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DEVELOPMENT OF ADMIRALTY LAW IN INDIA VIS-À-VIS ARREST OF SHIP

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Abstract:

Maritime activities of India, has a history that can be traced back to 3rd millennium BC, which dealt with sea trade and commerce, within and outside the territory. The only legal instruments that regulated and governed maritime activities were customs, traditions and established practices. The law with respect to maritime activities was not codified. Europe was the first continent to codify the laws pertaining to maritime activities which gradually trickled down to its colonies. Today, maritime activities have expanded manifold owing to exponential development in the field of technology leading to better connectivity and transportation and therefore, increasing trade and commerce. In the course of trade and commerce a ship is bound to incur liabilities due to damage to another ship, pending wages, violating law of seas etc. The liabilities against the ships are realized through enforcement of maritime claims against the ship. Since, under Admiralty laws, maritime claims are enforced in rem i.e. against the property, which is ship, therefore the study pertaining to the applicable laws, regulations and procedure pertaining to the arrest of ship becomes necessary to understand the intricacies of Admiralty law. Ship arrest is an admiralty procedure in the civil law, where exclusive jurisdiction is granted to an Admiralty Court to arrest a vessel in the process of securing a maritime claim.

The first part of the paper outlines and traces the history and evolution of the Admiralty law and underlying necessity of arresting the ship under admiralty law. The paper proceeds further in the second part by defining the concept of the arrest of ship and procedure prescribed thereof. The third part of the paper sketches the history of evolution and development of the admiralty law in India and analyses the role played by the Indian Supreme Court in evolving and developing the admiralty law pertaining to the arrest of ship to bring it at par with the law prevalent in the United Kingdom. The fourth part of the paper analyses the admiralty prevailing in India with respect to the arrest of ship as of this date by

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analyzing The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 and basic concepts such as maritime claim, maritime liens and arrest of sister with the aid of judicial precedent which played an active role in development and evolution of the admiralty law.

I. EVOLUTION OF ADMIRALTY LAW

Maritime and shipping law are one of the oldest branches of law. The history of maritime laws can be traced back to the Rolls of Oleron and Rhodian Sea Laws.² The Rhodian Sea law was the body of regulations that governed the trade and navigation in the Byzantine Empire in the 7th century. The Rolls of Oleron was written in France in the early thirteenth century and were the first common sea law regulating the medieval shipping in the North Western Europe. Post colonization by the British Empire, the colonies relied on the jurisprudence that was developed in the Courts of England. These courts were called Courts of Lord High Admiral, and thus, the name Admiralty Court came into existence. These Courts were independent from the common law court and were initially set up to deal with the issues of piracy on the high seas. However, subsequently these Courts started exercising civil jurisdiction in the wake of the variety of claims that were brought for adjudication before them.

The Admiralty powers of the Indian High Courts, as known today, were conferred upon these courts by the Admiralty Court Act of 1840 and then 1861. Post enactment of Admiralty Court Act, 1840 there was persistent jurisdictional issues and therefore, the Admiralty Court were merged with the Queen's Bench Division of High Court of England by the virtue of the Judicature Act, 1875.³ Therefore, the Admiralty Courts, today exists as part of the Queen's Bench Division.⁴

The Colonial Courts were dependent upon the Admiralty Courts in England for development of their jurisprudence. Therefore, these Courts were given power similar to that of the Admiralty Courts in England through various statutes. For instance, in India, the Admiralty powers of the High Court of England was extended to the Courts of India enjoying original

² W.G. Paulsen, *A Historical Overview of the Development of Uniformity in International Maritime Law*, 57 TULANE LAW REVIEW 1065 (1983).

³ S.D. Nandan, *Admiralty Jurisdiction in India: Pre and Post Elizabeth*, 49 JILI 81 (2007).

⁴ *Ibid.*

civil jurisdiction, specifically to the three chartered High Courts in India through the Colonial Courts of Admiralty (India) Act, 1891. The law continued to develop in England through subsequent statutes such as Judicature Act, 1925. However, none of these statutes were extended explicitly to the colonies, including India. India even after its independence continued to adhere to the statutes that were brought into force in India by the British regime.

The claims that can be enforced in the Admiralty Court are generally propounded and laid down in the domestic statutes. These claims are called maritime claims. The legal claims are generally by nature *in personam*, i.e. can be brought and enforced against another person or individual. However, in maritime disputes and most particularly in the shipping industry where the ships are engaged in international trade and commerce the legal claims that arise out of dispute are of *in rem* nature. The reason being, it is not easy to trace the person/persons who are associated with the ships. These person/persons can be charterers or owners.

The situation is furthermore complicated by the fact that the ships engaged in the international trade are registered in the countries such as Greece, Panama or Cayman Islands, which offer tax incentives and less strict registration norms. Many of the ships are either registered in the name of Shell Corporation or the owners that are untraceable. Even if the corporation or the person can be tracked, bringing an actionable claim is the fight through the web of myriads of jurisdictional and conflict of laws issue. Therefore, the only feasible course of action in bringing an actionable claim against the property which is subject matter of the dispute, the *res* i.e. a ship. Therefore, *in rem* action were developed to counter these problems.

In rem actions are directed against the *res*, i.e. a ship but in certain circumstances it also include the goods on board, bunker and cargo. However, jurisdictional issues are bound to arise even in these circumstances therefore, the nation's enact statutes providing the maritime claims that can be enforced in its jurisdiction and the admiralty jurisdiction is restricted to these claims only. However, maritime liens are the special maritime claims that enjoy preferential treatment over the other claims and are not prejudiced by the jurisdictional issues that might crop up. ⁵

⁵*Ibid.* at p. 1065.

II. SHIP ARREST

The maritime claims are enforced against the property i.e., ships by means of arrest of ship. A ship is arrested to prevent it from moving or trading until the dispute is adjudicated. The Admiralty Court have exclusive jurisdiction to detain or arrest a vessel to secure maritime claim. Ship arrest has been defined in the following words:

*"(2) "Arrest" means the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment."*⁶:

*"Arrest means detention or restriction for removal of a vessel by order of a High Court to secure a maritime claim including seizure of a vessel in execution or satisfaction of a judgment or order."*⁷

The primary purpose of bringing in rem action or the arrest of ship is to secure the personal presence of the defendant in order to enforce maritime claim.⁸ However, it could also be for the purpose of furnishing security for a claim or to execute decree of a Court.⁹ Once the ship is arrested, a legal notice is sent to all those who hold interest over the ship in any capacity. If charterer or owner appears before the Court issuing notice and submits himself/itself to the jurisdiction of the Court by furnishing security, then the action gets converted into the in personam action. If no one appears before the Court and furnishes the security then the ship is sold and proceeds of the sale are apportioned amongst the claimant.

Civil law countries such as the United States has propounded its own set of laws dealing with the maritime jurisprudence that are quite distinct from the common law jurisprudence. Civil law jurisdictions do not distinguish between the in-rem action and in personam actions. All the maritime actions are considered as in personam. The ship is treated as the property if the defendant and dispute is dealt by the courts and tribunals exercising ordinary civil jurisdiction. For instance, in France, the presence of property i.e. ship belonging to the defendant with the territory of the France confers the jurisdiction on the French Court¹⁰ as

⁶ INTERNATIONAL CONVENTION RELATING TO THE ARREST OF SEA- GOING SHIPS, 1952, art. 2.

⁷ Admiralty (Jurisdiction and Settlement of Maritime Claims) Act of 2017, sec. 2 (1)(c).

⁸ C.HILL, MARITIME LAW 89 (1995).

⁹ M.V. Elizabeth v. Harwan Investment Co. 1993 Supp (2) SCC 433.

¹⁰ The Observation of Lord Diplock in The Jade (1976) 1 All ER 920, 923

opposed to the common law jurisdictions where admiralty actions are confined within well-defined parameters of the maritime claims or maritime liens and are directed only against the property i.e. ship, cargo or freight. The power to arrest the ship also includes arresting sister ships which are the ships of the same beneficial owners.¹¹

III. ADMIRALTY JURISDICTION IN INDIA: PRE ELIZABETH-CASE

The first instance of exercise of Admiralty jurisdiction in India was by the Supreme Court of Judicature at Bombay which was established in 1823. Admiralty and Vice admiralty jurisdiction, after the establishment of High Court of Judicature at Bombay by virtue of Clause 31 of the Letters Patent of 1862, was exercised by the High Court of Bombay.¹² After the enactment of Colonial Courts of Admiralty Act, 1890, every Court of law which was in the British possession and having original unlimited civil jurisdiction was given a status of Court of Admiralty by virtue of Section 2(1) of Colonial Courts of the Admiralty Act, 1890. Section 3 of the Colonial Courts of the Admiralty Act, 1890 conferred power upon the Colonial Legislature to declare any Court of unlimited civil jurisdiction, whether original or appellate, to be Colonial Court of Admiralty.¹³

The High Court of Bombay, Bengal and Madras were declared as the Colonial Courts of Admiralty after enactment of The Colonial Courts of Admiralty (India) Act, 1891¹⁴ thereby equating them with High Courts of England.¹⁵ The aforesaid state of affairs continued majorly due to legislative inaction which can be largely attributed to the India being under British Rule. Even after coming into force of Government of India Act 1915 and 1935 there was no change in powers and jurisdiction of the Colonial Courts of Admiralty which were established at Calcutta, Bombay and Madras. After Independence, the India Legislature did not deem fit to amend the existing admiralty laws or enact new laws and therefore, the existing admiralty laws continued to apply, even though admiralty law had evolved and developed to a considerable extent in England. In India, the development of Admiralty law took place by virtue of ruling of the Hon'ble Supreme Court in *M.V. Elizabeth* case.¹⁶

¹¹ *Supra* note 8.

¹² S.P. HATHI, SHIP ARREST IN INDIA AND ADMIRALTY LAWS OF INDIA 13 (2020).

¹³ *Ibid* at pg. 16

¹⁴ *Ibid* at pg.17

¹⁵ *Ibid*.

¹⁶ *Supra* Note 8

In *M.V. Elizabeth*, the ship in dispute i.e. MV Elizabeth was owned by Greek National and was registered abroad. The ship while carrying the goods of the claimant violated the orders of the claimant. The ship was arrested at the Visakhapatnam Port by the order of the High Court of Andhra Pradesh. The issue that arose before the Hon'ble Court was whether the admiralty jurisdiction could be exercised by the Courts over a ship that was carrying cargo out of the country and whether the courts have power to exercise jurisdiction over a foreign ship that was in its coastal waters. The latter question arose because the Admiralty Courts Act, 1861 which was then in effect restricted the admiralty jurisdiction of the courts to the ships that were carrying cargo into the country. Various High Courts in their earlier ruling were of the opinion that admiralty jurisdiction was distinct from the other jurisdictions that were exercised by the Court and the Courts had no power beyond what was conferred under Admiralty Court Act, 1861.¹⁷

The Court after interpreting section 2 and 3 of the Act came to the conclusion that statute merely declared the Courts of competent jurisdiction as the Admiralty Court. English statutes were not incorporated into the Indian laws and there was no statutory conferment of power by the Admiralty Court Act, 1861. The Court also observed that the Admiralty jurisdiction in England has evolved and expanded as opposed to India and therefore, the Indian High Court should also be attributed with corresponding growth and evolution. The Court drew the inference from The Administration of Justice Act 1920 and Administration of Justice Act, 1928 through which England had removed the difference between the cargo that was outbound and the cargo that was inbound.

The Court further went on to observe that High Courts of India were superior court of record with inherent plenary powers that were constitutionally granted and therefore had unlimited jurisdiction including jurisdiction to determine its own power unless specifically and expressly barred. In an earlier case the Supreme Court had refused to confer the power on the High Court that was not granted by the statute.¹⁸ However, by this ruling the Court held that the High Court was, “*vested with all the appellate and original jurisdiction, including the admiralty jurisdiction, to order the arrest and detention of the ship.*”¹⁹ The Court also

¹⁷ Kamalakar Madhav Bhagat v. Scindia Steam navigation Co., AIR 1961 Bom 186

¹⁸ Raja Soap Factory v. S.P. Shantaraj, AIR 1965 SC 1449

¹⁹ *Supra* Note 8 at 466

took note that Supreme Court of Judicature Act of 1981 specifies the maritime claims that falls with the jurisdiction of the admiralty court. However, there was no statute in India that laid down maritime claims explicitly.

To fill this lacuna the Court expanded the interpretation of section 443 of the Merchant Shipping Act. Section 443 read with Section 3 (15) of the Merchant Shipping Act lays down the procedure that has to be adopted in the arrest of the ship that has caused damage to the property belonging to the Indian government or citizen. The term damage had not been specifically classified in any Indian Statute with respect to maritime claim and the provisions of the Carriage of Goods by Sea Act, 1925 were ineffective against the foreign ship. The Court held that the terms should be interpreted widely so as to include all the maritime claims that were specified in the Arrest of Sea-going Ships (The Arrest Convention), 1952 and later adopted by U.K. Act of 1981. Through this ruling the Arrest Convention was applied to India, even though India had not ratified it.

The wide interpretation and the activism opened a flood gate of the questions such as whether by virtue of this ruling all the High Courts of India including inland High Courts were conferred with the admiralty jurisdiction. The judgment was by no stretch a perfect judgment as it was widely criticized as well as lauded but the judgment paved the way for future development and evolution in the maritime law. The legislator were urged to amend the laws to bring them in conformity with the international conventions.

IV. ADMIRALTY JURISDICTION IN INDIA: POST ELIZABETH RULING:

On 9 August 2017 The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (herein after The Admiralty Act 2017) was enacted and came into force in India. The objective of the Admiralty Act was to consolidate the laws pertaining Admiralty thereby repealing all the existing outdated laws relating to Admiralty.

Section 3 of the Admiralty Act, 2017, conferred the admiralty jurisdiction upon the High Courts, so that respective High Court can exercise authority within its territorial waters. The Admiralty Act, 2017 widened the scope of the admiralty jurisdiction and answered the question that arose as the result of the ruling of the Supreme Court in the MV Elizabeth Case.

By virtue of the Admiralty Act, 2017 now apart from the presidency courts, High Court of Andhra Pradesh, Orissa, Gujarat, and Kerala also has the jurisdiction to deal with the Admiralty matters.

A. Maritime claims

Maritime claim means a claim civil in nature arising out of a maritime dispute. A maritime dispute may arise regarding, the possession or ownership of the ship, loss or damage caused to the cargo or ship, pilotage, employment etc. Section 4 of the Admiralty Act, 2017 lays down a list of maritime claims that are enforceable in the Indian Courts. These claims may include a claim arising out of dispute with respect to loss or damage to the ship, caused by the ship, goods or a mortgage or a charge on the ship. A state may also have a maritime claim on the ship if ship fails to abide by maritime laws. The violation of laws can be in nature of non-payment of dues such as harbor charges, dock charges, waterway charges, light tolls etc. A member of crew, employee or a master may also bring a maritime claim for non-payment of wages, non-payment towards social insurance, or a claim arising out of manning and crew agreement.”²⁰

The maritime claims as enumerated under section 4 have been derived from the International Convention in relation to the Arrest of Sea-Going Ships 1952, Brussels and the International Convention on the Arrest of Ships, 1999, Geneva. However, the Admiralty Act, 2017 has incorporated few additional claims which are enforceable in the Indian Courts by means of arrest of the Ship.²¹

However, the Admiralty Act 2017 has been curtailed because maritime claims cannot be enforced in rem against the Time charterers and Voyage charterers. The Time and Voyage Charterers cannot be arrested under the Act which is a significant deviation from the Article 3 (2) of the Arrest Convention.²²

Section 5 of the Admiralty Act 2017 provides for the arrest of the vessel in rem. If the High Court has the reason to believe that the owner of the vessel or the demise vessel of the charter is liable for the claim then the High Court may order for the arrest of this ship within its

²⁰ The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act of 2017, sec. 4.

²¹Supra Note 11 at pg. 47

²² *Ibid.*

jurisdiction for the purpose of providing security in order to satisfy maritime claim and while doing so the High Court will also look into the merit of the claim and see assess the category of the maritime claim under section 5 of the Act.²³

The general rule states that the maritime claims are enforceable in rem and not in personam. However, Section 6 of the Admiralty Act, 2017 has conferred Admiralty Jurisdiction upon the High Courts in personam in respect of certain Maritime claims, which are subject to certain conditions and restrictions as laid down in Section 7. Maritime claims arising out of a collision and other such related claims, can be initiated against the Defendant, *in personam* if the cause of action has arisen in India in whole or in part, or if the Defendant was actually and voluntarily residing or carrying on business or personally working for gain in India at the time of commencement of the cause of action.²⁴

The order of priority of maritime claims enforceable has been laid out under section 10 of the Admiralty Act. A claim arising out of carrying maritime lien shall be given preference over registered mortgages as well as charges of same nature as per section 10 (1). All other kind of maritime claims are given preference when first two kind of claims have been settled.

B. Maritime lien

Maritime lien are the kinds of lien that attaches itself to the property in this case the ship and travels with the res wherever it goes in order to secure a maritime claim. The maritime lien attaches itself to the res from the time of the events giving rise to it. It then attaches itself to the ship, travels with the ship into anyone's possession, who can even be bona fide purchaser for value. However, maritime lien is extinguished post the arrest of the ship and settlement of the claims by the decree of the Court. Maritime liens are the privileged claims that get the preference over the other claims.²⁵ Maritime liens²⁶ are defined as following

“maritime lien” means a maritime claim against the owner, demise charterer, manager or operator of the vessel referred to in clauses (a) to (e) of sub-section (1) of section 9, which shall continue to exist under sub-section (2) of that section;

²³ The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act of 2017, sec. 5.

²⁴ The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act of 2017, sec. 7.

²⁵ Supreme Court Act of 1981(UK), sec. 20(2).

²⁶ The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act of 2017, sec. 2 § 1, cl. (g).

The Supreme Court in the case of *Epoch Enterrepots v. MV Won Fu*²⁷ classified the maritime liens under the broad heads of damage done to the ship, salvage, seaman's and master's wages, master's disbursement and bottomry. The list of the maritime liens and the priorities in which maritime liens shall be given preference for the enforcement are provided under Section 9 of the Act.

- “(a) claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;
- (b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;
- (c) claims for reward for salvage services including special compensation relating thereto;
- (d) claims for port, canal, and other waterway dues and pilotage dues and any other statutory dues related to the vessel;
- (e) claims based on tort arising out of loss or damage caused by the operation of the vessel other than loss or damage to cargo and containers carried on the vessel.”²⁸

The period of limitation for Maritime Lien is also provided under the Admiralty Act 2017. Generally, a maritime lien extinguishes after expiry of one year. However, lien may get extinguished before period of one year if the vessel is arrested and seized and such arrest and seizure lead to a forced sale by the High Court. But the Maritime Liens which relate to the claims for wages or other employment related payments, the limitation period is two years.²⁹ Generally, the period of limitation runs continuously starting from the moment the charge is created without any suspension or interruption, however, if the ship is subject to arrest or detention then the period during which the vessel was under arrest or seizure is excluded for the computation of the period of limitation. The maritime lien continues to be attached to the vessel notwithstanding any change of ownership or of registration or of flag.

²⁷ (2003) 1 SCC 205

²⁸ The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act of 2017, sec. 7.

²⁹ *Ibid.*

However, once the ship is sold to settle the maritime claim or to satisfy the decree of the court the lien is lifted and ship becomes free of any encumbrance.

C. Arrest of a Sister Ship.

The general rule of enforcement of maritime claims is rem coupled with the elusiveness of the ships mandates that the claimant ought to have a remedy against some alternate res in which the defendant holds some interest. The Indian legal system is not based on the civil legal system therefore, an enforceable action cannot be brought against the properties that a defendant may possess. Therefore, in rem action is maintainable against another ship in which the defendant may have beneficial interest. The power to arrest a sister ship is implied under Section 5 (2) of the Admiralty Act 2017 which states that, “*the High Court may also order arrest of any other vessel for the purpose of providing security against a maritime claim, in lieu of the vessel against which a maritime claim has been made under this Act.*” Vessel has been defined in the following words:

“vessel includes any ship, boat, sailing vessel or other description of vessel used or constructed for use in navigation by water, whether it is propelled or not, 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.”³⁰

The question whether the sister ship can be arrested or not has already been a contentious issue for the High Courts before the Admiralty Act, 2017. In the case of *State Trading Corporation v. Govt. of the People’s Republic of Bangladesh*,³¹ the contention of the claimant was that a particular ship, named MV Pranburi ought to be arrested as being sister-ship of MV Yanmit. The first question that arose before the Hon’ble Delhi High Court was whether at all the Court had the jurisdiction to arrest the ship. The court came to the conclusion that ship could be arrested provided one of the three conditions stipulated in section 3(15) of the Merchant Shipping Act, 1958 was fulfilled. However, the Court was unsure as to whether the cause of action had arisen within its territorial jurisdiction.

³⁰Section 2 (1) (l) The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act of 2017, sec. 2 § 1, cl. (l).

³¹ 63 (1996) DLT 971, 1997 (40) DRJ 441

Furthermore, the claimant also failed to prove that MV Pranburi was indeed the sister-ship, of MV Yanmit and consequently did not arrest the ship. This judgment despite holding that in the absence of proof a sister ship cannot be arrested, noticed some contentions that were duly evaded by the Court. It was contended that since India had not ratified the 1952 Brussels Convention, that legitimizes sister-ship arrest, and neither the judgment of the Hon'ble Supreme Court in the case of MV Elizabeth nor the provisions of Merchant Shipping Act talk about the arrest of the sister ship therefore, the Court was not empowered to arrest the sister ship. However, since the Court has already held that claimant's failure to prove that the ship was sister ship will not entitle him to relief did not delve into these questions.

The issue whether a sister ship can be arrested in the absence of any specific provision in the Merchant Shipping Act 1958 as well as without any observation to that effect in ruling of MV Elizabeth was dealt by the appeal court of the Bombay High Court in the case of *MV Mariner IV vs. Videsh Sanchar Nigam Limited*.³²The Court made the following observations:

*"In view of the decision of the in MV Elizabeth, we are of the clear view that the High Court does have jurisdiction to arrest a sister ship for securing any maritime claim."*³³

An interesting question arose before the Bombay High Court in the case of *MV Success Ivs. Liverpool and London Steamship Protection and Indemnity Association Ltd.*³⁴, whether ships belonging to parent company and a subsidiary company can be said to be sister ships for the purpose of arrest of sister ships. In this case an action in rem under admiralty jurisdiction was initiated against the vessel MV Success which was owned by Defendant no. 1. It was alleged that Defendant No. 2 was the owner of the vessels "Sea Ranger" and "Sea Glory" the two vessels against which the claimant-initiated action for the amounts due towards unpaid insurance premium. It was further alleged that defendant No. 2 owned "Sea Success I" of defendant No. 1, through a wholly owned subsidiary and, therefore, the Defendant No. 1 vessel's i.e., Sea Success I was a sister ship of "Sea Ranger" and "Sea Glory". The Court firstly observed that ownership of a ship in maritime law is established through the holding of shares in that ship. A company in law is a separate legal entity and

³² 1997 SCC OnLine Bom 549: (1998) 1 Mah LJ 751: (1998) 5 Bom CR 312

³³ *Ibid* para 33

³⁴ 2001 SCC OnLine Bom 1019: AIR 2002 Bom 151: (2002) 2 Bom CR 537

merely because a company is a wholly owned subsidiary of a parent company that does not necessarily imply that all the assets of the subsidiary company belong to and are owned by the parent company. The Court then referred to its earlier decision in the case of M.V. Mariner IV³⁵ wherein the court had held that, "The admiralty jurisdiction could be invoked not only against the offending ship in question but also against a sistership in regard to which the claim arose", however, the said ruling did not apply to the instant case. The court observed the following:

“...and this legal position is not disputed before us but the question is whether the allegations made in the plaint, particularly paragraphs 1 and 14 which are only relevant paragraphs in that regard by themselves prove that defendant No. 1 vessel "Sea Success I" is the sister ship of the vessel "Sea Glory" and "Sea Ranger". The answer is clearly no as the only pleading in respect of the defendant No. 1 vessel "Sea Success I" being sister ship of "Sea Ranger" and "Sea Glory" is that vessel "Sea Success I" is owned/controlled by defendant No. 2 through its 100% wholly owned subsidiary S.S. Shipping Corporation Inc. of Monrovia and we have already indicated above that on that basis defendant No. 2 cannot be held to be owner of the vessel "Sea Success I" since the ownership of a vessel is denoted by the shares in the ship and there is no allegation worth the name in the entire plaint that the defendant No. 2 owns the shares in the defendant No. 1 vessel Sea Success I. The ships are deemed to be in the same ownership when all the shares are owned by the same person or persons (Article 3(2) of 1952 Brussels Arrest Convention).”³⁶

The ruling of the Court in this case clearly indicates that merely because ships belong to parent company and subsidiary company and where subsidiary company is wholly owned by the parent company does not establish a sister relationship between the two ships. The management and control of the parent company over the subsidiary company does not make the parent company beneficial owner of the ships that are owned by the subsidiary company even though the parent company may be in exercising effective management and control over the ships. A person will only be considered as rightful owner of the ship if he is the owner of the shares in the ship. Ownership of a ship can be established from the facts that a

³⁵1997 SCC OnLine Bom 549; (1998) 1 Mah LJ 751; (1998) 5 Bom CR 312.

³⁶*Supra* Note 33, at para 55

person owns the shares in the ship and has the right to sell, dispose of or alienate the shares in the ship.

In order to avoid the arrest of another ship belonging to same owner to satisfy maritime claim, the owners register their ships under several companies or shell corporations. Due to this, the tracing of the ships to its actual owner becomes quite difficult and even if the owner of the ship can be traced it is difficult to establish the ship as sister ship. These ships are known as “Associated Ships”.

All the jurisdictions in the world allow the arrest of the sister ship in order to satisfy the maritime claims either directly or through the lifting of the corporate veil. But the arrest of the associated ships is not recognized in all the jurisdictions. One of the jurisdictions that recognizes the arrest of associated ship is South Africa. The law is so extensive that it allows the lifting of corporate veil in almost every cases. The laws permit the arrest of ship owned by a company that is seemingly unconnected to the company against whose ship maritime claim has been initiated simply by the virtue of the fact that to companies are commonly controlled and owned.³⁷

The Indian Courts are not so inclined in the lifting of corporate veil unless there is an evidence of fraud. Hon’ble Division Bench of The Bombay High Court in the case of *Lufeng Shipping Company Ltd vs M.V. Rainbow Ace & Anr*³⁸ held that lifting of corporate veil will only arise if there is evidence of fraud and not otherwise. If it shown through evidence that beneficial ownership of the ship that need to be arrested vests in the person who is liable and responsible for the claim, then only as a ship can be arrested and not merely on the grounds of suspicion.

Indian Courts generally encourage the arrest of sister ships if the beneficial ownership is proved however Courts are reluctant when the arrest of associate ships or surrogate ships is sought. Indian Courts are not inclined to pierce the corporate veil if it cannot be established through evidence that ships are indeed sister ships.

³⁷ Belfry Marine Ltd v Palm Base Maritime Sdn Bhd (MV Heavy Metal) [1999] ZASCA 44

³⁸ 2013 SCC OnLine Bom 733; (2013) 4 AIR Bom R 1412; (2013) 7 Bom CR 700

V. CONCLUSION

As discussed in the paper, and in light of the fact that maritime claims are generally enforced against the *res*, therefore, having a comprehensive understanding of the concept pertaining to the arrest of ship such as maritime claims, liens and arrest of sistership amasses greater importance in order to enforce a maritime claim in the Indian High Courts exercising admiralty jurisdiction. The discussion pertaining to the arrest of the ship and allied concepts such as maritime claims, maritime liens and arrest of sister ship along with the analysis of these concepts through the judicial precepts reveal the active role that the Supreme Court and Indian High Courts have played in evolving and developing the law of admiralty in India.

The discussion and analysis of the prevailing admiralty law in India and its enforcement by the Indian High Courts reveal that the law with respect to the arrest of the ship is well settled in India post enactment of the Admiralty Act 2017 which had repealed the colonial laws upon which India had been dependent upon even after its independence. Admiralty law is still evolving and developing area of law but it plays very important role in protecting the rights of the plaintiffs and in the light of the developments in the Admiralty law, India has emerged as preferred destination for enforcement of maritime claims.
