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Arrested at Sea, Adrift in Law: Vessel Arrest as Security for Arbitration under India's Admiralty Act 2017

Eshita Pal Choudhury[a]

[a]S.K. Acharya Institute of Law, Kalyani, West Bengal, India

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The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017 was a significant milestone in the Indian maritime legal system, replacing the obsolete clutter of colonial statutes with a framework that integrates vessel arrest and admiralty jurisdiction. Although modernised, it has yet to resolve the matter of vessel arrest as security where a maritime claim dispute is pending for foreign-seated arbitration. While the Act has drawn inspiration from the International Convention on Arrest of Ships, 1999, it failed to incorporate Article 2(3) of the convention, an essential provision in this regard, leaving three evident lacunae in India's maritime arbitration architecture. This article analyses the Act and highlights gaps at the intersection of admiralty law, international commercial law, and arbitration, arising from the absence of a statutory provision authorising courts to order the arrest of a vessel to obtain security. At the same time, a dispute is referred to arbitration outside India. Through discussion on the Altus Uber ruling, comparative structures of the UK and Singapore, and the issues addressed and recommendations in the Law Commission's 1994 report on admiralty jurisdiction, this article proposes strong statutory amendments reforming the admiralty structure to fulfil India's maritime goals.

Keywords: *vessel arrest, admiralty jurisdiction, foreign-seated arbitration, interim measures, actions in rem.*

INTRODUCTION

The expansion of India's maritime law framework has been exponential, and its international commercial arbitration structure has also advanced significantly. In the current times, maritime and shipping disputes, mainly focused on under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017, are considered commercial disputes within the scope of arbitration, governed by the Arbitration and Conciliation Act, 1996. However, imagine the following scenario:

A cargo vessel registered in Panama, while carrying industrial equipment from Mumbai to Japan, damages a consignment worth Rs. 15 crores. The bill of lading includes a Singapore Chamber of Maritime Arbitration (SCMA) arbitration clause, with the seat pre-decided as Singapore. The owner of the cargo being shipped is based in Kolkata. She fears that the ship will sail away before the arbitrators in Singapore render a decision about six months from now. The question arises whether she can arrest the ship at the Jawaharlal Nehru Port (Mumbai).

Keeping India's present-day maritime arbitration architecture in mind, the answer to this question presents a factual possibility but also legal ambiguity. Through this article, the discussed legal uncertainty will be examined closely.

The Admiralty Act 2017[1], despite being a prominent step forward in the maritime legal framework of India, creates some ambivalence in empowering courts to order the arrest of a vessel for foreign-seated arbitration disputes by omitting an important provision under Article 2(3)[2] of the International Convention on the Arrest of Ships. Parallelly, the Act establishes vessel arrest by Indian High Courts as its in rem jurisdiction, while arbitration gives rise to an action in personam, leading to a structural conflict. Additionally, there is no set prescription for the measure of security to be derived from arrested vessels under this Act or in the entirety of the maritime arbitration structure of India. These gaps observed in the existing legislation and judicial precedents leave the courts to base their decisions solely on common law principles and inconsistent judicial standards. This article aims to analyse the Admiralty Act 2017[3] and the Arbitration and Conciliation Act 1996, along with its 2015

[1] The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017
[2] International Convention on the Arrest of Ships 1999, art 2(3)
[3] The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017

amendments, to present the gaps in the existing legislation and recommend specific legislative reforms based on the English and Singapore models of international maritime arbitration.

THE ADMIRALTY ACT 2017: MODERNISATION AND LACUNAE

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017[4] has become the primary reliable source for maritime claims and maritime lien-related disputes. Before this Act, the introduction of maritime law came with colonial statutes, like the Admiralty Courts Act 1840, the Admiralty Courts Act 1861, and the Colonial Courts of Admiralty 1890. These statutes were disconnected, incoherent and archaic. In M.V. Elisabeth v Harwan Investment and Trading Pvt. Ltd.,[5] the Supreme Court of India held that High Courts have unlimited and plenary powers, unless restricted, to deliver justice to a claimant in accordance with the provisions of Indian statutes and the general principles of maritime law and that Indian maritime law can continue the incorporation of existing principles from its English counterpart as was provided for under the colonial statutes, thereby broadening admiralty jurisdiction.[6] This case compelled the Supreme Court to address the chaos caused by the colonial maritime law framework after India's independence. The Law Commission in 1994, through its 151st report[7] on the subject of admiralty jurisdiction, which was taken up suo moto, proposed several reforms such as consolidation of existing laws on civil matters of admiralty jurisdiction, expansion of jurisdiction regarding territory, maritime claims, maritime lien arrest, detention, sale of vessel and other related matters. Based on these recommendations, a bill on admiralty matters was brought about in 2005, though it could not be passed. [8] Finally, the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act was passed in 2017, reshaping the admiralty law framework of India.

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[4] *Ibid*

[5] *M V Elisabeth & Ors v Harwan Investment and Trading Pvt Ltd* (1993) Supp (2) SCC 433

[6] 'Broadening Admiralty Jurisdiction: Insights from M.V Elisabeth v Harwan Investment and Trading Pvt Ltd' (*Case Mine,* 27 February 1992) <https://www.casemine.com/commentary/in/broadening-admiralty-jurisdiction:-insights-from-m.v-elisabeth-v.-harwan-investment-and-trading-pvt.-ltd./view> accessed 05 May 2026

[7] Law Commission, *Report No 151: On Admiralty Jurisdiction* (Law Com No 151, 1994)

[8] Mr Shuvro Prosun Sarker and Ms Shreyasi Bhattacharya, 'Tracing Admiralty Law in India' (2021) 3(2) CMR University Journal for Contemporary Legal Affairs <https://www.cmr.edu.in/school-of-legal-studies/journal/wp-content/uploads/2022/02/05-Tracing-Admiralty-Law-in-India.pdf> accessed 05 May 2026

The Admiralty Act 2017[9], replacing its predecessors, under section 2(e),[10] extended jurisdiction to most coastal High Courts, unlike the previous assignment, limited to the High Courts of Calcutta, Madras and Bombay, thereby including the High Courts of Gujarat, Karnataka, Orissa, Kerala and Hyderabad. According to Section 3[11], the aforementioned High Courts are vested with the powers to adjudicate on matters relating to maritime claims, subject to the provisions under sections 4[12] and 5.[13]

Under section 4[14], admiralty jurisdiction over a list of maritime claims, such as those arising from ownership, possession, or mortgage of a ship, loss of or damage to cargo, personal injury or loss of life due to the operation of a vessel, salvage, towage, pilotage, necessaries supplied to a vessel and environment damage caused by a ship, has been established, while also making provision for settlement of accounts in relation with the vessel, its sale, and holding any proceeds from such sale as security against any claim. Under section 5[15], High Courts have the power to order the arrest of a vessel in rem, an action against the vessel itself, against maritime claims given under section 4, given that the owner or the demise charterer is the person liable for the ship at the time of arrest.

Section 6[16] provides for the exercise of in personam admiralty jurisdiction subject to the restrictions given under section 7[17] by imposing certain stipulations in connection with claims arising from damage, personal injury, or loss of life from the use or operation of a vessel. The defendant, for an action in personam, must either be domiciled in or ordinarily resident in India, or the cause of action must wholly or partly arise in India.

According to Section 11[18], High Courts may ask the claimant to ensure counter-security to the defendant for ordering the arrest of a vessel as protection against wrongful or unjustified arrest or excessive security being demanded or provided. For the amount of security, there is no statutory benchmark, and the courts may rely on their own discretion.

[9] The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017
[10] The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017, s 2(e)
[11] The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017, s 3
[12] The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017, s 4
[13] The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017, s 5
[14] The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017, s 4
[15] The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017, s 5
[16] The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017, s 6
[17] The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017, s 7
[18] The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017, s 11

Indian Courts, before this Act, have applied principles from several international conventions which had not been ratified in India. For example, the M.V. Elisabeth[19] case studied and drew connections to certain principles from the International Convention Relating to the Arrest of Sea-Going Ships (Brussels) 1952, and in Liverpool & London S.P. & I Association Ltd. v M.V. Sea Success I,[20] principles from the International Convention on Arrest of Ships 1999 were acknowledged and applied accordingly. Despite the addition of provisions mirroring those from the 1999 Convention[21] and those suggested in the Draft Admiralty Act given by the Law Commission through its 151st report, the Admiralty Act, 2017,[22] failed to include provisions related to arbitration, consequently omitting a significant subject of maritime commercial disputes.

THE ARBITRATION FRAMEWORK AND ITS INTERFACE WITH ADMIRALTY

The Arbitration and Conciliation Act 1996 forms the foundation for the arbitration architecture of India. Section 9[23] enables the claimant to apply to any court for interim measures before the arbitral tribunal is constituted, during the arbitration proceedings, or after the making of an arbitral award. This works as a safeguard for the claimant to protect the assets and evidence involved and the effectiveness and sanctity of arbitration proceedings. This provision is specifically significant in cases of maritime arbitration, where vessel arrest is required to assure the claimant of security for foreign-seated arbitration before an arbitral award is made. In Bhatia International v Bulk Trading S.A.,[24] it was determined that Part I, including section 9,[25] could be applied to international arbitrations, unless its application is explicitly excluded. This judgment was later overruled in BALCO v Kaiser Aluminium,[26] where the Supreme Court held that Part I of the Act would not apply to arbitrations taking place outside India, including section 9[27]. Based on this judgment, in Rushab Ship International v M.V. African Eagle,[28] the Bombay High Court concluded that

[19] *M V Elisabeth & Ors v Harwan Investment and Trading Pvt Ltd* (1993) Supp (2) SCC 433
[20] *Liverpool & London S P & I Association Ltd v M V Sea Success I & Anr* (2004) 9 SCC 512
[21] International Convention on the Arrest of Ships 1999
[22] The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017
[23] The Arbitration and Conciliation Act 1996, s 9
[24] *Bhatia International v Bulk Trading S A & Anr* (2002) 4 SCC 105
[25] The Arbitration and Conciliation Act 1996, s 9
[26] *Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc* (2012) 9 SCC 552
[27] The Arbitration and Conciliation Act 1996, s 9
[28] *K R Shriram Rushab Ship International v M V African Eagle* (2014) Supreme (Bom) 1106

section 9[29], would not be maintainable for the arrest of a vessel for the desired award in a foreign arbitration.

After the 2015 amendment, section 2(2)[30] established the application of section 9[31] to international arbitrations seated outside India, unless the parties exclude such application. Through such provisions made by the Parliament, India's progressive intent and support for international arbitration are clearly evident. However, the question of whether vessel arrest constitutes an interim measure that can be regulated by a distinct statute remains.

There exists a noticeable and basic structural tension created due to the provision for vessel arrest being an action in rem, where the action is against the ship itself, and an interim measure for a dispute under arbitration being an action in personam, where the action is of a private nature taking place between consenting parties. Therefore, vessel arrest being recognised as an interim measure for arbitration presents a conflict in theory, which can only be resolved if an unambiguous distinction is established to facilitate the existing statutory structure. This distinction was discussed in J.S. Ocean Liner v M.V. Golden Progress,[32] where it was held by the Bombay High Court that the arrest of a vessel could be ordered as an action in rem but not as an interim measure under section 9[33], before an award is made in a foreign-seated arbitration, mainly keeping the standards set by the International Convention on the Arrest of Ships 1999, in mind.

THREE CRITICAL GAPS IN THE ADMIRALTY ARBITRATION FRAMEWORK

On close evaluation of the existing admiralty arbitration framework, three critically evident deficiencies can be observed.

Absence of Definite Statutory Approval: The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017 allows for the arrest of a vessel as security against a maritime claim, but it does not mention any provision relating to arbitration. Supreme Court, in the case of Videsh Sanchar Nigam Ltd v M.V. Kaptain Kud,[34] highlighted the importance of vessel arrest to prevent the escape of a foreign ship from the jurisdiction, thereby obstructing

[29] The Arbitration and Conciliation Act, 1996, s 9
[30] The Arbitration and Conciliation Act, 1996, s 2(2)
[31] The Arbitration and Conciliation Act, 1996, s 9
[32] *J S Ocean Liner LLC v M V Golden Progress* (2007) 2 Bom CR 1
[33] The Arbitration and Conciliation Act 1996, s 9
[34] *Videsh Sanchar Nigam Ltd v M V Kapitan Kud & Ors* (1996) 7 SCC 127

the enforcement of maritime claims. Similarly, the Arbitration and Conciliation Act, 1996, approves interim measures by courts for disputes reserved for foreign-seated arbitration without any mention of vessel arrest being included in the list of such measures provided under the Act. As a result, in the presence of an arbitration clause between parties with the seat being outside India, there is no definite legislative framework for the High Courts to follow, and the courts have to rely on their own discretion. However, the International Conference on the Arrest of Ships 1999, through its Article 2(3),[35] lays down the provision for courts to allow the arrest of a ship to obtain security before the arbitral tribunal, constituted outside the State where the arrest is to be made, decides on an award in respect of a maritime claim.

Despite the Admiralty Act 2017,[36] incorporating several provisions replicating those under the 1999 Convention,[37] it omitted the inclusion of a crucial provision that could better support maritime arbitration. Before 2017, High Courts applied principles and provisions from international conventions in accordance with their application in the English maritime legal systems, as seen in the M.V. Elisabeth case[38]. The Law Commission, through its 151st report, also suggested considering principles of international conventions as part of the Indian common law. However, with the overhaul of colonial statutes and ambiguity with respect to the application of common law principles, which allowed for such an implementation by the Admiralty Act 2017[39], uncertainty has developed regarding the implementation of international convention principles.

The Bombay High Court, in Altus Uber v Siem Offshore Redri As,[40] upheld the arrest of a vessel to obtain security against a maritime claim, irrespective of the presence of arbitration proceedings seated outside India. This marked a forward-thinking step towards the expansion of the admiralty arbitration framework in respect of vessel arrest as security, notwithstanding the existence of laws governing the matter to a limited extent, highlighting the need for a stronger statutory coverage or a conclusive judicial pronouncement by the Supreme Court to clarify, strengthen and formalise this stance.

[35] International Convention on the Arrest of Ships 1999, art 2(3)
[36] The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017
[37] International Convention on the Arrest of Ships 1999
[38] *M V Elisabeth & Ors v Harwan Investment and Trading Pvt Ltd* (1993) Supp (2) SCC 433
[39] The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017
[40] *Altus Uber Imo No 9385300 v Siem Offshore Rederi As* AIRONLINE (2019) Bom 1286

Structural Conflict between Actions in Rem and in Personam: Under maritime law, an action in rem arises against the vessel itself, while an action in personam may arise against not only the owner, but also a demise charterer, master, and the crew as well. The Admiralty Act 2017[41] ensures the arrest of a vessel, which is an action in rem. However, interim measures before an arbitral award is made represent actions in personam. These provisions lack the harmony required for the proper functioning of an effective admiralty arbitration ecosystem.

The Law Commission recommended maintaining a distinction between in rem and in personam actions in admiralty law. In the JS Ocean Liner case (2007),[42] a distinction between the two provisions was established, enabling vessel arrest for the purpose of obtaining security where the dispute is set to be arbitrated under a foreign jurisdiction. This case underscored the difficulty in making these provisions work in tandem. In the Altus Uber case, the admiralty provision of vessel arrest in rem under the Admiralty Act 2017 was given precedence over the in personam provisions of interim measures under Section 9 of the Arbitration and Conciliation Act 1996, to permit the arrest of a ship as security regardless of the dispute being under foreign-seated arbitration.

The lacuna created by the absence of unambiguous statutory guidance on the issue needs to be resolved by a clarification through an amendment or any other form of legislation. Staying on the same trajectory as the Altus Uber case, the Parliament may amend the Admiralty Act 2017 to pave the way for vessel arrest as security in maritime claim disputes pending arbitration taking place outside India.

No Benchmark for Amount of Security: The quantum of counter-security, as previously discussed, has been left undecided under section 11[43]. Likewise, there is no prescription for the amount of security that can be obtained by the claimant in a maritime claim dispute from the arrest of a ship under section 5[44], which leaves the estimation of such security or counter-security to judicial determination.

[41] The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017
[42] *J S Ocean Liner LLC v M V Golden Progress* (2007) 2 Bom CR 1
[43] The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017, s 11
[44] The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017, s 5

Such a determination is usually made by the High Courts having their own standards, as there is no Supreme Court ruling to provide the mechanism for deriving security or counter-security. In the case of foreign-seated arbitration, this determination becomes increasingly complex due to questions arising about who should decide the quantum of security and what factors should be taken into consideration, such as the arbitral claim amount or the amount to be awarded, for such a calculation. The quantum of security or counter-security needs to be fixed by the statutes to prevent the affected parties from being under-secured or excessively secured.

Article 4(2)[45] states that the security amount may be decided by the courts, but it should not exceed the value of the arrested ship. This is another provision that could have been included, but has been left out of the Admiralty Act 2017. Therefore, amending the Act to provide for standards of determining the amount of security or counter-security against arrested vessels in disputes related to maritime claims.

COMPARATIVE LESSONS FROM ENGLISH AND SINGAPOREAN MODELS

While taking into account the lacunas present in the Indian maritime arbitration framework in respect of vessel arrest to obtain security, it would be beneficial to integrate lessons from frameworks that have been effective in handling this matter.

The UK Framework: The English admiralty framework is noteworthy for its frictionless integration with arbitration. The London Maritime Arbitration Association (LMAA) was founded in 1960 and is currently the world's largest maritime arbitration body. English courts have been proactive and skilled at supporting and sustaining arbitration with admiralty remedies. In The Rena K,[46] it was settled that vessel arrest could be maintained as security despite the parties referring their dispute to arbitration, forming a significant and fundamental ruling which is later cited by several other nations to develop their own admiralty arbitration structures. Under section 11 of the UK Arbitration Act 1996, the courts are permitted to order the arrest of a vessel as security irrespective of whether the dispute has been referred for arbitration. Although English courts have been given discretionary powers, statutes have codified and formally settled matters of significance and historical

[45] International Convention on the Arrest of Ships 1999, art 4(2)
[46] *The Rena K* [1979] QB 377

controversy, unlike the Indian framework, where statutes have yet to establish a comprehensive, codified nexus between arbitration and admiralty.

The Singapore Framework: Singapore is another significant hub of maritime arbitration. Section 7 of Singapore's International Arbitration Act (IAA), 1944, explicitly allows the arrest of a ship to obtain security for arbitration, with the seat being irrelevant. The ICL Raja Maharaja case[47] strengthened this position further by ruling that vessel arrest as security in a maritime claim dispute pending arbitration, whether domestic or foreign, is maintainable under Section 7 of the IAA. Singapore Chamber of Maritime Arbitration (SCMA) is gaining prominence in recent times, rivalling the LMAA, mainly because of Singapore's statutory clarity and precision. This underlines how even a small but unambiguous legal provision can help in transforming a country's appeal as a maritime dispute resolution hub.

Through the Maritime India Vision 2030 and the Sagarmala Programme, India aims to position itself as a leading maritime nation. These aspirations will be undermined without a proper and unambiguous maritime dispute resolution mechanism in place. For this very purpose, India can draw inspiration from the UK and Singapore and develop an efficient and effective admiralty arbitration system.

CONCLUSION

The cargo owner mentioned in the introduction, with her goods damaged, her contract including terms for London arbitration, and the ship carrying her goods still at port, currently has the option to arrest that ship in India in accordance with the Altus Uber ruling. However, she has to do so without any clear legislative ground or any form of statutory or judicial guidance on the procedure of arrest as security and the quantum of such security to protect and support her for the foreign-seated arbitration proceedings.

Three reformative interventions may be suggested to close this gap. Firstly, an amendment to the Admiralty Act 2017 must be made to empower High Courts to order vessel arrest as security, notwithstanding a clause in the contract referring the dispute to arbitration outside India, drawing inspiration from Article 2(3)[48], a model that was followed by both the UK and Singapore. Secondly, a benchmark for the quantum of security and counter-security, not

[47] *The ICL Raja Mahendra* [1999] 1 SLR(R) 922
[48] International Convention on the Arrest of Ships 1999, art 2(3)

exceeding the value of the vessel, must be set by amending the Act, following the standard set by article 4(2)[49]. Thirdly, the Act must incorporate a mechanism to coordinate the working of both the admiralty jurisdiction of High Courts over vessel arrest and the maritime claim dispute being referred to a foreign-seated arbitration under the Arbitration and Conciliation Act 1996.

India's aspiration of becoming one among the major maritime hubs of the world through the Maritime India Vision 2030 and the Sagarmala Programme requires more than mere repeated judicial repair. India needs legislative clarity by codifying an appropriate, efficient and unambiguous maritime dispute resolution system.

[49] International Convention on the Arrest of Ships 1999, art 4(2)