Codifying Maritime Laws in India

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The growth of the maritime sector in India over the past decade has been phenomenal, and as per industry sources, it will continue to be the same in the coming years. India has one of the largest merchant shipping fleet amongst developing countries and almost 90 per cent of the country’s trade volume is moved by sea. The major ports in India together handled a total cargo of 530.35 MT during 2008 - 2009 as against 227.26 MT in 1996 - 1997. With new ports to be completed soon, this fast-growing sector certainly requires some serious consideration.

A ship during its voyage is a subject matter of numerous contracts and deals, thereby creating chances for disputes. Moreover, disputes can also be due to collision, wages and allowances of crew, obligations to ports and other governmental authorities, or even loss of life or personal injury caused by ship or occurring in connection with the voyage. It is in this context that the legal remedy of Ship Arrest gains importance. ‘Arrest of ship’ means detention of a ship in a port by judicial process to secure a claim against the ship owner. It is to be noted that if a ship leaves the territorial waters of a particular court, nothing much can be done to enforce the claims against the ship owner. Hence, for practical convenience, law presumes that a ship is a legal person and all creditors can proceed against the ship, instead of the ship owner. It is also an accepted principle that irrespective of the nationality of the ship, the law of the coastal state will be applicable when a ship is within its waters.

As per principles of International Maritime Law, the power to arrest a foreign ship is a manifestation of the territorial sovereignty of coastal nations.

With huge investments pouring in the maritime sector, the legal system in India needs to equip itself to these challenges. The courts should be able to protect ship owners from unlawful claims and even in case of an arrest, the proceedings need to be wound up as soon as possible. Lack of certainty and procedural delay are the two means by which the legal system dampens the growth of the maritime sector in India. With huge vessels calling to our ports, a slight delay in voyage can cause losses worth millions.

However, much confusion still remains as to the scope and implications of ship arrest in India. The confusion is mostly because the law relating to admiralty jurisdiction in India is still not codified. We are still governed by colonial laws like the Colonial Courts of Admiralty Act, 1891. Earlier, it was only the High Courts of Bombay, Chennai and Calcutta that could arrest a ship in India. However, after the decision of the Supreme Court in M V Elizabeth’s case (1992), it has been decided that ship arrest can be done by any High Court in India when the vessel is within its jurisdiction. Sadly, even today, courts have not made up their minds to exercise judicial discipline in this regard. There have been instances of the Bombay High Court arresting vessels in Cochin Port and vice versa. Even more, there is no clarity as to the court fee that is to be deposited to secure an order of arrest. Though Admiralty Rules framed in major High Courts prescribe a court fee to be deposited, in courts like High Court of Kerala with no Admiralty Rules of its own, only a meager amount for the writ petition needs to be submitted. This confusion leads to forum shopping.

Now, what if the ship was wrongfully arrested on a false claim? The law provides for damages to the ship owner in cases of wrongful arrest of his ships. The courts usually prescribe for a security to be kept by the claimant in the form of a bank guarantee to be kept alive till the case is concluded. However, often it is seen that such remedies become futile, considering the long duration our courts take to settle the matter.

It is in this context that the Law Commission of India in its 151st report in 1994 suggested a uniform admiralty law in India. However, nothing has been done so far, except for few amendments in existing laws. An Admiralty Bill introduced in 2005, which has been pending since then, has recently lapsed, ending hopes for a new law in the near future. India has neither adopted the Brussels Convention on Arrest of Sea-Going Ships, 1952, nor the Geneva Convention on the Arrest of Ships, 1999, adding to the confusion and leaving our courts with no option but to rely on the colonial statutes of the last century. Periodical updation of laws in tune with International Standards is an indicator of a nation’s commitment to progress. Unfortunately, it is a lesson we are too lazy to learn.
References


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