

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).

In the context of ship arrest under Indian admiralty law, jurisdictional boundaries are paramount, as they define the extent to which a High Court's authority can be exercised over maritime claims. The jurisdiction of the High Courts in India concerning admiralty matters, including the arrest of vessels, is governed by the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("Admiralty Act, 2017"). Specifically, the provisions of Sections 4 and 5 of the Admiralty Act, 2017, coupled with the definition provided in Section 2(k) of the same Act, provide the foundation for understanding the concept of territorial waters within which a High Court's jurisdiction extends.

Jurisdiction of High Courts and Indian Territorial Waters

The Admiralty Act, 2017, confers jurisdiction upon certain High Courts across India to adjudicate maritime claims, which includes the power to arrest ships. Section 4 of the Act establishes that the admiralty jurisdiction of a High

Court extends to the waters up to and including the territorial waters of its respective state. This territorial limit serves as a critical boundary within which the High Court can exercise its authority.

Under Section 2(k) of the Admiralty Act, 2017, the term "territorial waters" is defined by reference to the Territorial Waters, Continental Shelf, Exclusive Economic Zone, and Other Maritime Zones Act, 1976 ("Maritime Zones Act, 1976"). According to Section 3(2) of the Maritime Zones Act, 1976, "territorial waters" extend up to 12 nautical miles from the baseline of the coast of India. This means that a High Court's admiralty jurisdiction extends to vessels within this 12-nautical-mile limit from the state's coastline.

Extension of Jurisdiction Beyond Territorial Waters

Although the default jurisdiction of a High Court under the Admiralty Act, 2017, is confined to territorial waters, the Central Government retains the power to extend this jurisdiction further. Section 5(1) of the Admiralty Act, 2017, empowers the Central Government, by notification, to extend the jurisdiction of the High Court beyond territorial waters to areas such as the continental shelf, exclusive economic zone (EEZ), or other maritime zones as defined under the Maritime Zones Act, 1976.

This extension of jurisdiction is particularly significant in cases where maritime disputes arise beyond the territorial waters, such as in offshore drilling operations, exploration activities, or incidents occurring in the EEZ. The Central Government, through such notifications, can bring such disputes within the purview of the High Courts exercising admiralty jurisdiction.

Legal Framework for Ship Arrest in Indian Territorial Waters

The Admiralty Act, 2017, provides a comprehensive legal framework for the arrest of ships within Indian territorial waters. Section 5(2) of the Admiralty Act specifies that the arrest of a ship can be ordered by the High Court in

respect of maritime claims, which are defined under Section 4 of the Act. These claims include disputes relating to possession or ownership of a ship, mortgage or charge on a ship, claims for damage or loss, and claims arising out of collisions, salvage, or towage, among others.

The process for arresting a ship involves filing a suit in the appropriate High Court with admiralty jurisdiction. The claimant must establish a prima facie case by demonstrating the existence of a valid maritime claim against the vessel. The application for arrest is supported by an affidavit detailing the claim and the necessity of securing the vessel as a form of security. Once the court is satisfied, it issues a warrant for the arrest of the ship, which is executed by the appropriate authorities, typically the Sheriff's office or the Port Authorities, within the territorial waters.

Case Law on Indian Territorial Waters and Admiralty Jurisdiction

Several landmark judgments have clarified the scope of admiralty jurisdiction and the execution of ship arrests within Indian territorial waters:

MV Elisabeth v. Harwan Investment & Trading Pvt. Ltd., Goa (AIR 1993 SC 1014): This seminal judgment by the Supreme Court of India emphasized the inherent admiralty jurisdiction of Indian High Courts and clarified that their powers extend to all waters within their respective states' territorial limits. The court also reinforced the principle that ship arrests can only be effected within these defined territorial waters.

Liverpool and London S.P. and I. Asson Ltd. v. MV Sea Success I and Anr., (2004) 9 SCC 512: The Supreme Court held that admiralty jurisdiction in India is linked to the location of the vessel within territorial waters, reaffirming that a ship can only be arrested when it is within the 12-nautical-mile territorial limit, unless otherwise extended by notification.

National Co. Ltd. v. MV Oceanic Pride and Anr., (1997) 7 SCC 736: The court held that the jurisdiction to arrest a ship depends on its presence within the territorial waters of the High Court in question, thereby reinforcing the territorial limitations imposed by the Admiralty Act and the Maritime Zones Act.

The jurisdiction of Indian High Courts in respect of ship arrests is closely tied to the concept of territorial waters, as defined under the Admiralty Act, 2017, and the Maritime Zones Act, 1976. The default jurisdiction extends up to 12 nautical miles from the baseline of the coast, but the Central Government retains the power to extend this jurisdiction to other maritime zones. Legal precedents have consistently upheld the principle that the jurisdiction for ship arrests is confined to the territorial waters unless extended by specific government notification. This legal framework ensures clarity and predictability in maritime disputes, particularly in the enforcement of ship arrests within India's defined maritime boundaries.