solicitor, search of the caveat book for caveats against release will have to be taken and produced before the Judge at the time of obtaining order of release of the vessel. Normally Release Instrument is dispensed with by the court; if the same is not dispensed with then the Release Instrument will have to be issued by the court. Poundage is payable at 1% of the claim amount or the settled amount, whichever is less before the vessel is released.

21. Can you arrest a ship to obtain security for both court judgments and arbitral awards?

   Yes
22. Can bareboat-chartered ships be arrested?

Yes, Whether a bareboat-chartered ship can be arrested depends upon the type of claim being brought.

23. Can time-chartered ships be arrested?

Yes, Whether a time-chartered ship can be arrested also depends upon the type of claim being brought.

24. Can legal sister ships be arrested?

Yes, An action in rem lies in relation to a number of claims the jurisdiction can be invoked not only against the offending ship in question but also against a "sistership" i.e., a ship in the same beneficial ownership as the ship in regard to which the claim arose.

In m.v. Mariner IV v. Videsh Sanchar Nigam Limited decided on 15th December 1997 by the appeal court of the Bombay High Court observed that "In view of the decision of the in m. v. Elizabeth, we are of the clear view that the High Court does have jurisdiction to arrest a "sister ship" for securing any maritime claim."

25. Is counter-security required? If so, in what form and how much?

No, But the court has discretionary power to pass order for counter security if required.

26. Effect of Arbitration clause (if any) on arrest?

The Supreme Court of India in State Trading Corporation of India Ltd & Anr has held that there is no good ground or acceptable reason why the intention of the parties to incorporate the arbitration clause in the
Charter Party Agreement in the Bill of Lading should not be given effect to.

A claim which is brought in the Admiralty Court by an action in rem is subject to an arbitration agreement so that if an action were commenced the court would stay the proceedings to arbitration upon the application of the defendant.

The claimant can arrest a vessel for security in arbitration.

27. What maritime liens are recognised?

Maritime lien means a maritime claim as recognised under section 4 (1) (w) of the Admiralty Act (2017) against the owner, demise charterer, manager or operator of the vessel referred to in clauses (a) to (e) of sub-section (1) of section 9, which shall continue to exist under sub-section (2) of that section;

Maritime lien and its characteristics are:—

(a) claims for wages and other sums due to the master, officers and other members of the vessel’s complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;

(b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;

(c) claims for reward for salvage services including special compensation relating thereto;

(d) claims for port, canal, and other waterway dues and pilotage dues and any other statutory dues related to the vessel;
(e) claims based on tort arising out of loss or damage caused by the operation of the vessel other than loss or damage to cargo and containers carried on the vessel.

The maritime lien shall continue to exist on the vessel notwithstanding any change of ownership or of registration or of flag and shall be extinguished after expiry of a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized and such arrest or seizure has led to a forced sale by the High Court. Provided that for a claim for wages and other sum due to the master, officers and other members of the vessel, the period shall be two years from the date on which the wage, sum, cost of repatriation or social insurance contribution, falls due or becomes payable.

28. How soon after the arrest is effected will the claimant have to take action on the merits?

There is no delay between the arrest and the action on the merits.

29. Will the courts that ordered the arrest accept jurisdiction over the substantive claim?

In general, yes, unless there is a valid jurisdiction or arbitration agreement between the parties to the contrary.

30. Do the courts acknowledge wrongful arrest? If so, what is the test?

Yes. The ship-owner must prove that the action was so unwarrantedly brought as to imply malice or gross negligence on the part of the Plaintiff and must show and establish malice and willful conduct.
31. Do the courts acknowledge the piercing and lifting of the corporate veil?

Yes, but the courts will only lift the corporate veil in limited circumstances e.g. where the corporate structure is used to evade an existing legal obligation or to defraud.

In Great Pacific Navigation (Holdings) Corporation Ltd -vs- m.v. Tongli Yantai, the Bombay High Court on October 14, 2011 in appeal pierced the corporate veil to establish beneficial ownership.

32. Is it possible to have a ship sold prior to obtaining a judgment? If so, how long does such a sale take?

Yes, but the court will only make an order for auction sale if there is a good reason e.g. where the costs of maintaining the arrest may exceed the value of the claim, thereby diminishing the value of the claimants security, depreciation of vessel or there is a danger for the vessel to sink or cause casualty. Interim application will have to be taken out for sale of the vessel, normally advertisement is given in two Indian newspaper in Lloyds List and Tradewinds.

33. Can you arrest foreign State owned vessel?

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.

34. What is the difference in respect to arresting a ship for a maritime claim and a maritime lien?

A maritime lien is a species of charge that attaches to property and follows the property – most commonly a ship – to secure certain types of claims. It is inchoate from the time of the events giving rise to it, attaching to the ship, travelling with the ship into anyone’s possession.
even a bona fide purchaser for value without notice, except a purchaser at an admiralty court sale and perfected by legal process. Only a limited class of maritime liens are recognised under section 9 (1) of the Admiralty Act (2017).

Section 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 sets out a list of maritime claims in respect whereof, the High Courts can exercise their Admiralty Jurisdiction. The lists of maritime claims are similar to the maritime claims defined under the International Convention in relation to the Arrest of Sea-Going Ships 1952, Brussels and the International Convention on the Arrest of Ships, 1999, Geneva. However, the Admiralty (Jurisdiction & Settlement of Maritime Claims) Act, 2017 incorporates the following additional claims as maritime claims in relation to which a vessel can be proceeded against and arrested. They are claims related to port or harbor dues, canal, dock or light tolls, waterway charges and such like; particular average claims; claims by master or crew or their heirs, dependents for wages, cost of repatriation or social insurance contributions; insurance premiums, mutual insurance calls; commission/ brokerage agency fees payable by vessel owner or demise charterer; environment damage claims or threat thereof; and wreck removal claims.

35. Does India recognise maritime liens?

Yes, under section 4 (1) (w) of The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.
36. What are the duties and responsibilities of the Sheriff/ Marshal towards crew on board after arrest of ship?

The Sheriff/ Marshal owes no duty to the crew on board as such. The relationship of the Sheriff/ Marshal to the crew will depend upon the circumstances as they affect the discharge of the Sheriff/ Marshals duty to retain custody of, and to preserve the ship.

The arrest of a ship does not operate to determine the employer/employee relationship between the owners or demise charterers and the master and crew. Nor does it follow that the issue of a writ/ warrant against the ship by the master or crew to recover outstanding wages automatically determines the employment relationship. It will be a question of fact in each case whether or not there is conduct on the part of the owner amounting to repudiation of the employment contract, for example, failure to pay wages and allowances which are owing, which is accepted by the crew as terminating the relationship.

If the employment relationship is terminated, then crew members may seek to recover wages up until the termination and thereafter damages for breach of contract calculated by reference to the wages lost, the cost of sustenance for a reasonable time at the place of termination pending repatriation to their home port, and the cost of repatriation. Such a claim ranks after the Sheriff/ Marshals claim against the ship, substitute security, or proceeds of sale for the Sheriff/ Marshals charges and expenses, the plaintiffs costs of the action, and other claims having priority.

If the crew continue in employment after arrest, the ongoing liability for wages reduces the value of the ship or proceeds of sale to satisfy claims which have lesser priority than the claims of the master and crew. Although the continued engagement by the owner of the crew
will give them a right to wages and entitlements, accommodation on board and the right to sustenance, those rights are not enforceable against the Sheriff/ Marshal. However, the Sheriff/ Marshal may, if the Sheriff/ Marshal considers it is necessary to the safety of the ship or to preserve it, pay wages and provide accommodation and sustenance to the crew on board for such time following arrest of the ship as the Sheriff/ Marshal considers is necessary. With leave of the court the Sheriff/ Marshal may also provide minimal sustenance in order to avoid hardship to the crew.

The presence of the crew on board is justifiable only for so long as it does not interfere with the ship or the Sheriff/ Marshals custody of it and does not increase the Sheriff/ Marshals costs of maintaining custody of the ship and preserving it. For example, if a ship can conveniently be laid up as a dead ship pending trial or the provision of security, a crew will not be permitted to remain on board where that would involve unnecessary expense in providing power or access to the ship to enable the crew to live on board.

What happens if the crew refuse to leave or prevent the Sheriff/ Marshal from laying up the ship if that is the appropriate course to follow in the circumstances? Such conduct is prima facie contempt of court for interfering with the Sheriff/Marshals custody of the ship. However, the cases do not suggest that crew members are lightly dealt with for contempt.

A refusal by the master or crew to leave a ship is not uncommon. This is particularly so when a ship needs to be moved within the port or to another port or where the ship is to be sold pendente lite. In both cases, there is an attempt to force the Sheriff/ Marshal or some other party to pay the outstanding claims for the master and crew and their costs of repatriation. In the case of a sale pendente lite, there is often
the hope that a purchaser will re-engage the crew and thus will provide them with continuity of employment. How the issue of an obdurate crew is resolved can have significant consequences upon the fund ultimately available to satisfy the plaintiffs costs and claim and the claims of others against the ship.

37. 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 24-48 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.

38. Is counter security required from the arresting party?

No, but an undertaking should be filed along with the Plaint to pay damages if the vessel is wrongly arrested.

39. Will the Court accept a Club LOU to release a vessel under arrest?

No, the court normally accepts either cash deposits, bank guarantee as security for release of the vessel.

40. Can Charterers' bunkers on board a third-party's vessel be arrested or attached to secure or enforce a claim against Charterers?

Yes, assuming Charterer's ownership of the bunkers can be clearly shown, the Charterers' bunkers on board a third-party's vessel can be attached to secure a claim against the said Charterer but there is no precedence in India till date.
41. Can arbitrator pass an interim or final award arresting a ship as security in arbitration?

No, Arrest of a ship can only be effected by a Court Order, a ship may only be arrested under the authority of a court. Arrests cannot be ordered by an arbitration tribunal. Also, arrests should not be confused with restrictions, seizures or detentions imposed by administrative authorities, such as Port, Customs or other authorities, for violations of certain rules concerning, for example, safety issues, cargo stowage, accommodation and transport of passengers, load lines, seaworthiness certificates, or marine pollution.

The court’s decision ordering the arrest of a ship is not a “judgment” in the correct legal sense of the term. The term “judgment” implies a full and absolute determination of the matter in dispute following a complete examination and evaluation of the evidence adduced.
ABOUT THE AUTHORS

Shrikant Pareshnath Hathi (Dr)
B.Com, LL.B., LL.M., Solicitor (India & United Kingdom), Ph.D
Advocate Bombay High Court
Solicitor, Bombay Incorporated Law Society
Advocate, Supreme Court of India
Advocate on Record, Supreme Court of India
Solicitor, England and Wales (Non-Practising)

EMAIL : shrikant@bruschambers.com
TELEPHONE : +91-22-22659969
MOBILE : +91 976 9946865

OFFICE : Mumbai, INDIA
PRACTISING SINCE 1992

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+ Projects
+ Insurance and P & I Clubs
+ Dispute Resolution

Shrikant Hathi is a good strategist and has excellent reputation in shipping and project works amongst international clients and legal peers for many years. He is excellent in dispute resolution on all commercial litigations and international arbitration. He covers all aspects of admiralty, shipping and projects work with a particular focus on admiralty ship arrest and all aspects of maritime disputes and transactional work, is renowned for his expertise in wet and dry shipping advice also advises on upstream exploration and production sector in oil and gas also handle projects including energy, infrastructure and mining. Shrikant Hathi is also considered a dominant presence for project work in infrastructure, construction, oil, gas, energy, mining and property.

He is consistently ranked by Legal500 as leading individual for shipping work (since 2004/2005). Euromoney Expert Guides have also consistently ranked Mr. Shrikant Hathi since 2005 as Worlds Leading Lawyers for Shipping & Maritime and also for Energy & Natural Resource Lawyers.

He is also the co-author of the book 'Maritime Practice in India' and 'Ship Arrest in India and Admiralty Laws of India', these books can be located at www.maritimepractice.com and www.admiraltypractice.com respectively.

In Admiralty, Maritime & Shipping matters he advises on ship arrest, all types of shipping disputes representing owners, charterers, suppliers, repairers,
cargo owners and their insurers, banks, financial institutions and mortgagors, P & I clubs and conducts litigation and arbitration disputes and claims, including casualties, collision, limitation of liability, cargo, unpaid dues, charter party, jurisdiction, conflict of laws, bill of lading, carriage of goods, contract conditions, fire, liens, general average, containers, recoveries, subrogation, casualties, freight forwarders liabilities, multimodal and unimodal, insurance and reinsurance, commercial disputes and advise on financing international trade through letter of credit, bills of exchange and other methods, preparing standard conditions of sale and advise on trade in commodities of all kinds, advising on the terms of contracts. In transactional work he handles all aspects of ship finance, negotiation, bid preparation, sale, purchase and registration. In projects he advises on upstream exploration and production sector in oil and gas also handle projects including energy, infrastructure and mining.

Career & Education
LL.B from Government Law College, Mumbai;
LL.M from Government Law College, Mumbai;
Admitted as Advocate with the Bar Council of Maharashtra & Goa (1992);
Admitted as Solicitor with the Bombay Incorporated Law Society, (2002);
Admitted as Advocate on Record (AOR) with the Supreme Court of India (2004);
Admitted as Solicitor with the Solicitors Regulation Authority, United Kingdom (2010);
Advocate Bombay High Court and Supreme Court of India;
Solicitor, England and Wales (Non-Practising);
Graduated in Doctorate Program with major in Law Enforcement

Successfully completed solicitors examination through Oxford Institute of Legal Practice (OXILP) (Oxford University and Oxford Brookes University) and is enrolled with the Solicitors Regulation Authority (SRA), United Kingdom as a solicitor. Since he is practicing law in India, he is a non-practicing solicitor in United Kingdom.

Successfully completed 'Justice & Contract', a course of study offered by Harvard University under the guidance of Prof. Michael J. Sandel, Professor of Government at Harvard University, where he teaches political philosophy and under the guidance of Prof. Charles Fried, the Beneficial Professor of Law at Harvard University since 1961. He was Solicitor General of the United States and an Associate Justice of the Supreme Judicial Court of Massachusetts, respectively.

Successfully completed 'The Arbitration of International Disputes and Courts & Tribunals in the Hague', a course of study offered by Leiden University, Netherlands under the guidance of Prof Dr. Eric De Brabandere and Prof. Dr. Giulia Pinzauti. and by Prof. Larissa van den Herik; Prof Cecily Rose and Prof. Yannick Radi, respectively.
Successfully completed 'Globalisation', a course of study offered by University of Texas at Austin under the guidance of Dr. John Hoberman, he is a Professor of Germanic languages within the Department of Germanic Studies at the University of Texas at Austin, he has taught courses on sport and politics at Harvard University and at the University of Chicago.

Successfully completed 'Energy Subsidy Reform' a course conducted by International Monetary Fund under the guidance of Dr. Nooman Rebei (Economist at IMF's Institute for Capacity Development); Dr Samah Mazraani (Economist at IMF); Dr. Kangni Roland Kpodar (Economist in the IMF); Dr. Luc Moers (Economist at IMF) and Dr. Masahiro Nozaki (Economist at IMF).

Article ship for Solicitor with Little & Co, Solicitors;
Solicitor Assistant with Little & Co, Solicitors;
Partner with Brus Chambers, Solicitors;

Co-author of the book 'Ship Arrest in India and Admiralty Laws of India';
Co-author of the book 'Upstream exploration of Oil';
Co-author of the book 'Doing business in India';

Languages
English, Hindi, Marathi, Bengali and French.

Member
Admitted as Advocate with the Bar Council of Maharashtra & Goa;
Admitted as Solicitor with the Bombay Incorporated Law Society;
Admitted as Advocate on Record (AOR) with the Supreme Court of India;
Admitted as Solicitor with the Solicitors Regulation Authority, United Kingdom.

Professional Achievements
2018/19: Ranked by Legal500 as Leading Individual for shipping work in India
2018/19: President of Shippinglawyers.NET
2018/19: Ranked by Euromoney Expert Guides as World Leading Lawyer for oil and natural resources
2018/19: Ranked by Euromoney Expert Guides as World Leading Lawyer for shipping and maritime
2018/19: Awarded by India Business Law Journal as the best shipping lawyer.
2018/19: Ranked by Asia Law Profiles as Leading Lawyer for shipping work.
2018/19: Ranked by Asia Law Profiles as Leading Lawyer for oil and natural resources.
2018/19: Ranked by Global Law Experts for shipping work in India
2017/18: Ranked by Legal500 as Leading Individual for shipping work in India
2017/18: President of Shippinglawyers.NET
2017/18: Ranked by Euromoney Expert Guides as World Leading Lawyer for oil and natural resources
2017/18: Ranked by Euromoney Expert Guides as World Leading Lawyer for shipping and maritime
2017/18: Awarded by India Business Law Journal as the best shipping lawyer.
2017/18: Ranked by Asia Law Profiles as Leading Lawyer for shipping work.
2017/18: Ranked by Asia Law Profiles as Leading Lawyer for oil and natural resources.
2017/18: Ranked by Global Law Experts for shipping work in India
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2008/09: President of Shippinglawyers.NET
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2007/08: Ranked by Legal500 as Leading Individual for shipping work in India
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2006/07: Ranked by Legal500 as Leading Individual for shipping work in India
2006/07: President of Shippinglawyers.NET
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2006/07: Ranked by Euromoney Expert Guides as World Leading Lawyer for oil and natural resources.
2005/06: Ranked by Legal500 as Leading Individual for shipping work in India
2005/06: Recommended by Shippinglawyers.NET for shipping work
2005/06: Ranked by Euromoney Expert Guides as World Leading Lawyer for shipping and maritime
2005/06: Ranked by Euromoney Expert Guides as World Leading Lawyer for oil and natural resources

Shrikant Hathi is listed in the elite "Leading lawyers" list as "Leading Individual", by Legal 500 since 2004

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Shrikant Hathi- Leading Shipping & Maritime Lawyer in India
- Asia Law Profiles

Shrikant Hathi- World's Leading Lawyer (Shipping & Maritime) since 2004
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Shrikant Hathi- World's Leading Lawyer (Energy & Natural Resources Lawyers)
- Euromoney Expert Guides

Shrikant Hathi- Leading Energy & Natural Resources Lawyer in India
- Asia Law Profiles

Shrikant Hathi- World's Leading Lawyer (Energy & Natural Resources) since 2007
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'pragmatic, resourceful and professional team.'
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'solid shipping practice'
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The firm has a dedicated shipping practice that covers disputes, transactional matters and finance.

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is widely respected for its wet and dry shipping expertise.

The Asia Pacific Legal 500

'extremely good for shipping work'

The Asia Pacific Legal 500

'Shrikant Hathi gives effective assistance to shipping industry'

Trade Winds

Binita Shrikant Hathi (Ms)
BCom, LL.B., LL.M., Solicitor (India)
Advocate Bombay High Court
Solicitor, Bombay Incorporated Law Society
Advocate, Supreme Court of India
Advocate on Record, Supreme Court of India

EMAIL: binita@bruschambers.com
TELEPHONE: +91-22-22659969
MOBILE: +91 976 9946864
OFFICE: Mumbai, INDIA
PRACTISING SINCE: 1994

EXPERTISE
+ Admiralty and Shipping
+ Litigation and Arbitration
+ Projects and Infrastructure
+ Insurance and P & I Clubs

Binita Hathi practices shipping law, specialising in dispute resolution, marine insurance, shipping and admiralty, has extensive experience in resolving international and domestic client disputes through litigation and arbitration and is also known for negotiating amicable settlement between parties and contractual skills for projects on ports, dredging and shipping. She has 'sound knowledge' and offers 'practical solutions' to clients, and has notable expertise in commercial-related litigation and arbitration matters, the latter being a major focus, and is praised for her multi jurisdictional reach. Her strength in shipping, projects, and commercial dispute are leveraged in settling-related disputes. She excels in admiralty ship arrest and other shipping work.
Binita Hathi heads dispute resolution practice, has extensive experience in resolving international and domestic client disputes through litigation and arbitration and is also known for negotiating amicable settlement between the parties, enforcing foreign arbitral awards, enforcement of foreign court judgment and decree. She is also known for her contractual skills for projects on ports, dredging, shipping, oil, gas, infrastructure, construction and energy.

International Arbitration and Disputes has always been her forte, analysing the dispute, understanding the strong and weak points in the dispute, strategising the dispute. She masters all procedural techniques used in international arbitration in combination with her legal analytical mind on law and the procedure. She is street smart does her best to achieve results for client.

International arbitration, ad-hoc or institutional with seat in India or overseas are represented by Brus Chambers on behalf of their client.

She has acted in several institutional international arbitrations under the rules of the International Chamber of Commerce (ICC), UNCITRAL, London Court of International Arbitration, Stockholm Chamber of Commerce, American Arbitration Association (AAA), ICSID, UNCITRAL, SCC, DIAC, SIAC, CICA, PCA, CIArb, AFA, OHADA (CCJA), ICJ and ad hoc cases. Brus Chambers specialisation in arbitration has led to close relationships with arbitration specialists in other countries when the law or procedure of some other jurisdiction becomes pertinent. For all these reasons, Brus Chambers has been frequently engaged to handle all aspects of complex international disputes or to serve as lead or co-counsel in international arbitration proceedings, where seat of arbitration is in India or outside India. Brus Chambers attorneys are well versed in the many different ADR areas. Thus, the firm can respond quickly and effectively to client needs in complex and foreign business disputes. Very often, just knowing the array of choices may shorten the time and energy required to bring the matter to an early resolution.

She is co-author of the book International Arbitration, Maritime Practice in India and Ship Arrest in India and Admiralty Laws of India. Binita Hathi has sound knowledge and offers practical solutions to clients and has notable expertise in commercial related litigation and arbitration matters. She is praised for her multi-jurisdictional reach.

Career & Education
LL.B from Government Law College, Mumbai;
LL.M from Government Law College, Mumbai;
Admitted as Advocate with the Bar Council of Maharashtra & Goa;
Admitted as Solicitor with the Bombay Incorporated Law Society;
Admitted as Advocate on Record (AOR) with the Supreme Court of India;
Advocate Bombay High Court and Supreme Court of India;
Legal assistant Desai & Dewanji,
Advocate Assistant at Hariani & Co,
Advocate Assistant at Bhatt & Saldanha,
Partner with Brus Chambers, Solicitors;

Co-author of the book International Arbitration;
Co-author of the book Ship Arrest in India and Admiralty Laws of India;
Co-author of the book Maritime Practice in India;

Successfully completed Justice, a course of study offered by Harvard University under the guidance of Prof. Michael J. Sandel, Professor of Government at Harvard University, where he teaches political philosophy.

Languages
English, Hindi, Marathi and Bengali.

Member
Admitted as Advocate with the Bar Council of Maharashtra & Goa;
Admitted as Solicitor with the Bombay Incorporated Law Society;
Admitted as Advocate on Record (AOR) with the Supreme Court of India;

Brus Chambers, is praised for its prompt responses, knowledge, efficiency, understanding of the industry, application of law, and innovative ideas used at the right time and place. Binita Hathi is the key name
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'First class for International arbitration'
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'track record to negotiate and settle cases out of court'
- Economic Times

'best for projects and infrastructure work'
- NDTV Profit

'processed enforcement of foreign arbitral award in India promptly'
- KEV Shipping