



ADMIRALTY JURISDICTION IN INDIA: IMPLICATIONS AND CHALLENGES

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ABSTRACT: International trade by sea is increasing day by day leading to rise in related disputes. Admiralty jurisdiction exists to resolve cases related to shipping and sea related issues. In India, only the High Court in each states has admiralty jurisdiction , but the increase in cases may cause delay in judgements affecting trade. This study suggests establishing specialized admiralty tribunal to expediate case resolutions with experts in maritime law.

CHAPTER 1 INTRODUCTION

In Indian maritime law, admiralty jurisdiction plays an important role in managing disputes in the maritime sector, especially disputes related to ships, cargo and maritime affairs. This specific domain of law is necessary to maintain the efficiency of maritime trade and to solve problems that arise during shipping operations.

Due to India's vast coastline and safe maritime operations, there is a need to establish a clear legal framework for resolving disputes in the shipping sector. Admiralty jurisdiction in India is mainly governed by the Admiralty (Settlement and Administration of Maritime Claims) Act, 2017, which serves as the legal basis for settling maritime claims, including ship damage, cargo disputes, salvage operations, collisions and other general maritime issues. .

An important feature of admiralty jurisdiction in India is the exclusive jurisdiction given to individual High Courts. This court was designated as a specialized agency to deal with admiralty matters, providing a focused and expert approach to maritime matters.

The scope of admiralty jurisdiction in India covers most maritime claims. The charter contract covers disputes involving damage or loss of goods carried by ships, shipping, flights or goods shipped on ships. Admiralty jurisdiction extends to collisions, salvage operations, and moderate conditions.

Admiralty law in India is in line with international conventions and agreements, including the United Nations Convention on the Law of the Sea (UNCLOS), which India is a signatory. This alignment ensures that Indian admiralty law is in line with global maritime standards and principle.

1.2 BACKGROUND TO THE PROBLEM

The Admiralty jurisdiction was initially vested in the Recorder's Court at Bombay, established through a Charter dated February 20, 1798. However, this court was later replaced by the Supreme Court of Judicature at Bombay, established via Letters Patent under the 1823 Charter, with the same Admiralty jurisdiction as the High Court of Admiralty in England¹.

The Indian High Courts Act, passed by the British Parliament on August 6, 1861, was titled an act to establish high courts of judicature in India. This legislation, consisting of only 19 sections, primarily aimed to abolish the supreme courts and Sadar Adalats in the three Presidencies, replacing them with high courts. These high courts were empowered to exercise civil, criminal, admiralty, vice-admiralty, testamentary, intestate, matrimonial, original, and appellate jurisdiction.

Each high court was to comprise a chief justice and up to fifteen puisne judges appointed by Her Majesty. These high courts had supervisory authority over all subordinate courts within their appellate jurisdiction. They were authorized to request transfers of suits or appeals between courts and establish general rules to regulate court practices and proceedings.

The charter for the Calcutta High Court was issued on May 14, 1862, and published in Calcutta on July 1, 1862, officially establishing the high court the following day. The charters for the High Courts of Bombay and Madras were issued on June 26, 1862, and these courts were inaugurated on August 14 and 15, 1862.

The Supreme Court of Judicature at Bombay, established in 1823, was superseded by the High Court of Judicature at Bombay under the Letters Patent of 1862. Clause 31 of the 1862 Letters Patent addressed admiralty and Vice Admiralty jurisdiction. These Letters Patent of 1862 were later replaced by those of 1865, and Clause 32 of the 1865 Letters Patent granted the High Court of Judicature at Bombay civil and maritime jurisdiction, including the trial and adjudication of prize causes and other maritime questions arising in India².

In 1890, the Colonial Courts of Admiralty Act, 1890, was enacted, and it included sections 2(1), 3, and 7, which read as follows:

"Section 2 - Colonial courts of Admiralty:

Any British possession's court of law, designated as a Court of Admiralty under this Act or having original unlimited civil jurisdiction if no such designation exists, shall possess the jurisdiction outlined in this Act. It can utilize its existing powers for this specific jurisdiction. Such a court is referred to as a Colonial Court of Admiralty in this Act. In cases where the Governor is the sole judicial authority in a British possession, the term 'Court of law' in this section includes such a Governor.

Section 3 - Power of Colonial legislature as to Admiralty jurisdiction: The legislature of a British possession can, through Colonial law:

Declare any Court in that possession with unlimited civil jurisdiction, whether original or appellate, as a Colonial Court of Admiralty, specifying its jurisdiction under this Act and limiting it territorially or otherwise.

Grant partial or limited Admiralty jurisdiction to any inferior or subordinate Court in that possession with regulations and possible appeals³.

However, any such Colonial law cannot confer jurisdiction not already granted to a Colonial Court of Admiralty by this Act.

Section 7 - Rules of Court:

Rules of Court governing procedure and practice in a British possession's Court exercising jurisdiction under this Act, whether original or appellate, can be established by the same authority and following the same process as rules for the Court's Ordinary Civil Jurisdiction, including fees and costs. These rules do not apply to matters related to the slave trade unless provided by this Act and require approval from Her Majesty in Council before taking effect. Any inconsistent enactments are repealed.

Her Majesty in Council, when approving rules under this section, may declare that rules concerning specific, local, or detailed matters can be altered without the approval process outlined in this section.

These rules can specify whether the jurisdiction granted by this Act is exercised by the full Court, one or more Judges, and in cases where a Single Judge can exercise the Ordinary Civil Jurisdiction of the Court, the same applies to the jurisdiction granted by this Act.

³<https://www.legislation.gov.uk/ukpga/Vict/53-54/27/data.pdf>

By the Colonial Courts of Admiralty (India) Act, 1891, declared the High Court of Bombay, along with the High Courts at Fort William in Bengal and Madras, as Colonial Courts of Admiralty. The Act's preamble stated that it was in accordance with the Colonial Courts of Admiralty Act, 1890, allowing a British possession's legislature to declare a Court with unlimited civil jurisdiction as a Colonial Court of Admiralty. The High Court of Bombay, being a Court of record with unlimited civil jurisdiction, was declared a Colonial Court of Admiralty with jurisdiction equivalent in scope and quality to that of the High Court of England based on statute or custom."

The Colonial Court of Admiralty Act of 1890 established the equivalence of the High Courts of Bombay, Calcutta, and Madras with the High Courts of England regarding admiralty jurisdiction in India. This arrangement stemmed from the Admiralty Courts Act of 1861, which was applied through the Colonial Courts of Admiralty Act of 1890 and subsequently adopted by the Colonial Courts of Admiralty (India) Act in 1891.

This situation persisted due to a lack of legislative action. Moreover, Section 3 of the 1890 Act granted authority to the Colonial Legislature to designate any Court of unlimited jurisdiction as a Colonial Court of Admiralty. In accordance with this provision, the Indian Legislature established the Colonial Courts of Admiralty in Calcutta, Bombay, and Madras under the 1890 Act. Their powers and jurisdiction were upheld in the Government of India Acts of 1915 and 1935. Even after the promulgation of the Constitution, the Admiralty jurisdiction of the High Courts remained intact, as Article 372 ensured the continuity of existing laws. Although Admiralty jurisdiction expanded significantly in England, it remained unchanged in India as per the 1861 Act. Today, Admiralty jurisdiction in India is governed by the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act of 2017⁴.

OBJECTIVES OF THE STUDY

- To Analyze the wider range of Maritime law in Admiralty jurisdiction.
- To Analyze the effective legal remedies for the maritime conflicts.
- To study international and domestic compliance in admiralty jurisdiction
- To suggest the reforms towards promoting the protection of maritime interests.

⁴<https://www.cmr.edu.in/school-of-legal-studies/journal/wp-content/uploads/2022/02/05-Tracing-Admiralty-Law-in-India.pdf>

STATEMENT TO THE PROBLEM

Admiralty jurisdiction, as a crucial element of judicial authority, is exercised by the High Court as a superior court of record in accordance with the Constitution and laws, ensuring the dispensation of justice concerning individuals and matters falling within its purview.

Main Problems Facing :

Conflicts of laws Inadequate Infrastructure Delay in Adjudication

Arrest and Release of Vessels Inconsistent Precedent Environmental Concerns Enforcement of Judgements Complexity in Jurisdiction

The jurisdiction is applicable to all vessels, regardless of the owner's place of residence or domicile. However, it's important to note that the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, does not extend its application to inland vessels as defined in clause

(a) of sub-section (1) of section 2 of the Inland Vessels Act, 1917, or vessels under construction that have not been launched, unless such vessels are officially designated by the Central Government under this Act. Furthermore, this Act does not cover warships, naval auxiliaries, or other vessels owned or operated by the Central or State Government and used for non-commercial purposes. It also excludes foreign vessels used for non-commercial purposes as determined by the Central Government.

In my view the actions of the Admiralty court may not be corrective and efficient. Finding the Evidence and Proof against a vessel within a specific time may affect the decision and also affect the vessels too .

RESEARCH DESIGN

Various research methodologies are available for conducting studies, each grounded in distinct theories and philosophical principles. In certain situations, neither qualitative nor quantitative approaches alone suffice to provide a thorough analysis of a phenomenon. This particular study utilized a mixed methods design, incorporating both qualitative and quantitative methods to analyze the data. Mixed method design was appropriate because it determines and helps to examine the impacts of Admiralty jurisdiction in Indian shipping law.

RESEARCH METHODOLOGY

Doctrinal and non-doctrinal method of data collection have been employed in this study. Empirical Data will be collected through qualitative and quantitative methods of data collection like, questionnaires, surveys and direct physical interviews with some of Maritime advocates which forms the primary data. Secondary sources are also used and they are collected from various journals and Admiralty Websites.

LITERATURE REVIEW

In Admiralty Jurisdiction the Indian shipping law may be limited for various functions that are holding the vessel for a long time, Pollution by the cargos in the Vessels etc. some of major literatures are listing here:

- 1.(Nigal meeson, John kimbell 2018) “Admiralty Jurisdiction and Practice” - explains the vessel’s description and the wider sense of admiralty jurisdiction and practice of the courts having admiralty powers. it ensures the definitive work on litigation in admiralty courts. it also refers the reduction of high burden of the limited jurisdiction of the admiralty courts. Court’s power to decide a case which comes in their own jurisdiction.
- 2.(Thomas J schoenbaum 2018) “Admiralty and Maritime Law”- this work focus on maritime law covering the shipping law and also all other nations and international law and rules on the mankind’s use of world oceans and their resources. Procedures for doing the trial of the case comes in front of the Admiralty courts.
- 3.(Dr.Shreekanth pareshnath Hathi 2019) “Ship arrest in india and Admiralty law of India”- explains the extended jurisdiction of admiralty of different high courts and observing the changes after commencement of the Admiralty (jurisdiction and settlement of maritime claims) Act 2017. it repeals the british statutes over the admiralty law and repeals the British’s Admiralty Courts Act and the colonial court of admiralty Acts.
- 4.(M.M Cohen 1883) ”Admiralty-Jurisdiction, Law and Practice”-this work defines the court of admiralty having the habit of entertaining the suits between the foreign vessels and salvages in maritime law. And also describing the causes of collision of vessels and its trial jurisdiction.

- 5.(F.LWiswall 2011) “The Development of Admiralty jurisdiction and Practice since 1800”- It focus about the evolution of Admiralty and shipping law. Tracing the history and development of jurisdiction and change in the structure of the Admiralty Jurisdiction .Firstly seas were controlled by only Spain , Portuguese and Dutch then the Term sea is open to all is established by HugoGrotious
- 6.(Robert Force 2004) “Admiralty and Maritime Law”- explains the Maritime Liens , Contractsunder Maritime Law, Jurisdiction of Maritime Law in Tort , and Admiralty Remedies when a dispute arises when shipping or under maritime law. Settlementof the cases between the states .
- 7.(Lindy S. Johnson 2004) “Coastal state regulations of international Shipping”-It deals with Recognition of conflicts between Coastal state and ship owners under maritime law ,Navigationused for shipping and guidance for the coastal state.
- 8.(Christopher Hill 2003) “ Maritime Law”- it focuses in depth study of Bill of lading , salvage agreement , shipping contracts under maritime Law. It also deals with the limitation of liabilityand pollution made by the ships and new conventions about the bunker spills.
- 9.(Biju Antony Thekkanath) “ Text Book on Maritime Law” - In study of admiralty jurisdiction ,the jurisdiction conferred by the act on the high court of admiralty may be exercised either by the proceedings in rem or by the proceedings in personam. It also refers to the maritime claims under Indian admiralty act 2017 section 4 contains the jurisdiction of the High Court.
10. (M.E Aliyar 2019) “The Modern Maritime Law ”-Admiralty jurisdiction and maritime lawapply to persons , events or things within the sea . so the territory or the geographical area of operation of admiralty law is the sea. It deals with contracts of carriage by sea, charters , possession of vessels, maritime transactions and wages and allowances of captain and crew.

HYPOTHESIS OF THE STUDY

The current study is to be guided by mainly two questions:

- 1) How do Indian Courts determine the proper exercise of admiralty jurisdiction in case of shipping law?

2) What are the challenges and ambiguities in the application of admiralty jurisdiction of Indian shipping law and how do they impact legal proceedings?

Hypothesis

To determine the extension of the admiralty jurisdiction in our country and speed trail of admiralty cases.

SIGNIFICANCE OF THE STUDY

- Admiralty jurisdiction is pivotal in facilitating the operation of India's maritime commerce, a key driver of a nation's economy by facilitating the movement of goods in and out of the country.
- Admiralty jurisdiction establishes a specialized legal avenue for resolving maritime disputes.
- It ensures the legal clarity that is transparency and predictability to involved maritime activities and legal frameworks for their operations.
- India's Adherence to international maritime conventions and treaties supported by admiralty jurisdiction.
- Admiralty Law protects the assets that are ship arrests, interests of ship owners.
- By regulating and enforcing the shipping law, admiralty jurisdiction gives maritime safety.

1.10 CHAPTERISATION

First chapter will consist of an introduction, aims and objectives of the study, research methodology adopted for this study and the literature review.

Second consists of the evolution of the topic, challenges, judicial decisions of this study

Third chapter consists the Research questions and answers about the study , Analysis of theresearch and interviews

Forth chapter consists that suggestion of the needs of the study and challenges in it. and dataanalysis , summary and conclusion.

CHAPTER 2

2.1 THE EVOLUTION OF ADMIRALTY JURISDICTION IN INDIA

Admiralty jurisdiction in India has yet to undergo significant development, and India's Admiralty Law lags considerably behind the legal systems of most other nations. Since the colonial era, India has essentially adhered to British Admiralty law, as defined by the Colonial Courts under the Admiralty Act of 1890. The matter of admiralty jurisdiction in India only gained attention after the verdict in the case of *M.V. Elizabeth vs. Harwan Investment & Trading Pvt. Ltd, Goa*⁵.

In this case, the Supreme Court observed that Indian admiralty jurisdiction had remained frozen since 1890, despite subsequent legal advancements in England. India had not enacted its own Admiralty Law, even though the Admiralty Bill of 2005 had been in limbo since its preparation in 2005. It took more than 12 years for the Admiralty Bill of 2005 to finally be introduced in the Parliament, prompted by the Supreme Court's recognition of its urgent necessity.

Prior to the *M.V. Elizabeth* case, admiralty jurisdiction in India was vested in the three High Courts located in Calcutta, Madras, and Bombay by statute. The High Courts of other coastal states in India, such as Gujarat, Karnataka, Kerala, Andhra Pradesh, and Orissa, did not possess admiralty jurisdiction based on any statutory provisions. Since India gained independence, the Indian Parliament has not exercised its authority to enact laws pertaining to admiralty. As a result, the three Indian High Courts continued to apply admiralty laws as they were applied by the English courts of Admiralty, as defined in the Admiralty Court Act of 1891.

Article 225 of the Indian Constitution grants High Courts the authority to address various matters concerning citizens, including the use of inherent power. This jurisdiction extends beyond statutory limitations and encompasses customs, practices, necessity, and even exigency, all in pursuit of delivering justice to its citizens. A citizen engaged in a fundamental business right cannot be left defenseless based on the presumption that High Courts' jurisdiction is rigidly constrained by statutes or established customs⁶.

Before the Indian Constitution's adoption, both English Statutory Laws and non-statutory laws pertaining to admiralty jurisdiction were applicable in India. These laws persisted even after India gained independence, thanks to Article 372(1) and Explanations I and II of the Indian Constitution. Article 372(1) Explanation I and II affirm that all existing laws in India will remain

⁵AIR 1993 SC 1014

⁶<https://www.jjandjattorneys.com/post/admiralty-law-and-the-constitution>



in force until modified, repealed, or amended by a competent legislative body or authority, regardless of the repeal of previous enactments mentioned in Article 395.

The Colonial Courts of Admiralty Act, 1890 of the UK aligned the admiralty jurisdiction of Indian High Courts with that of their English counterparts, thereby integrating non-statutory elements of English admiralty jurisdiction into Indian law through a statute. In the proposed Indian legislation on admiralty jurisdiction, the entirety of the existing jurisdiction, inclusive of non-statutory elements, is being preserved.

Elements of admiralty jurisdiction originating from the Colonial Courts of Admiralty Act, 1890, the Colonial Courts of Admiralty (India) Act, 1891, the Letters Patent of 1865 governing the Supreme Courts in Calcutta, Madras, and Bombay, and similar provisions affecting other High Courts by their respective founding documents, remain fully intact and will continue to do so even after the enactment of the Admiralty Bill, 2005, as per clause 5(1)(c) thereof, provided they enhance or align with the jurisdiction conferred by the new legislation. This is consistent with the well-established principle of public international law, which dictates that existing laws persist despite changes in sovereignty, implying that British admiralty laws may have continued with necessary modifications in India.

The original admiralty jurisdictions of the High Courts established in Calcutta, Madras, and Bombay have been preserved through Article 225 of the Constitution. The Orissa High Court laid claim to this jurisdiction, tracing its roots back to the Patna High Court, which inherited it from Calcutta High Court. As a result, most High Courts in coastal states in India possess admiralty jurisdiction inherited from one of the presidency courts in Madras, Bombay, or Calcutta⁷.

Subsequently, the Andhra Pradesh and Gujarat High Courts asserted admiralty jurisdiction as successors to Madras and Bombay High Courts, respectively, in the post-Constitution era. However, there was uncertainty regarding whether other High Courts, not deriving jurisdiction from the Presidency High Courts, could exercise admiralty jurisdiction.

In the case of *M.V. Elizabeth*, the Supreme Court clarified that every High Court in India, as the highest court of record for its respective state, holds admiralty jurisdiction. Admiralty jurisdiction is a crucial facet of judicial sovereignty, exercised by the High Court under the Constitution and laws in matters concerning individuals and property within its jurisdiction. The British statute equating Indian High Courts with the English High Court concerning admiralty jurisdiction is a

⁷<https://www.dakshindia.org/indian->

courts/#:~:text=Every%20High%20Court%20has%20original,of%20court%20and%20election%20petitions.



legislative provision that complements the High Court's jurisdiction as per constitutional provisions⁸.

Section 2(2) of the Colonial Courts Admiralty Act, 1890, granted Colonial Courts of Admiralty powers equivalent to those of the High Court in England in international law and the comity of nations. Article 372 of the Constitution maintained this aspect of Indian admiralty law. Presently, High Courts in India exercise admiralty jurisdiction based on Article 51 of the Constitution, which mandates the State to promote international peace and security, maintain honorable relations between nations, foster respect for international law and treaty obligations, and encourage the resolution of international disputes through arbitration.

The directive principles emphasize that municipal courts must prioritize applying municipal law in cases of inevitable conflict with international law, while still respecting international law and the principles of international comity. The Colonial Courts of Admiralty (India) Act, 1891, declared the presidency courts in India as the courts with Colonial Courts of Admiralty Jurisdiction in line with the Colonial Courts of Admiralty Act, 1890.

In the Government of India Act, 1935, "admiralty jurisdiction" was specified in the Federal List (Entry 21). This provision was later incorporated into the Constitution and is now part of List-1 of the 7th Schedule (Union List). Entry 25 of the Union List pertains to "Maritime shipping and navigation, including shipping and navigation in tidal waters.

The provision of education and training for the mercantile marine, and the regulation of such education and training provided by states and other agencies⁹."

2.2 JUDICIAL DECISIONS INVOLVED IN THE STUDY

There are many cases has ruled by the supreme court and high court about the topic of the Admiralty Jurisdiction.

In M.V Elisabeth and Ors Vs. Harwan Investment and trading co 1992 , the Supreme court held that Article 215 , 225 , 226 the Admiralty jurisdiction of the High Court have powers to decide that case and dismiss the appeal by this. The Andra state Act 1953 section 30 and 52 itself saying admiralty jurisdiction extends to a foreign vessel in repect of claim relating to carriage of goods¹⁰.

⁸<https://www.legalserviceindia.com/legal/article-9419-m-v-elisabeth-v-s-harwan-investment-and-trading-irac-analysis.html>

⁹<https://www.mea.gov.in/Images/pdf1/S7.pdf>

¹⁰ 1993 AIR 1014 , 1992 SCR (1) 1003

In Liverpool and London S.P & I Association Vs. M.V Sea success I & Anr 2003, Here the supreme court held that unpaid insurance also can be enforceable within the admiralty jurisdiction of the Bombay high court. It comes under the Maritime claims. The high courts can decide the case under Admiralty jurisdiction such as unpaid insurance money¹¹.

In M.V.A.LQuamar Vs. Tsavliris Salvage 2000, Supreme court considers the Reciprocating territory in this case, In CPC section 44A held that on the jurisdiction aspects, as a decree of a superior foreign court having reciprocity with India, it is self sufficient to bring it within the scope of section 44A of Code of civil Procedure. Here the Assumption of jurisdiction by the Andhra Pradesh high court¹².

In World Tanker Carrier Corporations Vs. Snp Shipping services Pvt Ltd 1998, it was held that Limitation of the Liability of damages in respect of certain claims ss.352A and 352B, Application of this part to charterer, manager etc of the vessel under ss.352F of Merchant Shipping Act. its views the maintainability of limitation action by ship owner in Admiralty Jurisdiction¹³.

In Islamic Republic of Iran vs. M.V Mehrab and Ors 2002, Bombay High court held that widening the view of the Admiralty Jurisdiction and Modernize the law by inter alia introducing into admiralty jurisdiction in the international law including principle underlying Arrest of the Sea etc¹⁴.

2.3 CHALLENGES FACED BY THE COURT OF ADMIRALTY JURISDICTION

Admiralty jurisdiction in Indian shipping law encounters a multitude of obstacles that impede its efficiency. This jurisdiction primarily deals with maritime disputes, which are vital for the smooth operation of the shipping industry. Here are some of the primary challenges it faces:

Outdated Laws: The Indian admiralty laws are predominantly based on the Admiralty Courts Act of 1861, which hasn't kept pace with the rapid advancements in the shipping industry, making it challenging to address modern maritime issues effectively.

Lack of Specialized Judges: Admiralty cases necessitate judges with specialized knowledge of maritime law, but there's a shortage of such expertise within India's judicial system, leading to delays and inconsistent judgments.

¹¹(2004) 9 SCC 512

¹²<https://indiankanoon.org/doc/1762940/>

¹³<https://www.legalauthority.in/judgement/world-tanker-carrier-corp-vs-snp-shipping-services-pvt-ltd-2370>

¹⁴ AIR 2002 BOM 517, (2002) 4 BOMLR 785, 2002

Over burdened Courts: Indian courts, including those handling admiralty cases, grapple with a

backlog of cases, causing substantial delays in resolving admiralty disputes and affecting vessel and cargo releases.

Complex and Technical Nature: Maritime disputes often involve intricate technical and legal issues, which judges and lawyers may struggle to fully comprehend, resulting in decisions lacking depth and accuracy.

Inadequate Infrastructure: The infrastructure for managing admiralty cases, including facilities for ship arrests and auctions, is often insufficient, hindering the efficient execution of court orders and impacting involved parties' rights.

Inconsistent Judgments: There's a lack of consistency in judgments from various High Courts in India, making it challenging for shipping industry stakeholders to predict case outcomes accurately.

Lack of Precedents: Indian admiralty law lacks a substantial repository of precedents to guide judges in decision-making, contributing to inconsistent judgments.

Jurisdictional Issues: Determining the correct jurisdiction for admiralty cases can be contentious, leading to conflicting claims and delays in case resolution.

International Conventions and Conflicts: India's adherence to international maritime conventions can sometimes conflict with domestic laws, necessitating harmonization of these provisions.

Inadequate Enforcement of Judgments: Even when admiralty cases are decided in favor of a party, enforcing judgments can be problematic due to the lack of robust execution mechanisms.

Costly Legal Procedures: Admiralty case legal proceedings can be expensive, dissuading parties, especially smaller shipowners or cargo owners, from pursuing their rights.

Environmental Concerns: With the growing focus on environmental protection, admiralty cases increasingly involve disputes related to pollution, oil spills, and marine environmental damage, requiring distinct regulations and expertise.

CHAPTER 3

RESEARCH QUESTIONS AND RESPONSES

What is your Professional Background?

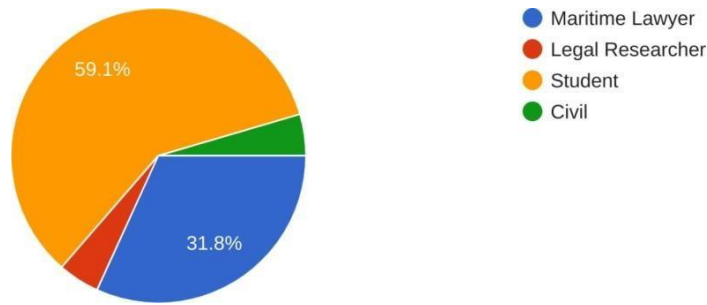


Figure 1. Occupation

How familiar are you with admiralty jurisdiction in Indian shippinglaw?

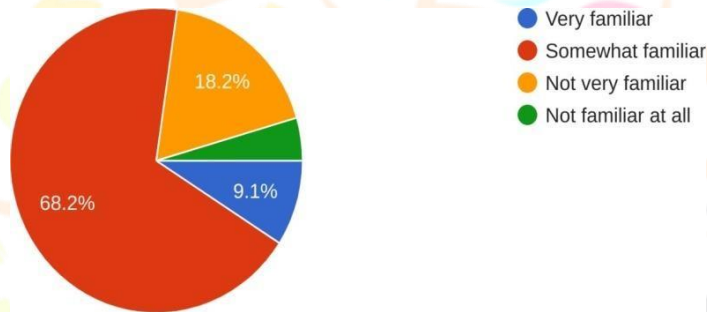


Figure 2. Familiarity

What is the primary purpose of admiralty jurisdiction in Indian shippinglaw?

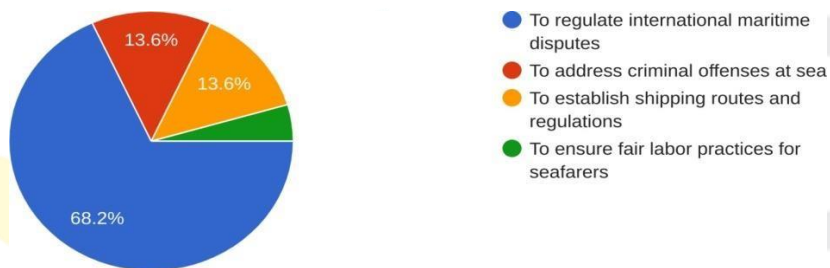


Figure 3. Purpose Admiralty Jurisdiction

What is a significant implication of admiralty jurisdiction on shipping disputesin India?

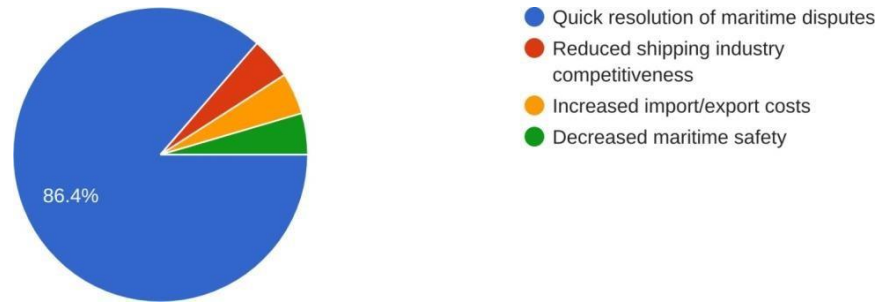


Figure 4. Implications of Admiralty jurisdiction

How does admiralty jurisdiction impact international trade and commerce in India?

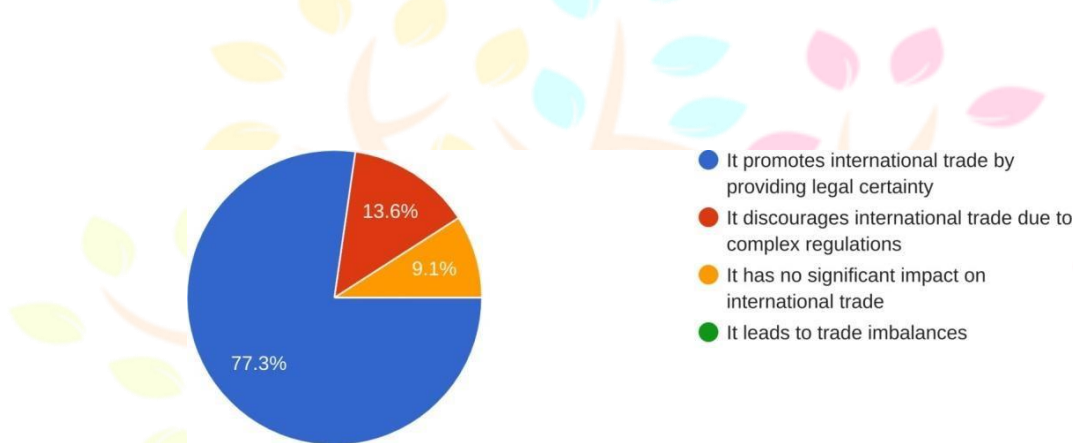


Figure 5. Admiralty jurisdiction in international trade and commerce

What is one of the major challenges faced in the implementation of admiralty jurisdiction in India?

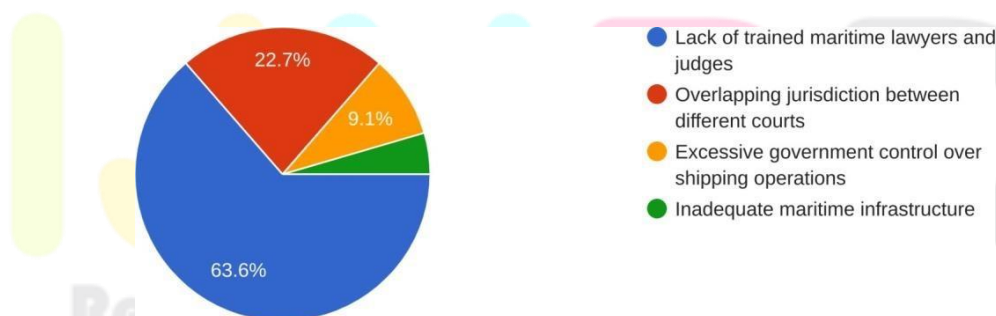


Figure 6. Challenges in implementation of Admiralty jurisdiction

Which of the following is a common procedural challenge in admiralty jurisdiction cases in India?

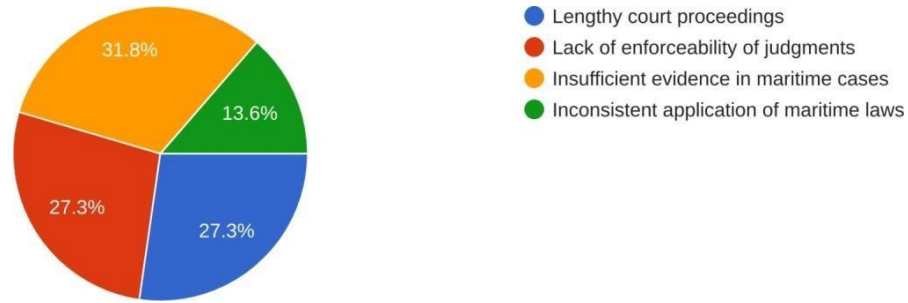


Figure 7. Common Procedural Challenges in Admiralty Jurisdiction

How does admiralty jurisdiction affect shipping companies operating in India?

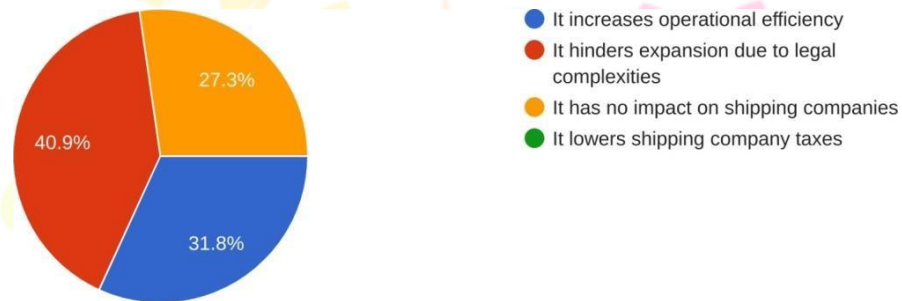


Figure 8. Admiralty jurisdiction affecting shipping companies

In what way does admiralty jurisdiction influence maritime insurance and liability issues?

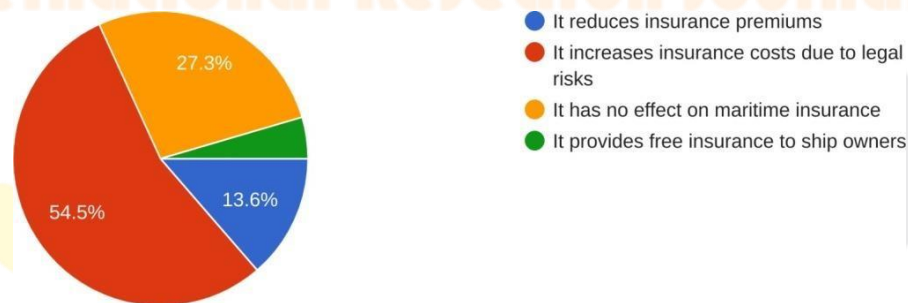


Figure 9. Influence in Maritime insurance and liabilities

What do you believe could improve the effectiveness of admiralty jurisdiction in India?

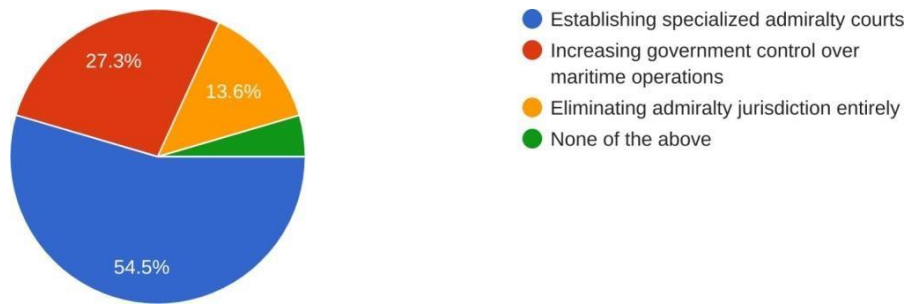


Figure 10. Effective Maritime Operations

Should there be more international cooperation in handling admiralty cases involving multiple countries?

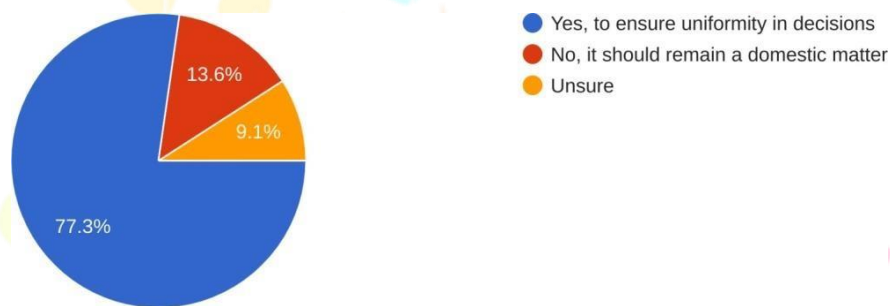


Figure 11. International Cooperation in Admiralty Cases

RESPONSE ANALYSIS

The pie chart, graph, and data illustrating responses to research questions. These pages feature the accurate feedback from a diverse group, including advocates practising in maritime law , civil laws etc, Law students , researching persons, political figures, and ordinary citizens. Many of them generously shared their opinions on the research topic, some doing so directly. The questions were intentionally crafted in a straightforward manner to ensure easy comprehension and accurate expression of opinions by readers. These responses have provided valuable insights into the perspectives of individuals from different sectors of society.

First question is about their profession and occupation 59.1 % is Student , 31.8% is Maritime Lawyers , 4.5% is Legal Researchers and 4.5 is civil Lawyers in various Positions.

Analyzing the second question that is “How familiar are you with admiralty jurisdiction in Indian shipping law?” 68.2% of them said it is somewhat familiar , 18.2% said it is not very familiar, 9.1% of them is very familiar with it and 4.5 % said it is not at all familiar.

While Analyzing the third question “ What is the primary purpose of admiralty jurisdiction in Indian shipping law?” 68.2 % said that To regulate international maritime disputes, 13.6% said that To address criminal offenses at sea ,13.6% said that To establish

shipping routes and regulations , 4.5% said that To ensure fair labor practices for seafarers.

While Analyzing the fourth question “What is a significant implication of admiralty jurisdiction on shipping disputes in India?” 86.4% said that Quick resolution of maritime disputes , 4.5% said that Reduced shipping industry competitiveness , 4.5% said that Increased import/export costs and 4.5% said that Decreased Maritime safety.

While Analyzing the Fifth Question “How does admiralty jurisdiction impact international trade and commerce in India? 77.3% said that It promotes international trade by providing legal certainty , 13.6% said that It discourages international trade due to complex regulations, 9.1% said that It has no significant impact on international trade and None of them not choose it leads to trade imbalances.

While Analyzing the sixth question “What is one of the major challenges faced in the implementation of admiralty jurisdiction in India? 63.6% of them stand with Lack of trained maritime lawyers and judges , 22.7% said that Overlapping jurisdiction between different courts, 9.1% said that Excessive government control over shipping operations, 4.5% said that inadequate maritime infrastructure.

While Analyzing the Seventh question “Which of the following is a common procedural challenge in admiralty jurisdiction cases in India? 31.8% said that Insufficient evidence in maritime cases, 27.3% said that Lack of enforceability of judgments, 27.3% said that Lengthy court proceedings, 13.6% said that inconsistent application of maritime laws.

While Analyzing the eighth question “ How does admiralty jurisdiction affect shipping companies operating in India? 40.9% said that It hinders expansion due to legal complexities, 31.8% said that it increases operational efficiency, 27.3% said that it has no impact on shipping companies, none of them choose it lowers shipping company taxes.

While Analyzing the ninth question “In what way does admiralty jurisdiction influence maritime insurance and liability issues?” 54.5% said that it increase insurance costs due to legal risks, 27.3% said that it has no effect on maritime insurance, 13.6% said that it reduces insurance premiums, 4.5% said that it provides free insurance to ship owners.

While Analyzing the Tenth question “What do you believe could improve the effectiveness of admiralty jurisdiction in India?” 54.5% said that Establishing specialized admiralty courts, 27.3% said that Increasing government control over maritime operations, 13.6% said that Eliminating admiralty jurisdiction entirely, 4.5% said that None of above.

While Analyzing the eleventh question “Should there be more international cooperation in handling admiralty cases involving multiple countries? 77.3% of them stand with Yes to ensure uniformity in decisions, 13.6% said that No it should remain a domestic matter and remaining people unsure about that.

CASE STUDY ON ADMIRALTY JURISDICTION

ENRICA LEXIE CASE

In 2012, the Italian-owned tanker Enrica Lexie sailed from Singapore to Djibouti due to piracy concerns in Kerala waters. On February 15, 2012, while about 20.5 nautical miles off the Kerala coast, it encountered the fishing boat 'St Antony.' The Enrica Lexie had Italian men on board, Sergeant Massimiliano Latorre and Sergeant Salvatore Girone. They interpreted the fishing boat as a potential threat, leading to an open fire, resulting in the deaths of Indian fishermen Valentine Jelastine and Ajeesh Pink. The Indian coast guards intercepted the tanker, charging the Italians with murder and mischief, leading to a legal case in the Kerala High Court. Italy escalated the matter to UNCLOS and the Permanent Court of Arbitration.

The High court found the two Italian mariners liable under Indian jurisdiction for a crime in Indian coastal waters, denying Italy's contentions. They were ordered to pay Rs 1,00,000 to the respondents. The Supreme court later reversed Kerala High court's decision, citing jurisdiction issues, and authorized the establishment of a special court for international cases. The court clarified that Kerala lacked jurisdiction, while the Union of India had it. Italy initiated proceedings against India in an international arbitration tribunal in June 2015, seeking to prevent India from holding a trial and requesting the mariners' return to Italy. India argued that Italy must exhaust ITLOS remedies for the mariners to leave. Then Award is given in the Permanent court of Arbitration (PCA) to the Indian Fishers¹⁵.

KAMALAKAR MAHADEV BHAGAT & Ors Vs SCINDIA STEAMSHIP NAVIGATION CO LTD 1960

This is an appeal case involving the plaintiffs, who are the widow and heirs of Eknath Dhondur Adurkar, who died in a collision at sea. They filed a lawsuit in the Bombay City Civil Court, seeking damages under the Fatal Accidents Act, 1855. The defendant company argued that the case should fall under the Admiralty Jurisdiction of the High Court, not the City Civil Court.

Historically, before 1911, it was believed in England that "damage done by a ship" did not cover injuries resulting in a person's death, and therefore, no action in rem for damages was allowed in such cases.

¹⁵ICGJ 499 (ITLOS 2015)

However, in 1911, the Maritime Conventions Act was passed in the UK, which changed this

interpretation and allowed actions for damages due to loss of life or personal injury in both remand personam. This Act extended to British India.

The judgment concludes that the lawsuit falls within the exclusive jurisdiction of the High Court's Admiralty Side, and the City Civil Court had no jurisdiction to handle it. The appeal was dismissed with costs¹⁶.

M V ELISABETH &Ors Vs HARWAN INVESTMENT AND TRADING COMPANY 1992

In the pre-independence period, the concept of admiralty jurisdiction in India was primarily vested in the courts of Madras, Bombay, and Calcutta. These courts held the authority to adjudicate matters pertaining to maritime disputes and claims. However, it was in the landmark case of M.V.Elisabeth AndOrs v. Harwan Investment And Trading (1993) that a significant precedent was established. This case clarified that, in ordinary circumstances, the High Courts of India maintain superiority over any other courts within the country when it comes to maritime matters.

This assertion effectively granted the High Courts of India unrestricted jurisdiction over maritime cases. Consequently, their decisions in such matters were considered final and binding, solidifying their role as the ultimate arbiters of maritime disputes in the Indian legal system. This decision has had a lasting impact on the legal landscape concerning admiralty jurisdiction in India.

LIVERPOOL & LONDON S.P & I ASSOCIATION LTD Vs MV SEA SUCCESS I & ANR 2003

The appellant is a UK-based association comprising ship owners, providing insurance coverage for various third-party risks related to vessel operation and trade. They argue that Protection & Indemnity (P&I) coverage is mandatory for ships entering major Indian ports. The Sea Ranger and Sea Glory, sister ships of the first respondent's vessel, are allegedly owned by the second respondent. Although the first two vessels contracted with the appellant for insurance in 1998- 1999 and 1999-2000, they haven't paid their premiums for the P&I coverage. The appellant detained the first respondent's vessel in Mumbai due to unpaid premiums, and it was released on security provided by the second respondent. The respondents disputed jurisdiction, claiming that the unpaid insurance premiums did not qualify as 'necessities' under the Admiralty Courts Act 1861 (UK). The High Court's Single Judge referred this issue to a Division Bench. The Division Bench ruled in favor of the appellant concerning the definition of 'necessities' but against them on other matters. Both parties appealed. The Supreme Court has set aside the challenged judgment and sent the case back to the High Court¹⁷.

¹⁶AIR 1961 Bom 186, (1960) 62 BOMLR 995

VIDESH SANCHAR NIGAM Vs M V KAPITAN KUD 1995

This special leave appeal arises in Bombay Admiralty Court. The Division Bench had modified aprior order by a single judge, resulting in the release of the commercial ship M/s. M.V. Kapitan Kud.

The facts are related to damage caused to an international cable from Singapore to France, branching at Bombay, due to a ship's anchor. The appellant requisitioned Coast Guard authorities to identify the responsible vessel, which led to the arrest of the respondent-vessel.

Section 140 of the Civil Procedure Code 1908 provides the court with the authority to summon assessors for Admiralty or Vice-Admiralty causes. In this case, assessors assessed the situation and determined the vessel's probable involvement.

Despite some disputes about the process, the Division Bench found that the claim was not vexatious and should proceed to trial.

The court emphasizes that the admiralty action is an action in rem, and considering the foreign nature of the ship, it may not be possible to enforce a judgment if the ship leaves Indian territorial waters. Therefore, the ship may be released upon certain conditions, including a deposit of Rs. 10 crores and undertakings from the Ukrainian Government.

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The appeal is allowed, and the notice of motion is made absolute subject to these conditions. Each party will bear its own costs¹⁸.

EPOCH ENTERREPOTS Vs M V WON FU 2002

The appellant, involved in mineral exports, made an agreement with a Taiwanese mining company to export feldspar. Subsequently, they entered into an agreement with Taiyo Senpaku Kaisha Ltd to ship the cargo from Tuticorin to Taiwan, as evidenced by a fixture note. The appellant claimed that the contract was complete on signing the fixture note and suffered losses due to a failure to ship the cargo.

The trial Judge dismissed the claim, stating it didn't fall under admiralty jurisdiction, and no contract existed between the appellant and the vessel owner, the respondent.

The Division Bench upheld the trial Judge's ruling. The appellant appealed to the Supreme Court, but the appeal was dismissed without prejudice to the appellant's ability to initiate a further action in personam.

The principal issue was whether the fixture note gave rise to a maritime lien or a right in rem, allowing proceedings under admiralty jurisdiction.

The Court discussed the concept of maritime liens and noted that the fixture note did not create a maritime lien. The applicable conventions and acts clarified that claims arising from agreements related to the use or hire of a ship were not maritime liens.

On the facts, there was no evidence supporting an action in rem. The fixture note was based on an expectation of a future charter, not an existing contract. The disponent owner was not a demise charterer, and there was insufficient evidence for the vessel's liability in the recorded contract in the fixture note¹⁹.

QUALITATIVE STUDY WITH PERSONAL INTERVIEW

These are the responses by few Maritime lawyers Practicing in the High court of Kerala. 1. What types of maritime claims fall under the purview of admiralty jurisdiction in India?

Admiralty jurisdiction in India extends its reach to a wide array of maritime claims, encompassing matters relating to:

To damage or loss incurred due to ship-related incidents like collisions, salvage operations, and cargo damage. Additionally, it covers claims concerning the wages and compensation of seafarers, mortgages and charges on ships, disputes regarding possession or ownership of vessels, towage and pilotage issues, maritime services, disputes arising from marine insurance agreements, matters associated with ship use or hire agreements, and contributions to general average.

These diverse maritime claims typically fall within the purview of admiralty courts in India, which specialize in handling maritime disputes and related matters. In such cases, it is highly advisable to engage the services of legal counsel who possess expertise in admiralty jurisdiction to provide specific

guidance and representation as needed.

2. Can you discuss the procedural aspects of filing a maritime claim in India's admiralty courts?

Initiating a maritime claim in India's admiralty courts entails a series of procedural steps. Here is an outline of the process:

Determining Jurisdiction :Begin by identifying the admiralty court with the appropriate jurisdiction to hear your claim. In India, this jurisdiction typically resides in High Courts and specific District Courts.

Pre-Action Considerations :Prior to initiating the claim ,it's advisable to explore pre-action measures, including negotiation, mediation, or even arbitration, as these may be prerequisites imposed by the court.

Crafting the Claim: Compose a written statement detailing the maritime incident, parties involved, requested remedies and any supporting evidence.

Legal Representation: Appoint a maritime law specialist, such as an advocate or solicitor, to advocate on your behalf in court.

Lodging the Lawsuit :Present the written claim statement ,accompanied by the requisite court fees,to the admiralty court with the pertinent jurisdiction.

Service of Legal Process: Ensure that the defendant is properly served with the claim notice and a copy of the lawsuit.

Provisional Actions :If needed to safeguard the claim amount ,consider pursuing provisional actions such as the arrest of the vessel and cargo.

Responding and Counter claim :Expect the defendant to respond with a defense and possibly a counter claim.

Evidence and Discovery :Engage in the exchange of evidence and the possibility of court-ordered discovery to access relevant documents.

Trial Phase: Attend court hearings to present your case, with the court evaluating the evidence and arguments from both sides.

Issuance of Judgment: Following the trial, the court will render a judgment, potentially encompassing

directives for payment ,the sale of seized assets, or other pertinent remedies.

Execution of Judgment: In the event of a favorable judgment, take the necessary steps to execute it, which might include the sale of property to recover the claim amount.

It is crucial to seek counsel from a legal expert well-versed in maritime law and acquainted with the specific procedures of the particular admiralty court where you intend to file your claim, as these processes can diverge among different Indian courts

3. What are the limitations and exceptions to admiralty jurisdiction in India?

In India, the framework for admiralty jurisdiction is primarily defined by the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. This legislation outlines several limitations and exceptions within the ambit of admiralty jurisdiction, which are crucial to understand. These include:

Territorial Boundaries: Admiralty jurisdiction typically extends up to India's territorial waters, specifically up to 12 nautical miles from the baseline. Claims arising beyond this demarcation may not fall under the purview of Indian admiralty jurisdiction.

Public and Government Vessels: Admiralty jurisdiction does not encompass public ships and government vessels employed for non-commercial purposes.

Navigational Immunity: Certain vessels, like warships, benefit from navigational immunity ,rendering them exempt from admiralty claims.

Cargo Disputes : Admiralty jurisdiction doesn't usually encompass claims pertaining to cargo, unless they involve damage to the vessel itself, with specific circumstances triggering such inclusion.

Salvage and Towage Claims: Claims arising from salvage and towage services can be subject to specialized regulations and constraints.

Liability Limitation: Shipowners have the option to limit their liability under the Act, potentially impacting the scope of claims that can be pursued against them.

Pollution-Related Claims: Claims connected to pollution damage are influenced by international conventions, and the Admiralty Act incorporates these conventions and their limitations.

It is essential to consult the Admiralty Act's specific provisions and seek legal counsel to navigate the intricate details and evolving legal landscape surrounding admiralty jurisdiction in India.

4. What international conventions or treaties has India ratified that impact admiralty jurisdiction, and how do these affect maritime claims in the country?

India has ratified several international conventions and treaties that have a significant impact on admiralty jurisdiction and maritime claims within the country. These agreements play a crucial role in shaping the legal framework for maritime incidents and their consequences. Some of the key conventions include:

The International Convention on Civil Liability for Oil Pollution Damage (CLC): By adhering to the CLC, India establishes a liability framework for oil pollution damage, allowing those affected by oil spills to seek compensation from shipowners, ensuring they bear the financial responsibility for environmental damage.

The International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunker Convention): This treaty addresses pollution damage from ship bunkers. India's participation ensures that ship owners are liable for pollution incidents involving bunker fuel.

The International Convention on Salvage: India's commitment to the Salvage Convention affects the legal landscape for compensation in cases where salvors assist distressed vessels.

The International Convention on Limitation of Liability for Maritime Claims (LLMC): India's ratification of the LLMC sets the maximum liability limits for ship owners in various maritime incidents.

The United Nations Convention on the Law of the Sea (UNCLOS): While not exclusive to admiralty matters, UNCLOS outlines the legal framework for maritime boundaries and exclusive economic zones, impacting India's jurisdiction over its maritime zones and resources.

These international agreements collectively establish a comprehensive and consistent legal structure for admiralty jurisdiction in India, ensuring that maritime claims and liability issues are handled in a standardized and equitable manner. Ship owners, salvors, and those affected by maritime incidents in Indian waters benefit from this established framework.

In cases involving collisions or accidents at sea, how is liability determined under Indian admiralty law?

In cases involving maritime collisions or accidents within the waters of India, the determination of liability is governed by the Admiralty Act of 2017. The process of ascertaining liability in such situations follows established admiralty law principles, encompassing factors such as negligence, fault, and adherence to international maritime conventions, notably those endorsed by the International Maritime Organization (IMO).

The progression towards identifying liability typically consists of several key steps. First and foremost, an investigation is carried out to uncover the causes and circumstances surrounding the collision or accident. This investigation can entail the collection of evidence, interviews with witnesses, and thorough inspections of the vessels involved.

Liability is often pinned on the party found to be at fault or negligent. This might involve shipowners, captains, or crew members, depending on their roles and responsibilities in the incident. In some instances, the concept of contributory negligence might be applicable, wherein liability is apportioned between multiple parties if both are determined to be at fault to varying degrees.

Shipowners have the option to seek the limitation of their liability, which is a provision provided under the Admiralty Act. This allows them to cap the extent of their financial responsibility for damages arising from the collision or accident.

Maritime insurance plays a pivotal role in the context of liability for maritime mishaps. Insurance policies, in many cases, cover the financial repercussions of such incidents and provide a means for addressing liability.

India, as a signatory to numerous international maritime agreements, may also consider the influence of international conventions in its determination of liability in collision or accident cases, further adding a layer of complexity to the legal framework.

The process of determining liability in cases of maritime collisions or accidents in India is multifaceted and involves a meticulous investigation, considerations of negligence and fault, potential limitations on liability, and the influence of international conventions. Consulting legal experts with expertise in Indian admiralty law is essential for specific cases, as the intricacies and nuances of each incident can vary significantly, impacting the outcome of liability determinations.

What is the role of federal and state courts in admiralty jurisdiction?

The roles of federal and state courts in admiralty jurisdiction differ, and they are determined by the legal framework in the United States, where federal law governs admiralty jurisdiction. Here's an overview of their functions:

***Federal Courts*:** Federal courts have exclusive jurisdiction over certain types of admiralty cases, which are those specifically outlined in federal law, such as the United States Constitution's grant of admiralty jurisdiction to the federal courts. Federal courts have jurisdiction over traditional admiralty cases, including disputes involving vessels and maritime contracts, regardless of whether the dispute arises on navigable waters or the high seas. This jurisdiction extends to cases involving ship collisions, cargo disputes, maritime personal injury, and more. Federal courts aim to provide uniformity in the application of admiralty law throughout the United States, ensuring consistent interpretation and rulings in maritime cases. Federal courts apply federal maritime law and relevant international treaties and conventions in admiralty cases.

***State Courts*:** State courts have concurrent jurisdiction with federal courts over many admiralty cases that don't fall under the exclusive jurisdiction of federal courts. This means that for certain admiralty matters, parties can choose to file their claims in either federal or state courts. State courts often handle local maritime matters that don't involve substantial federal issues or international elements. These cases may include disputes related to recreational boating accidents or minor maritime contracts. In cases within state court jurisdiction, state law may be applied, rather than federal maritime law. State courts are more likely to apply local law in matters involving in-state waters or local maritime activities.

It's important to note that the choice of whether to file a case in federal or state court depends on several factors, including the nature of the dispute,

the location where the incident occurred, and the specific laws and regulations governing admiralty jurisdiction in that jurisdiction. Parties involved in admiralty cases should consult with legal professionals experienced in maritime law to determine the appropriate venue for their case and to navigate the complexities of admiralty law.

7. What are the legal remedies available to parties in admiralty cases?

Parties involved in admiralty cases have access to various legal remedies to address their claims and disputes. The specific remedies available may depend on the nature of the case and the applicable laws, but here are some common legal remedies in admiralty cases:

Injunctions : Parties can seek injunctive relief to prevent a specific action or behavior, such as the departure of a vessel, that might jeopardize their rights or interests.

Attachment and Arrest : Parties can request the attachment or arrest of vessels or maritime property to secure claims .This may involve placing a lien on a vessel until a judgment is rendered.

Damages : Monetary damages are a common remedy in admiralty cases. These can include compensatory damages for losses incurred due to maritime incidents, such as injuries, property damage, or cargo losses.

Salvage Awards: In salvage cases, parties involved in rescuing or recovering vessels or cargo in distress may be entitled to salvage awards, which are monetary rewards for their efforts.

Limitation of Liability: Shipowners and operators may seek to limit their liability under applicable international conventions, such as the Limitation of Liability for Maritime Claims Convention (LLMC), which caps their financial responsibility in certain cases.

Towage and Pilotage Fees: Indisputes related to towage and pilotage services, parties can seek payment for services rendered or challenge excessive fees.

Cargo Liens: Unpaid cargo claims can lead to the exercise of cargo liens, allowing cargo owners to retain possession of cargo until their claims are satisfied.

Specific Performance: In some cases, parties may seek a court order for the other party to fulfill a specific obligation under a contract agreement, such as the delivery of cargo or payment.

Contribution and Indemnity: Parties may seek contribution or indemnity from other parties found liable in cases involving shared responsibility, such as vessel collisions.

Environmental Remedies: In cases involving maritime pollution or environmental damage, parties may seek remedies such as clean up orders and the recovery of costs associated with mitigating environmental harm.

Admiralty Arbitration: Parties can choose to resolve their disputes through arbitration, as many maritime contracts include arbitration clauses. Awards from arbitration can be enforced through the courts.

Arbitration Awards Enforcement: Enforcement of arbitration awards may be a remedy available in admiralty cases when parties need the court's assistance in enforcing the decisions made in arbitration.

The availability of these remedies may vary depending on the jurisdiction and the specific circumstances of the admiralty case. Parties involved in admiralty cases often work with legal professionals experienced in maritime law to navigate the complexities of these remedies.

8. How do you see the future of admiralty jurisdiction evolving in India, especially in light of maritime trends ?

In the opinion of India, it is opening various ports and coastal regions for shipping. In our Kerala, Vizhinjam is going to grow as the best port city. So there should be more specialized practices and involvement in the maritime matters such as import exports etc., we can see that the jurisdiction of admiralty is limited. It should be established as a specialized permanent court.

for admiralty under the supervision of the high courts that is admiralty courts.

Increasing the trading and commercials in Sea facilitates the nations economy, so the international connections in admiralty should be equalize all over the world .

CHAPTER 4 - FINDINGS AND SUGGESTIONS

4.1 THERE IS A NEED FOR THE PERMANENT SPECIAL COURT FOR ADMIRALTY CASES OTHER THAN HIGH COURT.

The establishment of dedicated admiralty courts, separate from the broader high courts, is driven by a multifaceted set of compelling reasons. Admiralty law, as a distinct legal field, is characterized by its intricacy and unique nature. This specialty encompasses a complex body of legal principles and doctrines that are distinct from conventional civil law. In addition to its legal complexity, admiralty law is deeply interwoven with international treaties and conventions, which apply universally to maritime activities. Furthermore, the field involves the intricate technical aspects specific to maritime operations and disputes.

For these distinctive reasons, the existence of admiralty courts that are purpose-built to navigate the intricacies of this legal domain is paramount. These dedicated admiralty courts ensure that the judges and legal professionals presiding over admiralty cases possess not only a comprehensive understanding of the applicable laws and regulations but also the technical expertise required to adjudicate cases accurately.

Efficiency, perhaps one of the most compelling reasons for the presence of dedicated admiralty courts, is of paramount importance. These specialized courts have honed their ability to expedite the resolution of admiralty cases. The prompt handling of these cases is of exceptional significance, particularly in the context of maritime commerce. Given the inherent complexities and international dimensions of maritime disputes, swift resolutions are essential to the maintenance of smooth maritime operations and international trade.

Moreover, these specialized courts are positioned to ensure a consistent interpretation and application of admiralty law. This consistency is pivotal in the creation of a legal framework that offers predictability to those engaged in maritime disputes. A stable and reliable legal framework, with clear and uniform legal precedents, not only facilitates the resolution of cases but also fosters a sense of fairness among the parties involved.

In essence, specialized admiralty courts significantly enhance access to justice for those entangled in admiralty cases. With a deep understanding of maritime law and a particular focus on cases within this domain, these courts provide an environment where justice is served comprehensively

and fairly. The parties involved in admiralty cases can have confidence that their cases will be adjudicated by judges with a profound knowledge of the relevant legal principles and the intricate nuances that often characterize maritime disputes.

Furthermore, the presence of these specialized courts allows for the efficient allocation of resources. It leads to cost savings and optimizes the management of complex cases. In cases involving the complexities of international treaties and conventions, specialized courts are well-equipped to ensure that judgments and awards comply with international legal standards. This capacity is vital for the recognition and enforcement of these decisions in various jurisdictions.

Many maritime disputes are inherently technical in nature. They may involve complex scientific and technical evidence that requires thorough evaluation. Specialized admiralty courts are adequately prepared to handle such technical evidence, ensuring that it is understood, considered, and adjudicated accurately in the legal proceedings.

In regions where admiralty cases are frequent and substantial, the establishment of dedicated courts alleviates the burden on general court dockets. By concentrating admiralty cases in these courts, other courts are free to focus on cases unrelated to admiralty matters, further streamlining the legal process.

By providing a consistent and uniform interpretation and application of admiralty law, specialized admiralty courts play a pivotal role in creating a favorable legal environment for the maritime industry. This conducive legal atmosphere, characterized by consistency and knowledgeable adjudication, can attract maritime businesses, contribute to the growth of maritime trade, and, in turn, foster economic growth.

In essence, the establishment of specialized admiralty courts is rooted in the necessity for a deep understanding of maritime law, international conventions, and the unique technical aspects of maritime activities. Their presence ensures that admiralty cases are managed with precision, fairness, and efficiency, benefiting all parties involved and the broader maritime industry. The specialized nature of these courts, tailored to the complexities of maritime law, ultimately serves to enhance the rule of law and the administration of justice in the maritime domain.

4.2 SUPREME COURT'S INTERVENTION IN ADMIRALTY JURISDICTION

The Supreme Court's role in overseeing admiralty jurisdiction within the High Courts of India is a crucial component of the nation's legal landscape. It is exercised primarily through the Supreme Court's appellate jurisdiction, where parties dissatisfied with judgments or orders issued by High Courts in admiralty cases can seek recourse and resolution.

Admiralty jurisdiction pertains to legal matters arising from maritime activities, encompassing a wide array of issues such as vessel collisions, cargo disputes, salvage operations, and contractual obligations within the realm of maritime law. Given the complexity and diversity of matters falling

under admiralty jurisdiction, the role of the Supreme Court in providing a final appellate authority is paramount.

When a party involved in an admiralty case believes that an error in law has been committed, or when a matter of substantial public importance is at stake, they have the right to appeal to the Supreme Court. This process not only serves as a mechanism for parties to seek justice but also plays a significant role in ensuring the uniform application of admiralty law throughout the country.

The Supreme Court's appellate jurisdiction is critical for several reasons. Firstly, it provides an opportunity for parties involved in admiralty cases to challenge and rectify erroneous decisions made at the High Court level. This is essential for upholding the principles of justice and ensuring that parties' rights and interests are protected.

Secondly, the Supreme Court serves as the ultimate legal authority when it comes to setting legal precedents in admiralty matters. By hearing appeals on questions of law, it has the power to clarify and establish legal standards, which are binding on all lower courts. This helps in creating a consistent legal framework for handling admiralty cases and ensures that similar cases are decided based on the same legal principles.

Thirdly, the Supreme Court's appellate jurisdiction contributes to the development of admiralty law in India. Admiralty law is a highly specialized field with its own set of rules and principles, often rooted in international conventions and treaties. Through its appellate decisions, the Supreme Court can interpret and apply these principles to Indian cases, thus enriching and evolving the body of admiralty law in the country.

In addition to its routine appellate role, the Supreme Court also has the discretionary power to take up admiralty cases on special leave. This extraordinary jurisdiction enables the Supreme Court to intervene in matters that are of exceptional legal significance or that require urgent attention. It ensures that the highest court in the land can address cases that may have far-reaching implications for maritime trade, navigation, or legal principles.

Overall, the Supreme Court's involvement in admiralty jurisdiction within High Courts is multifaceted. It safeguards the rights of parties involved in admiralty cases, establishes legal precedents, and fosters the development of admiralty law in India. This comprehensive role underscores the significance of the Supreme Court in maintaining legal consistency and ensuring that admiralty disputes are resolved with the highest level of legal expertise and fairness. As such, the Supreme Court stands as a pillar of justice in admiralty matters and upholds the rule of law in maritime affairs throughout India.

4.3 DATA ANALYSIS ON ADMIRALTY JURISDICTION IN INDIA

Based on the data analyzed above, it is needed to establish the permanent special courts for Admiralty Matters. High court is bearing lot of cases other than Maritime cases some may lack of experts in Maritime matters it should be change.

There should be focused courts in matters of maritime law like Armed Force Tribunal (AFT) etc. High Court can be Supervise and appellate jurisdiction in the specialized courts. Our Environment is changing day by day , trades , commerce etc is developing . Shipping is one of the best and increased standards of import and exports for example Carriage of goods by sea (COGS). By establishing the specialized courts reduce the burden of the High Court on Admiralty cases.

Impact of New provisions in admiralty jurisdiction

New provisions in admiralty jurisdiction can have various impacts, including greater clarity and efficiency, expanded jurisdiction to cover new maritime activities, alignment with international standards, stronger enforcement measures, and effects on maritime businesses. These provisions can also enhance environmental protections in the maritime domain.

The specific impact will depend on the nature of the changes and how they are implemented. Staying informed and consulting legal experts is essential to understand the full implications. Pitfalls in Admiralty Jurisdiction in india

Admiralty jurisdiction under Indian shipping law is known for its intricacies and potential obstacles. These encompass a range of issues:

Determining the correct jurisdiction for admiralty cases can be challenging due to multiple high courts with such jurisdiction in India.

Limiting liability under the Limitation of Liability Act can be complex, with claimants often disputing these limits.

Ship arrests, while common, can lead to financial losses and counter claims if not based on valid grounds.

Cargo claims frequently involve multiple parties, complex contracts, and international regulations, making them intricate and time-consuming.

Pollution claims, especially involving environmental issues like oil spills, carry substantial liabilities and regulatory complexities requiring expert legal guidance.

Salvage claims may lead to disputes over salvage awards, necessitating a deep understanding of the legal framework and relevant international conventions.

Strict limitation periods in admiralty cases are crucial, as missing these deadlines can result in forfeiting the right to claim.

India's adherence to various international admiralty conventions necessitates a solid grasp of these agreements for effective case handling.

Proper documentation and evidence management are essential, as a lack thereof can weaken a party's legal position.

Admiralty law is subject to regulatory changes and international conventions, demanding vigilance to stay updated.

Understanding India's unique legal practices and customs in admiralty jurisdiction is important.

Successfully navigating admiralty law in India requires a comprehensive understanding of these challenges and often calls for expert legal counsel to protect the interests of all involved stakeholders in the shipping industry.

Safety Measures

In Indian shipping law, Admiralty jurisdiction should take precautions by ensuring clear jurisdictional boundaries, appointing knowledgeable judges, adhering to international maritime conventions, optimizing case procedures, involving maritime experts, encouraging alternative dispute resolution, establishing specialized admiralty courts, providing ongoing legal training, facilitating access to relevant legal information, and maintaining transparency in the decision-making process. These measures aim to enhance the efficiency and fairness of the maritime legal system.

Admiralty (jurisdiction and settlement of maritime claims) Act 2017

effects in Current Admiralty Jurisdiction

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act of 2017 had a profound impact on how maritime claims are handled in India, replacing the older Admiralty Act of 1861. Here are some of the main changes it brought about:

Broader Jurisdiction: The 2017 Act expanded the range of maritime claims that fall under admiralty jurisdiction. This now includes claims related to cargo carried on ships, services provided by ships, and certain employment-related claims of seafarers.

Exclusive High Court Jurisdiction: It established that only India's High Courts have the authority to hear admiralty cases, as they are better equipped and specialized to handle such matters.

Precise Definitions for Maritime Claims: The Act offers clear definitions for various types of maritime claims, encompassing issues like losses or damages caused by ships, salvage operations, collisions, and more. This clarity aids in categorizing and processing different claim types.

Provisions for Ship Arrest : The Act allows for the arrest of ships as collateral for claims. In certain situations, claimants can request the court to detain a ship, preventing it from leaving port until the claim is resolved.

Limiting Liability: Shipowners are permitted to limit their liability for maritime claims, in line with common practices in admiralty law worldwide. However, this limitation is subject to specific conditions and restrictions.

Admiralty Case Procedures : The Act outlines the procedures for handling admiralty cases, including the process of arresting ships, selling ships, and distributing sale proceeds to claimants.

Focus on Speedy Resolution: The Act places an emphasis on expediting the resolution of admiralty cases by imposing time limits at various stages of the legal process.

4.2 SUMMARY OF THE STUDY

Admiralty jurisdiction within the realm of Indian shipping law confronts an array of requisites and challenges that collectively shape its framework and effectiveness. These multifaceted aspects are pivotal to the ongoing development and refinement of admiralty jurisdiction, with each issue representing a crucial piece of the puzzle.

First and foremost, the need for modernization is a paramount concern that has lingered for some time. Indian admiralty jurisdiction must align itself with international norms and best practices to remain relevant and efficient in today's globalized maritime industry. The introduction of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act in 2017 marked a significant step toward modernization. This legislative initiative recognized the necessity of adapting to the changing dynamics of the maritime sector, which has become increasingly complex and interconnected. Modernization encompasses a wide range of aspects, including the incorporation of international conventions and treaties, the digitization of legal processes, and the harmonization of Indian admiralty laws with global standards.

Another fundamental area of concern revolves around the clarity and comprehensiveness of legislation. The need for clear, unambiguous, and comprehensive legal frameworks governing admiralty matters is imperative. Legal ambiguities can lead to protracted disputes and unnecessary delays, adversely affecting the interests of all parties involved. Thus, it is vital to ensure that the legal framework is well-defined, leaving no room for ambiguity or misinterpretation. Clarity in legislation promotes a more straightforward and efficient adjudication process, reducing the likelihood of disputes arising from differing interpretations of the law. Specialized courts for admiralty cases represent another pressing issue. Admiralty matters are inherently complex and

require a deep understanding of maritime law principles and nuances. To expedite the resolution of such cases and ensure accuracy in judgments, the establishment of dedicated admiralty courts staffed with judges well-versed in maritime law is paramount. These specialized courts offer several advantages, such as streamlined case management, faster resolution times, and an improved understanding of the unique challenges posed by maritime disputes. They play a crucial role in elevating the overall efficiency of admiralty jurisdiction within the Indian legal system.

Efficiency and speed are intertwined challenges that demand immediate attention. A prolonged legal process can have severe economic implications, affecting not only the parties directly involved in a case but also the broader business environment. Speedy and efficient resolution of admiralty disputes is essential to maintaining a robust and competitive maritime industry in India. This necessitates the optimization of legal procedures, timely handling of cases, and the removal of unnecessary bottlenecks that hinder the expeditious disposition of disputes.

Adequate infrastructure for various maritime activities is a critical requirement. Ports and facilities designed for arresting ships, conducting investigations, and securing maritime claims must be developed and improved. The absence of such infrastructure can impede the timely resolution of admiralty matters and hinder the enforcement of maritime claims. Adequate infrastructure is an essential component of an effective admiralty jurisdiction system, ensuring that legal decisions can be enforced without unnecessary delays.

Furthermore, the scarcity of legal experts specializing in admiralty law presents a significant challenge. Maritime law is a highly specialized field, and the shortage of legal professionals with expertise in this domain can pose difficulties in effectively handling admiralty cases. This challenge underscores the need for targeted efforts to produce a cadre of legal experts well-versed in maritime law.

Initiatives such as specialized training and education programs can help address this gap and ensure that the legal profession has the requisite expertise to navigate the complexities of maritime legal issues.

International cooperation is indispensable in the realm of admiralty jurisdiction. The maritime industry, by its very nature, transcends national borders, often giving rise to cross-border maritime disputes. India must strengthen its cooperation with other nations to effectively address and resolve such disputes. Collaboration and harmonization of maritime laws and regulations with international counterparts can facilitate smoother dispute resolution processes and foster a more harmonious global maritime environment. It is crucial for India to be an active participant in international forums and discussions related to maritime law, ensuring that its legal framework remains in sync with global trends and requirements.

Environmental concerns have gained prominence in contemporary shipping law. The increasing awareness of environmental protection and the potential environmental impacts of maritime

activities necessitate stringent regulations and liability mechanisms. Admiralty jurisdiction should include robust provisions for holding responsible parties accountable for environmental harm. This aligns with international standards on environmental protection and reflects India's commitment to sustainable and responsible maritime practices.

Promoting the use of alternative dispute resolution (ADR) methods is another avenue to alleviate the burden on the courts. Encouraging parties involved in admiralty disputes to opt for arbitration and mediation can expedite the resolution process, reduce the backlog of cases in the legal system, and provide a more cost-effective and flexible approach to dispute resolution. ADR methods can offer parties greater control over the resolution process, often resulting in quicker and more amicable outcomes.

Finally, raising awareness and ensuring compliance with admiralty laws among shipping companies and maritime professionals is of utmost importance.

Fostering a culture of adherence to legal norms and regulations is a preventive measure to avoid disputes in the first place. Ensuring that entities involved in maritime activities are well-informed about their legal responsibilities and obligations helps create a more compliant and responsible industry.

These requisites and challenges collectively shape the landscape of admiralty jurisdiction in Indian shipping law. Addressing these multifaceted issues requires a coordinated and multifaceted approach, involving legislative reforms, the establishment of specialized courts, infrastructure development, education and training initiatives, international engagement, and a strong focus on environmental protection. By proactively addressing these challenges, India can position itself as a maritime legal hub that effectively serves the needs of the maritime industry while upholding the principles of justice, efficiency, and sustainability. This ongoing commitment to enhancement ensures that admiralty jurisdiction in Indian shipping law remains robust, responsive, and adaptable to the evolving needs of the maritime sector.

CONCLUSION

In the comprehensive examination of the needs and challenges surrounding admiralty jurisdiction in Indian shipping law, several critical aspects come to the forefront. Admiralty jurisdiction is a vital component of regulating maritime disputes, but it grapples with numerous issues that require attention. This analysis underscores the imperative need for reforms and modernization in Indian shipping law.

One of the primary challenges in admiralty jurisdiction is the presence of outdated legislation. The legal framework governing maritime matters in India has not kept pace with the evolving complexities of the shipping industry. This lag in legal development can hinder the efficient resolution of disputes, potentially causing delays and complications for all parties involved. Therefore, updating and amending the legal statutes to align them with contemporary maritime

practices is a pressing requirement.

Another pressing concern in Indian admiralty jurisdiction is the significant delays in legal proceedings. Maritime disputes often involve high stakes and time-sensitive matters. Delays in resolving such disputes can result in financial losses and hinder the smooth functioning of maritime trade. Addressing this issue necessitates streamlining legal procedures, ensuring prompt adjudication, and facilitating alternative dispute resolution mechanisms. By expediting the legal process, admiralty jurisdiction can better serve the needs of the maritime industry.

Additionally, the domain of admiralty law requires specialized expertise. Maritime disputes often involve intricate technical, navigational, and contractual aspects. Ensuring that judges and legal practitioners possess the necessary knowledge and skills to address these complexities is crucial. The establishment of specialized admiralty courts or the provision of targeted training and education for judges can help bridge this knowledge gap.

To conclude, the study of needs and challenges in admiralty jurisdiction within Indian shipping law emphasizes the vital importance of timely and comprehensive reforms. Modernizing legislation, expediting legal proceedings, and enhancing expertise in the field of admiralty law are essential steps in ensuring that maritime commerce is facilitated efficiently, the rights of all stakeholders are protected, and disputes are resolved fairly and expeditiously. By addressing these needs and challenges, India can further strengthen its position in the global maritime industry.

BIBLIOGRAPHY

Books and Documents

Dr. Shrikant Hathi Ms. Binita Hathi, *Ship arrest in India and admiralty laws of India*, Twelfth edition 2019.

M E Aliyar, *Understanding of modern maritime law*, Swathy Law House, 2019.

C M Row, *Maritime jurisdiction and Admiralty law in India*, Universal Law Publishing 2017.

Dr. Biju Antony Thekkanath, *Text Book on Maritime Law*, Bsols Publication, 2022

Websites and Links <https://www.google.com/> <https://www.admiraltypractice.com>.

<https://www.prsindia.org/billtrack/the-admiralty-jurisdiction-and-settlement-of-maritime-claims-bill-2016#:~:text=Admiralty%20laws%20deal%20with%20cases,Courts%20of%20Admiralty%20Act%2C%201890>.

<https://www.juriscentre.com> <https://www.tnmaritime.com> <https://www.scribd.com>

https://en.wikipedia.org/wiki/Admiralty_law

<https://blog.ipleaders.in/maritime-law-2/>

<https://indiankanoon.org>

<https://www.legalserviceindia.com/legal/article-9419-m-v-elisabeth-v-s-harwan-investment-and-trading-irac-analysis.html.in>

<https://www.legalserviceindia.com/legal/article-9419-m-v-elisabeth-v-s-harwan-investment-and-trading-irac-analysis.html.in>

<https://www.legalserviceindia.com/legal/article-9419-m-v-elisabeth-v-s-harwan-investment-and-trading-irac-analysis.html.in>

<https://www.legalserviceindia.com/legal/article-9419-m-v-elisabeth-v-s-harwan-investment-and-trading-irac-analysis.html.in>