

EXERCISE OF THE ADMIRALTY JURISDICTION

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (AJSC Act) establishes a framework for resolving disputes arising from maritime activities. Sections 5 and 6 of this Act delve into the two primary modes of exercising admiralty jurisdiction: actions in rem and actions in personam.

Statutory Basis and Subject Matter:

Admiralty jurisdiction is not inherent, but rather statutory. This means it derives its authority from specific laws like the AJSC Act. These laws also define the specific types of maritime claims that courts with admiralty jurisdiction can handle. Unlike some other legal areas, admiralty courts are not courts of general jurisdiction.

Two Sides of the Coin: In Rem and In Personam

The AJSC Act recognizes two main approaches for resolving maritime disputes:

Action in rem: This action targets the ship itself as the "defendant." Here, the claim is secured by the ship, and a successful judgment can lead to the arrest, detention, and even sale of the vessel to satisfy the claim. This mechanism is particularly useful when the owner of the ship is unknown or insolvent.

Action in personam: This action directly targets the person or entity responsible for the maritime claim. It functions similarly to a regular lawsuit, where the court issues a judgment against the person (in personam) and enforces it against their assets.

The Peripatetic Nature of Ships and International Liabilities:

Ships by their very nature are constantly on the move (peripatetic). This mobility creates a unique challenge when it comes to enforcing claims against them. Ships can incur liabilities in various countries during their voyages. For instance, a ship owned by an Indian company might damage a port facility in Singapore. Here, the Singaporean court could potentially exercise admiralty jurisdiction over the ship through an action in rem if the ship enters its waters.

Multinational Ships and Jurisdiction:

The AJSC Act recognizes the reality of a global maritime industry. Merchant ships, regardless of their nationality (including those owned by Indian companies, solvent or insolvent), operate internationally. As they travel, they may incur liabilities like collision damage or cargo loss. Entering the waters of another country subjects them to the jurisdiction of that country's courts. This means they can be arrested within those waters to enforce maritime claims arising from incidents like collisions, salvage operations, loss of life or injury, or cargo damage.

The Purpose of Arrest

The primary purpose of arresting a ship is not to punish the owner, but rather to secure the claim. This ensures that if the court finds in favor of the claimant in the action in rem, there will be an asset (the ship) available to satisfy the judgment. In some cases, the arrest itself may be enough to prompt the owner to settle the claim and avoid the risk of losing their vessel.

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.

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ('AJSC Act') establishes a comprehensive legal framework for addressing disputes arising from maritime activities in India. Admiralty jurisdiction, as delineated under this Act, is specific, statutory, and focuses on particular types of maritime claims. Sections 5 and 6 of the AJSC Act lay down the two primary modes through which admiralty jurisdiction may be exercised: actions in rem and actions in personam.

Statutory Basis and Subject Matter

Admiralty jurisdiction is not inherent to the courts but is created and governed by statutory enactments such as the AJSC Act. It is a special jurisdiction that handles claims related to maritime activities, unlike courts of general jurisdiction that deal with a broad spectrum of civil matters. The AJSC Act clearly defines the scope of maritime claims that fall within the purview of admiralty courts, making it distinct from other civil jurisdictions. Some of the key claims under the Act include those related to ownership disputes,

mortgage enforcement, salvage operations, damage caused by or to vessels, and maritime liens, among others.

Dual Modes of Jurisdiction: In Rem and In Personam

The AJSC Act recognizes two primary approaches for resolving maritime disputes:

Action in Rem: An action in rem targets the maritime property itself, typically a vessel, as the defendant. This form of action allows the claimant to secure their maritime claim by arresting and detaining the ship. The vessel, as a valuable asset, serves as security for the claim, ensuring that if the court rules in favor of the claimant, the judgment can be satisfied by the sale of the ship. This remedy is particularly useful when the shipowner is unknown, insolvent, or beyond the court's territorial reach. The principle underpinning this jurisdiction is that a ship, as a movable property, can incur liabilities independently of its owner. Hence, arresting the vessel serves as a mechanism to enforce maritime claims against it.

Case Law: The Indian courts have consistently upheld the jurisdiction in rem, as seen in *M.V. Elisabeth and Ors v. Harwan Investment & Trading Pvt. Ltd.* (1993 SCR (2) 1006). In this landmark case, the Supreme Court of India recognized that Indian courts could exercise admiralty jurisdiction in rem over foreign vessels, thus reaffirming the global nature of maritime law. This case also emphasized that actions in rem are crucial for securing the interests of claimants in international maritime disputes.

Action in Personam: An action in personam, on the other hand, directly targets the individual or entity responsible for the maritime claim. It functions much like a regular civil lawsuit, where the court issues a judgment against the person, and this judgment can be enforced against their personal assets. This mode of jurisdiction is useful when the defendant is within the territorial reach of the court or when personal service can be effected. Unlike an action

in rem, where the ship serves as security, an action in personam relies on the defendant's personal liability to satisfy the claim.

Case Law: In *Liverpool and London Steamship Protection and Indemnity Association Ltd. v. M.V. Sea Success I & Anr.* (2004 Supp(2) SCR 493), the Supreme Court of India explored the interplay between actions in rem and in personam. The court observed that while an action in rem is directed against the ship, it does not preclude the possibility of an action in personam against the shipowner if jurisdiction can be established over the person.

Peripatetic Nature of Ships and International Liabilities

Ships, by their very nature, are peripatetic, constantly moving across international waters and different jurisdictions. This mobility makes it challenging to enforce maritime claims, especially when ships can incur liabilities in multiple jurisdictions during their voyages. For example, a vessel owned by an Indian company may cause damage to a port facility in a foreign country. In such cases, admiralty jurisdiction may be exercised in that foreign country through an action in rem if the ship enters its territorial waters. The principle of "internationality" in maritime law allows courts to exercise jurisdiction over foreign vessels, provided that the vessel has entered their waters, even if the claim arose elsewhere.

Case Law: The doctrine of internationality was reaffirmed in *Owners and Parties Interested in the Vessel M.V. "Fortune Express" v. M.V. "P.T. Jakarta"* (2006 (3) KHC 374). In this case, the Kerala High Court highlighted that ships could be subject to arrest in any jurisdiction they enter, regardless of the nationality of the vessel or the location where the claim arose. This ensures that maritime claims can be enforced internationally, providing security to claimants irrespective of where the liability was incurred.

The Purpose of Arrest

The primary purpose of arresting a ship in an action in rem is not to penalize the shipowner but to secure the claim of the plaintiff. The arrest serves as a form of pre-judgment security, ensuring that the ship remains within the jurisdiction of the court and that the claimant has recourse to the ship's value if they succeed in their claim. In many cases, the threat of losing a valuable asset such as a vessel may prompt the shipowner to settle the claim rather than risk the sale of the ship.

Case Law: In *O. Konavalov v. Commander, Coast Guard Region* (2006 (4) KLT 578), the court reiterated that the arrest of a ship is a mechanism to secure the claim and is not a punitive measure. The court must balance the interests of the claimant in securing their claim with the need to prevent undue hardship to the shipowner. This case also emphasized that the arrest of a ship must be proportionate to the value of the claim.

Global Maritime Industry and Multinational Ships

The AJSC Act is designed to address the realities of the global maritime industry. Merchant ships, regardless of their nationality, operate internationally and may incur liabilities in various jurisdictions. The entry of a vessel into the territorial waters of another country subjects it to that country's admiralty jurisdiction. This principle allows for the enforcement of maritime claims against vessels that may have incurred liabilities in foreign jurisdictions, such as damages from collisions, salvage operations, or cargo losses.

Case Law: The case of *The Halcyon Isle* ([1981] A.C. 221) is a key authority on the international nature of admiralty law. The Privy Council ruled that maritime liens and claims follow the vessel wherever it may go, meaning that a vessel can be arrested in any jurisdiction for liabilities incurred elsewhere. This

principle underlines the global nature of admiralty jurisdiction and the ability of courts to enforce claims against foreign vessels.

The exercise of admiralty jurisdiction under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, particularly Sections 5 and 6, provides a robust framework for addressing maritime claims in India. The dual modes of action in rem and action in personam allow for flexibility in securing claims against vessels and shipowners, whether within India or in international contexts. The arrest of ships serves as a vital tool for claimants, ensuring that maritime claims can be enforced across jurisdictions, reflecting the global nature of maritime law. The statutory foundation of admiralty jurisdiction ensures that maritime claims are addressed within a specialized legal framework, offering clarity and security to the international maritime industry.