

Tracing Admiralty Law in India

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Abstract

In recent times, the field of admiralty law has witnessed fresh debates and renewed interest with the introduction of the Admiralty (Jurisdiction and Settlement of Maritime Act, 2017). Amongst, others the Act has shed much needed clarity on the issue of jurisdiction of courts with regards to admiralty law. This move raises questions about the current conceptualization of admiralty law in the country. Although from time to time, cases like *MV Elisabeth* has shed some light on such questions, any definitive clarity on such questions may be hard to obtain since, as the area of admiralty for quite a long time remained obscure as the 151st Law Commission rightly observed. In such context, this work is an attempt to trace the origins and development of admiralty law in India and its position as it stands today.

Introduction

The terms ‘maritime’ and ‘admiralty’ though often used interchangeably¹, signify a difference when it comes to law. Maritime law refers to the "body of legal rules and concepts concerning the

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¹Law Commission of India, “151st Report on Admiralty Law”, (1994), Para 2.1

business of carrying goods and passengers by water”.²On the other hand, the 151st Report of the Law Commission of India observes that admiralty law is a branch of jurisprudence regulating maritime matters of civil and criminal nature and it contemplates a court or tribunal administering maritime law by a procedure peculiar to it.³This jurisprudence finds an ultimate source in the initial law of sea which was the law of commercial nations generally. England, being essentially an island, has all along been engaged in commercial business through the sea and in that process the admiralty law developed. Modern international maritime law is widely believed to be Western in its evolution and hence it is believed that little contribution of the extra-European, especially Asian or African countries is found. Although some highly advanced civilizations in Asia such as India, China, Egypt and Assyria had their own rules of inter-state conduct, these had very little effect on development of modern international law as almost all these countries became colonized and thus lost their international personality.⁴Several authors have noted that these extra European civilizations had carried on maritime trade since a long time and had their own rules of conduct in the process. India being one of these civilizations, had always remained a major sea-faring nation. Having a coastline of approximately 7517 kilometers⁵, Indian maritime trade prospered and her ships had roamed upon the Indian Ocean onto distant civilizations.

Though India has been carrying on maritime trade for a long time, the law relating to the same has been very slow in its development, particularly post-Independence. So much so that the Law Commission

²Thomas J. Schoenbaum and A.N.Yiannopoulos, *Admiralty and Maritime Law, Cases and Materials*. (Charlottesville, Va.: Michie Co, 1984), at p. 1.

³*Supra* note 1 at para 3.1

⁴R P Anand, “Role of the "New" Asian-African Countries in the Present International Legal Order” 56 *AM. J. INT'L L.* 384-385 (1962)

⁵ D.J. Wilson and J.H.S. Cooke, *Lowndes and Rudolf: The Law of General Average and the York-Antwerp Rules 2*, (London: Sweet & Maxwell, 11th edition, 1990).

even in its 1994 report has observed that the law relating to admiralty remains unfamiliar to the lawyers and even the judges in the country.⁶In spite of recent legislative efforts in this area, hardly there exists any ground that suggests that the observation of the Law Commission in 1994 does not hold true today.

Much of what we regard as admiralty law in this country has in fact been deeply influenced by the English jurisprudence on the point. The admiralty powers of the High Court of England were extended to the colonial courts by the Colonial Courts of Admiralty Acts of 1890 and 1891. Ever since then however, there has been scanty development in this regard. Even after attaining independence, Indian legislature took no active efforts to lay down the law relating to admiralty matters. In spite of some emphatic court decisions on this point, this insufficiency was laid bare by the decision rendered by the Indian Supreme Court in the *Elizabeth's* case. This decision however triggered the law makers of the country to take the issue up seriously. Consequently, a series of legislative efforts in this regard culminated in the enactment of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. The objective of this paper is to trace the origin and development of this branch of law in this country and to unearth the factors that contributed to its development.

Admiralty Law in Ancient India

Maritime activities commenced in India as early as early as 3000 BC.⁷ Indian literature has ample references to maritime trade, shipping and commerce in it. Therefore, it becomes apparent that some form of rule or code of conduct did exist in ancient India for governing maritime trade and commerce. Maritime trade and other aspects were generally

⁶*Supra* note 1 at para 3.1

⁷ R.P Anand, *Origin and Development of the Law of the Sea*, 10 (MartinusNijhoff Publishers, Hague/Boton/London,1983)

regulated by local customs. Evidence of the same can be found in Arthashastra where adherence to these customs has been advised. However, the exact nature of these customs is difficult to ascertain.

One of the earliest and most significant sources of information in this period is the *Manu Smriti* which lays down certain rules to govern commercial maritime disputes. References therein have been made to seaborne traffic as well as inland trading and commerce.⁸ Certain aspects such as rates and interests were left to be determined by experienced specialists.⁹ The code also laid down the foundations of 'marine insurance'. Rights and obligations of cargo owners were also discussed. Liability was affixed for damage caused by one's own fault to the goods of the passengers.¹⁰ However, one was free from liability if damage was caused by conditions which were beyond his control. Thus force majeure conditions were specified so as to mitigate unwarranted disputes while.¹¹ Apart from *Manusmriti*, mentions of maritime activities are also found in Buddhist Jatakas¹².

During the rule of Chandragupta Maurya, due to the rapid expansion of maritime trade, it became imperative to create a Board of Admiralty. It was one of the six boards that made up the war offices of the emperor.¹³ Kautilya in his Arthashastra has detailed the duties of the Superintendent. In chapter XXVIII of the Arthashastra, it is stated that the Superintendent of ships examined accounts on navigation on oceans,

⁸ Rajiv Sinha, "India – Pioneer in Maritime Trade", 188 *ICA Arbitration Quarterly* 11 (January-March, 2016)

⁹ *Id*

¹⁰ R.K Mukherjee, "*History of Shipping and Maritime Activity of the Indians from Earliest Times*".60 (Oxford Publishers, 1912)

¹¹ *Id*

¹² Jatakas stated that ships traded from Bhroach and Supara to Babylon in 8th-6th centuries. See *Supra* Note 10 at.90

¹³ *Supra* note 10 at 73

mouths of rivers, natural or artificial lakes, as well as nearby rivers¹⁴. His duties consisted of almost all the maritime activities like examining accounts of navigation related to oceans and rivers or other artificial or natural water bodies, port levies, regulating the harbors, safety measures of boats and ships in docks and in open seas¹⁵. The Superintendent of Ships also controlled sea going ships upto the area to which his jurisdiction extended. This included the harbor as well as a certain maritime zone outside inland waters as can be inferred from the reference to fisheries, particularly pearl fisheries found at a certain distance from land.¹⁶ There were also specific regulations for compensation, fees for fishing license, freight payment, toll and cargo lien¹⁷. Consideration was shown for ‘weather-beaten’ ships as the Superintendent of Ships was to show ‘fatherly kindness’ towards them. Moreover, ships arriving with goods spoilt by water were exempted from payment of toll or had it reduced to half.¹⁸ Brahmins, ascetics, children, the aged, the afflicted, royal messengers, and pregnant women were to be given free passes to cross rivers.¹⁹

Arrest of a person was made in certain circumstances such as abduction of the wife or daughter of another person, stealthy possession of valuable weapons, being on secret missions, false suffering from a disease, carrying weapons or explosives etc.²⁰. Piracy was condemned and pirate vessels “bound for the country of an enemy as well as those which

¹⁴*Kautilya's Arthashastra* Translated into English by R Shamasastri(2016) Chapter XXVIII,p 179

¹⁵*Id*

¹⁶ C.H. Alexandrowicz, *An Introduction to the History of the Law of Nations in the East Indies (16th, 17th and 18th Centuries)* 62 (Oxford Publishers, 1967)

¹⁷*Supra* note 14

¹⁸*Supra* note 14

¹⁹*Supra* note 14

²⁰*Supra* note 14

have violated customs in force in port towns” were instructed to be destroyed.²¹

Kautilya’s Arthashastra also mentions about Board of Shipping and a Commissioner of shipping who were to be engaged in the task of supervision of sea-traffic²². The shipmaster was the formal custodian and registrar of merchant vessels²³. The import export laws were carried on by well-defined laws which were in due course also applied in other territories with required modifications²⁴.

Extensive sea trade was also carried on during the Chola and the Gupta empires. The Cholas were especially noted for their powerful navy and maritime prowess. Nature of advancement of maritime conducts and rules in ancient India is evidenced from the fact that the maritime codes of Malacca and Macassar contained customary rules and provisions borrowed from the Indian law²⁵. The doctrines of Grotius and other classical European Jurists were influenced by such Asian maritime practices.²⁶

Development of Admiralty Law in British India

During the British period, admiralty law consisted mostly of rules relating to carriage of goods and people across water²⁷. In the case of

²¹*Supra* note 14

²²*Supra* note 8.

²³*Supra* note 8.

²⁴*Supra* note 8.

²⁵Nagendra Singh, *India and International Law: Ancient and Medieval (State Practice of India Series)* 41-45(S. Chand & Co., New Delhi 1973),

²⁶*Supra* note 7, 10-12

²⁷David W. Skeen, Esquire and Meighan G. Burton, Esquire, “What is Admiralty Law?”, *Federal Bar Association, Maryland Chapter Newsletter*, October 15, 2013, available at: <https://www.wcslaw.com/resources/what-is-admiralty-law-featured-in-fba-maryland-chapter-newsletter/>

*Chrisomar Corporation v. MJR Steels Pvt Ltd*²⁸, Rohinton Nariman.J, while trying to trace the origin of admiralty law in India referred to the opinion expressed by Lord Halsbury in the case of *Currie v. M'Knight*²⁹ wherein it was observed that admiralty law in England was derived from the laws of Oleron and other ancient maritime codes like the Rhodesian Sea Law, the Basilika, the Assizes of Jerusalem, the Baltic Laws of Wisbuy and the Hanseatic Code.³⁰ Admiralty law, in its formative phase, was developed to a larger extent, by the Courts of Lord Admiral in England. This Court functioned independent from the common law courts, initially set up to deal with the issue of piracy on high seas, but subsequently transformed into a civil jurisdiction dealing with a variety of claims.³¹ However, owing to the incessant conflict relating both to jurisdiction and jurisprudence, the admiralty courts was merged with the High Court of England by the Judicature Act of 1875. The admiralty power of the High Court was in turn extended to the colonial courts of India through the Colonial Courts of Admiralty Act, 1890 and the Colonial Courts of Admiralty Act, 1891. Hence, we will find that the development of admiralty law in India is closely intertwined with the development of the admiralty law in England. In the next section the development of maritime law has been discussed in the perspective of the rule of the East India Company and the British Raj.

Admiralty law during rule of English East India Company

A significant development in Indian legal system took place when Queen Elizabeth I granted a Charter to the East Indian Company for 15

²⁸ AIR 2017 SC 5530 at Para 11

²⁹ 1897 AC 97

³⁰ AIR 2017 SC 5530 at Para 11

³¹ Shyam D Nandan, "Admiralty Jurisdiction in India: Pre and Post Elizabeth", 49(1) *Journal of Indian Law Institute* 81 (January- March 2007), available at: <https://www.jstor.org/stable/43952077>

years authorizing it to make laws for good governance of the territories and for the advancement of trade and traffic.³² The Company began trade in India by setting up factories. After creating settlements in India, the Company found it very difficult to continue its trading activities without a proper legal system. Hence on their request, the British Crown authorized the Governor and Council in each of the factories to judge cases pertaining to civil and criminal matters by the Charter of Charles II in 1661.³³ In pursuance of the powers granted under the Charter, each of the three Presidency towns formed their own judicial setups, depending to a large extent on the innovativeness of the local Governor and Council. However, it became extremely difficult to hand down judgments without proper legal training and expertise. One particular problem was with regards to the ‘interlopers’- the ones who unauthorized interfered with the monopoly that the Company had with regards to trade. Upon request of the Company, in 1683 a Court of Admiralty was established at Madras to try cases involving trespass, injuries and wrongs, committed on high seas, or within charter limited cases of forfeitures and seizures of ships of goods which came within the Company’s monopoly area.³⁴ The Court consisted of a person knowledgeable of civil matters and two merchants appointed by the Company. Although being an exclusively maritime and admiralty court it actually tried all civil and criminal cases and continued to operate for a while. Similar circumstances occurred in Bombay as well where the Admiralty Court was also tasked with all matters, civil and criminal.³⁵ However, the Company became unwilling to meet expenses required for the continuation of the Court soon after. Moreover, the

³² Muhammad Munir, “The Judicial System of East India Company: A Precursor to Pakistani Legal System,” 13 & 14 *Annual Journal of International Islamic University, Allahabad* 53-68, (2005-06)

³³Raj Kumari Agarwal, “History of Courts and Legislature”. in Minattur, Josephet. *al.* (ed.), *The Indian Legal System* 103-32(Oceana Publications, New York 1978) p115

³⁴*Id*

³⁵*Supra* note 33

Governor belonging to the executive branch was unable to accept the superiority of the Court to its authority.³⁶ Thus, the Admiralty Court was again reduced in its independence and the judicial power became concentrated on the governor again.³⁷ Calcutta however, never got an Admiralty Court.³⁸

Before 1726 judiciary developed in the three Presidencies in a scattered manner without any proper structure. Hence in order to meet the ends of justice the Charter of 1726 had been granted by George I.³⁹The Charter granted to East India Company established the Mayoral Courts at three places: Madras, Bombay and Calcutta, with each Court consisting of one mayor and nine aldermen.⁴⁰The Mayor's Court was a court of record and it had the jurisdiction to try all civil suits.

In 1773 a Committee of Secrecy was appointed for looking into the affairs of the State of East India Company. It submitted a report after the investigation. The report of the Committee led to the passing of the "the Regulation Act" 13 Geo. III, C-63. This led to establishment of a Supreme Court of Judicature at Fort William, West Bengal having a Chief Justice and three other judges. The Act further empowered them to exercise civil, criminal, admiralty and ecclesiastical jurisdiction⁴¹. By a Charter on 26th March, 1774, a 'Court of Record' known Supreme Court of Judicature at Fort William was established. It began to exercise admiralty jurisdiction. Clause 26 of Charter (dated 26th March, 1774) declared Supreme Court of Judicature at Fort William to be a "Court of Admiralty", in and for provinces, counties, districts of Bengal, Bihar and

³⁶*Supra* note 33

³⁷*Supra* note 33

³⁸*Supra* note 33

³⁹*Supra*note 33

⁴⁰ B.C Mitra, *The Law Relating to Merchant Shipping in India*, (University Book Agency Allahabad,2000)

⁴¹*Id*

Orissa and all other dependent territories and islands adjacent thereto. The Supreme Court was given absolute power to take cognizance, to try, to examine and to determine all causes, both civil and maritime, and also all pleas of contracts, debts, exchanges, policies of assurance, accounts, charter-parties, agreements, loading of ships etc. Clause 27 also conferred upon it, power to exercise jurisdiction as per laws and customs of Admiralty of English in relation to crime committed in high seas as well as the authority to try and punish such cases. Jurisdiction extended to subjects of 'King' residing in Bihar, Orissa, Bengal as well as persons employed by the company⁴².

Provisions were also made for appeals. However, if appeals were preempted by an act of the plaintiff it was beyond the power of a High Court of Admiralty to make any order as to the prosecution of the appeal⁴³.

Admiralty law during British Raj

The Proclamation Act of 1858 transferred the authority to govern India from the East India Company to Her Majesty. As per this Act, High courts were deemed to be courts of record and were vested with admiralty jurisdiction including offences committed on high seas⁴⁴.

In 1860, the Admiralty Jurisdiction(India) Act was passed to extend the provisions of the Admiralty Jurisdiction to territories under Her Majesty's rule in India⁴⁵.

⁴²*Supra* note 1

⁴³ Thomas Charles Loughan and Ors V HjaiJoosubBhulladina, Moore's Indian Appeals, p 137

⁴⁴ Government of India Act, 1858(Repealed), Repealing Act-Government of India Act, 1915-1919, section 106

⁴⁵ Admiralty Jurisdiction(India) Act, 1860, Preamble

The Indian High Courts Act was enacted by the British Parliament for establishing High Courts of Judicature in India.⁴⁶ It provided for establishing High Courts of Judicature at Calcutta, Bombay, Madras by Letters Patent under seal of United Kingdom. Section 9 of the Act empowered the Courts to exercise admiralty and vice-admiralty jurisdiction by granting Letters Patent. Clause 31 of the Letters Patent Act, 1862 conferred such maritime jurisdiction by High Courts as was conferred upon the Supreme Court of Admiralty. This jurisdiction conferred was further continued by Clause 32 of Letters Patent dated 1865.⁴⁷

Colonial Courts of Admiralty Act, 1890 provided that courts of law in pursuance of the Act or courts having unrestricted jurisdiction shall be Courts of Admiralty. Pursuant to this, the Indian Legislature enacted the Colonial Courts of Admiralty Act (XVI) of 1891. The High Courts of Judicature were declared to be 'Colonial Courts of Admiralty'.⁴⁸ The Chartered High Courts of Calcutta, Bombay and Madras continued to exercise admiralty powers which was further continued by Government of India Act, 1915 and Government of India Act, 1935. Where recourse could be obtained from ordinary civil jurisdiction with regards to granting relief in claims for necessities supplied to a ship, plaintiff was not allowed to invoke admiralty jurisdiction, since it was a special jurisdiction of the Court⁴⁹.

In the sphere of merchant shipping law, The U.K Merchant Shipping Act 1894 became applicable to India by virtue of its section 91 which stated that the Act would apply to all places where 'Her Majesty

⁴⁶ Indian High Courts Act, 1861 was passed by the Parliament of United Kingdom, which abolished the Supreme Courts in Bombay, Madras and Calcutta and provided for the establishment of High Courts in India.

⁴⁷*Supra* note 1

⁴⁸*Id*

⁴⁹*Jawaswal Shipping Co. V Owners and Parties interested in Steamship S.S Leelavat, AIR 1954 Cal 415*

had jurisdiction'. Due to this it came to be known as the Imperial Statute. Under this law although ships were registered in India, they belonged to the British⁵⁰.

During the British rule, the Bombay Coastal Vessels Act, 1838 was the first law on merchant shipping which was passed which provided for a system of identification and registration of vessels belonging to residents of Bombay Presidency and which were employed on its coasts⁵¹. The next Act in this regard was the Indian Registration of Ships Act, 1841, which provided for registration of sailing vessels and trading within the limits of the East India Company's charter. The Act conferred the status of British ships on such ships as long as the ships were within the limits of the charter⁵². This Act was subsequently amended in 1850 so as to extend the privileges of British ships to Indian ships which were on voyage from one part of the territory of the East India Company to another part⁵³. The Merchant's Shipping Act 1894 enacted thereafter was a comprehensive law covering several aspects of shipping and maritime trade.

Owing to the innumerable number of laws in India, attempts were made in 1867, 1882, 1893 and 1896 to consolidate the law. However, they failed due to legal difficulties. The limited powers of the Indian legislature with respect to shipping law was one such difficulty. Moreover during that time, parts of the British Statute Law on the subject including parts of Merchant Shipping Act, 1894 were applicable in India and thus all Indian laws had to comply with the same.⁵⁴ The Statute Law

⁵⁰J.S Gill, *Manual of Merchant Shipping Act, 1958*, (Bhandarkar Publications, March 1999)

⁵¹*Id*

⁵²*Supra* note 50

⁵³*Supra* note 50

⁵⁴ DS Shukla, *Manual of Merchant Shipping Laws 1* (Dwivedi Law Publications, Second edn, 2003)

Revision Committee in 1921-22 attempted to consolidate the Indian Law on merchant shipping without any revision. As a result, the Merchant Shipping Act, 1923 came into existence consolidating around 20 acts on the subject. Two major amendments to the Act took place in 1933 and 1953 to implement international provisions relating to road lines and safety of life at sea. Since the Act only consolidated and did not revise anything, it lacked in several respects. Consequently, this Act was replaced by Seamen (Litigation) Act, 1946 and Control of Indian Shipping Act, 1947(which expired in 1958). In 1908, the Indian Ports Act was also enacted laying the first provisions related to constitution of ports in the Country.

During the British Raj, laws on determination of territorial waters were also enacted in India. India at first adopted the three-mile rule of English customary law regarding the width of the territorial sea. In 1871, the Bombay high Court even held that it had the jurisdiction to try offences committed within three miles from coast.⁵⁵ However, the decision in *R v Keyn*⁵⁶ raised doubts as to the applicability of the three-mile rule was put to doubt. Therefore, the Territorial Waters Jurisdiction Act 1878 was passed by British Parliament and was consequently extended to India. As per this Act, the width of the sea was fixed at 3 miles from the low watermark. This Act also provided for the basis of the Indian Fisheries Act, 1897.

Modern Admiralty Law in India

As pointed out earlier, the post-independence development of maritime and admiralty laws in the country was rather slow, until the decision in *Elizabeth's case*⁵⁷, which finally resulted in active legislative

⁵⁵ R V Kastya Rama 8 B.H.C.R

⁵⁶ (1876) 2 Ex D 63

⁵⁷ M.V Elizabeth and Others Vs Harwan Investment and Trading Private Limited JT 1992 (2) SC165

efforts to consolidate the law relating to admiralty, culminating finally into the enactment of the Admiralty Jurisdiction and Settlement of Maritime Claims Act of 2017. This section discusses some of the most important legal developments that took place after independence in this country.

Pre Elizabeth

While discussing the state of maritime laws in India, it is important to point out the validity of the British era laws. By virtue of Article 372 of the Constitution of India, the outdated admiralty laws passed during the British regime are still applicable in India although Indian legislature possesses the power to amend or repeal existing Acts of British Parliament.

The First Law Commission of India in its 5th Report had conducted a thorough study on British statutes which were applicable to India had recommended substitution of these laws by relevant Indian statutes. It was recommended that Admiralty Jurisdiction (India) Act, 1860 and Colonial Courts of Admiralty, 1890 be repealed⁵⁸. However, no action as such was taken in this respect.

In 1986, a committee headed by Praveen Singh, the Director General of Shipping in Mumbai conducted a study of the existing maritime laws and jurisdiction in India. He observed that as per the provisions of the Colonial Admiralty Jurisdiction Act, 1891, the jurisdiction was vested only in the High Courts of Bombay, Calcutta and Madras, although after independence, jurisdiction of these courts had ceased to be extended throughout the whole of India. The

⁵⁸ Law Commission of India, “5th Report on British Statutes Applicable to India” (1957), Annexure III

Committee recommended that a comprehensive admiralty legislation be enacted keeping in view of the present circumstances⁵⁹.

M. V Elizabeth: The Turning Point

On the point of jurisdiction of the Indian High Courts to entertain admiralty matters, the decision in *M.V Elizabeth and Others Vs Harwan Investment and Trading Private Limited*⁶⁰ is of immense significance. The matter arose out of a Special Leave Petition filed before the Supreme Court after the decision of the Division Bench of the Andhra Pradesh High Court on the issue. Harwan Investment & Trading Pvt. Ltd. was a private limited company having its registered office in Goa. The main allegation in this case was that the owners of 'M.V. Elizabeth' acted in "breach of duty" by leaving the port of Marmagao on 8.2.84 and delivering the goods to the consignee contrary to the directions of the company. It thereby had committed conversion of the goods entrusted with them. Accordingly, a suit was filed before the High Court of Andhra Pradesh invoking its admiralty jurisdiction by means of an action in rem. When the vessel entered the Vizag port, upon returning from foreign ports, it was arrested. On the owner of the vessel entering appearance and on providing a security by furnishing bank guarantee under protest in the sum of Rs. 14,25,000/-, the vessel was released from detention. The defendants, raised a preliminary objection to the High Court's jurisdiction in the instant matter. Central to their contention was that a suit against a foreign ship, under the ownership of a foreign company, not having a place of residence or business in India could not be proceeded against

⁵⁹Abhay Kumar Singh, "The Admiralty(Jurisdiction and Settlement of Maritime Claims) Bill, 2016-The Long Journey of an Important Maritime Legislation"(IDSA Strategic Comments, Oct 3 2016) <http://www.idsa.in/idsacomments/admiralty-maritime-claims-bill-2016_aksingh_031016> Accessed on 31/05/2017

⁶⁰ *M.V Elizabeth and Others Vs Harwan Investment and Trading Private Limited* (JT 1992 (2) SC165)

on the admiralty side of the High Court by an action in rem in respect of a cause of action which allegedly arose due to a tort or a breach of obligation by carriage of goods from India to a foreign port. The Single judge bench of the High Court ruled out the contentions, which was later reaffirmed by the Division Bench of the said High Court. Aggrieved by the decision, a Special Leave Petition was filed before the Supreme Court.

The main question for consideration of the Supreme Court was whether the Andhra Pradesh High Court, not being a chartered Court had the admiralty jurisdiction to hear the impugned matter. Mr. Raju Ramchandran, the counsel who appeared for the petitioners in the instant case didn't question the successorship status of the Andhra Pradesh High Court to the Madras High Court and as such did not argue against the Admiralty jurisdiction of the High Court altogether. Rather his contention was more general. According to him, admiralty jurisdiction of the High Courts had frozen with the Admiralty Courts Act, 1861, made applicable in India through the Colonial Courts of Admiralty Act, 1890 read with Colonial Courts of Admiralty Act, 1891 wherein the three Indian High Courts were clothed with the Admiralty jurisdiction of the High Court of England. His contention was that the subsequent broadening of powers of the High Court in England regarding admiralty matters through subsequent statutes in that country were inapplicable or unavailable to the High Courts in India⁶¹. Hence, only the jurisdiction available under the Act of 1861 could be exercised by the High Court of Andhra Pradesh. Section 6 of the Act of 1861 is the only provision related to the matter in issue in

⁶¹ This argument was founded upon the following decisions: *Kamalakar Mahadev Bhagat v. Scindia Steam Navigation Co. Ltd* AIR 1961 Bom 186, *Mrs. Sahida Ismail v. Petko R. Salvejkov and Ors.* AIR 1973 Bom 18. In these cases, the Bombay High Court had opined that the admiralty jurisdiction of the High Courts in India had frozen ever since the provisions of the Admiralty Courts Act, 1861 was extended to India through the Colonial Courts of Admiralty Act, 1890 read with Colonial Courts of Admiralty Act, 1891.

the present case. And since it applies only to claims concerning inward cargo, it was argued in the instant case, that the High Court lacked jurisdiction.

The counsel on behalf of the respondent on the other hand contended the need for a liberal interpretation instead of a narrow, pedantic one. If the courts held that it no jurisdiction to try the cases, then the litigant would have to agitate the matter in front of foreign country, according to unfamiliar systems of law. He argued for interpretation of colonial statute in a manner that does not obstruct the exercise of jurisdiction of High Court by implication, until and unless it has been expressly barred.

The Supreme Court held that the Andhra Pradesh High Court was a successor to Madras High Court. It had power in such matters. It rejected the contention of the petitioner. Emphasizing the need for the judiciary to expound the law for the present, the Court held that the objective of the Colonial Admiralty Act, 1890 was not to cloth the Indian courts with the powers of the High Court of England, but rather to raise the courts in India to the same pedestal as that of the High Court of England in exercise of Admiralty jurisdiction⁶². It also held that the High Courts were superior courts of record with unlimited jurisdiction and inherent and plenary powers to decide on their own jurisdiction for the purpose of redressing grievances according to the principles of justice, equity and good conscience, where the statute is silent and judicial intervention is necessary. In this context, the Supreme Court observed that there is no reason to think that the jurisdiction of the High Courts has stood frozen on the date of the Colonial Courts of Admiralty Act, 1890.

Justice Sahai expressed shock at the prevalence of obsolete admiralty laws in India. He went on to observe:

⁶²*Supranote* 60 at Para 20

".... what was surprising to hear, even in 1991, was that the admiralty jurisdiction exercised by the High Courts in Indian Republic is still governed by the obsolete English Admiralty Courts Act, 1861...Yet there appeared no escape from it notwithstanding its unpleasant echo in ears. The shock was still greater when it transpired that this state of affairs is due to lack of legislative exercise, even when in wake of decision of this Court in State of Madras V. C. G. Menon & Others⁶³ that Article 372 of the Constitution cannot save this law because the grouping is repugnant to the concept of a 'sovereign democratic Republic.'"

Since there was no Indian statute governing the Courts' jurisdiction in regard to maritime claims, the Supreme Court made the principles of International Conventions on Maritime Laws, applicable in India as part of India's common law. Further directions were also given for the early enactment of a suitable legislative measure. Justice Thommen also recommended that the Law Commission should take up the matter at the earliest.

On the question if non-Charter High Courts also have admiralty jurisdiction was not expressly decided in the instant case, though, by implication, the Supreme Court had made its leanings clear⁶⁴. The High Court being Courts of record constituted by the Constitution have unlimited civil and appellate jurisdiction subject to statutory restrictions if any.

⁶³AIR 1954 SC 517

⁶⁴*Supra* note 1 at Para 4.10

Post Elizabeth

In *Liverpool and London S.P. and I Asson. Ltd. v. M.V. Sea Success I and Ors*⁶⁵, the Supreme Court held that the provisions of the Arrest Convention, 1952 were applicable to India even without India ratifying the treaty so long as it is not contrary to domestic legislations operating in the field. In its 151st Report, the Law Commission of India observed that the law regarding jurisdiction regarding admiralty matters of the various High Courts was not clear. Codification of the admiralty law was referred to as a “pressing need⁶⁶”.

In the post-Elizabeth scenario, the High Courts in India other than those present in Bombay, Calcutta and Mumbai do not possess the power to intervene in admiralty matters, the High Courts of Gujrat, Andhra Pradesh and Orissa have exercised admiralty jurisdiction in some cases based on a perfunctory consideration of the several States Reorganization Acts enacted by the Parliament⁶⁷. The admiralty jurisdiction in India is therefore in dire need of a proper legislation.

Following the *M.V Elizabeth* case, the Law Commission in its 151st Report analyzed the admiralty law prevalent in India and recommended for a new legislation to take effect for replacing the old laws. The Law Commission also observed that the task in this regard had been rendered somewhat easy, because of the existence of a British legislation on the point. Since admiralty law in India has always been born out of the womb of English law, it was only expedient that the law relating to admiralty matters in India should

⁶⁵(2004) 9 SCC 512

⁶⁶*Supra* note 1 at Para 1.7

⁶⁷*Supra* note 59

draw inspiration from the English legislation on the point⁶⁸. The Law Commission also provided a draft legislation relating to admiralty law.

Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017- Statutory Overview

Based on the recommendations of the Law Commission in its 151st Report, a Bill relating to admiralty matters was introduced in 2005, but could not see the light of the day. In 2016, The Admiralty (Jurisdiction and Settlement of Maritime Claims) Bill was introduced in Lok Sabha on November 2016 by the Minister of State for Shipping, Mr. Mansukh Mandaviya. It was passed and came into force in April, 2018. It aims to consolidate existing laws on civil matters of admiralty jurisdiction of courts, admiralty proceedings on maritime claims, and arrest of ships and other related aspects. The long title of the Act indicates the objectives of enactment. The Act seeks to consolidate the law relating to admiralty jurisdiction, the legal proceedings in connection to vessels and the arrest, detention, sale and other incidental and connected matters.

The Act repeals Admiralty Courts Act, 1861, Colonial Courts of Admiralty Act, 1890 and provisions of the Letters Patent Act of 1861 with regard to matters of admiralty jurisdiction⁶⁹. The Act is retrospective in application and thus all proceedings pending before concerned High Courts immediately before commencement along with other matters, bye-laws, rules, orders, notices under repealed statutes would be adjudicated under this Act unless they are inconsistent with its provisions.⁷⁰ The Act contains provisions

⁶⁸*Supranote* 1 at Para 8.6

⁶⁹Section 17(1), Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

⁷⁰ Section 5(2), (3) & (4) Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

empowering the High Courts present at Karnataka, Gujrat, Orissa, Kerala and Hyderabad (for Telangana and Andhra Pradesh) or any other High Court notified by the Central Government the jurisdiction to decide matters concerning maritime claims.⁷¹ The jurisdiction of the Courts shall be in respect of maritime claims and such jurisdiction shall extend to waters up to and including the territorial sea waters.⁷² Applicability of the Act extends to all vessels in irrespective of the place of residence or domicile of the owner. An exception has however been carved out in case of inland vessels, as defined under Section 2(1)(a) of the Inland Vessels Act of 1917. The Act also is inapplicable to a vessel that is under construction and has not been launched. The Act is also not applicable to the following:

- a warship, naval auxiliary or other vessel which is under the ownership and operation of the Central or State government and which is used for any non-commercial purposes, and
- a foreign vessel which is used for any non-commercial purpose as may be notified by the Central Government.⁷³
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As a general rule, in the absence of a cause of action arising in India, it may be difficult for two foreign parties to litigate before an Indian court, save for admiralty disputes in which the court acquires

⁷¹ Section 2(e) Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

⁷² Section 3, Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.

⁷³ A vessel has been defined as any ship, boat, or sailing vessel used or constructed for use in navigation by water, which may or may not be mechanically propelled 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 under section 2(1)

jurisdiction by virtue of the vessel having been arrested in India, by an order of an Indian littoral high court⁷⁴.

Section 4 of the Act provides for the jurisdiction of the High Courts to hear and determine any question relating to maritime claim against any vessel regarding the following matters⁷⁵:

- (i) disputes regarding ownership or sale of a vessel,
- (ii) disputes between co-owners of a vessel on employment or earnings of the vessel,
- (iii) mortgage or a similar charge on a vessel,
- (iv) loss or any damage caused to any person/good related to operation of a vessel
- (v) construction, repair, or conversion of the vessel,
- (vi) claim by any crew member with relation to any wages or other form of dues or any dues related ports, harbours etc.
- (vii) environmental damage caused by the vessel, etc.

Section 5 of the Act deals with in rem proceedings against the vessel itself which is considered to be the wrongdoer, and empowers the High Courts to order the arrest of any vessel within its jurisdiction so as to furnish a security against a maritime claim which is the subject matter of an admiralty proceeding⁷⁶. Courts are empowered to take actions in personam for claims listed under Section 4 except for damage, or loss of life, or personal injury arising out of a collision between vessels taking place in India, or for not complying with the collision regulations of the Merchant Shipping Act, 1958 by a person

⁷⁴Section 20 of the Code of Civil Procedure 1908 (CPC).

⁷⁵ Section 4, Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

⁷⁶Section 5 Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

who does not reside or carry out business in India⁷⁷. Further, under the Act, the courts are barred from entertaining an action against a person if any case with regard to the same incident is pending before any court outside of India⁷⁸.

While determining maritime claims under the specified conditions, courts may settle any outstanding accounts between parties with regard to the vessel and may also direct that the vessel or any share of it be sold.⁷⁹ In case of such a sale, courts may determine the title to the proceeds of such sale.⁸⁰ Pending final outcome of any admiralty proceeding, any vessel arrested or proceeds from sale of a vessel shall be held as security.

Among all claims in an admiralty proceeding, highest priority will be given to maritime claims, followed by mortgages on the vessel, and all other claims.⁸¹ Within maritime claims, highest priority will be given to claims for wages due with regard to employment on the vessel followed by claims with regard to loss of life or personal injury in connection with the operation of the vessel.⁸² Such claims will continue to exist even with the change of ownership of the vessel.⁸³

In pursuance of the power bestowed under Section 13 of the Act, the Central Government notified the Admiralty (Assessors) Rule, 2018 provides for the appointment of assessors to perform such functions as the High Court may bestow upon them.

⁷⁷ Section 6- 7 Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

⁷⁸Section 7 Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

⁷⁹ Section 4(2) Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

⁸⁰ Section 4(3) Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

⁸¹ Section 10 (1) Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

⁸² Section 9(1) Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

⁸³ Section 9(2) Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

Commercial Courts Act 2015- The Implication

Apart from the Admiralty Act, the Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (later renamed as the Commercial Courts Act 2015) has established special commercial courts, having the jurisdiction to deal exclusively with 'commercial disputes' involving specialized subject matters (i.e., relating to export or carriage of goods, import of merchandise, sale of goods, insurance, etc.) and for claims of a specified value. Section 2 (1)(c)(iii) of the Act lays down that commercial disputes would also include issues related to admiralty and maritime law.

Conclusion

As can be seen, the growth of modern admiralty law in India has been a rather slow in its development, inspite of India being a sea-faring country. However, *Elizabeth's* case proved to be turning point in this sector. The scathing observations of the court has led to an increased seriousness amongst legislators and policy makers to address the lacunas in the existing laws. This has triggered a number of responses over the last couple of decades that reflect the fact that independent India has finally given the issue a serious consideration. However, having said so, the field of admiralty law still remains out of the grasp for many lawyers. There are still jurisdictional issues surrounding it, which requires urgent attention so as to enable this field of law to grow and flourish in this country. Moreover, India is yet to ratify on some of the major international conventions. Ratification of these conventions and their subsequent incorporation into domestic legislation will increase the scope and ambit of Indian maritime law. More scholarly attention needs to be devoted so that this nascent branch of law can enrich itself.