History and Admiralty jurisdiction of the High Courts

The historical development of admiralty jurisdiction and procedure is of practical as well as theoretical interest, since opinions in admiralty cases frequently refer to the historical background in reaching conclusions on the questions at issue. The special jurisdiction of admiralty has a maritime purpose, different from the common law. It is not exclusively rooted in the civil law system, although it includes substantial derivations there from. It has a strong international aspect, but may undergo independent changes in several countries. Certain universal features exist in all countries that have admiralty law and such international features are given serious consideration by admiralty courts. By the end of the seventeenth century the admiralty jurisdiction in England was restricted, it was not as extensive as compared to other European maritime countries due to a long standing controversy in which the common law courts with the aid of the Parliament had succeeded in limiting the jurisdiction of admiralty to the high seas and as such excluded admiralty jurisdiction from transactions arising on waters within the body of a country.

A suit against a foreign ship owned by a foreign company not having a place of residence or business in India is liable to be proceeded against on the admiralty side of the High Court by an action in rem in respect of the cause of action alleged to have arisen by reason of a tort or a breach of obligation arising from the carriage of goods from a port in India to a foreign port. Courts’ admiralty jurisdiction is not limited to what was permitted by the Admiralty Court, 1861 and the Colonial Courts of Admiralty Act, 1890. Prior to the decision of m.v Elisabeth v. Harwan Investment & Trading Pvt Ltd., Goa, the courts exercising Admiralty Jurisdiction statutorily in India were the three High Courts at Calcutta, Madras and Bombay. The High Courts of the other littoral states of India, viz. Gujarat, Karnataka, Kerala, Andhra Pradesh and Orissa, do not possess Admiralty jurisdiction, albeit there have been instances of the High Courts of Gujarat, Andhra Pradesh and Orissa having entertained Admiralty causes apparently on a perfunctory consideration of the various States Reorganisation Acts enacted by the Indian Parliament and presumably without the benefit of a full argument. However, after the decision of the Supreme Court in m.v Elisabeth v. Harwan Investment & Trading Pvt Ltd) interpreting under A.225 the High Courts in India is superior courts of record. They have original and appellate jurisdiction. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate or discretionary jurisdiction of the Supreme Court, the High Courts have unlimited jurisdiction, including the jurisdiction to determine their own powers.
The Admiralty jurisdiction of the High Courts at Calcutta, Madras and Bombay were the same as the Admiralty jurisdiction of the High Court in England at the time of the enactment by the British Parliament of the Colonial Courts of Admiralty Act 1890 and is, under subsection (2) of the said Act, and subject to the provisions thereof, over the like places, persons, matters and things as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise and exercised in the like manner and to as full an extent as the High Court in England having the same regard as that court to international law and the comity of nations. The subsequent extension of the Admiralty jurisdiction of the High Court in England by statutes passed after that date by the British Parliament, the Administration of Justice Act 1920, re-enacted by the Supreme Court of Judicature (Consolidation) Act, 1925, is not shared by the said three High Courts. After India attained independence, the Indian Parliament has so far not exercised it powers to make laws with respect to Admiralty and thus the three Indian High Courts were to apply Admiralty laws as it was applied by the English Court of Admiralty as defined in the Admiralty Court Act, 1861. The scope and nature of the Admiralty jurisdiction exercised by the High Courts in India have been examined and ascertained in Kamlakar v. The Scindia Steam Navigation Co. Ltd; Rungta Sons Ltd. v. Owners and Master of Edison6; National Co. Ltd. v. M. S. Asia Mariner; m.v Elisabeth-v- Harwan Investment & Trading Pvt Ltd., Goa

The fact that the High Court continues to enjoy the same jurisdiction as it had immediately before the commencement of the Constitution, as stated in Art. 225, does not mean that a matter which is covered by the Admiralty Court Act, 1861 cannot be otherwise dealt with by the High Court, subject to its own Rules, in exercise of its manifold jurisdiction, which is unless barred, unlimited. To the extent not barred expressly or by necessary implication, the judicial sovereignty of this country is manifested in the jurisdiction vested in the High Courts as superior courts. It is true that the Colonial statutes continue to remain in force by reason of Art. 372 of the Constitution of India, but that do not stultify the growth of law or blinker its vision or fetter its arms. Legislation has always marched behind time, but it is the duty of the Court to expound and fashion the law for the present and the future to meet the ends of justice.

It was because of the unlimited civil jurisdiction that was already vested in these High Courts that they were declared to be Colonial Courts of Admiralty having the same jurisdiction in extent and quality as was vested in the High Court of England by virtue of any statute or custom. The High Courts were declared competent to regulate their procedure and practice in exercise of admiralty jurisdiction in accordance with the Rules made in that behalf. There is, therefore, neither reason nor logic in imposing a fetter on
the jurisdiction of those High Courts by limiting it to the provisions of an imperial statute of 1861 and freezing any further growth of jurisdiction. This is even truer because the Admiralty Court Act, 1861 was in substance repealed in England a long time ago. Assuming that the admiralty powers of the High Courts in India are limited to what had been derived from the Colonial Courts of Admiralty Act, 1890, that Act, having equated certain Indian High Courts to the High Court of England in regard to admiralty jurisdiction, must be considered to have conferred on the former all such powers which the latter enjoyed in 1890 and thereafter during the period preceding the Indian Independence Act, 1947. What the Act of 1890 did was not to incorporate any English statute into Indian law, but to equate the admiralty jurisdiction of the Indian High Courts over places, persons, matters and things to that of the English High Court. There is no reason to think that the jurisdiction of the Indian High Courts have stood frozen and atrophied on the date of the Colonial Courts of Admiralty Act, 1890.

The Admiralty jurisdiction exercised by the High Courts in Indian Republic is still governed by the obsolete English Admiralty Courts Act, 1861 applied by (English) Colonial Courts of Admiralty Act, 1890 and adopted by Colonial Courts of Admiralty (India) Act, 1891 (Act XVI of 1891). Yet there appears no escape from it, notwithstanding its unpleasant echo in ears. The shock is still greater when it transpired that this state of affairs is due to lack of legislative exercise.

Viewed in the background of enactment of 1890 it would be too artificial to confine the exercise of power by the High Courts in Admiralty to what was contained in 1861 Act. Even otherwise for deciding the jurisdiction exercised by the High Court in India founded on jurisdiction exercised by the High Court of England it is not necessary to be governed by the decisions given by English Courts. Law is pragmatic in nature to problems arising under an Act and not by abdication or surrender, 1890 Act is an unusual piece of legislation expansive in scope, wider in outlook, opening out the wings of jurisdiction rather than closing in. The authority and power exercised by the High Court in England, the width of which was not confined to the statute but went deep into custom, practice, necessity and even exigency.

Law of 1890 apart, can the Indian High Courts after 1950 be denied jurisdiction to arrest a foreign ship to satisfy the claim of an owner of a bill of lading for cargo taken outside the country? Without entering into any comparative study regarding the jurisdiction of the High Court of England and the High Courts in our country the one basic difference that exists today is that the English Courts derive their creation, constitution and jurisdiction
from Administration of Justice Act or Supreme Court Act but the High Courts in our country are established under the Constitution. Under it’s Art. 225 enlarged preserves the jurisdiction, including inherent jurisdiction, which existed on the date the Constitution came into force and Art. 226 enlarged it by making it not only a custodian of fundamental rights of a citizen but a repository of power to reach its arms to do justice. A citizen carrying on a particular business which is a fundamental right cannot be rendered helpless on the premise that the jurisdiction of the High Courts stands frozen either by the statute of England or any custom or practice prevailing there or the High Court of England cannot exercise the jurisdiction.

The jurisdiction of the High Court of Admiralty in England used to be exercised in rem in such matters as from their very nature would give rise to a maritime lien - e.g. collision, salvage, bottomry. The jurisdiction of the High Court of Admiralty in England was, however, extended to cover matters in respect of which there was no maritime lien, i.e., necessaries supplied to a foreign ship. In terms of Section 6 of the Admiralty Act, 1861, the High Court of Admiralty was empowered to assume jurisdiction over foreign ships in respect of claims to cargo carried into any port in England or Wales. By reason of Judicature Act of 1873, the jurisdiction of the High Court of Justice resulted in a fusion: of admiralty law, common law and equity. The limit of the jurisdiction of the Admiralty court in terms of Section 6 of the 1861 Act was discarded by the Administration of Justice Act, 1920 and the jurisdiction of the High Court thereby was extended to (a) any claim arising out of an agreement relating to the use or hire of a ship; (b) any claim relating to the carriage of goods in any ship; and (c) any claim in tort in respect of goods carried in any ship.

The admiralty jurisdiction of the High Court was further consolidated by the Supreme Court of Judicature (Consolidation) Act, 1925 so as to include various matters such as any claim "for damage done by a ship", and claim 'arising out of an agreement relating to the use or hire of a ship'; or 'relating to the carriage of goods in a ship'; or "in tort in respect of goods carried in a ship".

The admiralty jurisdiction of the High Court was further widened by the Administration of Justice Act, 1956 so as to include not only the claims specified under Section 1(i) of Part I but also any other jurisdiction which either was vested in the High Court of Admiralty immediately before the date of commencement of the Supreme Court of Judicature Act, 1873 (i.e. November 1, 1875) or is conferred by or under an Act which came into operation on or after that date on the High Court as being a court with admiralty jurisdiction and any other jurisdiction connected with ships vested
in the High Court apart from this section which is for the time being assigned by rules of court to the Probate, Divorce and Admiralty Division.

Sub-section (4) of Section 1 removed the restriction based on the ownership of the ship. By reason of Clauses (d)(g) and (h) of the said Section the jurisdiction in regard to question or claims specified under Section 1(i) included any claim for loss of or damage to goods carried in a ship, any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship.

In the course of time the jurisdiction of the High Courts vested in all the divisions alike. The Indian High Courts after independence exercise the same jurisdiction.

The Indian Courts possessing Admiralty jurisdiction have jurisdiction over the following claims and to hear and determine any questions with regard thereto.

(a) Any claim for the building, equipping or repairing of any ship

"Any claim for the building, equipping or repairing of any ship if at the time of the institution of the action the ship or the proceeds thereof are under arrest of the court."

Where the facts pleaded in the plaint read with the particulars set forth in the annexure conclusively show that the repairs done and material supplied were prima facie "necessaries", an action will lie.

(b) Any claim for necessaries supplied to any ship

"Any claim for necessaries supplied to any ship elsewhere than in the port to which the ship belongs and on the high seas unless it is shown to the satisfaction of the court that at the time of the institution of the action any owner or part-owner of the ship is domiciled in India."
(c) **Any claim by the owner or consignee or assignee of any bill of lading of any goods for damage**

"Any claim by the owner or consignee or assignee of any bill of lading of any goods carried into any port in India in any ship for damage done to the goods or any part thereof by the negligence or misconduct of, or for any breach of duty or breach of contract on the part of, the owner, master or crew of the ship, unless it is shown to the satisfaction of the court that at the time of the institution of the action any owner or part-owner of the ship is domiciled in India."

This section has been construed liberally by the Indian High Courts which have held that, in order to attract the jurisdiction, it is not necessary that the goods should be imported into India or that their carriage should be for delivery in India. It is sufficient if the goods are carried into an Indian port and there is a breach of duty or contract on the part of the master or owner of the ship. An unpaid vendor exercising his right of stoppage in transit can call upon the master of the ship to deliver the goods and refusal on the part of the latter would constitute a breach of duty so as to attract the jurisdiction.

The section has been held to apply not only to cases of damage, actual or constructive, done to the goods in the strict sense but also to cases of non-delivery or delay in delivery. Unless damage, actual or constructive, is done to the goods or in other words, unless the goods carried or to be carried are affected in some manner, the section can have no application. A cause of action based on false statements or misstatements made in a bill of lading is not a cause of action founded on a breach of contract of carriage or breach of duty in relation to carriage within the meaning of the section. "Carriage of goods", in the context of the section, means carriage of goods actually shipped and not hypothetical goods which ought to have been shipped but were never shipped. There can be no breach of contract of carriage or breach of duty in relation to carriage within the meaning of the section before the goods are delivered to the carrier.

The object of this section is not to provide a remedy for something done which is not connected with carriage or delivery of actual goods; a claim for issuing an antedated bill of lading or a false bill of lading, or a bill of lading in contravention of the Hague Rules is a claim arising out of a bill of lading but is not a claim within the scope of the section because, without anything more, such a claim is not in
respect of damage done to the goods nor does it relate to the goods carried by the ship; a claim based on the wrongful exercise of lien on cargo by a ship owner is an Admiralty cause within this section.

(d) Any claim for damage done by any ship

"Any claim for damage done by any ship."

The High Court on its Admiralty side has exclusive jurisdiction in respect of damage caused by a ship to property on the high seas; a suit for damages for loss of life or personal injuries as a result of a collision on the high seas falls within the section by virtue of the Maritime Conventions Act, 1911. Quaere: The Maritime Conventions Act, 1911, in so far as it extended to and operated as part of the law of India, was repealed by Section 46(2) of the Merchant Shipping Act, 1958, with effect from 1 January, 1961 and whether from such date such a claim for damages, for loss of life or personal injuries will fall within the section may require to be considered.

(e) Any claim for damage received by any ship or sea-going vessel

"Any claim for damage received by any ship or sea-going vessel whether such a ship or vessel may have been in India or upon the high seas when the damage was received."

(f) Any claim for the possession or ownership of a ship

"Any claim for the possession or ownership of a ship or to the ownership of any share therein."

(g) Any claim in the nature of salvage services

"Any claim in the nature of salvage services rendered to a ship, whether such ship or vessel may have been within India or the high seas at the time when its services were rendered in respect of which the claim is made."
Section 402 of the (Indian) Merchant Shipping Act 1958 provided as follows:

(1) Where services are rendered: -

(a) wholly or in part within the territorial waters of India in saving life from any vessel or elsewhere in saving life from a vessel registered in India;

(b) In assisting a vessel or saving the cargo or equipment of a vessel which is wrecked, stranded or in distress at any place on or near the coats of India;

(c) By any person other than the receiver of wreck in saving any wreck; there shall be payable to the salvor by the owner of the vessel cargo, equipment or wreck, a reasonable sum for salvage having regard to all the circumstances of the case.

(2) Salvage in respect of the preservation of life when payable by the owner of the vessel shall be payable in priority to all other claims for salvage.

(3) Where salvage services are rendered by or on behalf of the Government Wor by a vessel of the Indian Navy or the commander or crew of any such vessel, the Government, the commander or the crew, as the case may be, shall be entitled to salvage and shall have the same rights and remedies in respect of those services as any other salvor.

(4) Any dispute arising concerning the amount due under this section shall be determined upon application made by either of the disputing parties -

(a) to a Judicial Magistrate of the first class or Metropolitan Magistrate as the case may be where the amount claimed does not exceed ten thousand rupees; or

(b) to the High Court, where the amount claimed exceeds ten thousand rupees.

(5) Where there is any dispute as to the persons who are entitled to the salvage amount under this section, the Judicial Magistrate of the first class or the Metropolitan Magistrate or the High Court as the case may be shall decide the dispute and if there are more persons than one entitled to such amount, such Magistrate or the High Court shall apportion the amount thereof among such persons.
(6) The costs of and incidental to all proceedings before a Judicial Magistrate of the first class or Metropolitan Magistrate or the High Court under this section shall be in the discretion of such Magistrate or the High Court, and such Magistrate or the High Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid and to give all necessary directions for the purpose aforesaid."

The section provides that any dispute as to salvage shall be determined by a magistrate where the amount does not exceed Rs.10,000 and by the High Court where the amount exceeds that sum. For the purpose of the said Act the term "High Court" has been defined by section 3(15) of the said Act in relation to a vessel to mean the High Court within the limits of whose appellate jurisdiction:

(a) the port of registry of the vessel is situate; or
(b) the vessel is for the time being; or
(c) the cause of action wholly or in part arises.

One of the effects of the said section is that all the High Courts of littoral states will have jurisdiction to entertain a cause relating to salvage and not just the High Courts having Admiralty Jurisdiction. That part it is arguable that the Admiralty Jurisdiction exercised by the High Courts in relation to such a cause has been replaced and substituted by or must yield to the special jurisdiction conferred by the Act and that consequently a suit on such a cause is not maintainable in the Admiralty jurisdiction of the High Courts.

(h) Any claim by a master or crew for wages, etc.

"Any claim by a master or crew for wages or for any money or property which under any statutory provisions is recoverable as such."

(i) Any claim by a master in respect of disbursements

"Any claim by a master in respect of disbursements made on account of a ship."
(j) Any claim arising out of bottomry

"Any claim arising out of bottomry."
To the best of the writer's knowledge, the last case of bottomry in the Bombay High Court, relating to the m.v. Kali Elpis was in or about 1967 and this part of the Admiralty jurisdiction can be regarded as obsolete in practice.

(k) Any claim in the nature of towage

"Any claim in the nature of towage supplied to any foreign ship or sea-going vessel whether such ship or vessel may have been within India or upon the high seas at the time services were rendered in respect of which the claim is made."

(l) A claim and cause of action in respect of any mortgage

"Whenever any ship shall be under arrest by the court or the proceeds of any ship having been so arrested shall have been brought into and be in the registry of the said court a claim and cause of action of any person in respect of any mortgage of such ship."

(m) Any claim in respect of any registered mortgage

"Any claim in respect of any mortgage duly registered according to the provisions of the (Indian) Merchant Shipping Act, 1958, whether the ship or the proceeds thereof be under arrest of the Court or not."

The reader is referred to section 51 of the Merchant Shipping Act 1958, regarding the rights of a registered mortgagee of a ship, which is as follows:

(1) A registered mortgagee of a ship or share shall be entitled to recover the amount due under the mortgage in the High Court, and when passing a decree or thereafter the High Court may direct that the mortgaged ship or share be sold in execution of the decree.
(2) Subject to the provisions of Sub-s. (1), no such mortgagee shall merely by virtue of the mortgage be entitled to sell or otherwise dispose of the mortgaged ship or share.

The "High Court" referred to in the section by definition in the Act means the High Court within the limits of whose appellate jurisdiction (a) the port or registry of the ship is situate; or (b) the ship is for the time being; or (c) the cause of action wholly or in part arises. The High Court need not be one having Admiralty jurisdiction and the sale of the ship which the High Court directs to be sold will not extinguish all the claims to or liens on the ship so as to give the purchaser a free and clear title to the ship.

(n) Claims Relating to Cargo and contracts of Affreightment

The Admiralty jurisdiction of the High Court in respect of cargo claims and contracts of affreightment is statutory. The High Court has Admiralty jurisdiction over any claim arising out of an agreement relating to the use or hire of a ship; or relating to the carriage of goods in a ship; or tort in respect of goods carried in a ship, unless it is shown to the Court that at the time of the institution of the proceedings any owner or any part owner of the ship was domiciled in India; Jurisdiction in relation to the carriage of goods was first acquired by the Admiralty Court under the Admiralty Court Act, 1861. The Act of 1861 gave jurisdiction to the Court over claims by the owner, consignee or assignee of the bill of lading of any goods carried by a ship into any port in India for damage caused by negligence or for any breach of contract or breach of duty, unless at the institution of the cause the owner or part owner of the ship was domiciled in India. The jurisdiction which the Court now exercises has thus been extended to include claims which, notwithstanding the liberal interpretation which the Act of 1861 received could not have been entertained under the earlier statute. Under the Act of 1861 the right to bring an Admiralty action was limited to owners of cargo, but now there appears to be no reason why a ship-owner, provided that he is not domiciled in India, should not bring an Admiralty action against cargo owners, although the latter are domiciled in India; The only express limitation upon this exercise of jurisdiction in rem in claims relating to the carriage of goods is now the proviso that no owner or part owner of the ship shall on the institution of the suit be domiciled in India. Under the Act of 1861 it was held that "owner" meant the owner at the time when the cause of action arose, and that the word "domiciled" is to be understood in its strict legal sense. It was also held that the claim must be in respect of goods actually shipped on board the vessel which is made subject to proceedings in rem. Proceedings in rem can only be instituted against the ship in which such goods have actually been carried. Upon the same principle it would seem that a claim relating to the use or hire of any ship is only capable of
being enforced against the ship to which such agreement relates. The language of the section does not, however, expressly impose any such limitation, but leaves a plaintiff free to enforce in proceedings in rem a claim relating to an agreement for the hire of a ship, or carriage of goods in a ship, against a ship other than that to which the agreement relates or in which the goods were carried, belonging to the same owner.

The jurisdiction is, however, no longer confined to claims relating to goods "carried into any port in India in any ship", to include claims in respect of any breach of contract for the use or hire of a ship. The right to proceed is no longer confined to the owner, consignee or assignee of the bill of lading and therefore it would seem that the limitation of the jurisdiction to claims where actual damage to goods has been sustained, or a breach of contract taken place in relation to them, which the Courts held to be a consequence of the restriction under the Act of 1861 of the right to sue to parties interested in the goods.

A claim in personam by cargo owners against the owners of the carrying ship who were domiciled in India are not within the jurisdiction of the Admiralty Court. Any action in personam may now be brought in the Admiralty Court. The jurisdiction in actions in rem has not, however, been affected in respect of cargo claims or relating to the use or hire of a ship. There is, therefore, no jurisdiction to entertain an action in rem in which the owner of the ship, whether plaintiff or defendant, is domiciled in India. The remedy applies to foreign ships as well as to Indian ships, its objects being to give a practicable remedy, where formerly in the great majority of cases there was no available process in consequence of the shipowner being out of the jurisdiction. "Many foreign ships" "came into this country, and did not deliver the goods according to the bill of lading. The owners and consignees of cargo then suffered great loss, and had no practicable remedy; for though the shipowner, if in India, might have been sued for breach of contract, in the very great majority of cases that remedy was wholly unavailable. It appears, too, that in some cases, if not nearly in all, the owner of a Indian ship carrying cargo to a foreign country was liable to have his ship there seized for any breach of his contract as carrier.

As remedy depends upon the place where the owner of the ship is domiciled at the time of the institution of the suit, it is clear that it was not intended that a plaintiff having a claim under the section should have a maritime lien; for a maritime lien accrues from the instant of the circumstances creating it, and not from the date of the intervention of the Court. The claim of the plaintiff in cases of damage to cargo or breaches of contract therefore accrues only upon the institution of the suit, and is subject to claims subsisting on the ship at the time of the institution of the suit.