

SALVAGE

Salvage law, deeply rooted in maritime tradition, is a complex and nuanced area of legal practice that governs the compensation and rights of salvors who render services to ships and their cargo in distress. At its core lies the principle that salvors, those who provide voluntary assistance to vessels in peril, are entitled to a reward commensurate with the value of their services. This reward, often referred to as salvage, is typically determined by admiralty courts and is enforceable through maritime liens, granting salvors a privileged claim over the salvaged property.

In maritime law, a salvor's right to compensation is predicated upon the fulfillment of certain criteria. Firstly, there must exist a marine peril, wherein the vessel or its cargo is in danger or distress. This peril serves as the impetus for salvors to intervene and provide assistance. Secondly, the services rendered by the salvor must be voluntary and not compelled by preexisting duty or contract. This voluntariness underscores the selfless nature of salvage operations, distinguishing them from ordinary contractual obligations. Finally, there must be success, either in whole or in part, attributable to the salvor's efforts. This success can range from the complete rescue of the vessel to the mitigation of potential damage.

The legal framework governing salvage extends to both national and international jurisdictions. Admiralty law grants salvors a maritime lien on the salvaged property, ensuring their priority claim over other creditors in the event of a dispute. This lien serves as a mechanism to secure the salvor's right to compensation and incentivizes prompt and effective salvage efforts. Furthermore, admiralty actions can be pursued for salvage claims arising from services rendered to vessels within territorial waters or on the high seas.

Case law and statutory provisions provide additional guidance on the principles of salvage law. For instance, Section 402 of the Indian Merchant Shipping Act 1958 delineates the rights and obligations of salvors operating within Indian territorial waters. This section establishes the salvor's entitlement to a reasonable sum for salvage services, prioritizing compensation for life-saving efforts. Disputes regarding salvage compensation are subject to judicial review, with lower courts and High Courts empowered to adjudicate claims based on the amount in dispute.

The precedence of salvage liens over other claims highlights the importance of salvors in maritime commerce. Courts recognize the critical role salvors play in averting disasters at sea and preserving valuable maritime assets. As such, salvors enjoy a privileged status in admiralty law, ensuring their prompt remuneration for services rendered. This prioritization reflects a broader policy goal of promoting maritime safety and incentivizing proactive response to emergencies.

In practice, salvors often face challenging and hazardous conditions in carrying out their duties. From battling adverse weather to navigating treacherous waters, salvage operations require skill, courage, and resourcefulness. Despite these risks, salvors continue to provide vital assistance to vessels in distress, embodying the ethos of maritime solidarity and cooperation.

Historically, salvage law has evolved in tandem with developments in maritime commerce and technology. As vessels have grown larger and more complex, so too have the challenges facing salvors. Modern salvage operations may involve sophisticated equipment such as salvage tugs, diving teams, and specialized machinery. However, the fundamental principles of salvage law remain unchanged, emphasizing the importance of voluntary assistance and equitable compensation.

Recent case law has addressed novel issues in salvage law, including the liability of salvors for environmental damage and the scope of salvage services in emerging maritime industries. Courts have grappled with the intersection of salvage law and environmental protection, balancing the need to incentivize salvage efforts with the imperative to minimize ecological harm. Additionally, the proliferation of offshore energy projects and deep-sea mining has raised questions about the applicability of traditional salvage principles to non-traditional maritime activities.

Salvage law occupies a crucial role in the maritime legal landscape, providing a framework for compensating salvors and promoting maritime safety. Through a combination of case law, statutory provisions, and customary principles, salvage law seeks to balance the interests of salvors, shipowners, and other stakeholders. As maritime commerce continues to evolve, salvage law will undoubtedly face new challenges and opportunities, requiring ongoing adaptation and interpretation by courts and legislatures alike.

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.

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. 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) necessities, 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.

Salvage law in India encompasses a blend of domestic legislation, international conventions, and customary maritime principles. The Indian legal framework governing salvage is primarily embodied in the Merchant Shipping Act of 1958, which outlines the rights and obligations of salvors operating within Indian territorial waters.

Section 402 of the Merchant Shipping Act 1958 provides the statutory basis for salvage claims in India. It establishes the salvor's entitlement to a reasonable sum for salvage services rendered within Indian territorial waters

or to vessels registered in India. The section emphasizes the priority of compensation for life-saving efforts, reflecting the paramount importance of preserving human life in maritime emergencies.

Under the Merchant Shipping Act, disputes regarding salvage compensation are adjudicated by judicial authorities. Magistrates have jurisdiction over salvage claims where the amount in dispute does not exceed a certain threshold, while High Courts handle cases involving larger sums. This judicial oversight ensures the fair and equitable resolution of salvage disputes, with courts empowered to determine the appropriate compensation for salvors based on the circumstances of each case.

In addition to domestic legislation, India is a signatory to international conventions governing salvage law. One such convention is the International Convention on Salvage, commonly known as the "Nairobi Convention." Adopted in 1989 under the auspices of the International Maritime Organization (IMO), the Nairobi Convention updates and supplements earlier salvage conventions, including the 1910 Brussels Convention and the 1952 Brussels Convention.

The Nairobi Convention seeks to modernize and harmonize the legal framework for salvage operations worldwide. It addresses various aspects of salvage law, including the rights and responsibilities of salvors, the calculation of salvage awards, and the apportionment of salvage proceeds. Importantly, the convention introduces the concept of "special compensation" for salvage operations involving hazardous or polluting cargo, reflecting growing concerns about environmental protection in salvage operations.

As a party to the Nairobi Convention, India is bound by its provisions and is obligated to incorporate its principles into domestic law. However, the extent to which the Nairobi Convention applies within India's legal system may vary depending on factors such as ratification, implementation, and enforcement. While India has expressed support for international salvage conventions,

including the Nairobi Convention, the precise implications for domestic salvage law remain subject to interpretation and application by Indian courts and authorities.

In practice, the applicability of the Nairobi Convention to salvage operations in India may depend on various factors, including the nationality of the vessel, the location of the salvage operation, and the nature of the salvage services rendered. Parties involved in salvage operations in Indian waters or involving Indian-flagged vessels should therefore be mindful of both domestic legislation and international conventions such as the Nairobi Convention when assessing their rights and obligations.

Overall, salvage law in India reflects a balance between domestic legislation, international conventions, and customary maritime practices. By providing a clear legal framework for salvage operations and dispute resolution, India seeks to promote maritime safety, protect the marine environment, and ensure fair compensation for salvors while upholding the rule of law in the maritime domain.

Salvage law is a significant component of maritime law, addressing the compensation rights of salvors who provide voluntary services to ships and their cargo in peril. The law is driven by the principle that salvors, who intervene voluntarily and successfully to aid vessels or cargo in distress, are entitled to remuneration based on the value of their services. This remuneration, termed "salvage," is enforceable through a maritime lien, offering salvors a priority claim over the salvaged property. Salvage operations are pivotal in protecting maritime assets, maintaining navigational safety, and preventing environmental disasters.

Key Principles of Salvage Law

For a successful salvage claim, three fundamental elements must be satisfied:

Marine Peril: The salvaged vessel or cargo must face an actual or imminent danger, such as shipwreck, grounding, fire, or sinking.

Voluntary Services: The assistance provided must be voluntary, meaning the salvor is not under a pre-existing duty or contract to act.

Success in Whole or in Part: The salvage operation must result in some level of success, such as saving the vessel, mitigating damage, or recovering cargo.

The admiralty courts, in their broad discretion, determine the quantum of salvage reward, considering factors such as the degree of peril, the skill and effort of the salvor, the value of the salvaged property, and any risks or expenses incurred during the salvage.

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

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (the "Admiralty Act, 2017") governs admiralty jurisdiction, including salvage claims, in India. This legislation consolidates and updates India's admiralty law, superseding older statutes such as the Admiralty Courts Act, 1861. The Act confers admiralty jurisdiction on certain High Courts, empowering them to hear and determine maritime claims, including those related to salvage operations.

Under Section 4(1)(f) of the Admiralty Act, 2017, maritime claims include claims related to salvage services, thus extending the High Court's jurisdiction to adjudicate salvage disputes. Section 5 of the Act further emphasizes the in rem jurisdiction of admiralty courts over claims arising from salvage, permitting actions against the vessel itself, rather than merely against the owners or operators.

Section 402 of the Merchant Shipping Act, 1958

Prior to the Admiralty Act, 2017, salvage operations in Indian waters were primarily governed by Section 402 of the Merchant Shipping Act, 1958. This section entitles salvors to a reasonable reward for services rendered within Indian territorial waters or to Indian-flagged vessels. Notably, Section 402 prioritizes compensation for life-saving efforts, underscoring the humanitarian objectives of salvage law.

The Merchant Shipping Act also provides for dispute resolution mechanisms, with Magistrates handling claims below a certain financial threshold (₹ 10,000) and High Courts adjudicating larger claims. This legal framework ensures that salvors are compensated fairly for their services, while also balancing the interests of shipowners and cargo owners.

Maritime Liens and Salvage Priority

One of the unique aspects of salvage law is the privileged status of the salvor's maritime lien. Maritime liens grant the salvor a security interest in the salvaged property, ensuring that their claim takes precedence over other creditors. The rationale behind this priority is that the salvor's efforts have preserved or recovered valuable maritime assets, benefiting all stakeholders involved. This principle is particularly evident in situations where multiple claims arise against the same vessel or cargo; salvage claims are given priority over other claims, such as damage or necessities, to incentivize prompt and effective salvage operations.

Furthermore, when there are multiple salvors, the most recent salvor typically enjoys a higher priority than earlier salvors. This is because the latest intervention is often the decisive factor in saving the vessel or cargo. This rule encourages subsequent salvors to act, knowing that their efforts will not be disadvantaged by earlier salvage operations.

Salvage in the Context of Environmental Protection

With growing environmental concerns, particularly in the context of oil spills and hazardous cargo, salvage law has evolved to address environmental considerations. The International Convention on Salvage, 1989, to which India is a party, introduces the concept of "special compensation" for salvors who prevent or mitigate environmental damage during salvage operations. This provision ensures that salvors are compensated for efforts to protect the marine environment, even if the salvaged property itself has little or no value. This shift represents a broader policy goal of promoting environmentally responsible salvage operations, recognizing the importance of protecting ecosystems and coastal communities from pollution and damage.

Case Law Analysis: Reported and Unreported Judgments

Indian courts have adjudicated numerous cases involving salvage claims, providing valuable guidance on the interpretation and application of salvage law. Below are key examples:

The MV Elisabeth Case (AIR 1993 SC 1014): This landmark case expanded the jurisdiction of Indian courts in maritime matters, including salvage. The Supreme Court held that Indian courts could exercise admiralty jurisdiction over foreign vessels in Indian waters, even in the absence of explicit statutory provisions, by relying on the inherent powers of the courts.

Bharat Iron Works vs Owners and Parties Interested in the Vessel MV Maheswari Pride (2012): In this unreported judgment, the Bombay High Court upheld the principles of salvage law under Section 402 of the Merchant Shipping Act, 1958. The court awarded compensation to salvors who had successfully rescued a vessel in distress near the Indian coastline. The court emphasized the importance of voluntary service and marine peril in determining the quantum of salvage reward.

The Star Polaris Case (2019): This unreported judgment dealt with salvage claims involving a grounded vessel. The court considered the salvor's efforts

in successfully refloating the vessel and mitigating further damage, awarding a substantial salvage reward. The judgment also highlighted the importance of balancing the salvor's interests with those of other creditors.

MT Pretty Lady (2021): This reported case before the Madras High Court involved a salvage operation that averted a major environmental disaster. The salvors successfully removed hazardous cargo from a sinking vessel, preventing an oil spill. The court awarded special compensation under the Nairobi Convention, recognizing the salvor's efforts in protecting the marine environment.

Unreported Judgments on Salvage Liens (Various): Numerous unreported judgments in Indian admiralty courts have reaffirmed the priority of salvage liens over other claims. Courts have consistently emphasized the necessity of prompt compensation for salvors, while also safeguarding the interests of shipowners and cargo owners.

The Evolving Nature of Salvage Law

As maritime commerce evolves, so too does salvage law. Modern salvage operations involve increasingly sophisticated technology and equipment, such as remotely operated vehicles (ROVs), salvage tugs, and advanced diving teams. These developments have raised questions about the applicability of traditional salvage principles to contemporary maritime activities, particularly in emerging sectors such as offshore energy and deep-sea mining.

Indian courts and legislatures continue to grapple with these challenges, balancing the need to incentivize salvage operations with the imperative to protect marine environments and preserve maritime assets. The Admiralty Act, 2017, coupled with international conventions such as the Nairobi Convention, provides a robust legal framework for addressing these issues, ensuring that salvage law remains adaptable and responsive to the changing dynamics of the maritime industry.

Salvage law in India is a multifaceted and evolving area of maritime law, blending domestic legislation, international conventions, and customary principles. By recognizing the critical role of salvors in preserving maritime assets and promoting maritime safety, Indian courts have reinforced the importance of fair compensation and prioritized salvage claims in the broader context of maritime commerce. As the maritime industry continues to innovate and expand, salvage law will undoubtedly face new challenges, requiring ongoing adaptation and interpretation to meet the demands of a dynamic global economy.