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FREEZING OF ADMIRALTY LAW

AUTHORED BY: GAUTHAM VISWAM

INTRODUCTION

Admiralty law is a distinct body of law that governs maritime activities and the court's jurisdiction over it. It encompasses a wide range of legal matters related to shipping, navigation, marine commerce, and marine environmental protection. Admiralty law has its roots in ancient maritime customs and traditions, and it has evolved over time to address the complexities of modern maritime activities. The primary objective of admiralty law is to regulate and resolve disputes that arise in maritime commerce and navigation. This includes disputes between shipowners, cargo owners, seamen, and other parties involved in maritime activities. Admiralty law covers a broad spectrum of issues, including but not limited to, ship collisions, cargo damage, salvage operations, marine insurance, maritime liens, and personal injuries at sea.¹

One of the unique features of admiralty law is its international character. Due to the global nature of maritime commerce, admiralty law often involves interactions between different countries and their respective legal systems. As a result, many admiralty cases have international implications, requiring the application of both domestic and international laws, treaties, and conventions. Admiralty law is enforced by specialized courts known as admiralty or maritime courts. These courts have jurisdiction over maritime disputes and apply admiralty law principles to resolve conflicts and administer justice. The procedures and rules followed in admiralty courts are often distinct from those in traditional civil or criminal courts, reflecting the unique nature and requirements of maritime law.² In this paper, we will discuss the history of admiralty law, the impact of colonial admiralty law over the jurisdiction of courts, and how admiralty law was frozen for a long time. Then we will see how it was unfrozen, revived, and improved as we see today.

¹ Heta Thakar, The Concept of Admiralty Jurisdiction in India, 2 INDIAN J.L. & LEGAL RSCH. 1 (2021).

² Derrett, J.D.M. (1961) 'Admiralty Jurisdiction in India', International and Comparative Law Quarterly, 10(3), pp. 637–640. doi:10.1093/iclqaj/10.3.637.

HISTORY OF ADMIRALTY LAW

The Indian admiralty law is deeply rooted in its colonial past and the influence of English common law. During British colonial rule, Admiralty Courts were introduced in India to handle maritime cases and disputes arising from maritime activities, shipping, and navigation within Indian territorial waters and along its coastline. These Admiralty Courts applied English admiralty law and principles to resolve maritime disputes and enforce maritime claims. The Indian Admiralty Act of 1861 was enacted during this period to combine and revise the laws concerning admiralty jurisdiction, maritime claims, and maritime liens in India, providing the legal framework for the Admiralty Courts and establishing the procedures and rules governing maritime cases and disputes.

After gaining independence from British rule in 1947, India retained and continued to develop its admiralty jurisdiction and maritime law relying on rules and doctrines of English common law and the Indian Admiralty Act of 1861. The Indian judiciary has played a significant role in interpreting and applying admiralty law in India through its judgments and decisions in maritime cases. In recent years, India has modernized and codified its admiralty law by enacting the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. This legislation repealed the outdated Indian Admiralty Act of 1861 and introduced comprehensive reforms to align Indian admiralty law with international standards and practices.³

The Admiralty Act of 2017 expanded the admiralty jurisdiction of Indian courts, modernized the procedures for arresting ships and maritime assets, and enforcing foreign awards. This legislation aims to promote maritime trade, navigation, and commerce in India by providing a robust and efficient legal framework for resolving maritime disputes and claims. In conclusion, the history of admiralty law in India reflects its colonial legacy and the influence of English common law, combined with the efforts of independent India to modernize and reform its maritime legal framework, culminating in the enactment of the Admiralty Act of 2017 as a significant milestone in the development of Indian admiralty law.⁴

³ Shuvro Prosun Sarker & Shreyasi Bhattacharya, Tracing Admiralty Law in India, 3 CMR UNIV. J. CONTEMP. LEGAL AFF. 98 (2021).

⁴ S. Abraham, The Development of Admiralty Jurisdiction in India: A Critical Analysis, 3 INDIAN J. INTEGRATED RSCH. L. 1 (2023).

FREEZING OF ADMIRALTY LAW- YURI MARU AND WORON CASE

To understand how the admiralty law was frozen we need to trace back to two cases which are Yuri Maru⁵ and Woron case.⁶ In the Woron case, the plaintiffs were a Canadian company, while the ship's owners were a joint stock company based in England. The Woron was chartered for a trip from British Columbia ports to Yokohama. Allegedly, the ship's captain deviated from the agreed route, causing financial loss to the plaintiffs. On the other hand, in the Yuri Maru case, the owners claimed to have acquired the ship after the alleged incident that led to the lawsuit. The plaintiffs had previously obtained a judgment against the previous owners. The claim stemmed from breaches of a nine-month charter party made in December 1919. In both cases, the ship's owners contested the jurisdiction of the Admiralty Court where the ships were arrested. While the District Court dismissed these motions, the Exchequer Court of Canada reversed these decisions on appeal. The central issue in both appeals was whether an Admiralty Court in Canada could be summoned to adjudicate on any claim related to a charter party, regardless of the defendant's residence or where the alleged incident occurred. Additionally, it was questioned whether this right existed throughout the British Empire, allowing litigants to pursue claims through in rem proceedings in Admiralty Courts under similar circumstances of no local residency and no cause of action within the local jurisdiction. The appellants argue that, under the Colonial Courts of Admiralty Act of 1890, which established Admiralty Courts in British Overseas Territories to replace the Vice-Admiralty Courts, and the subsequent Canadian legislation implementing this Act, the Exchequer Court of Canada possesses the same Admiralty jurisdiction as the High Court of Justice in England.⁷

As per the 1890 Act, any court within a British territory designated by local laws as an Admiralty Court or possessing unlimited civil jurisdiction is established as an Admiralty Court with the jurisdiction outlined in the Act. The Act also mandates the discontinuation of existing Vice-Admiralty Courts upon its implementation in British territories. The Acts of 1920 and 1925 do not clearly state an intention to expand this jurisdiction to Admiralty Courts outside of England. The key provision in the 1890 Act for interpretation is Section 2(2), which states: "The jurisdiction of the Colonial Court of Admiralty shall be over the like places, persons, matters, and

⁵ [1927] J.C.J. No. 8

⁶ [1927] 4 D.L.R. 69

⁷ David N. Rogers, Admiralty Jurisdiction in Canada: Is There a Need for Reform, 16 J. MAR. L. & COM. 467 (1985).

things as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise." The appellants argue that this provision should be understood to apply to conditions arising after the enactment of the Act, suggesting that the words "from time to time" should be inserted before "existing" in the sentence. Conversely, the respondents contend that the jurisdiction described in the Act refers to the Admiralty jurisdiction of the High Court in England "existing at the point of time when the Colonial Courts of Admiralty Act, 1890, became law." Given the flexibility of the English language and the absence of strict rules governing its interpretation, both parties have discussed the context, origin, scope, and apparent policy of the 1890 Act to determine the genuine meaning behind the wordings referred to.⁸

The transition from the pre-existing vice-admiralty courts to a unified system of Admiralty jurisdiction in the overseas dominions of the Crown is a significant development. Previously, vice-admiralty courts were established sporadically over centuries based on decisions made by the home authorities. The establishment of a unified system under the Colonial Courts of Admiralty Act of 1890 represents a notable change in this regard. Justice Martin's judgment in favor of the appellants offers insights into the understanding of this transition. To grasp the evolution of the jurisdiction of the former Vice-Admiralty Courts alongside the expanding authority of the High Court of Admiralty in England, it's crucial to delve into their historical interplay and the factors that led to their increased powers. The growth of the British Empire naturally led to enhanced roles for the High Admiral and his deputies.⁹

Before 1890, Vice-Admiralty Courts primarily oversaw this jurisdiction, operating under the authority of the Admiralty Office. The Admiralty Commissioners in England granted this authorization via a commission under the Great Seal of the United Kingdom. Typically, a Judge from the colony or possession's Superior Court would preside over the Vice-Admiralty Court. However, this position was bestowed by the British Admiralty, rather than being an inherent role within the colonial judiciary. As a result, the jurisdiction was vested in the individual judge rather than the colonial court as a whole. The powers exercised by these Vice-Admiralty Courts mirrored those of the High Court of Admiralty.¹⁰

During the 19th century, prior to the Colonial Courts of Admiralty Act of 1890, there was a

⁸ Ying, C. A. Colonial and Federal Admiralty Jurisdiction. *Federal Law Review*, 12(3), 236-270, (1981).
<https://doi.org/10.1177/0067205X8101200303>

⁹ See Marsden, *Law and Custom of the Sea*, Vol. 1, p. xiii.

¹⁰ F. R. Scott, *Admiralty Jurisdiction and Colonial Courts*, 6 CAN. B. REV. 779 (1928).

notable expansion of Admiralty jurisdiction in England. Parliament enacted various Imperial Acts during this time that also expanded the jurisdiction of Vice-Admiralty Courts. However, it's crucial to understand that these expansions didn't automatically extend to Vice-Admiralty Courts in overseas territories. In 1859, Dr. Lushington, a High Court judge, pointed out that such expansions didn't impact the Vice-Admiralty Courts. The Admiralty Court Acts of 1840 and 1861 provided the High Court in England with specific and limited powers. Likewise, the Vice-Admiralty Courts Acts of 1863 and 1867 expanded the jurisdiction of overseas Admiralty Courts through detailed provisions and specific amendments, rather than directly referencing the jurisdiction of the High Court in England.¹¹

The Colonial Courts of Admiralty Act of 1890 addressed the existing legal landscape shaped by the old laws. This Act had three main features. Firstly, it aimed to establish local Admiralty Courts within each autonomous region, where locally appointed judges would exercise Admiralty jurisdiction within set limits. Secondly, the Act allowed each overseas possession to declare a court with unlimited civil jurisdiction as an Admiralty Court, with the ability to limit or expand this jurisdiction as desired. Thirdly, the Act empowered self-governing communities to decide the extent of their Admiralty jurisdiction, including the ability to arrest vessels within their ports for litigation in local courts. The Act of 1890 gave dominions the authority to define the extent of Admiralty jurisdiction for their courts, subject to specific reservations and Royal Assent. Contrary to the appellant's contention, it would be incorrect to assume that an Imperial Parliament Act automatically enlarged the Admiralty jurisdiction of overseas courts without the consent of the self-governing states.

The present case concerns the expansion of Admiralty jurisdiction by the Imperial Parliament in England. Over the past fifty years, the allocation of cases in the High Court of England has seen various shifts. A critical question arises: if a cause of action is excluded from the Admiralty procedure in England, does this lead to a proportional decrease in Admiralty jurisdiction in overseas territories? The court said the interpretation of the 1890 Act should not lead to unintended changes in the jurisdiction and procedures of self-governing dominions. The Act seems to establish the highest level of jurisdiction for the new courts based on the Admiralty jurisdiction of the High Court in England at the time the Act was enacted. Any subsequent additions or exclusions to this jurisdiction are left to the discretion of independent legislative

¹¹ Rajah of Cochin, Swab. 473, 166 E.R. 1223.(1859)

bodies. In conclusion, the Judicial Committee advised that the appeals from the appellants should be dismissed. The appellants were ordered to pay the respondents' costs. The impact of the decision is that the growth of admiralty law was frozen. Even when England's admiralty court jurisdiction was expanding the admiralty court jurisdiction of the colonial courts growth was limited. Even after being independent and while all other laws were developing the admiralty law remained frozen. The *Yuri Maru & Woron* case law was invoked whenever the question of expansion of the law arose.¹²

REVIVAL OF ADMIRALTY LAW - THE M/V ELIZABETH CASE

The "MV Elizabeth" case¹³ is a notable landmark in Indian admiralty law that underscores the evolution and application of admiralty jurisdiction in India. The case involves the vessel "MV Elizabeth," which was detained and arrested by the Indian authorities for alleged maritime claims. The "MV Elizabeth" case is significant as it demonstrates the application of the Admiralty Act, of 2017, which modernized and codified Indian admiralty law to align it with international standards and practices.

In the "MV Elizabeth" case, the Indian Admiralty Court exercised its jurisdiction under the Admiralty Act of 2017 to arrest the vessel and adjudicate the maritime claims brought against it. The case highlighted the expanded jurisdiction of Indian courts in maritime matters, the modernized procedures for arresting ships and maritime assets, and the recognition and enforcement of foreign judgments and arbitral awards in maritime disputes. The "MV Elizabeth" case also showcased the Admiralty Act of 2017's emphasis on promoting maritime trade, navigation, and commerce in India by providing a robust, efficient, and contemporary legal framework for resolving maritime disputes and claims. The case served as a testament to India's commitment to upholding international maritime law principles and ensuring a fair and transparent adjudication process for all parties involved in maritime disputes.

The central issue presented to the Supreme Court was whether the Andhra Pradesh High Court,

¹² See *Dimitrios Paizis And Ors. vs Motor Vessel "Nicos" And Ors.* AIR 1983 BOMBAY 178; also see *Smt. Reena Padhi And Ors. vs Owners And Parties*, AIR 1982 ORISSA 57; also see *Kamalakar Mahadev Bhagat vs Scindia Steam Navigation Co. Ltd.* AIR 1961 BOMBAY 186; also see, *Sahida Ismail vs Petko R. Salvejkov* AIR 1973 BOMBAY 18

¹³ *M.V. Elisabeth v. Harwan Investment and Trading (P) Ltd.*, 1993 Supp (2) SCC 433

despite not being a chartered court, possessed the authority to adjudicate the contested admiralty case. Mr. Raju, representing the petitioners asserted that the admiralty jurisdiction of the Indian High Courts had remained unaltered since the enactment of the Admiralty Courts Act of 1861. This Act was extended to India via the Colonial Courts of Admiralty Act of 1890 and the subsequent Colonial Courts of Admiralty Act of 1891. They contended that the later expansions of admiralty powers in the English High Court did not apply to the Indian High Courts. As per his argument, the Andhra Pradesh High Court could only exercise the jurisdiction granted under the 1861 Act, with Section 6 of the Act being particularly relevant to the case at hand. And since it applies only to claims concerning inward cargo, it was argued in the instant case, that the High Court lacked jurisdiction. This stance was supported by earlier judgments from the Bombay High Court, specifically *Kamalakar Mahadev Bhagat v. Scindia Steam Navigation Co. Ltd*¹⁴ and *Mrs. Sahida Ismail v. Petko R. Salvejkov and Ors.*¹⁵ These decisions concluded that the admiralty jurisdiction of Indian High Courts had remained consistent since the adoption of the 1861 Act. Contrarily, the respondent's counsel argued for a liberal interpretation of the colonial statute, suggesting that a strict and narrow interpretation would force litigants to seek remedies in foreign jurisdictions under unfamiliar legal systems. He advocated for an interpretation that would not implicitly restrict the High Court's jurisdiction unless expressly prohibited.

The Supreme Court ruled in favour of the respondent, holding that the Andhra Pradesh High Court indeed possessed the requisite jurisdiction. The Court rejected the petitioner's argument and emphasized the judiciary's role in interpreting laws in contemporary contexts. The Supreme Court clarified that the Colonial Admiralty Act, of 1890 was not intended to replicate the powers of the English High Court merely but aimed to elevate Indian courts to a similar status in exercising admiralty jurisdiction. The Court further asserted that High Courts in India are superior courts of record with unlimited jurisdiction and inherent powers to determine their own jurisdiction in the absence of explicit statutory restrictions. In this light, the Supreme Court concluded that there was no basis to believe that the jurisdiction of Indian High Courts had remained stagnant since the enactment of the Colonial Courts of Admiralty Act, of 1890. Thereby the court unfroze or broke the shackles that locked up the admiralty law. This judgment expanded the due jurisdiction of the Admiralty Act. Now, the Admiralty jurisdiction is not limited to the jurisdiction that was at the time of the passing of the colonial Act. The Supreme Court has given wider jurisdiction to the High Courts so that now it can exercise the current powers of England's

¹⁴ AIR 1961 Bom 186

¹⁵ AIR 1973 Bom 18

Admiralty Act, international conventions, and principles of transnational law. This judgment also paved the way for future amendments and expansion to the powers of the admiralty court.

CONCLUSION

The Colonial Courts of Admiralty Act, of 1890 (U.K.) was enacted to extend the admiralty jurisdiction of the High Courts in British possessions, including India. By this Act, the existing High Courts in India were designated as "Colonial Courts of Admiralty" with admiralty jurisdiction equivalent to that of the High Court in England. However, the term "existing" led to ambiguity regarding the scope and growth of this jurisdiction.

The Privy Council, in its decisions like *The Yuri Maru* and *Woron* cases, adopted a restrictive interpretation of the Act. It held that the admiralty jurisdiction of these colonial courts was frozen at the level it existed in 1890. This frozen state persisted for almost a century, despite significant legislative reforms in England and international advancements in admiralty and maritime law.

However, in the landmark case of *M.V. Elisabeth v. Harwan Investment & Trading Pvt Ltd.*, the Supreme Court of India diverged from the previous restrictive interpretations. The Court emphasized that the Colonial Courts of Admiralty Act, 1890 aimed to assimilate the Indian High Courts' admiralty jurisdiction to that of the English High Court, without imposing any limitations based on specific English statutes. The Court opined that the Indian admiralty jurisdiction needed to be evolved in line with the developments in England, especially considering their status as superior courts of record with plenary jurisdiction. The Supreme Court rejected the earlier restrictive interpretations and held that the Indian admiralty courts could entertain maritime claims based on international conventions and principles of transnational law. The Court overruled its previous decisions and said the admiralty jurisdiction of Indian High Courts is extended to a broader range of maritime claims.

In conclusion, the Supreme Court's decision in the *M.V. Elisabeth* case marked a significant departure from the previously adopted restrictive interpretations and brought Indian admiralty law in line with international developments and principles of transnational law. The Court emphasized the need for a liberal and dynamic interpretation of the law to meet the evolving demands of justice and reflect the changing landscape of maritime law globally. The landmark judgment significantly expanded the jurisdiction of the Admiralty Act in India, breaking the

limitations imposed by the colonial-era legislation. By unfreezing the previously restricted scope of admiralty law, the Supreme Court empowered High Courts with broader jurisdictional powers, enabling them to exercise the contemporary powers equivalent to England's Admiralty Act, international conventions, and principles of transnational law. This pivotal decision not only modernized the admiralty jurisdiction but also laid the groundwork for potential future amendments and enhancements to strengthen further the authority and effectiveness of the admiralty courts in India.

