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## **ARREST OF SHIPS IN MARITIME LAW: A STUDY OF INTERNATIONAL NORMS AND INDIAN PRACTICE**

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### **ABSTRACT**

The arrest of a ship constitutes one of the most distinctive and effective remedies under admiralty law, enabling a maritime claimant to secure enforcement of a claim by detaining the vessel itself. Owing to the transnational nature of maritime commerce and the mobility of ships, traditional methods of civil enforcement against shipowners often prove inadequate. Against this backdrop, ship arrest has evolved as a specialised mechanism rooted in actions in rem, whereby the vessel is treated as a juridical entity answerable for maritime liabilities. This paper critically examines the legal foundations and objectives of ship arrest from both international and Indian perspectives. It analyses the conceptual basis of admiralty jurisdiction, the doctrinal distinction between actions in rem and actions in personam, and the role of ship arrest in securing maritime claims. Further, it evaluates the regulatory framework governing ship arrest under international conventions, particularly the 1952 and 1999 Arrest Conventions, and assesses the statutory regime in India under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, highlighting its significance in aligning Indian admiralty law with contemporary international standards.

## Introduction

Ship arrest is a vital enforcement mechanism in maritime law, primarily aimed at securing maritime claims in circumstances where the shipowner may be outside the territorial jurisdiction of the court or otherwise difficult to bring within its effective control. Maritime commerce is inherently transnational: vessels navigate across multiple jurisdictions, carry cargo belonging to diverse parties, and engage in complex contractual relationships involving charterers, cargo owners, insurers, financiers, and port authorities. In such a dynamic environment, traditional civil remedies that depend upon personal jurisdiction over the defendant often prove inadequate or ineffective<sup>1</sup>.

Given the highly mobile nature of ships and their ability to depart from one jurisdiction to another within a short span of time, arresting the vessel itself has emerged as a more pragmatic and efficient remedy than proceeding solely against the owner in personam. This practical necessity gave rise to the evolution of admiralty actions in rem, whereby proceedings are directed against the vessel as a juridical entity capable of bearing liability. The conceptual foundation of this mechanism lies in the legal fiction that the ship, as an instrument of maritime enterprise, may itself be treated as the wrongdoer and compelled to answer the claim.

The fundamental objective of ship arrest is twofold. First, it prevents the vessel from leaving the territorial jurisdiction of the court pending adjudication of maritime claims, thereby safeguarding the claimant's interest. Second, it ensures the availability of security—either through the continued detention of the ship or through the provision of bail or other financial guarantees—for the satisfaction of a potential decree. Thus, ship arrest operates not merely as a procedural device but as a substantive safeguard within admiralty jurisprudence, balancing the interests of maritime commerce with the need to secure effective judicial remedies.

## Concept and Nature of Ship Arrest

Ship arrest refers to a judicial process by which a competent admiralty court orders the detention of a vessel within its territorial jurisdiction to secure a maritime claim. Unlike ordinary civil attachment proceedings, ship arrest is rooted in the distinctive principles of

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<sup>1</sup>Berlingieri, F., *Berlingieri on Arrest of Ships: A Commentary on the 1952 and 1999 Arrest Conventions*, 4th edn., Informa, London, 2006.

admiralty law, particularly the doctrine of action in rem. The vessel is treated as the res (the property in question) and becomes the focal point of jurisdictional authority and enforcement.

At its core, ship arrest performs multiple interconnected functions. First, it operates as a mechanism of pre-judgment security. By restraining the vessel, the court ensures that a tangible and valuable asset remains available to satisfy any decree or arbitral award that may ultimately be passed in favour of the claimant. In the absence of such a mechanism, the transient character of maritime trade would enable vessels to evade liability simply by sailing beyond the court's territorial reach.

Second, ship arrest serves a jurisdictional function. In many instances, the physical presence of the vessel within territorial waters confers admiralty jurisdiction upon the court, even where the shipowner lacks personal presence or residence within the forum state. The arrest thus compels the owner to enter an appearance and provide security, thereby facilitating adjudication of the dispute.

Third, ship arrest reflects a balance between commercial expediency and judicial control. While maritime commerce depends upon the free movement of vessels, it also necessitates reliable enforcement mechanisms to maintain confidence among cargo interests, financiers, insurers, port authorities, and service<sup>2</sup>. The possibility of arrest acts as a deterrent against non-payment of maritime dues and promotes discipline within the shipping industry.

Maritime operations expose vessels to a wide spectrum of liabilities, including cargo damage, collisions, salvage remuneration, towage and pilotage charges, bunker supplies, unpaid port dues, environmental damage, crew wages, personal injury, and loss of life at sea. Given the international character of these transactions and the multiplicity of parties involved, ship arrest has emerged as a crucial remedy for maritime creditors. It ensures that claims arising out of maritime adventures are not rendered illusory due to jurisdictional complexities or the mobility of the offending vessel.

Thus, the concept of ship arrest transcends mere detention; it represents a specialised enforcement technique embedded within admiralty jurisprudence, designed to secure justice in

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<sup>2</sup> Shrikant Hathi and Binita Hathi, *Ship Arrest in India and Admiralty Laws of India*, Brus Chambers, Mumbai, 15th edn., 2024

a domain where assets are mobile, transactions are transnational, and liabilities are often substantial.

### **Actions in Rem and Actions in Personam**

Admiralty law recognises two principal forms of legal action: actions in rem and actions in personam. The distinction between these two forms is foundational to understanding the unique character of admiralty jurisdiction and the legal basis of ship arrest.

An action in rem is directed against the vessel itself, rather than against the personal liability of the owner. In this form of proceeding, the ship is treated as the res and is regarded, through a well-established legal fiction, as the offending instrument responsible for the maritime claim. The institution of an action in rem enables the claimant to invoke the jurisdiction of the court by arresting the vessel within its territorial waters<sup>3</sup>. Upon arrest, the ship becomes subject to the authority of the court, and the owner is compelled either to appear and defend the claim or to furnish security for the release of the vessel. If the owner fails to enter appearance, the court may proceed to adjudicate the claim and, where necessary, order the judicial sale of the vessel to satisfy the decree.

The action in rem therefore performs both a jurisdictional and a security function. It confers jurisdiction based on the presence of the vessel within the forum and simultaneously ensures the availability of a tangible asset against which enforcement may be carried out. Historically, this remedy developed in response to the practical difficulty of serving foreign shipowners who operated beyond the reach of domestic courts. By attaching liability to the ship itself, admiralty courts ensured that maritime claims could be effectively enforced despite the international mobility of shipping enterprises.

In contrast, an action in personam is directed against a specific legal or natural person, typically the shipowner, charterer, or other party alleged to be personally liable. Such proceedings resemble ordinary civil suits and depend upon establishing personal jurisdiction over the defendant. In personam actions may result in monetary decrees enforceable against the defendant's assets generally, rather than being confined to the arrested vessel.

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<sup>3</sup> Verónica Ruiz Abou-Nigm, *The Arrest of Ships in Private International Law*, Oxford University Press, 2011

The distinguishing feature of admiralty jurisdiction lies in the availability and continued relevance of actions in rem, which are largely absent in ordinary civil proceedings. This procedural innovation reflects the specialised needs of maritime commerce, where assets are mobile, parties are often multinational, and claims require swift and effective remedies. The coexistence of actions in rem and in personam thus provides a flexible and comprehensive framework for the adjudication and enforcement of maritime claims.

## **International Legal Framework Governing Ship Arrest**

### **International Convention Relating to the Arrest of Seagoing Ships, 1952**

The International Convention Relating to the Arrest of Seagoing Ships, 1952, commonly known as the Brussels Arrest Convention, represents the first concerted international effort to harmonise the rules governing ship arrest across maritime nations. Prior to its adoption, national laws concerning arrest varied considerably, creating uncertainty, forum shopping, and inconsistency in the enforcement of maritime claims. The Convention sought to promote uniformity and predictability in international shipping by identifying recognised maritime claims, regulating jurisdictional competence, and prescribing procedural standards for the arrest and release of vessels.

A central feature of the 1952 Convention is its codification of specific categories of “maritime claims” that justify the arrest of a vessel. By limiting arrest to enumerated claims, the Convention attempted to strike a balance between protecting maritime creditors and preventing arbitrary interference with commercial navigation. These claims included, *inter alia*, damage caused by a ship, loss of life or personal injury, salvage, agreements relating to the use or hire of a ship, carriage of goods, general average, bottomry, towage, pilotage, supplies, construction, repair, wages of masters and crew, and disputes as to ownership or mortgage.

The Convention permits the arrest of a ship flying the flag of a contracting state within the jurisdiction of another contracting state for the purpose of securing a maritime claim. This provision reinforced the transnational enforceability of maritime claims and reduced the possibility of vessels evading liability merely by operating across borders. At the same time, the Convention preserved the procedural autonomy of the forum state by stipulating that questions relating to the method, procedure, and consequences of arrest are governed by the law of the state where the arrest is effected (*lex fori*). Thus, while substantive grounds for arrest

were internationally harmonised, procedural aspects remained subject to domestic law.

Another significant aspect of the Convention concerns the release of an arrested vessel. It provides that the competent judicial authority may order the release of the ship upon the furnishing of adequate security, such as bail or a bank guarantee, sufficient to satisfy the claim. This mechanism ensures that commercial operations are not unduly paralysed while simultaneously safeguarding the claimant's interest<sup>4</sup>. The provision reflects the Convention's broader objective of balancing the fluidity of maritime trade with the necessity of effective legal remedies.

The development of the 1952 Convention must be understood against the practical realities of maritime litigation. Shipowners were frequently located in foreign jurisdictions, and personal service of process was often difficult or impossible. By recognising the ship as a juridical entity capable of being proceeded against in rem, the Convention reinforced the doctrinal foundation of admiralty jurisdiction and strengthened the effectiveness of maritime claims enforcement. In doing so, it institutionalised a uniform legal framework that significantly contributed to legal certainty in international shipping practice.

### **International Convention on Arrest of Ships, 1999**

The International Convention on Arrest of Ships, 1999 was adopted with the objective of modernising and refining the regime established under the 1952 Convention in light of developments in international shipping, environmental regulation, and maritime finance. By the late twentieth century, the growth of global trade, the increasing complexity of ship ownership structures, and heightened environmental concerns necessitated a more comprehensive and contemporary framework governing ship arrest.

One of the most notable contributions of the 1999 Convention is the expansion and clarification of the categories of maritime claims that justify arrest. The Convention increased the recognised claims from seventeen to twenty-two, thereby widening the protective ambit available to maritime creditors. Newly introduced claims include those relating to environmental damage and the costs of preventive measures, wreck removal, port and harbour charges, insurance premiums, commissions and agency fees, and disputes arising out of contracts for the sale of a vessel. At the same time, obsolete concepts such as bottomry were

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<sup>4</sup> The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.

removed, reflecting the evolution of maritime financing practices. This expansion demonstrates the Convention's responsiveness to contemporary maritime realities, particularly the growing emphasis on environmental accountability and commercial transparency.

Another significant innovation of the 1999 Convention lies in its approach to jurisdiction and dispute resolution. The Convention expressly permits the arrest of a vessel for the purpose of obtaining security, even where the substantive dispute is subject to arbitration or the jurisdiction of a foreign court. In doing so, it recognises the practical necessity of securing claims without prejudicing agreed mechanisms for adjudication. This provision strengthens the enforceability of arbitration agreements and foreign judgments by ensuring that claimants may obtain security in a convenient forum while pursuing merits proceedings elsewhere.

Unlike its 1952 predecessor, the 1999 Convention does not restrict arrest solely to vessels flying the flag of a contracting state. It allows arrest of ships irrespective of flag, subject to the domestic law of the forum state. This broader scope enhances the Convention's effectiveness in a globalised shipping industry where flag-of-convenience registries are common and ownership structures are often multilayered and transnational.

The 1999 Convention also introduces more robust safeguards against wrongful or unjustified arrest. Recognising that detention of a vessel may cause substantial commercial losses, the Convention empowers courts to require the claimant to furnish counter-security for potential damages arising from wrongful arrest. Furthermore, shipowners and security providers are granted the right to apply for reduction, variation, or cancellation of security if circumstances so warrant<sup>5</sup>. These provisions reflect a conscious effort to balance the interests of maritime claimants in obtaining effective remedies with the need to protect shipowners from abuse of process.

In addition, the Convention addresses issues relating to the arrest of sister ships and associated ships, subject to defined ownership criteria. By clarifying the conditions under which ships owned by the same person may be arrested for claims against another vessel, the Convention contributes to greater legal certainty in complex ownership scenarios.

Overall, the 1999 Convention represents a progressive development in international admiralty law. It builds upon the foundational principles of the 1952 regime while adapting them to

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<sup>5</sup> International Convention Relating to the Arrest of Seagoing Ships, 1952.

modern commercial practices, environmental obligations, and dispute resolution mechanisms. Through its expanded list of maritime claims, flexible jurisdictional approach, and enhanced procedural safeguards, the Convention seeks to maintain equilibrium between facilitating maritime commerce and ensuring effective enforcement of maritime liabilities.

## **National Legal Framework in India**

### **Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017**

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 marks a significant legislative reform in Indian maritime law. It repealed and replaced a cluster of colonial-era statutes, including the Admiralty Court Acts of 1840 and 1861 as applied to India, and was enacted with the objective of modernising, consolidating, and clarifying the law relating to admiralty jurisdiction. The Act reflects India's growing importance in global maritime trade and seeks to harmonise domestic admiralty practice with contemporary international standards while retaining procedural flexibility suited to Indian judicial administration.

One of the most important contributions of the Act is the statutory recognition and definition of "maritime claims." Section 4 of the Act provides an extensive list of claims that may give rise to admiralty jurisdiction and consequently justify the arrest of a vessel. These include disputes relating to possession or ownership of a vessel; disputes between co-owners concerning operation or earnings; mortgage or charge on a vessel; loss or damage caused by the operation of a vessel; environmental damage and associated preventive measures; loss of life or personal injury occurring in connection with a vessel's operation; carriage of goods or passengers; charterparty disputes; supply of goods, bunkers, or services to a vessel; construction, repair, or conversion of a ship; port, harbour, canal, and other waterway dues; pilotage and towage; crew wages and other employment-related claims; and insurance premiums including mutual insurance calls. The breadth of this definition ensures that the Act accommodates the diverse and complex transactions that characterise modern maritime commerce.

The Act also codifies the concept of maritime liens, which occupy a privileged position in admiralty law. Maritime liens arise by operation of law and attach to the vessel itself, travelling with the ship irrespective of changes in ownership. Under the Act, maritime liens are recognised in limited but significant categories, such as claims for crew wages, salvage,

damage done by a vessel, port dues, and certain other specified claims. The statute further lays down the order of priority among competing claims, particularly in cases where the vessel is sold through judicial process. This statutory clarification enhances certainty and reduces litigation concerning ranking and distribution of sale proceeds.

With respect to jurisdiction, the Act confers admiralty powers on designated High Courts, including those exercising jurisdiction over coastal states and union territories. These High Courts are empowered to entertain actions in rem against vessels located within their territorial waters, generally extending up to twelve nautical miles from the baseline. The presence of the vessel within territorial jurisdiction constitutes the basis for arrest and invocation of admiralty jurisdiction. The court may order the arrest of the vessel where a prima facie maritime claim is established and may subsequently order its judicial sale if the claim remains unsatisfied.

The procedural framework governing arrest under the Act balances the interests of claimants and shipowners. Once arrested, the vessel or the proceeds from its judicial sale are held as security pending final adjudication of the dispute<sup>6</sup>. The owner may secure the release of the vessel by furnishing security, typically in the form of a bank guarantee or protection and indemnity (P&I) club letter of undertaking. At the same time, the court is empowered to require the claimant to provide an undertaking or counter-security to compensate the shipowner in the event that the arrest is found to be wrongful or unjustified. This safeguard discourages frivolous or abusive arrests and aligns Indian practice with international norms.

The Act also addresses issues relating to sister ship arrest, permitting the arrest of another vessel owned by the same person who is liable for the maritime claim, subject to statutory conditions. This provision is particularly significant in an era where single-ship companies and complex ownership structures are common in the shipping industry.

Overall, the Admiralty Act, 2017 represents a comprehensive and forward-looking legislative framework. By codifying maritime claims, clarifying the status and priority of maritime liens, strengthening procedural safeguards, and empowering High Courts with clearly defined admiralty jurisdiction, the Act ensures that India provides an effective and credible forum for the enforcement of maritime claims while maintaining fairness toward shipowners and maritime stakeholders.

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<sup>6</sup> International Convention on Arrest of Ships, 1999

## **Conclusion**

Ship arrest continues to occupy a central position within admiralty jurisprudence as one of the most powerful and pragmatic remedies available for the enforcement of maritime claims. In a domain characterised by the mobility of assets, multinational ownership structures, and transboundary commercial engagements, conventional civil enforcement mechanisms are often inadequate. The doctrine of action in rem, which underpins the concept of ship arrest, represents a distinctive juridical innovation that enables courts to assert jurisdiction through the presence of the vessel and to secure effective relief for maritime claimants. It ensures that maritime liabilities do not become illusory merely because the shipowner is outside territorial reach or shielded by complex corporate arrangements.

The evolution of the international legal framework demonstrates a conscious effort to balance commercial freedom with judicial accountability. The 1952 Arrest Convention laid the foundation for harmonised rules governing maritime claims and arrest procedures, thereby promoting predictability and reducing conflicts among maritime jurisdictions. The 1999 Convention further modernised this framework by expanding the scope of recognised maritime claims, incorporating environmental considerations, strengthening safeguards against wrongful arrest, and accommodating arbitration and foreign jurisdiction clauses. Together, these conventions reflect the dynamic nature of maritime law and its responsiveness to global commercial and environmental developments.

Within the Indian context, the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 signifies a decisive shift from fragmented colonial legislation to a coherent and contemporary statutory regime. By clearly defining maritime claims, codifying maritime liens and their priorities, recognising sister ship arrest, and introducing procedural safeguards against abuse, the Act enhances legal certainty and aligns Indian practice with international standards. It empowers High Courts to function as effective maritime forums while ensuring fairness toward shipowners through mechanisms such as counter-security and judicial scrutiny of arrest applications.

Ultimately, the law relating to ship arrest embodies a careful equilibrium. On one hand, it protects maritime creditors by providing swift and tangible security for legitimate claims. On the other, it safeguards shipowners from arbitrary or unjustified detention that could disrupt commercial operations and cause substantial economic loss. The continued relevance of ship

arrest in modern maritime law underscores its role not merely as a procedural device, but as a substantive instrument of justice that sustains confidence, discipline, and accountability within the global shipping industry.