Admiralty Jurisdiction in Indian Territory- New Changes

(In Reference to The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017)

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ABSTRACT

With the bringing in of a new legislation named The Admiralty (Jurisdiction and settlement of Maritime claims) Act, 2017, the colonial Admiralty Act of 1891 stands repealed. The 1891 Admiralty Act empowered only the Madras, Calcutta and Bombay High Courts. This new Act empowers the High Court to exercise jurisdiction but it defines under Section 2 (1)

(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, and 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. This article makes an attempt to study this new act in the prevailing circumstances.

Keywords: *Jurisdiction, Admiralty, Maritime claims, Government*

INTRODUCTION

Dating back history regarding jurisdiction of coastal states over adjoining sea water goes way back into the eighteenth century. Some evidence on this matter is found in the British Hovering Acts which were applied beyond the so called 'canon range 'so as to prohibit foreign ships.

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In late eighteenth century in US, laws were enacted to interdict ships bound for United States port, in this area within the High Seas. One such decision of the Supreme Court of United States[1] is in which it was observed that state jurisdiction only extends to the edge of the territorial sea and that governments only for the purpose of self – protection in time of war or for the prevention of frauds on its revenue, exercise an authority beyond this limit.

CRIMINAL JURISDICTION

It is the principle of 19th century (Criminal) English jurisprudence that; "all crime is local. The jurisdiction over the crime belongs to the country where the crime is committed"[2]. The reasons are varied regarding affinity to the place of crime, collection of evidence and possibility of enforcement measures to bring in sanction in criminal matters as it is taken to be an offence against mankind.

Jurisdiction in the high seas was concretized in the *Lotus* case[3] by the Permanent Court of International Justice (PCIJ). The question in issue was a collision in the high seas between the French registered *Lotus* and the Turkish registered *Boz- Kourt* , which resulted in the latter vessel sinking. *Lotus* arrived at the Constantinople where its Master was arrested and convicted on criminal charges of manslaughter. France protested and the matter came before the PCIJ for consideration. The court observed:

Jurisdiction is certainly territorial; it cannot be exercised by a state outside its territory except by virtue of a permissive rule derived from international custom or from a convention. *It does not however , follow that international law prohibits a state from exercising jurisdiction in its own territory, in respect of any case which relates to acts which have taken abroad, and in which it cannot rely on some permissive rule of international law*[4].

The court therefore rejected the exclusive jurisdiction concept of flag state on the high seas as was believed to be accepted till then in the realm of international law. The court observed that there was nothing in international law which prevented Turkey criminal law to take cognizance of an offence which affected a Turkish vessel in an area assimilated to Turkish territory, even if the offenders are foreigners[5]. Due to heavy criticism against this decision, Article 11 of the Convention on the High Seas 1958, which was recommended by

1 *Manchester* v. *Massachusetts* (1891)139US240, 258.

2 *See*: *Macleod v. Attorney General of New South Wales* (1891) AC 455, 451-58 and *Huntington v. Attrill* (1893) AC 150.

3 *Lotus (France v. Turkey*) [1927] PCIJ Rep ser A no 10.

4 *Ibid* 18-19.

5 *Ibid* 23.

the International Law Commission after the decision in the *Lotus* case and also the present Article 97 of the UNCLOS 1982, changed the position of law in this matter. This Article 97 deals with the penal jurisdiction, in a collision case or any other incident of navigation in the High Seas, over the ships involved in it. It provides that the institution of any proceedings against the master or any other person involved in such an incident must be by the flag state or the state of nationality of the person involved.[6] Thus only a flag state can issue a request for arrest or detention of a ship following such an incident[7]. The Commission had stated in its support that this was in line with seeking to protect ships and their crews from the risk of penal proceedings before foreign courts in the case of collision on the High Seas, as this may *constitute an interference with international navigation*[8]. The option in this instance for the aggrieved state is to request the flag state to exercise it jurisdiction properly[9]. In cases where the nationality of a ship is not clear the coastal state may take jurisdiction.[10]

JURISDICTION OF INDIAN COURTS

The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, Section 3(1) declares that the sovereignty of India extends, and has always extended, to the territorial waters of India: "The sovereignty of India extends and has always extended to the territorial waters of India and to the seabed and subsoil underlying, and the air space over, such waters." Sub-section (2) states that the territorial waters are limited to twelve nautical miles from the nearest point of the appropriate baseline. Sub- section (3) authorises the Government of India to alter the limit of the territorial waters by a notification approved by both the Houses of Parliament, with due regard to the

6 United Nations Convention on Law of the Sea 1982, Article 97 (1) - In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

7 United Nations Convention on Law of the Sea 1982, Article 97 (3)-No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

8 International Law Commission, "Articles Concerning the Law of the Sea with Commentaries" Yearbook of the International Law Commission, vol.2, 281(1956).

9 United Nations Convention on Law of the Sea 1982, Article 94(6), 94(7).

10 United Nations Convention on Law of the Sea 1982, Article 92 - 1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.
2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

International Law and State practice. This Act has no mention about the civil and criminal jurisdiction over foreign ships.

In India, Section188 of the Code of Criminal Procedure prescribes the jurisdiction to deal with offences[11] which states that the Parliament, has the power to make and apply the law to persons, who are not citizens of India, committing acts on any ship or aircraft registered in India, which constitute offences prescribed by the law of this country, irrespective of the fact whether such acts are committed within the territory of India or irrespective of the fact that the offender is present or not within the Indian territory at the time of the commission of the offence.

India was party to the United Nations Convention on Law of the Sea 1982. The Indian government ratified this convention in June 1995. Article 27 gives criminal jurisdiction on board a foreign ship to coastal states-

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:(a) if the consequences of the crime extend to the coastal State;(b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; (c) if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or (d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters. 3. In the cases provided for in paragraphs 1 and 2, the coastal State shall, if the master so requests, notify a diplomatic agent or consular officer of the flag State before taking any steps, and shall facilitate contact between such agent or officer and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken. 4. In considering whether or in what manner an arrest should be

11 Code of Criminal Procedure 1973, Section 188. Offence committed outside India- When an offence is committed outside India-(a) by a citizen of India, whether on the high seas or elsewhere; or (b) **by a person, not being such citizen, on any ship** or aircraft registered in India. He may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found**: Provided** that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

made, the local authorities shall have due regard to the interests of navigation.5. Except as provided in Part XII or with respect to violations of laws and regulations adopted in accordance with Part V, the coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

Article 28- Civil jurisdiction in relation to foreign ships

1. The coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.

2. The coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State. 3. Paragraph 2 is without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

Though India ratified the UNCLOS, the provisions were not reflected in the Maritime Zones Act 1976. This matter was discussed at large in M.V. Elisabeth and Ors vs Harwan Investment and Trading by Justice T.K. Thommen[12], wherein he read the Admiralty jurisdiction into the power of the sovereign Indian Government to exert jurisdiction in the absence of explicit law on that behalf. In this case it was considered by the court that all foreign ships entering Indian waters are presumed to know that they fall within the jurisdiction of this country during their stay here. The vessel in question in this case was lying in the Port of Vishakhapatnam when she was arrested in respect of a cause of action relating to cargo. Therefore the High Court, in view of the Apex court had rightly assumed jurisdiction by the arrest of the vessel while it was lying in the port of Vishakhapatnam. The court read into Article 225 of the Constitution, the jurisdiction, including inherent jurisdiction, which existed on the date the Constitution came into force and Article 226 enlarged it by making it not only a custodian of fundamental rights of a citizen but as repository of power to reach its arms to do justice. A citizen carrying on business which is a fundamental right cannot be

12 *M.V. Elisabeth and Others* v. *Harwan Investment And Trading* ... on 26 February, 1992;Equivalent citations: 1993 AIR 1014, 1992 SCR (1) 1060.

rendered helpless on the premise that the jurisdiction of High Courts stood frozen on that day.[13]

The Law Commission also felt the need for legislation in this matter and suo - motu took up this matter in its 151st Report on Admiralty jurisdiction, brought out in 1994, stating that in the absence of law the Indian courts have to rely on English law. They emphasised the need for legislation in this matter. The commission gave in a draft of the intended legislation on this subject.[14]

COLLISION

The Indian Legislation dealing with collision has been the Merchant Shipping Act 1958. Section 285 (2) states that collision regulations 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 ailing vessels shall, so far as respects the collision regulations, be treated as if they were Indian ships or sailing vessels registered in India, as the case may be.

Section 286 (2) also states that 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.

The provisions of UNCLOS does not mention about collision principles to be applied in the territorial waters. By the reading of the two articles of UNCLOS[15] the states have been empowered to takeover criminal jurisdiction over the ship only if the crime extends to the land of the coastal state or the assistance of the coastal state is required. Here also the matter has to involve the diplomat of the state in which the ship is registered. Finally it limits the power inherently by stating that the coastal state in considering whether or in what manner an arrest should be made, the local authorities shall have **due regard to the interests of navigation.** When it comes to civil jurisdiction it is limited to matter connected to ship and its journey and the liabilities incurred during this course.

13 *Ibid.*

14 Law Commission 151st Report 1994.

15 United Nations Convention on Law of the Sea 1982, Article 27 & 28.

THE ADMIRALTY (JURISDICTION AND SETTLEMENT OF MARITIME CLAIMS) ACT, 2017

After more than a century since the colonial Admiralty Act of 1891, now repealed, the Indian Government brought into being the Admiralty Act in 2017. The 1891 Admiralty Act empowered only the Madras, Calcutta and Bombay High Courts. The Supreme Court in M.V. Elisabeth case invoked the inherent jurisdiction of all the High Courts of India to take up admiralty jurisdiction .This new Act empowers the High Court to exercise jurisdiction but it defines under Section 2 (1) (*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, and 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.

This new Act which is yet to take effect, expressly states through the name of the act that it relates to maritime claims, which implies that the act deals with civil matters only. Section 3 limits the jurisdiction of the act to 12 nautical miles only .Under Section 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 (*d*) loss or damage caused by the operation of a vessel and (*e*) loss of life or personal injury occurring whether on land or on water, in direct connection with the operation of a vessel. Section 5 correspondingly empowers the High Court to arrest the vessel or sister vessel connected to the case.

Section 7(1) deals with collision cases wherein jurisdiction comes in when there is action *in* 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 carryon 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. Section 6 gives jurisdiction to High Courts to 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 subject to section 7. This could to avoid interference into any outside India court decision.

A BARE DISCUSSION

Territorial Waters

The new legislation conducts itself within the ambit of the Article 27 and 28 of the 1982 Convention. Though it does not distinguish between criminal and civil, it is clear by its terms that in connection with collision matters wherein the action of the High Court can be directed against the ship or in personam to meet the ends of justice, it is limited to maritime claims only. The Act gives jurisdiction within the Territorial waters up to 12 nautical miles[16]

16 The Admiralty (Jurisdiction and settlement of Maritime claims) Act, 2017- Section 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

subject to section 4 wherein a matter of maritime claim is raised in reference to loss or damage to life or property. Here under subsection (2) of the Section 4 the power is limited to civil liability only in terms of accounts settlement.[17] It does not refer to criminal action in terms of punishment as international law does not encourage criminal jurisdiction as understood in domestic law as it impairs international trade except when the crime might extend or its consequences may extend to the coastal state e.g.; in cases of drugs or illicit trade . There also consular reference is needed. Regarding criminal jurisdiction the hands are not absolutely tied up as Section 285(2) of Merchant Shipping Act 1958,[18] treats for collision purposes foreign ships within territorial waters of India as Indian ships, which can be assumed to have given criminal and civil jurisdiction over these foreign ships to the High Courts.

CONCLUSION

The matter which the legislation failed to render is the position of law when a collision happens in the high seas. The legislation does not clarify the concept of flag state jurisdiction but[19] on reading section 7(1) (b) it could be inferred that owner of a ship is

the limit as defined in section 2 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976.

17 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— (*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;
(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.

18 Merchant Shipping Act 1958- Collision regulations - Section 285- (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 vessel 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 ailing vessels shall, so far as respects the collision regulations and the aid provisions of this Act, be treated as if they were Indian ships or sailing vessels registered in India, as the case may be.**

19 **Section 7(1) (*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

possibly referred as '*defendant*', who is involved in a collision case, which did not bring in a cause of action in India, possibly happened outside the Indian territorial waters, if living in India can be held liable.

It is not clear whether the ship should be registered in India or not. Under the UNCLOS the jurisdiction in a collision case on the high seas is given only to the flag state in which the ship is registered or to the state to which the erring person is a national. Article 97 clause 3 of the UNCLOS 1982, gives the power of arrest or detention of the ship even as a measure of investigation shall be ordered by no other authorities other than those of the flag state.

Section 7(1) (b) does not make it clear who is the 'defendant' referred in the section. If the defendant is not a national of India and if the ship is not registered in India, under the International regime Indian courts cannot take jurisdiction of matters pertaining to collision committed in the high seas neither can they arrest the ship be it for any matter whatsoever. This act gives jurisdiction in matters to maritime claim but how can it be executed. This could be in anticipation of difficulty in enforcement of the High court decisions outside India where the ship could be registered in India but the ship-owner is residing abroad. In a case where the ship is registered abroad but the ship – owner is in India and not an Indian national, the Act empowers the High Court to take jurisdiction over civil matters of the case which is against the concept of flagship jurisdiction concept.

Another anomaly is concerning subsection (2) of section 7, which debars the High Court from entertaining any action in personam to enforce a claim under this section until any previous proceeding case regarding this case , pending outside India brought by the plaintiff against the same defendant is either discontinued or comes to an end . This can bring a series of practical problems for the plaintiff especially if the ship has not been arrested in that port or any port, where the case is pending outside India. This technical snag can allow the defendant from escaping the law of this land. There needs to be more clarity in that matter. Most of the shipping companies have their agents in all the nations so at the same time for the same matter between the same parties; a series of cases may be concurrently fought in several courts around the globe. Therefore, to debar a case from being sued in India until every case regarding that matter should be set at rest around the world is a very difficult phenomenon to overcome. This provision could possibly have been incorporated to avoid court cases and to encourage arbitration to the best interest of shipping magnets.

This legislation has to go through a practical test before it can be considered fit for

each of the defendants acquiesces in such action.

sail. At the same it is appreciated that finally a law has been formulated which will give some ground for the High courts to work upon rather than having no law to fall back upon except some colonial English laws in the sphere of Admiralty law .Though in the climax it could be suggested that there is nothing new in the act except that all the available laws as in the different legislations and as formulated through the cases in relation to maritime claims have been codified under the same umbrella.