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THE LEGAL BASIS FOR SHIP ARREST: A COMPREHENSIVE OVERVIEW

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Abstract

The 'Arrest of Ship' means a legal procedure that allows a vessel to be detained to secure a maritime claim against it or its owner. Through this paper, the authors critically examine the legal basis for ship arrest in the International Legal Sphere and National law in India.

Introduction

Ship arrest is a pivotal legal mechanism for securing a maritime claim. The ability to arrest a ship in admiralty law is closely related to in rem actions. The arrest warrant is issued in a manner that ensures the ship owner provides security to avoid any judgment that may be made against him in the normal course of Court procedure.

The owner of the vessel is outside the jurisdictions, but the vessel can sail from the territory of one country into that of another. So, it is easier to arrest a vessel than to arrest the shipowner. Action in rem developed notion against such background that action is taken against the ship and not the owner. The purpose for which action in rem was founded was to prevent ship from leaving jurisdictional bounds of country's law in case there had been pending litigation or claim against it. Such was to concept such as arresting a ship so as to deal with ship owners who were thought to use all reasonable means to avoid the arrest of their vessels.

Arresting the vessel and other properties in rem is meant to obtain prejudgment security in order to fulfil the court's decision in the claimant's favour. The arrest of the vessel (ship) and prejudgment security to be provided to release an arrested ship are among several fundamental features that make admiralty action in rem different from other civil actions or cases. No country can arrest a ship except when it enters those 12 nautical miles near the boundary of that country.

Ship Arrest

Arresting a ship is such an order by the court that stops the ship in a particular jurisdiction. It achieves two major roles:

Security Obtained: Arrest ensures that assets are available to answer any judgment against the vessel or its owner.

Establishing Jurisdiction: Regardless of the owner's actual presence, the court may occasionally be able to assert jurisdiction over an admiralty claim when a vessel is arrested.

Merchant ships that travel internationally can face various liabilities while at sea. For creditors aiming to collect debts related to different maritime activities, ship arrest is an essential method. This can be necessary in cases involving cargo damage, collisions, salvage efforts, loss of life or personal injuries, and unpaid fees such as pilotage and towage.

In Rem and In Personam are two kinds of legal actions. In Rem refers to cases where the action is taken against the ship itself, viewing the vessel as the party being sued. In Personam, on the other hand, involves taking legal action against the shipowner directly.

International Legal Framework

International Convention on Arrest of Ships (1952)

When laws do not provide clear solutions, it is up to the court to create procedural rules based on basic principles and practical needs. Courts have used actions in rem to handle situations where serving the defendant personally is difficult. This approach forces the defendant to appear in court and accept the summons, so they can provide security for the property involved. If the defendant is not present, the court can take action against the property itself, treating it as if it has a legal identity to issue a judgment that can be executed through the sale of the property. This method was developed to ensure justice is served according to the law in various maritime issues, including collisions, salvage, and claims related to breaches of contracts for hiring vessels or transporting goods. When the substantive law calls for justice for an affected party and there is no statutory remedy, the court must create a procedure by looking at similar legal systems. In civil law countries in Europe and elsewhere, such issues rarely occur because they have the authority to manage all people and properties within their areas, without needing to distinguish between actions in rem and actions in personam.

The Brussels Convention of 1952, formally known as the International Convention Relating to the Arrest of Sea-going Ships, set out key rules for the arrest of ships. It covers important areas such as which courts have authority, the types of maritime claims that can be made, and the steps involved in the arrest process. This convention seeks to establish a legal framework that facilitates trade. It allows a Contracting State to hold a ship through legal action to secure a maritime claim (art.1). The convention applies to any vessel registered under a Contracting State's flag and within the j of any Contracting State (art.8). Therefore, a ship registered in one Contracting Party can be detained in any other Contracting Party's territory. Rights granted by a State, public authorities, or port authorities remain valid according to local laws (art.2). The procedures for arresting a ship will follow the law of the Contracting State where the arrest takes place (art.6). The "appropriate judicial authority" in charge of the area where the ship is detained will allow the ship's release upon payment of bail or providing other financial guarantees (art.5).

The Geneva Convention, 1999

The 1952 version is modified by the 1999 Convention on the Arrest of Ships. This code expanded the maritime claims that cause a ship's arrest and clarified the procedures for arrest. The difference between the 1952 Convention and 1999 Convention is that the latter has provisions for new claims, such as environmental damage under Article 1(d). Arrest rights under the 1952 Convention was meant to apply to 17 types of claims. The 1999 Convention increased this to 22. It introduces six new claims and removes bottomry. Among the new claims are environmental damages, costs of clean up, removals of wrecks, port charges, vessel sale disputes, insurance coverage on premiums or agency fees. Article 2 of the 1999 Arrest Convention permits vessel arrest in order to enforce any right, regardless of whether there are jurisdiction or arbitration clauses referring to other countries. It further permits the enforcement of an arrest also for the judgment of a court or an arbitration award. The new convention allows claimants to seize vessels under arrest whether these are registered with a flag in a member country or not. The 1952 Arrest Convention, on the other hand provided that the vessels must be flagged with a party to the convention at the date of arrest. Local laws may still obstruct the ability of the claimant to arrest the vessel. The 1999 Arrest Convention provides that jurisdiction is on the court where the arrest took place or where security is supplied for ship release unless parties otherwise agree on another jurisdiction or arbitration. The new convention amends the provisions of vessel arrest in relation to maritime liens, allowing arrest only under the law of the arresting country.

Article 6 of the 1999 Convention greatly favours ship owners and charterers in the case of detention. Unlike the 1952 version which issued an arrest warrant with the purpose of preventing detentions, the 1999 version allows for damage assessment and challenges against "unjust" detentions. Article 6(1) of the Arrest Convention thereby empowers the court hearing the application to impose a requirement on the applicant to provide security for any damages experienced by the shipowner as a result of the detention. In this regard, however, the 1952 Arrest Convention commits the whole matter of security entirely to the discretion of the local authorities. The new arrest warrant allows the owner and security provider to appear at any time to "reduce, vary or cancel" the security.

National Law Regulating Arrest of Ship in India

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

It is the law by which the Indian High Courts of today update British admiralty law as it had been in the 1800s, replacing antiquated enactments enacted to superimpose British law over India. The Admiralty Jurisdiction Act aims to bring together the laws that govern maritime claims. It covers legal actions involving ships, including their arrest, detention, and sale, along with related issues.

Maritime claims include disputes over vessel ownership, disagreements among co-owners about the exercise of management and control rights over a vessel, mortgage rights over a vessel, and loss or damage to property arising from any act related to or resulting from any intercourse or communication with any ship, including environmental damage. Such claims include loss of life or personal injury related to the operation of a vessel and loss of or damage to goods. Agreements for the carriage of goods or passengers and helicopter or aircraft charters qualify as maritime claims. This would include claims related to goods or services in connection with the running or maintenance of a ship, management or operation, sale, wages of seamen, and insurance on vessels. But claims related to the damage suffered by a vessel are not categorized as maritime claims under the Admiralty Jurisdiction Act, although they may fall under some other admiralty category. Maritime lien is a right annexed to the subject and goes with the ship whatever becomes of her. She does not depend on flag changes in ownership. How will maritime liens be determined and under which priority, the Admiralty Jurisdiction Act provides.

Courts that handle maritime cases have power over ships in their waters and over people in their area. The Admiralty Jurisdiction Act outlines when courts can use these powers. It also describes the steps that must be taken when a ship is arrested or sold. According to the Act, a ship that is ordered to be arrested or any money from the sale of a ship will be kept as security until the case is resolved. Additionally, if someone wants to arrest a ship, they may need to provide a promise set by the High Court to protect the ship owner from any losses if the arrest turns out to be wrong. The Act also allows the High Court to resolve any disputes related to who owns the money from the sale of a ship.

Power and Exercise of Right of Ship Arrest

One of the fundamental principles of the 1999 Arrest Convention, provides that a ship can be arrested only in respect of maritime claims and not for any other kind of claim. This provision, along with Article 1(1), addresses the conflict between civil law and common law systems. The Convention broadens the scope of maritime claims for which arrest is permissible, but Article 2 confines arrest strictly to those claims.

The 1999 Arrest Convention establishes, as a general rule, that a claimant may arrest a ship linked to a maritime claim if the ship's owner is liable for the claim. This principle was ambiguous under the 1952 Convention, leading to varied interpretations that sometimes allowed ship arrest for claims against time charterers. According to Article 3(1) of the 1999 Convention clarifies the conditions, stipulating that arrest is admissible if the ship's owner at the time of the claim is still the owner when the arrest is executed.

Exceptions to this general rule permit arrest even if the owner is not liable, including cases involving a liable demise charterer, claims based on ship mortgages, ownership disputes, and claims secured by maritime liens. The Arrest Convention allows the arrest of a ship not owned by the liable party if local law permits claim enforcement against that ship.

Article 3(2) specifies that arrest of such sister ships is permitted if, at the time the claim arose, the liable person was the owner or charterer (demise, time, or voyage) of the ship related to the claim.

A crucial issue in this regard is the existence of ownership, as single-ship companies are now the norm since the case in 1952. This frequently leaves claimants with no option but to arrest

the very ship identified with the claim, which creates the most difficulty in trying to arrest sister ships.

At the UN/IMO Diplomatic Conference, the UK suggested an amendment to permit the arrest of "associated" ships by piercing the corporate veil through the use of "control" for establishing association. Although some delegations favoured this, it did not gain general acceptance. That problem was recognized, but it was partly outside the scope of the 1999 Arrest Convention since it encompasses broader legal issues involved with corporate and contract law.

According to Article 3(3) of the 1952 Convention, a ship cannot be arrested for the same reason or be rearrested. However, Article 5 of the 1999 Arrest Convention outlines the precise circumstances in which a ship could be arrested again or another ship could be detained for the same claim made by the same claimant, specifically: (a) if the kind or degree of security already acquired in relation to the same claim is insufficient, provided that the total amount of security must be greater than the ship's worth; (b) the individual who has already provided the security is not able to fulfil some or all of his responsibilities, or (c) the vessel arrested or security furnished was released in the circumstances beyond his control.

Procedure for Ship Arrest

According to the renowned American author and professor John Augustus Shedd "A ship in harbour is safe, but that is not what ships are built for". This quote, generally attributed to John A. Shedd, expresses the idea that, while it may feel comfortable to stay in a harbor or other secure spot, this is not why ships are created. It is a metaphor for life and development, meaning that true potential and fulfilment come from stepping out, taking risks, and overcoming obstacles, even if they are plagued with danger and uncertainty. It also emphasizes that dealing with ships and their issues always involves challenges and obstacles. Most of the challenges regarding ships were faced by the claimants and ship arrest is the only possible way to protect their interest. A domestic or foreign ship may only be detained or arrested under the jurisdiction of a court or other competent judicial body in relation only to maritime claims and essentially no other claim.

The ship arrest procedure is entirely different from normal court procedures. The act of arresting a ship is related to an important and complex procedure under maritime law, that encompasses several steps to lawfully detain a vessel. It is typically an action by a party, usually

by the claimant, who holds that the owner of the ship owes them a maritime lien or other form of debt. The process is regulated by international conventions, such as the International Convention on the Arrest of Ships 1999, and also by local legislation, which can differ dramatically from one jurisdiction to another. In order to avoid wrongful arrest claims, the party arresting has to face legalities and ensure that all procedural requirements are fulfilled. The arrest seems like a grave operational as well as financial challenge for an immediate and suitable response from the shipowner's side but a full-pledged weapon for the creditor or claimants to obtain a claim.

The first step in showing that the right to arrest is available is establishing whether the claimant genuinely holds a valid maritime claim. It can include bad debts by his / her crew, supply bills, collision damage, or any other claims within Article 1(1) of the 1999 Arrest Convention. The claimant takes legal counsel in the form of a lawyer who is specialized in the area of maritime law and is well aware of local laws. Such an attorney will prepare all the necessary documentation and will provide guidance through the legal process.

The attorney of the claimant should produce application for the arrest warrant in the court that has jurisdiction. This paper should indicate the subject matter of the claim, the sum of money owed, and why they are to be arrested. The application must also include all the details relating to the ship and its owner, i.e., the name of the vessel, number of the vessel, the owner of the vessel, and the country wherein the vessel had been registered. Once it has been issued, the warrant is to be served on the ship's master or its agent, often through a court official or marine marshal. When the warrant is served, the vessel is detained in the port and cannot be allowed to leave until the claim is settled or until the judge permits her to be released.

Having reached this point, however, the court may order release of the vessel if the shipowner provides acceptable security such as a bond or bank guarantee considered by the court as sufficient for securing the claim. In case the claim still remains unsatisfied, the case proceeds for judicial adjudication in which the judge analyses the evidence and makes a ruling on the merits of the claim and the sum due.

Lastly, the result may be the sale or discharge of the ship. The court shall give judgment for the sale of the ship to execute the claim if the complainant succeeds. The ship will nevertheless be discharged if the shipowner succeeds. For instance, for cases of unpaid bunker supplies,

claimants must provide delivery receipts and records of past-due payments. The court verifies this before it delivers its judgment. Understanding the arrest procedure is important to every individual who participates in maritime operations. The arrest procedure ensures prompt and just settlement of claims, protects the interests of shipowners from unjustified arrest, and fairly balances rights enforcement with commercial interest.

Release of Ships

The 1999 arrest Convention's Article 4(1) establishes necessary guidelines for releasing a ship from custody when adequate security is provided in a satisfactory manner. It is up to the parties to determine what constitutes a "satisfactory form" or "sufficient security." But if the parties have not reached a consensus regarding the form and sufficiency of the security. The nature and amount of it will be decided by the court, not to exceed the worth of the ship that was arrested.

The issue of whether or not to set the security amount at the ship's value was also discussed. The Conference determined that the value of the ship was the greatest amount the claimant could get in the event of a forced sale of the ship because the security replaced the ship. Article 4(5) of 1999 Arrest Convention thus makes it clear that the security could never be worth more than the arrested vessel.

Defenses against Ship Arrest

The term "defense" refers to "the act of protecting someone or something from attack or criticism." However, in this context, it refers to adopting precautionary steps or resistance against ship arrests. The only person whose rights were infringed during ship arrest was the shipowner. The precautionary measures and vindications done by the shipowner to preserve his rights and interests during ship arrest are frequently cited as a defense against ship arrest. Thereby it can protect ship owner and demise charterer as covered in Article 6 of the International Convention on the Arrest of Ships, 1999.

Article 1(1) of the 1999 Arrest Convention states that the ship can only be arrested to secure the maritime claims. Aside from the aforementioned maritime claims, the Court has no authority to arrest a ship or vessel.

Article 6 of the aforementioned Convention specified specific conditions for arresting a ship or vessel. These circumstances play a crucial part in defending ship arrest. For initiating a ship arrest or allowing an already initiated arrest to continue, the claimant should provide the Court with sufficient financial security deposit. This security deposit is meant to cover any potential losses incurred by the defendant if it is later found that the arrest was wrongful or unjustified or if the security for maritime claim demanded by the claimant was excessive.

The Court where the ship was arrested has the jurisdiction to assess the claimant's liability for any damages caused by the arrest, particularly if the arrest is determined to be wrongful or if excessive security was demanded. If the shipowner suspects that there is a claim against his ship, he has the right to submit a caveat in court. The caveat will allow the shipowner to defend the claimant's case, preventing an ex parte order of ship arrest.

Proceedings regarding the claimant's obligation may be temporarily put on hold until the conclusion of the primary case pertaining to the arrest is decided if it is being handled by another court or arbitration panel.

Understanding and efficiently implementing such defenses demands a thorough understanding of international conventions such as the International Arrest Convention and local admiralty rules. Whether through jurisdictional challenges, procedural defenses, claims of unlawful arrest, or the provision of security to assist release, these measures maintain the balance between creditor rights and vessel operator protection. Ultimately, proactive and informed legal strategies can prevent or promptly resolve ship arrests, safeguarding the smooth operation of maritime activities while ensuring fair and just outcomes.

Conclusion

Of the legal tools in admiralty law the Arrest of Ship is very decisive and powerful measure whereby the claimants can secure their maritime claims by arresting a vessel. Although this provision gives essential relief to claimants, it also presents considerable obstacles for shipowners. Whereas providing an important framework, the International Arrest Convention such as the 1952 and 1999 Conventions on the Arrest of Ships, as well as the National Laws like the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 attempt to balance the competing interests of both the opponents.

The arrest of the ship gives the court jurisdiction to make an order on the admiralty claim even if the shipowner is not present. This principle refers to the unique status of the vessel under law, courts may identify the vessel as a party to the proceedings through acts. This has important jurisdictional implications, supporting the merits of a vessel it is kept in the context of international law and, in particular, the claims of claimants.

To maintain a reciprocal decorum the marine transportation by vessels the Arrest of Ships acts as an optimum solution for contentions.

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