



LAW COMMISSION OF INDIA

**ONE HUNDRED AND
FIFTY FIRST REPORT**

ON

ADMIRALTY JURISDICTION

1994

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August 17, 1994

D.O. No. 6(3)(16)/92-LC(LS)

Dear Prime Minister,

I have great pleasure in forwarding herewith the 151st Report of the Law Commission of India on the subject of "Admiralty Jurisdiction". This is the 8th Report after the constitution of the 13th Law Commission.

2. The subject of "Admiralty Jurisdiction" was taken up for an indepth study by the Law Commission *suo motu* in view of the observations of the Supreme Court in *M.V. Elizabeth and Others v. Harwan Investment and Trading Private Limited* (JT 1992 (2) SC 165) relating to the jurisdiction of the Andhra Pradesh High Court in Admiralty matters. India does not have "Admiralty Law" of its own, instead our courts continue to administer the admiralty jurisdiction in accordance with the statutes enacted by the British Parliament and extended to the then colonial India. The British Admiralty Law has undergone, several radical changes but in India there has been no legislative exercise to enact or amend the law of admiralty. The Commission has in this report considered the matter in detail and it has recommended enactment of law. For purpose of convenience, a draft of the proposed legislation is annexed to this Report.

3. The Commission trusts that its recommendations contained in this report will be accepted and acted upon which will meet a long standing need of Shipping and Maritime trade and business and it will further remove the uncertainty of law relating to courts' jurisdiction in Admiralty matters.

With warm regards.

Yours sincerely,

(Sd.)
(K. N. SINGH)

HON'BLE SHRI P. V. NARASIMHA RAO,
Prime Minister &
Minister for Law, Justice and Company Affairs
NEW DELHI.

Encl: As above.

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SECTION I
INTRODUCTORY

CHAPTER 1

INTRODUCTION

1.1. Even after forty four years of the promulgation of the Constitution of India, there are areas of jurisprudence in which issues regarding the jurisdiction of courts as well as issues regarding the law applicable thereto remain unclear, incomplete and unsatisfactory. One such area is the law pertaining to admiralty, shipping, carriage by sea and maritime matters. While there are statutes relating to some aspects of this field of jurisprudence, there is a vast grey area which calls for legislative action. However, the prevalence of absolute chaos has been averted and a modicum of order has been preserved as a result of the transitional provisions of the Constitution enabling the continuance of the *status quo ante* in all matters until specific legislation is introduced.

1.2. Article 372 of the Constitution has enacted a general saving provision that, subject to the provisions of the Constitution, "all laws in force in the territory of India immediately before the commencement of the Constitution shall continue in force therein until altered or repealed or amended by a competent legislation or competent authority." Explanation I to the Article defines a "Law in force" as including "a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either, at all or in particular areas"; and Explanation II clarifies that "any law passed or made by a Legislature or other competent authority in the territory of India which, immediately before the commencement of this Constitution, shall subject to any such adaptations and modifications as aforesaid, continue to have such extra-territorial effect." These provisions preserved the continuance in force of the English Common Law as well as the substantive laws earlier applicable to India in pre-independence period even after India became a Republic.

1.3. In regard to the jurisdiction of courts, Article 225 of the Constitution provides specifically that all jurisdiction of existing High Courts as on the date of commencement of the Constitution would continue subject to the provisions of any law of the appropriate Legislature made by virtue of the powers conferred thereon by the Constitution. In other words, the jurisdiction of, and the law administered by, any existing High Court and the respective powers of the judges thereof in relation to the administration of justice in the Court, including any power to make rules of the Court and the members thereof sitting alone or in Division Courts, continue to be the same as immediately before the commencement of the Constitution. The proviso to Article 225, and Articles 226 and 227 enlarge the powers of the High Courts in certain respects which they did not have prior to the Constitution have direct impact in the areas of jurisprudence with which we are concerned here. Likewise, Articles 32 and 136 also vest powers in the Supreme Court which would enable the Supreme Court to examine and pronounce opinions as effective and conclusive on matters which pertain to these branches of jurisprudence as on matters pertaining to any other branch of the law.

1.4. Under the Indian Independence Act, 1947, India became a dominion with sovereign legislative power to amend or repeal the existing laws including the Government of India Act, 1935 and the British statutes which were thought to have been extended to India. Section 6 of the Independence Act conferred this power on the legislature of the newly created Dominion of India. Under this Act, no British statute passed on or after 15th August, 1947 was to extend to India of its own force and the legislature of India was empowered to repeal or amend the Acts of the British Parliament in their applications to India. Since a number of statutes made by the British Parliament were applicable to India, Article 372 of the Constitution took care to provide for the continuance of the existing law until they were altered, repealed or amended by a competent legislature. After the promulgation of the Constitution, the Parliament had power to replace the British statutes by enacting laws of its own, although the Parliament did not do so till 1957. As a result, the British statutes which were expressly

applicable to India on account of India being a 'British Possession' continued to apply in India without any change in the text. Since India had acquired the status of sovereign Republic, the continuation of British statutes were bound to give rise to anomalies as was noticed by the Supreme Court in the case of *State of Madras V. C.G. Menon*.¹ The Supreme Court, while considering the provisions of the Fugitive Offenders Act, 1881, an Act of the British Parliament, observed that it was not possible to work out the Act and apply the same to the changed situation that had arisen after the coming into force of the Constitution of India. The Supreme Court emphasised the urgent need for examination of the British statutes in force in India with a view to their repeal or amendment.

1.5. Thereafter, the First Law Commission of India examined the British statutes applicable or of possible application to India and forwarded a detailed report (5th Report) to the Government in May, 1957. The Law Commission, while dealing with the British Statutes relating to subjects like Merchant Shipping, Extradition and Admiralty Jurisdiction with respect to which Indian enactments did not cover the whole field, observed that it was necessary for the Parliament to replace the British statutes by enacting laws of its own. Appendix III to the Law Commission's Report recommended that the British statutes, i.e. Admiralty Jurisdiction (India) Act, 1860 and the Colonial Courts of Admiralty Act, 1890 should be repealed by Indian law. The Commission further recommended that the necessary substantive provisions of the Colonial Courts of Admiralty Act, 1890 may be incorporated into the Colonial Courts of Admiralty (India) Act, enacted by the Indian legislature so as to make the Indian law comprehensive. Pursuant to the recommendations of the Law Commission, the British Statutes (Applicable to India) Repeal Act, 1960 was enacted by the Parliament repealing 259 statutes but the admiralty jurisdiction remained untouched, as a result of which various provisions as contained in the British Statutes have continued to apply to India.

1.6. The unsatisfactory state of law in admiralty jurisdiction came to the notice of the Supreme Court in *M.V. Elizabeth & Others. V. Harwan Investment and Trading Pvt. Ltd.*² The Supreme Court was surprised and shocked at the absence of legislative exercise in the sphere of admiralty jurisdiction. Sahai J. felt strongly and expressed his shock and surprise in the following words:

"But what was surprising to hear, even in 1991, was that the admiralty jurisdiction exercised by the High Courts in Indian Republic is still governed by the obsolete English Admiralty Courts Act, 1861 (referred hereinafter as 'the Act') applied by (English) Colonial Courts of Admiralty Act, 1890 (in brief 'the 1890 Act') and adopted by Colonial Courts of Admiralty (India) Act, 1891 (Act XVI of 1891). Yet there appeared no escape from it notwithstanding its unpleasant echo in ears. The shock was still greater when it transpired that this state of affairs is due to lack of legislative exercise, even when in wake of decision of this Court in *State of Madras V. C. G. Menon & Others*³ that Article 372 of the Constitution cannot save this law because the grouping is repugnant to the concept of a 'sovereign democratic Republic.' The Law Commission in its Fifth Report on British Statutes applicable to India went into detail on scope of Article 372 of the Constitution and observed that the British Statutes which were expressly applicable to India because India was a 'British possession' are still supposed to be applicable to India without any change in the context, therefore, it impressed upon the urgency as far as back as 1957 to enactment, own laws on the subject matter of those statutes where it is necessary to do so and take legislative action making it clear that these statutes are no longer applicable to India."

Thommen J. also emphasised⁴ the need for the codification of the law relating to admiralty jurisdiction, keeping in mind the International Conventions and Declarations. The learned Judge observed that the Law Commission of India should take up this matter.

1.7. The broad effect of these developments is that in spite of India being a Republic under its own Constitution, the Indian courts continue to administer admiralty, shipping and maritime law in accordance with the English Common Law and the statute law enacted by the British Parliament and extended to the

colonial India. Even though British Admiralty Law has undergone several radical changes, in India there has been no legislation to cover the entire field of admiralty, shipping and maritime law and the courts in India having admiralty jurisdiction are still following the English judicial precedents. During the British Raj in India, three High Courts, Bombay, Calcutta and Madras exercised admiralty jurisdiction but after the promulgation of the Constitution, more High Courts have been established by the Constitution, the law with regard to their jurisdiction in admiralty matters is not clear. There is chaos and confusion regarding courts' jurisdiction. India has a sea coast of the length of approximately 5700 Kms. and the sub-continent is abutted in three directions by the sea. It has 11 major ports and 163 minor ports and the shipping industry is carrying on maritime trade and business, to the extent of more than 40 million tonnes. India has liberalised its economy and it is entering the global economy, as a result, there would be spurt in international shipping and maritime business. The absence of maritime admiralty laws dealing with Courts jurisdiction is bound to hamper the shipping and maritime trade. There is, therefore, a pressing need to codify law with respect to maritime shipping and navigation, in accordance with the domestic need having regard to the relevant international conventions and treaties pertaining to laws of sea.

1.8. In view of the aforesaid developments, the Commission was of the opinion that even though the relevant administrative department has not considered it necessary to make any reference to it, there was an urgent need to consider the various aspects of Admiralty Jurisdiction. The Commission has, therefore, taken up, the subject *suo motu* to submit its report and recommendation to the Government for initiating legislative exercise to have Indian law relating to Admiralty Jurisdiction codified to cater to the expanding need of the maritime trade and shipping.

1.9. The Report is divided in four sections. Section I is introductory in nature which considers the historical development of admiralty jurisdiction in England and India. In Section II, the Commission has considered the substantive aspects of admiralty jurisdiction with reference to international covenants. Section III discusses the issues with regard to the nature and scope of admiralty jurisdiction and establishment of admiralty courts; it also considers the steps which are to be taken for updating the law. Section IV contains the Law Commission's conclusions and recommendations. Annexure VIII to the Report contains a draft of the proposed Admiralty Act.

FOOT NOTES - CHAPTER 1

1. AIR 1954 SC 517.
2. JT 1992 (2) SC 65.
3. AIR 1954 SC 517.
4. JT 1992 (2) SC 65.

CHAPTER 2

GENERAL BACKGROUND

2.1. The term 'admiralty' and 'maritime' law have been regarded as almost synonymous in the English speaking world of merchant shipping, particularly, in the context of what prevails in the United Kingdom and the United States. However, maritime law stands for wider and more descriptive reference whereas "admiralty" refers to the law administered in Courts. In its origin, maritime law developed out of the conduct of sea transport which is as old as human civilization itself. The ship has been described as the last relic of barbarism and the first relic of civilization. Long distance transport and commerce in general have come a long way from the earliest times till today, and admiralty jurisdiction depends for its existence on whether or not the cause involved is an admiralty or maritime matter. Basically, the special jurisdiction has a maritime purpose and is different from the common law. It has a strong internal aspect, but it may undergo independent changes in several countries. Certain features exist in all countries that have admiralty law, and such international features are given serious consideration by ordinary courts.

2.2. Throughout the world, the 'admiralty jurisprudence' system was brought by British settlers along with common law and equity, and courts for the administration of the maritime law were commissioned in almost all the colonies. These admiralty courts continued to exercise the power conferred on them until replaced by the suitable legislation of the country concerned. There is, however, no statutory definition of admiralty jurisdiction, and difficulties arise, if any attempt is made to define its exact limits. The scope of admiralty jurisdiction is limited under classical English Law.

2.3. In India, Admiralty Jurisdiction is an unfamiliar branch of jurisprudence. Even lawyers and judges are not familiar with the technicalities of this branch of law. Though India has been carrying on maritime trade since long, but unfortunately law relating to admiralty jurisdiction has not developed. As already stated, India has been following the British Admiralty Laws and the Indian Courts' jurisdiction was also regulated by the laws made by the British Parliament. Since the Admiralty Jurisdiction is founded on the British Admiralty laws, it would be necessary and proper to have a resume of the origin and history of Admiralty Jurisdiction in England.

2.4. The origin of the Admiralty Jurisdiction is traced succinctly in Halsbury's Law of English¹. According to which, Admiralty jurisprudence, even in England, is an unfamiliar branch of jurisprudence although jurisdiction of the Admiralty there is of ancient origin. As a result of possessing criminal jurisdiction, the Court of the Lord High Admiral began to hear all disputes in civil as well as criminal matters connected with the sea and gradually began to encroach upon the jurisdiction of the common law courts in matters arising in inland tidal waters, in consequence of which two statutes were passed in the reign of Richard II confining the jurisdiction of the admirals and their deputies to things done upon the sea and in the mainstream of great rivers. The Criminal jurisdiction of the Admiralty, as adjusted by these statutes continued until 1537, when it was, to a great extent, transferred to the Commissioners of oyer and terminer under the Great Seal, of whom one was the judge of the Admiralty Court². The Civil jurisdiction of the Admiralty Court continued within the limits laid down by the statutes of Richard II³, but its exercise involved the Admiralty Court in a long struggle with the superior courts of common law. The Admiralty Court asserted the highest and fullest jurisdiction over every thing which might happen upon the high seas, but it was obliged to give way to the common law courts and slowly ceased to exercise jurisdiction to the full extent which it had formerly claimed. Nevertheless, in the reign of William IV, it still retained a curtailed jurisdiction which included a number of important subjects like collisions and tortious acts committed on the high seas, bottomry, wages, etc. This position continued till the Admiralty Court Act, 1840 which was passed "to extend the jurisdiction and improve the practice of the High

Court of Admiralty" in England. This was the first of a series of Acts which enlarged or defined the jurisdiction, the latest of which is the Supreme Court Act, 1981..... In the last hundred years, the English Maritime Law, though developed in separate courts and has continued to be greatly influenced by changes in concepts of the common law, and in regard to today as constituting a system of law entirely separate from the general law may lead to error. In modern international law, it has been recognised that the jurisdiction of the Admiralty Court extends both to foreign ships on high seas as well as over injurious acts done on the high seas. In other words, the admiralty jurisdiction of the High Court now extends to all ships or aircrafts whether registered or not and wherever the residence or domicile of their owners may be, and in relation to all claims, wheresoever arising. However, the extent of jurisdiction is subject to rules governing the mode of exercise of jurisdiction⁵. Generally, the jurisdiction of the court is also restricted in collision and other similar cases where the action is *in personam*.... The international nature of maritime affairs and the right to proceed in rem readily produced conflicts of jurisdiction and disputes as to the forum in which claims should be heard.

2.5. Position in India.—So far as India is concerned, Admiralty jurisdiction is being exercised only by some of the Indian High Courts as the matter is still governed by the obsolete English Admiralty Court Act of 1861, initially applied to India by the (English) Colonial Courts of Admiralty Act, 1890⁶, and then adopted by India by Colonial Courts of Admiralty (India) Act (Act No. 16 of 1891)⁷. So far as criminal offences in Admiralty jurisdiction were concerned, the provision of the Admiralty Offences (Colonial) Act, 1849 were extended to India but with power only to the Supreme Court to try them. This was done by the Admiralty Jurisdiction (India) Act, 1860⁸.

2.6. After the Supreme Court Judicature Act, 1773, was passed in England, a number of Acts relating to Admiralty Jurisdiction were passed by the Indian Legislature from time to time with the result, the law became increasingly difficult to be referred to and the need for consolidation become very pressing. Though several attempts were made, all attempts failed, owing to legal and constitutional difficulties. Two of the principal contributory factors were: the limited powers of the Indian Legislature to legislate regarding shipping, and the fact that part of the British Statute Law on the subject applied to India and any Indian enactment, had to be in harmony with that law. An attempt was made in 1921-22 to codify the Indian Law on merchant shipping by the Statute Law Revision Committee, which decided that only consolidation and not revision should be attempted immediately. The result was the Indian Merchant Shipping Act, 1923, which repealed as many as 30 Acts (mentioned in the Schedule to the Act). The said Act has also been amended from time to time and replaced by the Merchant Shipping Act (44 of 1958) specially to implement the provisions of international conventions which have been ratified by India. The object of the 1958 Act is mainly to foster the development in a manner best suited to serve the national interest and for that purpose to establish a National Shipping Board and a Shipping Development Fund, to provide for the registration of Indian ships and generally to amend and consolidate the law relating to merchant shipping. Though Parts X, X-A, and X-B of the Act refer to collisions, accidents at sea and liability for oil pollution, the problem of 'Admiralty Jurisdiction' is left unresolved and is still governed by various erstwhile British Acts which, by reason of Article 372 of the Constitution, still continue to be in force in India, despite the fact that some of them (like the Act of 1861), have already been repealed in England. Thus, on 'Admiralty Jurisdiction' it is the British Admiralty Courts Act of 1840 and 1861 which provide the statutory base though since then a number of International Conventions have also come up on the subject.

2.7. Unsatisfactory State of the law.—The above brief historical background makes it abundantly clear that the state of the Indian law in this branch of jurisprudence is unsatisfactory. The jurisdiction of courts to deal with admiralty matters need to be more precisely defined. The various statutes in existence on different aspects of maritime law need to be reviewed and appropriately amended. The common law, as well as the judge made law, as projected in precedents, need to be analysed and, where necessary, codified. The various international agreements, protocols and conventions to which India is a party

or signatory or assenting State have to be compiled and consolidated. There is much ground work to be done for making this branch of the law upto date and bringing it in line with the international rules and conventions and developments in other countries. No doubt, in India, the statutory law regulating the shipping is contained in the Shipping Act, 1958, but it does not deal with the admiralty jurisdiction.

2.8. Present scope limited.—Admiralty law, in its wide meaning, comprehends the entire law of the sea. It covers areas included in special statutes such as the Indian Bills of Lading Act, 1856, the Indian Carriage of Goods by Sea Act, 1925, the Merchant shipping Act, 1958, the Multimodal Transport Act, 1993 and also by general statutes, such as the Marine Insurance Act, 1963, the Indian Contract Act, 1872, the Evidence Act, 1872, the Indian Penal Code, 1860, the Criminal Procedure Code, 1973 and the Companies Act, 1956; it also covers areas dominated by common law and general principles of law such as the law of torts, public and private international law, it further covers matters connected with ports such as the Indian Ports Act, 1908 and the Major Ports Act, 1963; it also encompasses matters dealt with by the Customs Act, 1962 containing various regulatory measures affecting ships, goods and persons in connection with importation or exportation of goods; it also includes the statutory provisions touching upon maritime boundaries¹⁰ and those governing employment and labour and the like. The task of consolidating the law applicable to all the areas is a monumental one and cannot be tackled effectively, in all its comprehensiveness, within a short span of time. The Commission is of the view that the more practical and reasonable approach will be to codify the law in stages. The Commission first proposes to address itself only to the codification of the law pertaining to the jurisdiction in Admiralty matters. This report is, therefore, confined to issues pertaining to "Admiralty Jurisdiction".

FOOTNOTES--CHAPTER 2

1. *Halsbury's Laws of England*, Vol. I (4th Ed.) (Re-Issue), paras 301-304.
2. *Offence at Sea Act*, 1536 (repealed).
3. *Admiralty Jurisdiction Act*, 1391 (Since repealed).
4. Exception is the ships of foreign sovereigns: *Halsbury's Law of England* (IV Edition), (Re-issue), Para 304.
5. This may be by statute such as the Supreme Court Act, 1981 (U.K.) or by International Conventions such as those relating to the "Arrest of sea-going Ships" or "Rules concerning Civil Jurisdiction in Matters of Collision".
6. *Sea Civil Court Manual*, Sixth Ed., Page 874-881.
7. *Sea Civil Court Manual*, 4th Edition, p. 882-3. This Act declared the High Courts at Bombay, Calcutta and Madras to be Colonial Courts of Admiralty.
8. These were the Supreme Courts at Bombay, Calcutta and Madras.
9. Extracts from these two enactments are set out in the Appendix.
10. JT 1992-2 SC 65.

SECTION II

CHAPTER 3

HISTORICAL DEVELOPMENT OF ADMIRALTY JURISDICTION IN ENGLAND

3.1. Admiralty Law is a branch of jurisprudence regulating maritime matters of civil and criminal nature and it contemplates a court or tribunal administering maritime law by a procedure peculiar to it. This jurisdiction finds an ultimate source in the initial law of sea which was the law of commercial nations generally. England, being an island, has all along been engaged in commercial business through the sea and in that process the admiralty law developed. Since Indian admiralty jurisdiction is founded on the English law, it would be proper to briefly refer to the development of admiralty jurisdiction in that country.

3.2. During Medieval period in England, Lord High Admiral and other Admirals appointed for different portions of the sea around the British Isles possessed disciplinary powers to cover vessels under their command; in addition, they were in a sense functioning as Sea Magistrates. They were only maritime officials having both authority and power. They determined disputes according to the custom, usage and equity. Generally, they determined disputes in regard to capture of enemy property on sea regarded as "Prize". Finally, there emerged from among these disputes a personage who, from being deputy of the Lord High Admiral, became the appointed judge of the English Court of Admiralty, exercising criminal jurisdiction, who in times of war fulfilled duties as a judge of the Prize Court and exercised jurisdiction in certain Maritime causes. These two jurisdictions eventually became quite separate of the Lord High Admiral and his fellows. This, in brief, is an epitome of the genesis of the High Court of Admiralty Jurisdiction which struggled on for centuries side by side with the Common Law and Chancery Courts of England, the one seeking to enlarge and the other to limit its jurisdiction.

3.3. This rivalry between the jurisdiction of the High Court of Admiralty and the Common Law Courts of England was eventually taken note of by the British Parliament. In 1389, it passed an Act (13 Ric. 2 (1389)) pertaining to the jurisdiction of the Admiral and the Deputy and also prescribing the limits of the jurisdiction of the High Court of Admiralty. The Act laid down that the Admirals and their deputies shall not meddle of anything done within the realm, but only of a thing done upon the sea. In spite of legislation forbidding the High Court of Admiralty from meddling in things not wholly and exclusively done upon the sea, the Admiralty Court continued to encroach upon the forbidden area of jurisdiction. The British Parliament passed another Statute (Jurisdiction of the Admiral Act, 1391), which clarified that of all manner of contracts, pleas, and quarrels and all other things arising within the bodies of the counties as well by water, and also wreck of the sea, the Admiral's Court shall have no manner of cognizance, power, nor jurisdiction, instead all such manner of contracts, pleas and quarrels and all other things arising within the bodies of Counties, as well by land as by water, as afore, and also wreck of the sea, shall be tried, determined, discussed and remedied by the laws of the land, and not before nor by the Admiral nor his lieutenant. This Act made it clear that the jurisdiction of the High Court of Admiralty was confined to things done upon the high seas and it had absolutely no jurisdiction to deal with things arising within the body of a county. However, this enactment failed to bring avoidance of the conflict of jurisdiction.

3.4. In 1648 an Ordinance was issued prescribing the jurisdiction of the Court of Admiralty, but it was set aside and thereafter the High Court of Admiralty lost its importance for nearly two centuries until, in the eighteenth century, the learning and ability of Lord Stowell raised the Court to a position of the highest importance². In 1840 the British Parliament passed the Admiralty Court Act, 1840 (3 & 4 Vict. C. 65 hereafter referred to as the 1840 Act) to improve the practice and extend the jurisdiction of the High Court of Admiralty. A significant feature of this Act was that the High Court of Admiralty could

also take cognizance of the things 'arising within the body of the county in the same manner as the Common Law Courts. The 1840 Act inter alia provided for claims in respect of damage received by a ship.

3.5. In 1861, the British Parliament enacted the Indian Admiralty Court Act of 1861. This Act made an effort to remove the conflict of jurisdiction and to enlarge the jurisdiction of the High Court of Admiralty. One of the significant changes introduced by the 1861 Act was that the High Court of Admiralty, instead of confining its jurisdiction only to cases of 'damage received by a ship', could now entertain claims in regard to "damages done by a ship". It is important to note that the jurisdiction of the High Court of Admiralty and the Common Law and Chancery Courts in respect of "damage received by a ship" were concurrent under the 1840 Act, but the jurisdiction of the High Court of Admiralty in regard to "damage done by a ship" under the 1861 Act was exclusive. The 1861 Act further provided that in cases of damage done by a ship on the high seas, the aggrieved party had the choice to move the High Court of Admiralty either for an action *in rem* or for an action *in personam*. Another feature of this Act was that, by S. 6, it empowered the Admiralty Court to assume jurisdiction over foreign ships in respect of claims to cargo carried into any port in England or Wales but it did not apply to outward cargo.

3.6. The Judicature Act of 1873, which came into force in 1875, merged the High Court of Admiralty with the High Court of Justice, causing a fusion of Admiralty Law, Common law and Equity. The provisions of the 1861 Act limiting jurisdiction of the Admiralty Court to the claims in respect of inward cargo was discarded by the Administration of justice Act, 1920. This Act extended the jurisdiction of the High Court 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.

3.7. The 1861 Act and the subsequent enactments were consolidated by the Supreme Court of Judicature (Consolidation) Act, 1925. This Act vested the Admiralty jurisdiction in all divisions of the High Court empowering the Court to entertain, apart from actions *in rem*, any claim *in personam* which could be brought in any other divisions of the High Court. By the Administration of justice Act, 1956, the Admiralty Jurisdiction was further widened and redefined.

3.7. (a) The 1925 Act was superseded by the Supreme Court Act of 1981. The Parliament enacted the 1981 Act to consolidate with amendments the Supreme Court Act of Judicature and other enactments and to repeal certain obsolete and unnecessary enactments. Section 20 of the Act defines admiralty jurisdiction of the High Court and Sections 21 and 22 deal with the procedure and mode and side of admiralty jurisdiction. Section 24 defines various expressions and phrases commonly used in maritime and admiralty jurisdiction. The provisions contained in that Act have made significant changes enlarging the High Court's jurisdiction in admiralty matters. It is not necessary to discuss in detail the provisions in Sections 20, 21 and 22 but it is important to note that the position that has now finally emerged in England is that the jurisdiction of the High Court is vested in all Divisions, although in practice, admiralty actions are assigned to the Queen's Bench Division and taken up by the Admiralty Court. It also ensures that the usual requirements of an action *in personam*, viz. the habitual residence or a place of business of the defendant or the cause of action having a nexus with England and Wales or a connected matter in the English High Court or the submission of the defendant to the jurisdiction of that Court are not applicable to a proceeding commenced as admiralty action *in rem*. The law as it stands at present extends the right to proceed *in rem* in many claims which do not give rise to a maritime lien. Similarly, the admiralty jurisdiction of the High Court will now in all causes be invoked by an action *in personam*, although the exercise of jurisdiction is inhibited by the operation of rules of court relating to service of proceedings within jurisdiction.

3.8. E.E.C. Convention.—To bring the position up-to-date, it may be mentioned that the Civil Jurisdiction and Judgements Act, 1982, has enacted into English and Scottish Law, the European Economic Commission Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters.

3.9. The aforesaid references to a series of statutes should not mislead one into believing that the law administered in admiralty courts are derived from and confined to Statutes only. "The wide jurisdiction vested in the English Courts is derived from ancient principles of maritime law developed by custom and practice as well as from subsequent statutes many of which have incorporated the provisions of International Conventions unifying the laws practised in several maritime countries". In the words of Holdsworth "Modern Legislation has restored to the Court of Admiralty many of the powers and much of the Jurisdiction of which it had been deprived in the Seventeenth Century..... But Admiralty law has lost the international character which it once possessed. It is essentially English Law. The Law which is administrated in the Admiralty court of England is the English maritime law. It is not the ordinary municipal law of the country, but it is the law which the English Court of Admiralty, either by Act of Parliament or by reiterated decisions and traditions and principles, has adopted as the English maritime law. Neither the laws of the Rhodians, nor of Oleron, nor of Visby, nor of the Hanse towns, are of themselves any part of Admiralty law of England..... But they contain many principles and statements of marine practice, which together with principles found in the Digest, and in the French, and other Ordinances, were used by the Judges of the English Court of Admiralty, when they were moulding and reducing to form the principles and practice of their court".

FOOTNOTES - CHAPTER 3

1. This has been traced by Kochu-Thommen J. in his scholarly judgement in *M.V. Elizabeth & Others*. For further treatment, reference can be made to Holdsworth: *A History of English Law*, Volumes 1, 5 and 8; *Admiralty Practice*, 5th Edn. Marsden; *Select Pleas of the Court of Admiralty*, Vols. I & II, and *Law and Custom of the Sea*, Vol. I & II; *Benedict on Admiralty*, 6th Edition, Vol. I; and Gilmore & Black; *Law of Admiralty*, 1957.
2. *Roscoe: Admiralty Practice*, 5th Edition, p. 14. quoted under JT 1992 (2) SC 65 Paragraph 34.
3. *Elizabeth & others V. Harwan Investment etc.* JT 1992 --2 SC 65 at 82.
4. *A History of English Law*, Vol. I, pp. 558-59.

CHAPTER 4

DEVELOPMENT OF THE ADMIRALTY JURISDICTION IN INDIA

4.1. The first Charter was granted in 1726 to the United East India Company (after the union of the old and new Companies), establishing Mayor's Courts at the settlements of Madras, Bombay and Culcutta, Mayor's Courts, each comprising of a Mayor and nine Aldermen. The Mayor's Court was a Court of Record and it had jurisdiction to try, hear and determine all civil suits, actions and pleas within the respective towns. The Governor and the five Seniors of the Council were appointed Justices of the Peace with power to hold Quarter Sessions of the peace and they were constituted into a Court of Record for the trial of all offences (except high treason) committed within the said towns or within ten miles of the same. By a Charter of 1753 the Mayor's Courts, the Courts of Quarter Sessions, etc. were re-established with re-distribution of jurisdiction amongst them. In 1773, the Committee of Secrecy appointed to enquire into the state of the East India Company submitted its report. This report led to the passing of "the Regulation Act" 13 Geo. III, C-63. This Act authorised His Majesty to establish a Supreme Court of Judicature at Fort William in Bengal, consisting of a Chief Justice and three other Judges to exercise all Civil, Criminal, Admiralty and Ecclesiastical jurisdiction. The Supreme Court of Judicature at Fort William was to be a Court of Record. Accordingly, the Charter dated 26th March, 1774, established a Court of Record to be called "the Supreme Court of Judicature at Fort William in Bengal" consisting of a Chief Justice and three other judges. Thus since 1774 the Supreme Court of Judicature at Fort William began to exercise Admiralty jurisdiction, Clause 26 of the Charter dated (26th March, 1774) declared the Supreme Court of Judicature at Fort William in Bengal to be a "Court of Admiralty" in and for the provinces, counties, or districts, of Bengal, Bihar and Orissa and all other dependent territories and islands adjacent thereto. The Supreme Court was given full power and authority to take cognizance of, hear, examine, try and determine all causes, civil and maritime, and all pleas of contracts, debts, exchanges, policies of assurance, accounts, charter-parties, agreements, loading of ships and all matters and contracts, which in any manner whatsoever relating to freight, or money due for ships hired and let out, transport-money, maritime usury or bottomry, and matters civil and maritime, whatsoever, between merchants, owners, and proprietors of ships and vessels, employed or used within the jurisdiction aforesaid or between others contracted, done, had, or commenced, in, upon or by the sea, or public rivers, or port, creeks, harbours, and places overflowed, within the ebbing and flowing of the sea and high-water mark, throughout Bengal, Bihar and Orissa and the dependent territories adjacent thereto, the cognizance whereof belonged to the jurisdiction of the Admiralty, as the same was used and exercised in England. Clause 27 of the Charter conferred full power and authority on the Supreme Court to exercise jurisdiction according to the law and customs of the Admiralty in English in regard to maritime crimes committed upon the high seas within the aforesaid limits of jurisdiction, to punish offenders according to the civil and maritime laws and to deliver and discharge them, and to take cognizance and to arrest ships, persons, goods, etc. Clause 27 further laid down that the proceedings in such cause or causes were to be according to the course and order of the said Charter dated 26th March, 1774 which *inter alia* provided that jurisdiction in maritime causes extended only to the subjects of the King residing in the Kingdom or provinces of Bengal, Bihar and Orissa and to persons in the service of the Company or of any of the subjects. Similar was the position at Bombay and Madras.

4.2. The 1861 Act: (Stat. 24 and 25 Vict. Chap. 104) was enacted by the British Parliament for establishing High Courts of Judicature in India which *inter alia* authorised Her Majesty to establish High Courts of Judicature at Calcutta, Bombay and Madras by Letters Patent under the Great Seal of the United Kingdom. Section 9 of the Act authorised the High Courts, established under the Act, to exercise all such civil, criminal, admiralty and vice admiralty,

testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in their respective presidencies as Her Majesty might by Letters Patent grant and direct. Clause 31 of the Letters Patent of 1862, *inter alia*, provided that the High Courts were to have such civil and maritime jurisdiction as was then exercised by the Supreme Court of Admiralty. Clause 32 conferred on the High Courts such criminal jurisdiction as was then exercised by the Supreme Court as a Court of Admiralty. The jurisdiction vested in the High Courts by the Clauses 31 and 32 of the Letters Patent, 1862 was continued by Clauses 32 and 33 of the Letters Patent dated 28th December, 1865.

4.3. The British Parliament enacted the Colonial Courts of Admiralty Act of 1890 (53 and 54 Vict. c. 27) (hereinafter referred to as the 1890 Act). This Act was enforced in the 'British Possessions' on July 1, 1891. Section 2 of the Act provided that every court of law in a British possession which is for the time being declared in pursuance of the Act to be the Court of Admiralty and if such declaration is in force and if there be a court having unlimited civil jurisdiction, it shall be Court of Admiralty. It further provided that such court will exercise all the powers which it possessed for the purpose of other civil jurisdiction. Clause 2 of Section 2 declared that the jurisdiction of Court of Admiralty shall be over the like place, matters and things as the admiralty jurisdiction of the High Court and the Colonial Court of Admiralty may exercise such jurisdiction in like manner to full extent as the High Court in England. Section 3 conferred power on the Colonial Legislature to enact law to declare any court of unlimited civil jurisdiction, whether original or appellate, to be a Colonial court of Admiralty. Such a law may further provide for exercise of jurisdiction under the Act and limit territorially or otherwise the extent of such jurisdiction. It further conferred power on the colonial legislature to enact law to confer upon any subordinate or inferior court such partial or limited jurisdiction as it may deem fit.

4.4. Pursuant to the aforesaid provision contained in Section 3 of 1890 Act, the Indian Legislature enacted the Colonial Courts of Admiralty (India) Act (XVI) of 1891 (hereinafter referred to as the 1891 Act) wherin the High Courts of Judicature being courts of 'unlimited civil jurisdiction' were declared to be Colonial Courts of Admiralty established under the 1890 Act, at Calcutta, Madras and Bombay. S. 2(2) of 1890 Act limited the jurisdiction of Colonial Courts of Admiralty established under the 1890 Act—jurisdiction of the High Court of England as it existed on the date of the enforcement of the Act. As already indicated, the jurisdiction of the High of Admiralty in England had been considerably expanded by the Acts of 1840 and 1861 passed by the British Parliament. This expanded jurisdiction of the High Court of Admiralty in England was conferred on the Colonial Courts of Admiralty by the 1890 Act.

4.5. Thereafter the Chartered High Courts of Calcutta, Bombay and Madras established under the Letters Patent continued to exercise admiralty jurisdiction in view of the declaration made by virtue of the 1891 Act. Their powers and jurisdiction were further continued successively by the Government of India Act, 1915 and Government of India Act, 1935¹. On the promulgation of the Constitution, the aforesaid Chartered High Courts continued to exercise admiralty jurisdiction in view of the saving provisions contained in Article 372 of the Constitution as no law or statute was enacted by the Parliament limiting or expanding the admiralty jurisdiction. The High Courts in India after the promulgation of the Constitution enjoyed unlimited jurisdiction in civil matters, being the superior constitutional courts under the Constitution. In regard to the extent of admiralty jurisdiction, the High Courts had framed rules for regulating the procedure and practice in cases arising out of admiralty jurisdiction.

4.6. As observed earlier, the question relating to the extent of admiralty jurisdiction came up for consideration after the promulgation of the Constitution before the Calcutta and the Bombay High Courts. Though the admiralty jurisdiction has been extended to a considerable extent in England by the laws made by the British Parliament but since these laws could not be made applicable to India the admiralty jurisdiction of the High Courts continued to remain the same as conferred on them by 1891 Act. The Calcutta High Court dismissed a suit for a claim for necessaries supplied in the port at Calcutta to a ship

registered in Madras and the owner of which was domiciled in India on the ground that since the owner of the ship had domiciled in the country, the supplier could seek his remedy by the ordinary process of law in the ordinary civil courts. While considering the extent of the admiralty jurisdiction of the Calcutta High Court, Justice Mukherjee held that in view of the Admiralty Court Act 1861, the jurisdiction of the Calcutta High Court was limited². The Calcutta High Court in an earlier case of Madras Steam Navigation Company Ltd. v. Shalimar Works Ltd.³ had interpreted the extent of admiralty jurisdiction, in a restrictive manner by referring to clause 2(3)(a) of the Colonial Courts of Admiralty Act, 1890.

4.7. The Bombay High Court⁴ discussed the scope, nature and extent of admiralty jurisdiction of that court with particular reference to the torts committed on the high seas. The Court after a detailed consideration of the admiralty law in England and India held that the High Court of Bombay enjoyed the same admiralty jurisdiction after the promulgation of the Constitution, as enjoyed by it earlier as the High Courts of Admiralty Jurisdiction in England had exclusive jurisdiction in regard to certain matters. Again in *Kashi Bai v. S. S. Navigation*⁵, Justice Shah considered the origin and continuity of the admiralty jurisdiction of the Bombay High Court. The learned Judge held that a suit for damages in rem in respect of loss of life as a result of collision on the high seas fell within the exclusive jurisdiction of admiralty side of the High Court.

4.8. The views of the Calcutta, Bombay and Madras High Courts were followed later by the same High Courts⁶ as well as by other High Courts⁷. No doubt, in these decisions the existence and continuance of admiralty jurisdiction of the chartered High Courts was not disputed in respect of certain dispute, but with regard to extent of jurisdiction of the High Courts in India there was considerable doubt. The view taken in the Calcutta and Bombay decisions indicated that the admiralty jurisdiction of the High Courts in India did not exist beyond the ambit of the English Act of 1861 and that the expansion of the jurisdiction of admiralty courts in England by later British statutes did not have a similar effect of expanding the jurisdiction of the Indian High Courts. Consequently, no High Court in India acting in admiralty jurisdiction could order arrest or detention of a foreign ship in an action *in rem* in respect of a cause of action relating to outward cargo, as distinguished from inward cargo.

4.9. The restrictive interpretation made by the High Courts limited the admiralty jurisdiction in India. Fortunately, this question was considered in detail by the Supreme Court in the case of *M. V. Elizabeth v. Harwan Investment & Trading Co.*⁸. The Apex Court examined the various Acts in detail and thereupon it upheld the admiralty jurisdiction of the Indian High Courts. In the case before the Supreme Court, the plaintiff with its registered office at Goa, had filed a suit for action *in rem* invoking the admiralty jurisdiction of the Andhra Pradesh High Court against the defendants' ship and its owner on the ground that the defendant had acted in "breach of duty" by leaving the port without issuing bills of lading or other documents for the goods shipped as required by the plaintiff shipper and further in discharging the goods and delivering them to the consignee inspite of the directions of the plaintiff not to do so as the price had not been paid. The defendant raised preliminary objection on the ground that the plaintiff's suit against foreign ship owned by a foreign company not having a place of residence or business in India was not liable to be proceeded against in the admiralty jurisdiction of the High Court by an action *in rem* in respect of a cause of action having arisen in tort or for a breach of obligation arising from the carriage of goods from a port in India to a foreign port. The High Court rejected the objection and the Supreme Court in appeal upheld the High Court's decision. Thommen J. dealing with the extent of admiralty jurisdiction spoke thus:

"It is likewise within the competence of the appropriate Indian Courts to deal, in accordance with the general principles of maritime law and

the applicable provisions of statutory law, with all persons and things found within their jurisdiction. The power of the court is plenary and unlimited unless it is expressly or by necessary implication curtailed. Absent such curtailment of jurisdiction, all remedies which are available to the courts to administer justice are available to a claimant against a foreign ship and its owner found within the jurisdiction of the concerned High Court. This power of the court to render justice must necessarily include the power to make interlocutory orders for arrest and attachment before judgement.”¹⁰

Referring to Admiralty Act of 1890, the learned Judge observed:

“In equating the admiralty jurisdiction of the Indian High Court to that of the English High Court, the Colonial Court of Admiralty Act, 1890 significantly refers to the admiralty jurisdiction of the High Court in England whether existing by virtue of any statute or otherwise. This is an enabling statute and not a statute of limitation of power. It aids, and does not fetter, the growth of jurisdiction. There is no reason why the words “Statute or otherwise” should be so construed as to exclude the various sources from which the admiralty jurisdiction in England developed. Apart from statutes the powers of that Court, as seen above, were derived from custom and practice and the principles developed by common law and equity as well as by the generally recognized principles of civil law developed and practised in Europe. There is no reason, as rightly stated by Westropp, C. J. of the Bombay High Court in Bardot, (*supra*), why the expression statute or otherwise should be so construed as to exclude all these vast areas of legal principles which enriched and strengthened the maritime laws of England. Likewise, there is no reason why those principles should not be drawn upon to enrich and strengthen the jurisprudence of this country, even if the jurisdiction of our courts were to be, by compulsions of history, considered to be curtailed and dovetailed to the colonial past a proposition which is neither correct nor consistent with our status as a sovereign republic.”¹⁰

In upholding the admiralty jurisdiction of the High Courts in India on the ground of their being superior courts and enjoying unlimited jurisdiction under the Constitution, Thommen J. placed strong reliance on a decision of the U.S. Supreme Court in *The Schooner Exchange v. M'Faddon & Ors.* U.S. Supreme Court Reports, Cranch 5-9, p. 114, 133 (3 L. ed. 287) and observed: “Admiralty Jurisdiction is an essential aspect of judicial sovereignty which under the Constitution and the laws is exercised by the High Court as a superior court of record administered justice in relation to persons and things within its jurisdiction. Power to enforce claims against foreign ships is an essential attribute of admiralty jurisdiction and it is assumed over such ships while they are within the jurisdiction of the High Court by arresting and detaining them”.

4.10. Before the Supreme Court an important question was raised as to whether the Andhra Pradesh High Court, not being a chartered High Court had jurisdiction in admiralty matters. The Supreme Court held that since the Andhra Pradesh High Court was successor to the Madras High Court, it had the admiralty jurisdiction. But the question whether other High Courts of India which are non-chartered High Courts have also the admiralty jurisdiction was not decided expressly although the observations made by the Supreme Court make it amply clear that the High Court being superior Court of record constituted by the Constitution has unlimited civil and appellate jurisdiction subject to statutory restrictions if any. The Court further ruled that the High Courts in India after the promulgation of the Constitution have Admiralty Jurisdiction uninhibited by the limitation of High Courts power in England under the 1861 Act. In this view there is need to codify the law conferring power on all High Courts to exercise admiralty jurisdiction. The mode, manner and procedure for exercise of power under their jurisdiction has to be laid down by law bearing in mind the international practice and conventions. The details of the proposed legislation will be considered in the subsequent Chapters.

FOOTNOTES—CHAPTER 4

1. Sections 220 and 223.
2. *Jayaswal Shipping Co. V. S.S. Leelawati*, AIR 1954 Cal 415.
3. AIR 1915 Cal 681.
4. *Kamalakar Mahader Bhagat V. Scindia Steam Navigation Co. Ltd.*, AIR 1961 Bom 186.
5. AIR 1961 Bom 200.
6. *Sahida Ismail V. Pekto R. Salvej Kov & Others*, AIR 1973 Bom. 18 and *Rungta Sons P. Ltd. & Anr. V. S.S. "Edison Mariner" & Another* (1961-62) 66 CWN 1083.
7. *Reena Padhi V. Jagdhir*, AIR 1982 Orissa 57.
8. JT 1992 (2) SC 65.
9. *Id.* at page 94.
10. *Id.* at page 95.

SECTION III

CHAPTER 5

INTERNATIONAL CONVENTIONS

5.1. In the case of international law, it is claimed that there must be a transformation of the international convention into state law before it can be enforced. This is not merely a formal but a substantive requirement which alone validates the extension to individuals of the rules laid down in international treaties and conventions.

Such theory rests on the supposed consensual character of international law as contrasted with non-consensual nature of State law. In particular, the transformation theory is based on an alleged difference between treaties which are of the nature of promises, and municipal statutes which are of the nature of commands. It follows from this basic difference that a transformation from one type to the other is formally substantially indispensable.

5.2. The Law of Admiralty is governed by both municipal laws as well as international law. Some aspects like registration of ships are governed by Municipal Laws of the maritime country concerned, while other aspects, specially commercial aspects, are governed by maritime international law. Maritime international law has its source either in customary law based on general practice followed by maritime States or treaty based mainly on internal conventions. Customary maritime law has developed over centuries and in different civilizations but during recent years, a substantial part of it has been codified into international conventions. Different international conventions cover different aspects of maritime law. A brief study of the development of this law will be of use.

5.3. In the pre-Second World War period all problems relating to shipping which required international agreements were dealt with by *ad hoc* conferences. The latter framed conventions to regulate various aspects of shipping --- an industry primarily international in its operation.

The establishment of a permanent international maritime commission was contemplated as early as 1889 at the International Marine Conference held in Washington, which dealt exclusively with questions of "safety for life and property at sea". The conference came to the conclusion, however, that "for the present the establishment of a permanent international maritime commission is not considered expedient."

5.4. The first inter-governmental organisation to deal with shipping matters was, however, set up in 1944. This organisation was called the United Maritime Authority and its main task was to arrange for necessary shipping for the requirements of demobilisation, civil need, relief and rehabilitation programmes, etc. In 1946, the United Maritime Authority was replaced by another organisation, the United Maritime Consultative Council. This Council had two sessions, one at Amsterdam in June, 1946 and the other in Washington in October, 1946. In pursuance of a Resolution of the Economic and Social Council of the United Nations, these Sessions of the United Maritime Consultative Council prepared a draft Convention for the setting up of a permanent inter-governmental maritime organisation. Finally, at the instance of the Economic and Social Council of the United Nations, a conference of representatives of Governments on a world-wide basis was called at Geneva in February-March, 1948, to consider the desirability of a permanent Governmental Shipping Organisation and to lay down its scope and functions. The basis of discussion was the draft Convention already prepared by the United Maritime Consultative Council. The Geneva Conference successfully prepared and opened for signature a Convention on the Inter-Governmental Maritime Consultative Organisation (IMCO), which, could come into force only after twenty-two States (including seven having at least one million gross tons of shipping) became parties to it. On March 17, 1958, Japan became the twenty-first State to accept the Convention. The organisation which thus came into being is the twelfth specialised agency

of the United Nations. Its members include not only the traditional maritime countries but all those who rely largely on the shipping services of other countries. It was the first inter-governmental organisation concerned with maritime affairs, since its *raison d'être* is shipping engaged in international commerce—a most important field since more passengers and greater tonnage of goods are still carried in ships than by other means of transport.

5.5. The first objective of IMCO is to facilitate cooperation among Governments in technical matters of all kinds affecting shipping. Its aim is to achieve the highest practicable standards of maritime safety and efficient navigation. It has a special responsibility for the safety of life at sea. It also provides for the wide exchange of information between nations on all technical maritime subjects.

5.6. Another purpose of the IMCO is to discourage discriminatory, unfair and restrictive practices affecting ships in international trade, so as to promote the maximum possible availability of shipping services to meet the needs of the world for overseas transport. The IMCO is also required to give advice to other international bodies on shipping matters, including agencies of the United Nations, and to coordinate its activities with those of the United Nations Agencies dealing with labour questions, telecommunications, meteorology, aviation, automatic energy and health. Other responsibilities of the organisation include such matters as the prevention of pollution of the sea by oil, and the unification of regulations for the tonnage measurements of ships.

5.7. In the present report it is not possible to do anything more than to refer merely to the numerous International Conventions.

5.8. **Major International Conventions.**—The major International Conventions governing merchant shipping during peace have been admirably treated under the following five principal sections in Volume VIII of "BRITISH SHIPPING LAWS":

- (a) Technical and Operational Conventions.
- (b) Employment, Welfare and Status of Seamen.
- (c) Unification of Private Maritime Law.
- (d) Law of the Sea; Land-locked States, Ports, Canals and Straits.
- (e) International Organisations concerning Merchant Shipping.

Needless to say that the treaty law today is the context of merchant shipping has become all important in the regulation of inter-state relations. Merchant shipping today is largely regulated by bipartite agreements, multilateral treaties and international conventions which could not be found in the national Code of any flag State which concerns itself with municipal legislations, including those international instruments whose ratification made municipal enactment.

5.9. **Technical and Operational Conventions.**—Technical and Operational Conventions relate to:

- (a) Navigation;
- (b) Safety Conventions;
- (c) Submarine Cables and Telecommunications;
- (d) Tonnage Measurement of Ships; and
- (e) Sanitary Conventions.

International Convention relating to navigation include agreements concerning maritime signals and manned lightships not on their stations and diverse other matters; but international safety conventions deserve fuller notice.

5.10. Telecommunication Conventions.—The International Telecommunication which was adopted at the Plenipotentiary Conference of Buenos Aires in 1952, came into force on January 1, 1954. It made no major structural changes. Nor did the Geneva Convention of 1959, which came into force on January 1, 1961, make any major changes in the structure of the Union or in the workings of its headquarters.

However, as the Geneva Convention of 1959 represents the latest legislation on the subject and the Radio Regulations, Geneva, 1959, supersede all the previous regulations, the texts of the following Conventions cover the entire field:

1. International Telecommunication Convention, Geneva, 1959 along with the Final Protocol of the Convention;
2. Radio Regulation, Geneva, 1959;
3. Additional Radio Regulations, 1959;
4. International Telegraph and Telephone Regulations, Geneva, 1958.

The previous International Telecommunication Conventions such as those of Buenos Aires (1952) or Atlantic City (1947), as well as the Radio Regulations, Atlantic City (1947), are not in force now, having been superseded by the Geneva Convention and regulations of 1959.

5.11. Sanitary Conventions.—In order to ensure maximum security against the international spread of disease with the minimum interference with world traffic, the International Sanitary Regulations, Geneva, 1951, were adopted by the World Health Assembly in that year, and these Regulations as regards yellow flag provisions, sanitary control of pilgrim traffic, etc., were amended by subsequent World Health Assemblies. As far as shipping is concerned, the Sanitary Regulations of 1951 represent, as it were, the codified law on the subject, being the culmination of a process which started in 1892.

5.12. Employment, Welfare and Status of Seamen.—The International Labour Organisation established by the Peace Treaty of 1919 with the sole object of serving International peace through the establishment of social justice, is one of the very few international organisations which have survived the Second World War. An agreement bringing the Organisation into relationship with the United Nations and defining its status as a specialised agency of the U.N. came into force upon its approval by the U.N. General Assembly on December 14, 1946. The Maritime Conventions and Recommendations of the International Labour Organisations are included within the following broad categories:

1. Employment of Seamen:
 - (a) Entry of employment;
 - (b) Conditions of employment;
2. Certificates of qualification;
3. Wages, hours of work and manning;
4. Social security;
5. Welfare of Seafarers on board ships and ports;
6. Miscellaneous.

5.13. Unification of private Maritime Law.—The Government of Belgium convened as a host country a number of sessions of the Diplomatic Conference on Maritime Law and these Conferences produced diverse International Conventions including those with respect to collisions, salvage at sea, limitation of liability of owners of sea-going vessels, stowaways, carriage of goods and passengers by sea, liability of operators of nuclear ships and maritime liens and mortgages.

A passing reference may be made to the Oxford Conference of 1932 which adopted the Rules known as "Warsaw-Oxford Rules", these being intended to offer to those interested in the sale and purchase of goods on specific terms but have no standard form of contract or general conditions available or means of voluntarily and readily adopting in their specific contracts a set of uniform rules.

5.14. Law of the Sea.—Until 1958 when the Geneva Conventions on the Law of the Sea were signed it was left to the customary principles of international law to regulate this important sphere of inter-state relationship. In fact, the influence of customary law of the sea in furnishing the basis of the Geneva Conventions has been acknowledged in the preamble of the Convention of the High Seas, which States that the provisions incorporated in the convention are "generally declaratory of established principles of international law." However, it could still be said that in certain respects the task of codification of the law of the territorial sea has still not been accomplished¹. To prevent the pollution of the sea by oil discharge from ships an International Convention was drafted in London in 1954 and it has since been revised to make it more acceptable to maritime states. Certain states have implemented the Convention by municipal legislation.

5.15. The U.N. Convention of the Law of the Sea, 1982.—On 10th December, 1982, the United Nations Convention on the Law of the Sea was signed by 117 countries and two other entities (the Cook Islands and the U.N. Council for Namibia) on the very first day of its opening for signature. This marked the culmination of over fourteen years of work involving participation by more than 150 countries representing all regions of the globe, all legal and political systems, all degrees of socio-economic development, countries with various dispositions regarding the kinds of minerals that can be found in the sea-bed, coastal states, states described as geographically disadvantaged with regard to ocean, space, archipelagic states, island and landlocked states.

The Convention, along with four related Resolutions, was adopted on 30th April, 1982. Only four States, namely, Israel, Turkey, U.S.A. and Venezuela voted against the Convention. On December 10, 1982, the Convention was signed in a formal ceremony at Montego Bay, Jamaica. It came into force on the 10th December, 1983. The Convention was signed by 117 States and two other entities on the very first day. Lastly, Japan also signed the Convention. Apart from the developing and socialist countries, Australia, Canada, Denmark, France, Finland, Ireland, the Netherlands, Norway and New Zealand who have signed the Convention so far, are the Federal Republic of Germany, Italy, Spain, Switzerland, the United Kingdom and the U.S.A. The elaboration of the convention represents an attempt to establish the universality in the effort to achieve a "just and equitable international economic order" governing ocean space. The Convention is multi-faceted and represents a monument to international cooperation in the treaty-making process. The new law of the sea comprises all aspects of ocean space from delimitations to environmental control, technology and the settlement of disputes relating to ocean matters. The convention aims not only at the codification of customary norms, but also the progressive development of international law.

5.16. The Convention itself established a comprehensive framework for regulation of all ocean matters. The Convention contains 320 Articles and 9 Annexures. It is divided into seventeen parts and the first part deals with the question of areas of national jurisdiction. Rest of the Convention contains provisions governing various aspects of ocean matters including access to the seas, navigation, protection and preservation of the marine environment, exploitation of living resources and conservation, scientific research, sea-bed mining and other exploitation of non-living resources, and the settlement of disputes. In addition, the Convention establishes new international norms which may be summed up as under:²

1. Coastal States would exercise sovereignty over their territorial sea of up to 12 miles in breadth, but foreign vessels would be allowed innocent passage through those waters for purposes of peaceful navigation.

2. Ships and aircrafts of all countries would be allowed 'transit passage' through straits used for international navigation, as long as they proceeded without delay and without threatening the bordering states. States alongside the straits would be able to regulate navigation and other aspects of passage.
3. Coastal States would have sovereign rights in a 200 mile exclusive economic zone with respect to natural resources and certain economic activities, and would also have certain type of jurisdiction over marine science research and environmental protection. all other states would have freedom of navigation and overflight in the zone, as well as freedom to lay submarine cables and pipelines. Land-locked and geographically disadvantaged States would have the opportunity to participate in exploiting part of the zone's fisheries when coastal State could not harvest them all itself: the highly migratory species of fish and marine mammals would be accorded special protection.
4. Archipelagic States, made up of a group or groups of closely related islands and interconnecting waters would have sovereignty over a sea area enclosed by straight lines drawn between the outermost points of the islands: all other States would enjoy the right of passage through sea lanes designated by the archipelagic States.
5. All States would enjoy the traditional free navigation, overflight, scientific research and fishing on the high seas: they would be obliged to adopt or co-operate with other States in adopting measures to manage and conserve living resources.
6. The territorial sea, exclusive economic zone and continental shelf of islands would be determined in accordance with rules applicable to land territory but rocks which could not sustain human habitation or economic life would have no economic zone or continental shelf.
7. Coastal States would have sovereign rights over the continental shelf (the national area of the sea-bed) for the purpose of exploring it up to 350 miles from the shore or even more under specified circumstances: coastal States would share with the international community part of the revenue they would derive from exploiting oil and other resources from any part of their shelf beyond 200 miles, and Commission on the Limits of the Continental Shelf would make recommendation to States on the Shelf's other boundaries.
8. A parallel system would be established for exploring and exploiting the international sea-bed area: all activities in the area would be under the control of the International Sea-Bed Authority to be established under the Convention.
9. Land-locked States would have the right of access to and from the sea and would enjoy freedom of transit through the territory of transit States.
10. States bordering enclosed or semi enclosed seas would be expected to cooperate on management of living resources and on environmental and research and policies and activities.
11. All marine scientific research in the exclusive economic zone and on the continental shelf would be subject to the consent of the coastal States, but coastal states would in most cases be obliged to grant consent to foreign states for conducting research for peaceful purposes.
12. States would be bound to prevent and control marine pollution from any source and would be liable for damage caused by violation of their international obligations to combat marine pollution.
13. States would be obliged to settle by peaceful means their disputes through reference to an International Tribunal for the Law of the Sea, to be established under the Convention, to the International Court

of Justice, or to Arbitration, Conciliation is also available and in certain circumstances submissions to it is compulsory.

14. States would be bound to promote the development and transfer of marine technology "on fair and reasonable terms and conditions" with proper regard for all legitimate interests, including the rights and duties of holders, suppliers and recipients of technology.
15. The paramount duty of all State parties is to respect the rights of others; however, some duties may entail more executory acts. The duty to give notice of hazards would be an example of the latter kind of duty. The omnipresent concept of the balance of rights and duties is emphasised by Article 300 of the Convention.
16. The Convention also sets out the principles and regulations governing the "Sea-Bed Authority".

5.17. With the signing of the Convention on the Law of the Sea, a preparatory commission was established to pave the way for the two major institutions to be set-up under the Convention, namely, the Sea-Bed Authority with headquarters in Jamaica and the International Tribunal for the Law of the Sea to be located in Hamburg, Federal Republic of Germany. These matters are still under study.

5.18. It is well known that in spite of the Convention, the ill effects of pollution of sea water is increasing. There is no doubt that the Convention opens a new era in history of international law. It is a successful attempt of objectivity in the search for solution to the problems. But technically the Convention does not reflect the new law of the sea which is binding on all States. Further, it is doubtful how far the international Sea-Bed Authority would be able to function effectively without the cooperation of technically advanced States. Various arguments and interpretations have been advanced by the law governing treaties in support of the Convention³. But without the super powers, the Convention is bound to be weakened. In addition, the Convention fails to answer why the laws of the coastal states cannot be directly enforced within its contiguous zone, although the coastal states are in a better position to regulate the rational exploitation of the resources adjacent to their coasts. In fact, a major part of exclusive economic zone and of the continental shelf would fall within the national jurisdiction of the coastal states which will affect the traditional concept of "admiralty jurisdiction" too.

FOOTNOTES—CHAPTER 5

1. Satish Chandra, the U.N. Chronology of the "Law of the Sea", Civil and Military Journal, Vol. 20 (3-4) 1984 p. 159.
2. Satish Chandra: "Some aspects of the New Constitution for the Ocean", Academy Law Review, Vol. 7 (1983), p. 194.
3. Satish Chandra: "Law of the Sea", 1985.

CHAPTER 6

INTERNATIONAL CONVENTIONS AND INDIA'S STATUS¹

6.1. India has been signatory to several maritime conventions and protocols. It is interesting to note that 22 maritime conventions and 15 protocols have been formulated so far. Out of these 37 International Maritime Organisation Instruments, 19 Conventions and 7 Protocols are presently in force. India has ratified 12 Conventions and 5 Protocols. Proposals for ratification of 6 Conventions and 1 protocol are under consideration of the Government of India. India has not ratified 13 Conventions/Protocols on the ground that they are either not in force internationally or for other substantive reasons. A list of the Conventions and Protocols and their status in India is as follows.

6.2. **Conventions already ratified by India.**—The following IMO Conventions have already been ratified by India:

- (1) International Convention for the Safety of Life at Sea, 1974 (SOLAS 1974);
- (2) Protocol of 1978 relating to SOLAS, 1974;
- (3) Convention of the International Regulations for Preventing Collisions at Sea, 1972 as amended (COLREG 1972);
- (4) Convention of Facilitation of International Traffic, 1965 (FAL-1965);
- (5) International Convention on Loadlines, 1966;
- (6) International Convention on Tonnage Measurement of Ships, 1969;
- (7) Special Trade Passenger Ships Agreement, 1971;
- (8) Protocol on Space Requirements for Special Trade Passenger Ships, 1973;
- (9) International Convention on Safe Containers, 1972;
- (10) Convention on International Maritime Satellite Organisation (INMARSAT);
- (11) Operating Agreement on the INMARSAT;
- (12) International Convention of Standards of Training, Certification and Watchkeeping, 1978 (STCW);
- (13) MARPOL 1973/1978 Protocol;
- (14) International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC 1969);
- (15) 1976 Protocol to CLC 1969;
- (16) Convention on Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971; and
- (17) The 1976 Protocol to the Fund Convention.

6.3. **Conventions under consideration.**—At present India is considering proposals for ratification of six IMO Instruments. The present status of consideration of the Convention is given below:—

Convention	Present Status of Consideration
1. International Convention on Search and Rescue, 1970 and adoption of Global Maritime Distress & Safety Systems.	A draft Note seeking concurrence of various concerned departments was circulated on 8-8-91. While the comments of most of them have already been obtained, those of the Departments of Legal Affairs are still awaited. The matter is being pursued.

- 2 & Convention for Suppression of Unlawful Acts against Safety Maritime Navigation, 1988 and
 3 Protocol for Suppression of Unlawful Acts against the Safety of Fixed Platforms located on Continental Shelf, 1988.
 Preliminary views of the Ministry of Law, Ministry of External Affairs and Ministry of Home Affairs have been obtained. Director General of Shipping is examining the suggestions received from the above Ministries.
4. International Convention on Salvage, 1989.
 While the concurrence of most of the concerned departments on the proposed ratification of the Convention has been obtained, concurrence of the Deptt. of Legal Affairs is awaited.
5. Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matters, 1972.
 Director General, Shipping has been requested to examine the present stage of studies made in the IMO to consider the desirability in view of the Provisions of the Brussels Convention.
6. International Convention on Intervention in High Seas in cases of Oil Pollution Casualties, 1969.
 While concurrence of most of the Departments on the proposed ratification has been obtained the concurrence of Deptt. of Legal Affairs and the Deptt. of Ocean Development is still awaited. The matter is being pursued.
7. International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990.
 Director General, Shipping is in the process of examining the financial and legal/legislative implications of the Convention.

6.4. Other International/U.N. Conventions.—Ministry of Surface Transport is also concerned with the following U.N./International Conventions relating to Law of Seas:

- (i) International Convention for Unification of Certain Rules of the Law relating to Bill of Lading, 1924 (Hague Rules);
- (ii) Hague Visby Rules, 1968 and 1979.
- (iii) U.N. Convention on Carriage of Goods by Sea, 1978 (Hamburg Rules);
- (iv) U.N. Convention on Code of Conduct for Liner Conference, 1974.

6.5. We would briefly discuss the aforesaid Conventions:

(i) International Convention for Unification of Certain Rules of the Law relating to Bill of Lading, 1924.—popularly known as Hague Rules were adopted in 1924. This Convention lists out the carrier's responsibilities and liabilities together with the rights and immunities. The Hague Rules came into force with effect from June 1931. India did not ratify this Convention mainly because the Convention requires that Bill of Lading should be issued even in respect of carriage of goods in the coastal trade by the sailing vessels, which was not acceptable to India. However, the rest of the provisions of the Convention were incorporated in the Indian Carriage of Goods by Sea Act, 1925.

(ii) Hague/Visby Rules, 1968 and 1979 (Protocols).—In 1968, a Protocol was adopted to increase the limits of liability provided in the Hague Rules per package or units of goods lost or damaged. This protocol came into force from 23-6-77. The Hague Rules were further amended in 1979 by adoption of another protocol which changes the Unit on account to SDR. These two Protocols could not be ratified by India since India did not ratify the main Convention.

(iii) U.N. Convention on Carriage of Goods by Sea 1978.—In 1978, the United Nations adopted the Convention on Carriage of Goods by Sea, 1978 known as Hamburg Rules, 1978. This Convention seeks to replace the Hague Rules and their two Protocols. This Convention has come into force internationally from November, 1992. The question of ratification or otherwise of this Convention is still under consideration by India.

(iv) U.N. Convention on Code of Conduct for Liner Conference, 1974.—Up to the first half of the 20th Century, sea borne trade was generally catered

to by the merchant fleets of developed countries. When developing countries started building up their merchant fleets, there was strong demand from the shipping lines of developing countries for increasing the share of their national fleets in their countries' overseas trade. As a result, mainly for the purpose of equitable cargo sharing and for other matters relating to sea borne trade, United Nations Convention on Code of Conduct for Liner Conference was adopted in 1974.

The fundamental objectives of this Convention are to facilitate orderly world sea borne trade, to stimulate development of regular and efficient liner services and to ensure the balance of interest between suppliers and users of Liner Shipping Services. The Cargo provisions of this Convention provide that trade between two countries shall be carried by the National Lines of each of the trading countries to the extent of 40% and third country lines can carry up to 20%.

India ratified this Convention in 1978. However, the Code has come into force internationally with effect from 6-10-83. In 1986, proposal to introduce legislation for giving effect to the provision of the Code was approved by the Central Government in principle. However, in view of some apprehensions expressed by the Ministry of Commerce about the adverse impact on India's foreign trade, no legislation could be introduced in Parliament. On the basis of Inter-Ministerial discussions, a modified non-legislative cargo support scheme was formulated and the Government has since approved implementation of this scheme. This modified scheme does not make any reference to the U.N. Convention Liner Code.

FOOTNOTES—CHAPTER 6

1. Position set out in the light of the letter No. D.O. No. SR 11011/10/86-M.A. dated 19-4-1994 from the Ministry of Surface Transport.

SECTION IV

CHAPTER 7

STEPS FOR UPDATING THE LAW

7.1. The discussion in the previous Chapters brings out the unsatisfactory state of the maritime law in this country. It has not only failed to keep pace with the political and constitutional changes in the country but also lagged far behind other maritime countries. Disputes in maritime matters being, more often than not, international in character, the state of the law at present is deplorable and even derogatory to the sovereign status of the country. These shortcomings and deficiencies were noticed by the Supreme Court¹. The Supreme Court has, in the course of its judgment, exhaustively discussed several issues; we do not consider it necessary to deal with those issues again.

7.2. Parveen Singh Committee.—But even before the Supreme Court had occasion to deal with the matter, the shipping industry had been highlighting from time to time the need to make India's admiralty law upto-date, responsive to the requirements of the shipping industry and conducive to the efficient and speedy disposal of maritime disputes. Recognising the urgency of an enquiry into the state of this branch of law, the Ministry of Surface Transport of the Government of India set up, in December, 1986, a Committee under the Chairmanship of Shri Parveen Singh, the then Director-General of Shipping² for going into the matter thoroughly. The terms of reference of the Committee were as follows:

- (a) To study the various aspects concerning Admiralty Jurisdiction including advances made in other countries and international conventions adopted on this jurisdiction;
- (b) To recommend what upto-date consolidated maritime legislation could be introduced supported by a report explaining the statements, objects and reasons: and
- (c) To make specific suggestions to establish separate Admiralty Jurisdiction/Admiralty Courts/Tribunals for the purpose of more effectively dealing with Admiralty and Maritime disputes."

The Committee submitted its report in 1987. The report comprised of two sections. The Committee surveyed the international scene, discussed the provisions of the existing law applicable in India and the changes needed in the present law to make it more responsive to the present day needs. It recommended the enactment of a legislation defining the scope of admiralty jurisdiction and submitted the draft of an Admiralty Act of India for consideration. The Committee discussed the role of the High Courts in exercising admiralty jurisdiction and suggested a re-orientation of the nature of the courts administering admiralty law. The letter containing the terms of reference and the drafts of the Admiralty Act of India and the Admiralty Courts Act formed the three Annexures to the Report³.

7.3. Committee on Admiralty Jurisdiction.—The Committee noted that under the English Admiralty Act of 1861 which formed the foundation for the jurisdiction of Indian Courts, the Courts had jurisdiction in Admiralty only in respect of—

- (a) claims for building, equipping or repairing of ships;
- (b) claims for necessaries supplied to a ship;

- (c) claims for damage to cargo imported into a Port;
- (d) claims for damage done by a ship;
- (e) claims as to ownership, employment and earnings;
- (f) salvage;
- (g) claims for wages and disbursements by the Master of a ship; and
- (h) matters arising out of mortgages.

It noted that, in maritime matters, a claimant is often tempted to seek relief not merely against the owner of a ship but also to seek, very often, relief by way of arrest of a ship as that is the most effective means by which claims as well as maritime liens and mortgages, could be enforced. Attempts were made in the past to enter into international conventions on maritime liens and mortgages and on the arrest of sea going ships¹. But they were unsuccessful. A fresh attempt was being made by the IMO² and the UNCTAD³ in consultation with the CMI⁴ but considerable time was bound to elapse before a new convention is adopted and ratified by the required number of countries to bring it into force. In the meantime, many countries had adopted their own laws to govern maritime liens and claims. Even in England, fresh legislation had been enacted, but India was following the archaic British Law as adumbrated in the Admiralty Act of 1861. This had to be changed. It was essential to enlarge the scope of legislation to cover claims pertaining to oil pollution, damages, loss of life, personal injury, towage of ship, pilotage of ship, port dues, disbursements made by shipowners and agents of ships, general average, bottomry bonds, forfeiture or condemnation of ships or cargo and other matters. It was also necessary to provide for exercise of jurisdiction *in rem* and *in personam* and also provisions enabling the arrest not only of the ship that causes damage but also of a "sister-ship", i.e. a ship under the beneficial ownership of the same owner. There was also necessity to lay down legal provisions regarding priorities of the claims that would arise for settlement out of the sale proceeds of a ship, in particular a provision for priority (to some extent) of crew's wages over all other claims against the ship except those of salvage. It was also necessary to cover the claims of owners, whether resident in India or abroad, and also mortgages and charges, whether registered or not and whether created in India or abroad. Some other important provisions proposed were:

- (1) As Indian ships are under the full control of the Government of India under the Merchant Shipping Act, 1958, no arrest of an Indian ship should be effected unless at least six days' notice was given to the owner and he failed to provide security to the court to cover the claim.
- (2) Interests of third parties who may have claims should be protected by giving 90 days' notice in newspapers.
- (3) Once the ship is sold by orders of court, the purchaser will get a title to it free from all encumbrances with no liability in respect of the claims.
- (4) The courts should be empowered to lay down the inter-se priority as between mortgages and maritime liens.
- (5) The provisions of a notice, where a suit is filed against a foreign ship, for notice to the counsel/mission of the foreign country in India.

Taking into consideration these aspects and deriving the benefit of legislation that had been enacted in this regard in U.K., Singapore and other common law countries, the Committee drafted its Admiralty Act of India.

7.4. Committee's views on courts exercising Admiralty Jurisdiction.—The Committee took note of the fact that at present admiralty jurisdiction was being exercised only by the High Courts of Bombay, Calcutta and Madras and that the High Courts of Gujarat, Andhra Pradesh and Orissa claimed to have derived such jurisdiction under the enactments pertaining to reorganisation of states⁸. The Committee, however, was of the view that there was a need for the Central Government to constitute independent courts of admiralty called "admiralty courts"⁹ and delink admiralty jurisdiction from existing High Courts so as to ensure that maritime claims received undivided and quick attention at the hands of experts. It was suggested that, to avoid divergent decisions in the admiralty courts, a Single Admiralty Appeal Court to entertain a first appeal should be constituted. Suggestions were made for the constitution of these courts in the light of the provisions contained in the Central Administrative Tribunals Act¹⁰. Suggestions were also made for the adoption of the rules framed by the High Court of Bombay and for the framing of rules prescribing courts fees and costs¹¹. The draft of an Admiralty Court Act was also submitted which took into account these considerations.

7.5. Law Ministry's Comments.—The report of the Committee was considered in the Law Ministry which appears to have raised certain queries:

- (1) Whether certain other causes could not be included within the jurisdiction of the Admiralty Courts;
- (2) Whether the Admiralty Courts would have jurisdiction over hovercraft as well;
- (3) Whether any limitation would be prescribed for filing maritime claims;
- (4) Whether the Acts of 1861, 1890 and 1891 did not have to be repealed, and if so, whether a single enactment clubbing the provisions of the two proposed legislations after the details are worked out would not be adequate;
- (5) Whether the provisions of the proposed legislation will need amendment to the existing statutes, viz., the Carriage of Goods by Sea Act, 1925, the Merchant Shipping Act, 1958 and the Major Port Trusts Act, 1963;
- (6) Whether the proposed legislation would necessitate the repeal of the Admiralty Jurisdiction (India) Act, 1860 and the Admiralty Offences (Colonial) Act, 1849 dealing with the admiralty offences; and
- (7) Whether the proposed legislations need any review in the light of the decision of the Supreme Court in *Elizabeth's case*¹².

It appears that some correspondence has ensued between the two concerned Ministries and that the matter is under consideration still with no final decision taken yet.

7.8. The Law Commission's task.—In the meantime, the Law Commission, in deference to the observations and directions of the Supreme Court in the *Elizabeth case*¹² has taken up the matter *suo motu* and is presenting this report, after taking into account the views of the Parveen Singh Committee and the comments thereon referred to above. As stated earlier, this report does not deal with all aspects of maritime law or the provisions of the existing statutes

applicable to this field of law¹⁵; instead it is confined only to the two broad aspects discussed in the *Parveen Singh Committee report*, viz.,

- (1) Nature and scope of Admiralty Jurisdiction; and
- (2) Admiralty Courts for India.

The views of the Commission on these two topics are set out in the two **succeeding Chapters**.

FOOTNOTES—CHAPTER 7

1. See *M. V. Elisabeth V. Harwan Investment & Trading Agency Ltd.*, JT (1992) 2 SC 65.
2. The other members of the Committee were: Sri K.C. Sidhwa, Senior Central Government Advocate; Dr. S.N. Sanklacha (representative of the Indian National Shipowners' Association), Shri H.N. Fotedar (Managing Director, Indian Ports Association), Shri S. Venkateswaran (Advocate), Dr. Leo Barnes (General Secretary, National Union of Seafarers of India) and Shri B.S. Bhesanial of M's Mulla, Craigie, Blunt & Cares, Solicitors, Shri C.M. Shetye, Deputy Director General of Shipping was the Member-Secretary.
3. The Annexure to the Report of the Committee are made Annexures to this Report for the purposes of convenient reference.
4. These Conventions were adopted in 1926 and 1952 respectively, but were not ratified.
5. International Maritime Organisation.
6. United Nations.
7. Committee Maritime Internationale.
8. A claim which has been approved in Elizabeth's case, JT 1992 (2) SC 65 by the Supreme Court.
9. To start with, it was considered sufficient to have four such courts at Calcutta, Madras, Bombay and Cochin.
10. As interpreted in Sampat Kumar's case : AIR 1987 SC 386.
11. A relaxation of these rules was suggested for "crew vessels".
12. JT 1992 (2) SC 65.
13. See para 2.8, *ante*.

CHAPTER 8

NATURE AND SCOPE OF ADMIRALTY JURISDICTION

8.1. It is not necessary to emphasise, over again, the archaic state of the Indian Law on the subject and its inadequacies. Luckily, as pointed out at the very outset, complete chaos in the matter was averted by the laws of transition passed in India when there was a change in the political set-up in the country. Even this is almost on the point of breakdown by the denial of admiralty jurisdiction to many of the High Courts on the one hand and the attempt to limit Indian jurisprudence to the pre-1891 Statute and case law in England. But for the far-sighted and liberal view taken by the Supreme Court in *Elizabeth's case*¹, the Indian law on the subject might have almost lapsed into regions of ludicrousness and absurdity.

8.2. Though the general position has got crystallised and become somewhat definite after the pronouncement of the Supreme Court, it is necessary to enact independent legislation to replace the century old statutes on the scope and extent of Admiralty jurisdiction.

8.3. Turning to the contents of such legislation, our task has been made comparatively easy by the legislations recently introduced in U.K.². *The Parveen Singh Committee* which felt the need for such legislation all the more in the absence of the guidance of the Supreme Court had taken pains to consider the U.K. Legislation as well as those introduced in Singapore and other countries and drafted the Admiralty Act, annexed to its report³. The Commission have referred, in the previous Chapter, to the various improvements and additions which the above Committee considered necessary to meet our country's needs. Its draft is based primarily on the Supreme Court Act, 1981 of U.K. and it has taken into account the aspects and features which the Committee felt needed special reference or provision.

8.4. In regard to the various questions raised by the Ministry of Law at an earlier stage in its correspondence with the Ministry of Surface Transport and referred to earlier⁴, we would like to make the following observations:

- (1) The causes in respect of which admiralty jurisdiction can be extended have been most comprehensively set out in the proposed statute, in the light of the 1981 Act of U.K. and other recent legislations. It does not seem necessary to add any other causes in the proposed Section 2.
- (2) In regard to the query as to whether there should be separate enactments on the scope of Admiralty jurisdiction and on the courts empowered to administer it, we are of the view that no such separate enactments are necessary, for the reasons contained in the next Chapter. Briefly, we are of opinion that for the present Admiralty Jurisdiction should be vested in High Courts and that all High Courts in India should be vested with such jurisdiction. But, if at some subsequent stage, it is found that Admiralty Jurisdiction should be conferred on other Courts, steps may be taken for conferring this jurisdiction on the Principal Civil Court of the District. This can be given effect to by an amendment of Sections 1 and 2(a) of the draft Admiralty Act of India proposed by the Committee and dispensing with the Admiralty Courts Act proposed by the Committee altogether.
- (3) On the question as to whether 'hovercraft' should be covered by the proposed enactment, we think that the answer should be in the negative for the time being. The U.K. Supreme Courts Act, 1981, no doubt defines a "Ship" as including a "hovercraft" as well. But

this is subject to the provisions of the Hovercraft Act, 1968 which render the application of the legislation liable to the excluded or modified by an Order in Council. Moreover, the regulation of hovercraft will have impact not only on the legislation pertaining to carriage of goods by sea but also on legislations pertaining to carriage by air and even on road traffic legislation. India has no legislation corresponding to the Hovercraft Act, 1968 of England. These aspects need further examination and we, therefore, do not think it appropriate to include "Hovercraft" part of Admiralty Law for the present. This can be easily done at a later stage if found necessary.

- (4) It is true that the continued application of U.K. Admiralty Act, 1861 should be scrapped and the Colonial Courts of Admiralty (Indian) Act, 1890 the Colonial Admiralty Jurisdiction Act, 1891 will have to be repealed. This can be done by the addition of a provision in the draft legislation prepared by the Committee on the lines indicated later. The Admiralty Offences (Colonial) Act, 1849 and the Admiralty Jurisdiction (India) Act, 1890 have to be repealed also but it is necessary to add a provision in the proposed legislation conferring jurisdiction in respect of admiralty offences.
- (5) The decision of the Supreme Court in *Elizabeth's case*⁶ does not call for any changes in the proposed legislation. The Merchant Shipping Act, 1958 and the Carriage by Air Act, 1925 may require amendments in the light of the observations made in paras 81 and 82 of the judgment. This can be considered separately later when these enactments are taken up for consideration.

8.5. From the above discussions, it will be clear that the enactment of legislation by Parliament in the field of admiralty law is imperative both as a matter of prestige and as a matter of necessity. India is now an independent nation and it does not behove its sovereignty that a British Statute enacted a century and more ago should govern its maritime law. Also, with vast expansion in India's maritime trade and commerce in recent years, with clear prospects of their further expansion in the coming years consequent on liberalisation of its economic policies and the emergence of trade as a global phenomenon, this branch of the law will assume greater importance in coming years and it is necessary and desirable that it should be covered by specific Indian legislation. We, therefore, agree with the Parveen Singh Committee that an attempt should be made to draft such legislation.

8.6. As pointed out earlier, this task is to a large extent rendered easy by the existence of recent U.K. legislation on the topic. The maritime law administered in this country has been based on the English law all along and it is also that law which has to a considerable extent influenced the law administered all over the world. It will, therefore, be not only expedient but also natural that our proposed legislation should be substantially based on the legislation in U.K., but with improvements and additions necessary to meet our needs. After considering the provisions of the U.K. Act and the legislation suggested by the Parveen Singh Committee, we have prepared a draft Admiralty Act which is appended to this report as Annexure VIII.

8.7. Though the proposed draft Bill is explanatory in itself, we however, think it necessary to briefly outline the main features of the proposed legislation. This may be considered in two parts: (i) the court which should exercise admiralty jurisdiction; and (ii) the scope and extent of their jurisdiction. The first of these topics is dealt with in greater detail in the succeeding Chapter 9. We shall here deal with some principal aspects of the second topic.

8.8. A wide range of subjects now fall within the ambit of admiralty jurisdiction, particularly those relating to maritime claims, contracts, torts, etc. There are various aspects touching admiralty jurisdiction in regard to location, persons, aliens, property, vessels, hydroplanes, etc. and certain principles governing tortious liability in admiralty matters which are governed by judicial precedents

and which it is unnecessary to spell out in this legislation. The principal feature of admiralty actions, however, has been a distinction between proceedings *in rem* and proceedings *in personam*. Admiralty law confers on a claimant a right *in rem* to proceed against a ship or cargo as distinguished from a right *in personam* against the owner. The principal characteristics of these types of action have been elucidated in *Elizabeth's case*⁹ and it is unnecessary to elaborate on the same here. As the Court has pointed out:

"The admiralty action *in rem*, as practised in England or in the United States, is not followed by many States. In the countries following the civil law, all proceedings are initiated by an action *in personam*. The Court having competence in the matter has the power to order an attachment of the ship if it is convinced that the plaintiff is likely to lose his security unless the ship is detained within jurisdiction. The hands of the court are not fettered by the technicalities of an action *in personam* and the scope of the proceedings are not limited to maritime liens or claims ..."

The real purpose of arrest in both the English and civil law systems is to obtain security as a guarantee for satisfaction of the decree, although arrest in England is the basis of assumption of jurisdiction, unless the owner has submitted to jurisdiction. In any event, once the arrest is made, and the owner has entered appearance, the proceedings continue *in personam*. All actions in the civil law whether maritime or not—are *in personam* and arrest of a vessel is permitted even in respect of non-maritime claims. Admiralty actions in England, on the other hand, whether *in rem* or *in personam* are confined to well defined maritime liens or claims and directed against the *res* (ship, cargo and freight) which is the subject matter of the dispute or any other ship in the same beneficial ownership as the *res* in question."

In the light of these observations and having regard to the importance, in maritime matters, of an effective remedy against the ship, we have proposed to retain the distinction between an action *in rem* and an action *in personam*. But at the same time, the proposed enactment confers discretion to the Court to decide the more appropriate form of action in any particular case at any stage, make appropriate directions and orders and grant necessary relief so as to ensure that technicalities as to the form of action do not defeat the valid claims and rights of parties⁹. Supplementary provisions have been included to ensure, *inter alia*, that the admiralty jurisdiction includes the jurisdiction to entertain a claim for wages in relation to an Indian ship¹⁰. Provisions have been included in respect of the effect of a sale as well as the manner of distribution of the proceeds of the sale of any ship or property and the order of priority of claims in regard thereto¹¹. Priority has been accorded to the wages and other sums due to the crew on a ship, the wages for a period of six months receiving a higher priority than the balance of the wages so due¹². The topic of attachment of maritime liens and their extinguishment has been dealt with¹³. Also included is a power conferred on the Central Government to make rules governing procedure and practice in the Courts in admiralty matters, including court fees and costs¹⁴.

8.9. The procedure in admiralty matters will be the same as that in suits and interlocutory applications in civil courts. The Code of Civil Procedure (V of 1908) will, therefore, be applicable, as far as may be to these proceedings. However, having regard to the position that sometimes difficult issues involving technical appraisal may arise, a provision has been made enabling the court to avail the assistance of assessors whenever necessary. A provision for a first appeal and a provision enabling reference to arbitration have also been included in the proposed legislation¹⁵.

8.10. It is necessary to refer to one more aspect at this juncture. The existing statutes contain certain provisions which need to be noted. The Merchant Shipping Act, 1958 contains a definition of 'High Court' in relation to jurisdiction and also enacts provisions authorising the detention of a foreign

ship¹⁶. The Indian Carriage of Goods by Sea Act, 1925 contains provisions imposing certain liabilities and responsibilities and conferring certain rights and immunities on the carrier. We have left these provisions untouched as they do not directly impinge on the subject matter of the draft legislation proposed by this report, and they can be considered when these Acts are taken up for revision. The proposed legislation, however, calls for the repeal of certain existing statutes and a recommendation and provision to this effect have been made¹⁷.

8.11. The above broad outline of the draft legislation proposed will, we hope, facilitate a proper appreciation of the provisions of the draft (Annexure VIII).

FOOTNOTES—CHAPTER 8

1. JT 1992 (2) SC 65.
2. There appears to have been similar legislation in Singapore and other countries but it is perhaps unnecessary to consider them in view of the fullness of the UK Legislation.
3. And this report as well, as Annexure I to III.
4. *See* Chapter 7, *ante*.
5. "Hovercraft" means a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle: S. 4(1) of U.K. Hovercraft Act, 1968.
6. JT 1992—2 SC 65.
7. U. K. Supreme Court Act, 1981.
8. JT 1992 (2) SC 65.
9. Proposed Admiralty Act at Annexure VIII, Section 8.
10. *Id*, Section 9.
11. *Id*, sections 10, 11, 12.
12. *Id*, Section 12(2) (b).
13. *Id*, Section 13.
14. *Id*, Section 19.
15. *Id*, Sections 15 to 18.
16. Sections 3 (15); 342 of the Merchant Shipping Act, 1958.
17. *Id* at Footnote 9, Section 20.

CHAPTER 9

ADMIRALTY COURTS

9.1. The question as to the designation of the courts that should be vested with admiralty jurisdiction is one of great importance. India is a large country with sea coast of the length of approximately 5700 kms. abutting it in the three directions except the north. It has always been having a vast extent of maritime traffic and trade and its history shows that many early empires and rulers encouraged international trade of various kinds of goods. In recent years, goods traffic into and out of India has increased so tremendously that there are at present 11 major ports and 163 minor ports in the country. The number of foreign flag vessels that visited major Indian ports for loading or unloading of goods in the past three years are as follows:

Year	No. of Vessels
1990-91	5528
1991-92	5462
1992-93	6129

Full information regarding the extent of loading and unloading of goods at minor ports is not readily available. The total tonnage of overseas trade carried by vessels carrying Indian flags during the last three years is as under:—

Year	Total Trade (In million metric tonnes)
1990-91	38.86
1991-92	39.53
1992-93	42.66

The above statistics furnish a rough idea of the extent of India's shipping trade. With the recent liberalisation of Indian Laws regarding export and import, there is no doubt that these activities will receive greater spurt in the coming years. With the increase in the number of vessels plying, passenger travelling and goods carried between India and other countries, the magnitude of maritime claims, disputes and litigation is also bound to increase. It is, therefore, necessary to clearly define the Indian courts which will exercise jurisdiction in admiralty maritime matters.

9.2. The discussions contained in Chapters 2 and 3, *ante*, clearly shows that, by accident of history, maritime or admiralty jurisdiction was exercised, till India became independent, and even after it became a Sovereign republic, only by the High Courts of Madras, Bombay and Calcutta. With the reconstitution of the territories of the various States, this jurisdiction has also vested in the High Courts on which the jurisdiction of the above three High Courts developed as a result of territorial readjustments¹. To a large extent this position has got stabilized with the decision of the Supreme Court in the recent *Elizabeth's case*² but there may be some points of ambiguity as to which of these High Courts should exercise jurisdiction in such matters. Before, however, adverting to this aspect of the issue which needs clarification, it is necessary to deal with the totally different recommendation that has been made by the *Praveen Singh Committee* report. As indicated earlier, that Committee has suggested that the admiralty jurisdiction should be taken away from the High Courts and should be vested in specially constituted Admiralty Courts with one Appellate Court empowered to hear appeals from their decision. This is a somewhat revolutionary suggestion, inspired by the recent trend of constitution of administrative tribunals³ which needs careful consideration and examination.

9.3. It is first necessary to analyse and examine the reasons given by the Committee in support of its recommendation for the constitution of Admiralty

Courts⁴. The Scheme envisaged by the Committee proceeds on the following lines:

- (1) The present law vests admiralty jurisdiction only in the three High Courts of Madras, Bombay and Calcutta and there is divided opinion on the question whether these Courts can exercise effective jurisdiction in the absence of clear cut and precise provisions of the Admiralty Act itself.
- (2) The admiralty jurisdiction of a Court cannot be restricted only to the territory where a court is located and should extend to the entire coast of India and inland waters as parties to maritime disputes are dispersed all over India.
- (3) The exercise of admiralty jurisdiction and the application of the law relating to it is an exclusive speciality and it is necessary to develop adequate expertise in the specialised field. The present system under which the judge in whom admiralty jurisdiction is vested has also to deal with other litigation before the High Court, does not allow him sufficient time to concentrate on and acquire specialised knowledge in this field.
- (4) Admiralty jurisdiction has international ramifications as the court has powers to arrest and even sell off the vessel involved whether it be an Indian or a foreign one. This not only makes expertise in the field of law a necessary desideratum; it also renders it necessary for the Central Government to constitute independent courts of admiralty and to ensure that maritime claims receive undivided attention of experts in their settlement. A maritime country like ours can ill afford to live with an outdated law admittedly coming in the way of growth of our shipping industry on the desired lines.
- (5) According to the Committee's assessment based on the experience of its members the High Courts ordinarily take not less than six years to dispose of an admiralty suit. The delay in civil courts are understood to be much greater. With the jurisdiction of the Admiralty Courts being made extensive as in U.K. and Singapore, India can become a centre of admiralty litigation which can also be the earner of valuable foreign exchange, only if the delays in courts are minimised.
- (6) The Admiralty Courts to be constituted should in no way be inferior to the High Courts. The qualifications, experience and mode of appointment of the judges of these courts should be strictly in accordance with the provisions of the Constitution. For the appointment of judges of the High Courts, the format of the Central Administrative Tribunal Act, 1985 as interpreted by the Supreme Court⁵ can be utilised.
- (7) To avoid conflicting decisions the rules governing procedural matters in these courts should be made by the Central Government. Also the safeguards provided by the existing rules of the Bombay High Court can be incorporated in framing the rules.
- (8) To avoid divergent decisions, in different Admiralty Courts, it is necessary to provide for an appeal to one Single Appeal Court of Admiralty from the decision of the Admiralty Courts at the first instance. No further appeals or revisions should be provided except that an appeal to the Supreme Court may be provided on questions of law, jurisdiction or issues of national or international importance, subject to a grant of Special Leave by the Supreme Court.
- (9) The Central Government should prescribe different court fees and expenses but no such fees/expenses would be payable by crew of vessels.

9.4. The Commission has considered the recommendation of the above Committee carefully in all its aspects and is unable to accept the suggestions.

the Committee to delink admiralty jurisdiction from High Courts and vest it in Admiralty Courts. The Commission would like to enunciate first its broad views on the general issues involved in the recommendations and, then, take up for consideration the specific points made by the Committee.

9.5. It is true that, as an aftermath of the Constitution of India and the growing awareness of the common man regarding the rights and the legal remedies available to him, there has been an unprecedented explosion of litigation in the courts of the country and in particular in the High Courts. This coupled with the consequential problems of delay accentuated by frequent differences of opinion among the High Courts has prompted the Government to consider the possibility of an alternative forum for the citizen to air his grievances, particularly in areas of speciality. The 42nd amendment to the Constitution gave legislative recognition to this line of thought by enacting Part XIV-A in the Constitution comprising of Articles 323-A and 323-B and authorising the setting up of National or State Level Tribunals in place of Courts in regard to certain areas of administration. It is unnecessary to set out fully the provisions.

Suffice it to say that the most important features of the legislation constituting a tribunal under either of these provisions are—

- (a) that it may provide for the exclusion of the jurisdiction of all courts except that of the Supreme Court under Article 136 with respect to all or any of the matters falling within the jurisdiction of the said Tribunal; and
- (b) that it may provide for the transfer to such tribunal of all cases which, at the time of its establishment, are pending before the courts or any other authorities in regard to the matters entrusted to the tribunal by the law in question.

The *Parveen Singh Committee* has, apparently, drawn inspiration from the aforesaid provisions as interpreted in *Sampat Kumar's case*⁶ in making its recommendations. The Committee has, however, suggested the constitution of Admiralty Courts and not Admiralty Tribunals as envisaged in the above provisions⁷, perhaps because 'admiralty' is not one of the subjects with reference to which a tribunal can be constituted under either of the above provisions.

9.6. (a) With regard to the proposal to constitute Admiralty Tribunals to the exclusion of High Courts' jurisdiction under Article 226 and 227, an important question arises whether this is permissible under the existing provisions of the Constitution. We have referred to Article 323(A) & (B) which confers powers on the appropriate legislatures to enact laws excluding the jurisdiction of the High Courts. A close scrutiny of Articles 323(A) & (B) would make it clear that the former provides for setting up of administrative tribunals for adjudication of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or a State or any local or any other authority. Article 323(B) also confers power on the appropriate legislature to enact law for the adjudication or trial by tribunals of disputes, complaints or offences with respect to all or any of the matters specified in Clause (2) which refers to levy, collection and enforcement of tax, foreign exchange, import and export across customs frontiers, industrial and labour disputes, land reforms, ceiling on urban property, election to either Houses of Parliament or the House or either House of Legislature of States, production, procurement and supply and distribution of food stuff and other goods. By no stretch of imagination any law relating to admiralty jurisdiction would fall within the matters specified in Clause (2) of Article 323(B).

9.6. (b) Law with respect to admiralty jurisdiction falls within Entry Nos. 24, 25 and 95 of List I of the Seventh Schedule of the Constitution. Parliament has exclusive jurisdiction to enact law with respect to matters specified in these three Entries which would cover the entire admiralty jurisdiction. The matters specified in Entry Nos. 24, 25 and 95 of List I do not find place under Article 323(A) or 323(B). There is, therefore, no escape from the conclusion that no tribunal for (A) or 323(B). There is, therefore, no escape from the conclusion that no tribunal

for adjudicating the admiralty matters can be constituted to the exclusion of the High Courts' jurisdiction. Moreover, there is a widespread feeling that Tribunals can be no good substitute for the High Courts. Some of the observations of the Supreme Court in *R.K. Jain's case*⁸ and the observations made by Ahmadi, J in a recent address to the Ahmedabad Income-tax Bar Association⁹ gave expression to this feeling. It has also recently been pointed out by the Andhra Pradesh High Court¹⁰ that the power of judicial review vested in the High Court under Articles 226 and 227 is a basic feature of the Constitution which cannot be taken away even by a constitutional amendment. The High Court in that case entertained a writ petition and interfered with the orders of the Administrative Tribunal. A Special Leave Petition has been filed in the Supreme Court and the matter has been referred to a large Bench for considering the whole issue. These developments do indicate that it would not be proper or desirable to deny the power of judicial review to the High Court against the orders of the Admiralty Court or Tribunal as suggested by the Parveen Singh Committee.

(b) The suggestion for the constitution of admiralty courts instead of tribunals does not improve the situation either. Under Articles 226 and 227 of the Constitution all courts and tribunals are under the supervisory jurisdiction of the High Courts and their orders are subject to judicial review by the High Courts. Thus, even if admiralty courts are constituted their orders would be subject to judicial review by the High Courts.

(c) In the absence of any constitutional provision, neither Parliament nor State Legislature have legislative competence to enact a law excluding the jurisdiction of the High Courts. The Supreme Court has emphasised that admiralty jurisdiction, despite peculiarities of its origin and growth is, nevertheless, a part of the totality of jurisdiction vested in the High Court as a superior court of record. High Courts being Courts of unlimited jurisdiction and repository of all judicial power under the Constitution, except what is excluded, are competent to deal with admiralty matters. The Constitution does not confer any power on legislature to curtail the High Courts' admiralty jurisdiction. Therefore, the recommendations of the Parveen Singh Committee for excluding the High Courts' jurisdiction cannot be accepted.

9.7. But, whether we call it a court or tribunal, such a body can be allowed to replace the existing jurisdiction of a High Court only for compelling reasons. The principal reason why tribunals have been thought of to replace the existing courts is that they provide a specialised body which can offer the attractions of special expertise ensuring speedy disposal. If a Tribunal is considered better in an area of taxation, it is because it is possible to constitute such a tribunal with a judicial member and an Accountant or Technical member. The former of these is drawn from the higher subordinate judiciary, profession of lawyers and the legal service of the centre or State while the latter is drawn from the profession of accountants or high officers of the relevant Government department. This combination makes it possible to have a body which has special familiarity with and knowledge and expertise of tax laws. Likewise, in an administrative tribunal, the judicial members are judges, lawyers and legal men while the administrative members are drawn from higher ranks of the service who are expected to have gained first hand knowledge and experience in the administration of service rules and service jurisprudence. Even these experiments have not been universally acclaimed and there is a strong opinion that the jurisdiction of Courts should not be taken away even in such matters¹⁰. In the area of admiralty law, unfortunately, there is no such specialised body that can be thought of. One would think that the lawyers specialising in this area are very few and they are unlikely to accept service of this kind. Indeed, even in the case of the other tribunals, it is found that the response from practising lawyers is very discouraging. There is no other service which can contribute persons with special knowledge or experience in this field to man these courts. Indeed, even the Parveen Singh Committee has only suggested that the Admiralty Courts should be constituted in the same way as the High Courts. The requirements of the situation can be met by recruiting lawyers practising in this branch of the law, to the extent possible, to High Court benches rather than go in search of such personnel to constitute a number of admiralty courts. Except for the nomenclature, these would be no real improvement in the situation.

9.8. Apart from a need to ensure a specialised body, a requirement which, as we have indicated, is not likely to be fulfilled here—the justification postulated for delinking any special branch of litigation from the courts (High Courts) is the huge pendency and delay on the part of the High Courts in disposing of the regular and normal litigation before it. The Commission is of the opinion that no data have been made available for considering such ground to exist. The statistics referred to by the Committee¹¹ are incomplete and refer only to the position in one of the High Courts, viz., the Bombay High Court¹². These figures are¹³ so insignificant compared to the total pendency in the various courts that they do not warrant any such serious apprehension as to justify taking away the jurisdiction from the High Courts. On the question of delay, one has to take note of the fact that, in maritime matters, a certain amount of delay is inevitable in view of the fact that the parties interested in any one litigation may be many and that very often service is required to be effected on foreign nationals and companies, a process which takes time. That apart, even the Committee has suggested one tier of appeal as of right under its scheme and it is not conducive to quick disposal. The truth appears to be that, up to now, no special attention has so far been paid to devise way and means of expeditious disposal of admiralty matters. A special effort and concentration on disposal of this type of litigation is bound to hasten matters and there is no reason to believe that the existing difficulties are insurmountable. Indeed the suggestion of the Committee that it will be sufficient to have four admiralty courts in India¹⁴ is a clear giveaway which indicates that the problem of magnitude and delay is not a very serious one in this branch of the law.

9.9. It is true that, in certain branches of law, difference of judicial opinion between several High Courts stands in the way of an early settlement of the law and the creation of a single body might be helpful in obviating difference of opinion and sorting them out itself by creation of large benches. But this is a criticism based on a fundamental misapprehension. The system of administering justice we have under our Constitution, contemplates a hierarchy of courts. There is, therefore, bound to be some conflict of opinion between courts and this cannot be helped. India being a vast country, having several States and eighteen High Courts administering same laws and also different laws, are bound to have different views on different matters. This is inherent in a federal structure and there is no way to eliminate conflict of decisions altogether. Rather, we are of the view that conflict of decisions is desirable at certain times as though that process the law has developed and progressed to meet the needs of the society and that would be so particularly in the branch of admiralty jurisdiction which is yet to develop in our country. That apart, the Commission does not think that this problem has assumed any such dimensions at all in admiralty matters. The fact that in the 57 years that have lapsed since the Government of India Act, 1935, no such difference of opinion seems to have occurred which was considered worthwhile to be brought up to the Federal or Supreme Court shows that this apprehension is more theoretical than practical. It may be that, with the passage of time, the problems of pendency and conflict of opinion may assume larger proportions and may have to be tackled by appropriate measures. The commission is of the view that, for the present at least, these are not of such magnitude as to take away the jurisdiction of the High Courts in these matters.

9.10. On the contrary, there are compelling reasons why the High Court's jurisdiction should be retained. In the first place, this is a field in which it was considered necessary, even in the last century, to vest jurisdiction only in the High Courts¹⁵. Secondly, the jurisprudence in this area is yet to develop, and precedents of other countries, customary practices of the sea and international conventions which have the force of law in practice¹⁶ need to be interpreted authoritatively and the High Courts' primacy in achieving this object cannot be denied. Thirdly, the arm of the courts' jurisdiction in these areas is long and powerful. It can arrest, detain, impound and sell vessels and property belonging to nationals of various parts of the world. As the Committee has pointed out, it is in the nature of an international jurisdiction and it should be dealt with by a well established judicial body which has a status in the country's Constitution and in the eyes of foreign nationals as well. This indeed should be a paramount consideration for a decision in favour of retaining the jurisdiction of the High Courts in admiralty matters.

9.11. There is also another aspect of the present pendency in admiralty matters that calls for consideration. It has been pointed out earlier that the figures of pendency in the Bombay High Court give no cause for alarm. That apart, there is simple way of reducing the impact of these factors. At present only some of the High Courts exercise jurisdiction in admiralty matters. As pointed out by the Committee itself the admiralty jurisdiction of the court cannot be restricted only to the territory where it is located but should extend to the entire coast of India and its inland, waters. On the basis that admiralty jurisdiction is vested in all the High Courts of India having original jurisdiction and that the jurisdiction is not restricted only to the territory of the state where the High Court is located, a provision may be engrafted enabling the Supreme Court, *suo motu* or on application, to transfer any admiralty suit from one High Court to any other in the country for such reasons as it may consider appropriate after hearing the parties. Even the existing litigation in three High Courts can be distributed over all the Indian High Courts and can be disposed of much more expeditiously than at present.

9.12. In the above discussion the points adverted to in the Parveen Singh Committee Report have already been dealt with and we do not consider it necessary to discuss it further by referring to each point again separately. The Commission is, therefore, of the opinion that existing admiralty jurisdiction should continue with all the High Courts.

9.13. The High Courts will be dealing with the admiralty jurisdiction as in the case of company and testamentary and other matters, on its original side. Generally the original jurisdiction in company and testamentary matters is exercised by a single judge of the High Court and appeals against his orders and judgments lie to a Division Bench of the Court. This should also be the position in admiralty matters. This will meet the need of having an appellate forum, adverted to by the Parveen Singh Committee.

9.14. The Parveen Singh Committee expressed an apprehension that due to congestion of cases in the High Court, perhaps, it may not be able to deal with the admiralty matters expeditiously. As already discussed, there is no doubt some explosion of litigation in the High Courts and there is delay in disposal of cases but that by itself does not justify an attempt to divest the High Courts of the admiralty jurisdiction at least for the present, especially in the absence of full statistics regarding the pendency of arrears in this jurisdiction. The Commission is, therefore, of the opinion that for the present the High Courts should continue to exercise admiralty jurisdiction exclusively. If it is found later on, that the volume of work is so large that the High Courts are not able to cope up with the work, the Central Government may, in consultation with the Chief Justice of India and the concerned High Court take steps to empower the Principal Civil Court of the relevant District to exercise such powers in exercise of admiralty jurisdiction as may be considered necessary having regard to the circumstances then prevailing. In such an event, an appeal against the order of the admiralty court would lie to High Court both on facts and on law. But, for the present, we are firmly of the opinion that the High Court should exclusively exercise admiralty jurisdiction. In the proposed draft legislation, necessary provisions on the above lines have been made.

9.15. So far we have been discussing the admiralty jurisdiction in civil matters. Criminal jurisdiction in admiralty offences is governed by different considerations. Section 4 of the Indian Penal Code¹⁷, makes it possible for an ordinary Court in India to try, in the normal exercise of its jurisdiction any offence committed by an Indian citizen in any place within or outside India. It also authorises the prosecution and trial in India of any person for an offence committed on any ship or aircraft registered in India irrespective of the location of the aircraft at the time of the crime. This jurisdiction is based on the principle that a ship registered in India is, in law, a floating island representing Indian territory. This general jurisdiction apart, certain statutes also confer jurisdiction on Indian court regarding "Admiralty Offences". The Admiralty Offences (Colonial) Act, 1849¹⁸, which enabled the authorities and courts in a British colony to try offences committed on seas or water-ways where the Admiral has jurisdiction where made applicable to India as it then was, by the Admiralty Jurisdiction (India) Act, 1860¹⁹ with the proviso that any person in India or brought to India accused of these offences could claim that he should be tried only by the Supreme

Court of the Presidency in question²⁰. These provisions continue to be operative in India.

9.16. It appears that the Merchant Shipping Act, 1894 of the United Kingdom also made such offences triable in England as well as in India by ordinary criminal court. Section 684 to 687 of the said Act are relevant in this context. But they need not be elaborately set out here since the British Merchant Shipping Act has been repealed in its application to India by our Merchant Shipping Act, 1958²¹. This Act contains a number of provisions regarding the offences under the Act²² but there is none corresponding to sections 684 and 687 of the British Act set out earlier.

9.17. It is clear that the applicability of the Admiralty Offences (Colonial) Act of 1849 and The Admiralty Jurisdiction (India) Act, 1860 to India should be repealed. Those legislations were enacted at a time when India was a British possession. Their continued application to India even after its independence and its constitution as a Republic is derogatory to the sovereignty of India. These two Acts have, therefore, to be repealed with immediate effect.

9.18. The question, however, reminds whether we should enact some provisions corresponding to those contained in the above enactments to facilitate the apprehension, prosecution, trial and punishment of persons who are guilty of offences in India or in places beyond the territorial jurisdiction of India. We have considered this question and we are of opinion that it is unnecessary to re-enact the above provisions as the situations envisaged by them are fully covered by the provisions of Sections 3 and 4 of the Indian Penal Code read with Section 188 of the Code of Criminal Procedure. The position thus will be that, while civil admiralty matters can be dealt with by the High Court exclusively, unless and until provision is made enabling other courts to deal with such matters, but criminal offences committed on the high seas and navigable waters will be subject to the ordinary law of the land.

FOOTNOTES—CHAPTER 9

1. This would clearly include the High Courts of Andhra, Orissa, Gujarat and Kerala and perhaps some others also.
2. *Elizabeth's Case*, JT 1992 (2) SC p. 65.
3. See Articles 323-A and B of the Constitution. The Central Administrative Tribunal and the National Tax Tribunal, a proposal for the Constitutional of which is under consideration, are examples of this trend. .
4. A draft legislation for the constitution of such courts has also been prepared by the Committee which is also annexed to this report.
5. *Sampat Kumar's case* : AIR 1987 SC 386.
6. AIR 1987 SC 386.
7. It would seen that the Committee had not kept the distinction in mind.
8. (1993) 4 SCC 119.
9. JT 1994 (2) Journal Section 1.
- 9A. *S. Hari Nath V. State of Andhra Pradesh*, 1993(3) Andh LT 471.
10. JT 1994(2) Journal Section 1.
11. In para 13 of its report.
12. The Committee says that "the number of suits filed under the maritime law with the various civil courts are far greater" but, with Admiralty jurisdiction presently vested only in three High Courts it is not clear what the Committee here refers to.
13. Both the numbers and amounts referred to. More recent figures are unfortunately not readily available.
14. Para 16 of the Report.
15. Initially, it may have been because the ships and ship owners belonged to the U.K. and they desired to safeguard their interests. But, on second thoughts, it will be realised that it is also prudent.
16. See, for example, the observations of Kochu Thomman, J. in para 91 JT 1992 (2) SC 65 at p. 105, extracted earlier.
17. The Indian Panel Code (Act No. XLV—OF 1860), Section 4.
18. The Admiralty Offences (Colonial) Act, 1849 (12 & 13 Vict., C. 96).
19. The Admiralty Jurisdiction (India) Act, 1860 (23 & 24 Vict., C. 88), Section 1.
20. *Id*, Section 2.
21. The Merchant Shipping Act, 1958, Section 461(2) and Part II of the Schedule thereto.
22. *Id*, Section 436.

CHAPTER 10

CONCLUSIONS AND RECOMMENDATIONS

10.1. The jurisdiction of courts in a State is the manifestation of the State's independent sovereign power as a nation. The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation unless imposed by the State itself. Therefore, admiralty jurisdiction is an essential aspect of judicial sovereignty which under the Constitution and the laws is exercised by the High Court as a superior court of record administering justice in relation to persons and things within its jurisdiction. The power to enforce claims against foreign ships is an essential attribute of admiralty jurisdiction and it is assumed over such ships while they are within the jurisdiction of the High Court by arresting and detaining them.

10.2. The Supreme Court has pointed out recently¹: "All persons and things within the waters of a State fall within its jurisdiction unless specifically curtailed or regulated by rules of international law". The power of arrest a foreign vessel, while in the waters of a coastal State, in respect of a maritime claim, whenever arising, is a demonstrable manifestation and an essential attribute of territorial sovereignty. This power is recognised by several international conventions. These conventions contain the unified rules of law drawn from different legal systems. Although many of these conventions are yet to be ratified by India, they embody principles of law recognised by the generality of maritime States and can, therefore, be regarded as part of our common law. Absence of ratification of these conventions is apparently not because of any policy disagreement, as is clear from active and fruitful Indian participation in the formulation of rules adopted by the conventions, but perhaps of other circumstances, such as lack of adequate and specialised machinery for implementation of the various international conventions by co-ordinating the concerned Departments of the Government. Such a specialised body of legal and technical experts can facilitate adoption of internationally unified rules by national legislation. It is appropriate that sufficient attention is paid to this aspect of the matter by the concerned authorities. Perhaps the Law Commission of India, endowed as it ought to be with sufficient authority, status and independence, can render valuable help in this regard. Delay in the adoption of international conventions which are intended to facilitate trade hinders the economic growth of the nation."

10.3. The Commission has discussed in detail, earlier in this report, the various international conventions/protocols and agreements to which the Indian Government has been a party and also indicated the extent to which our country has implemented these conventions, protocols and agreements. It has also indicated the stages at which the issues of implementation of each of the various protocols and conventions stand. All that is now necessary to be done in this regard, in the light of the observations of the Supreme Court quoted earlier, is speedy action to review the position and expedite implementation of the conventions, agreements and protocols without further delay. The Supreme Court has commented on the lack of adequate specialised machinery for implementation of the various international conventions. A perusal of the dates of these conventions and the stage of implementation referred to earlier will show that the Government has not given enough priority to follow-up action in these matters. We view with great concern the apathy and indifference which have characterised the actions of the Government in this regard and regret that the process of decision-making has been caught up in bureaucratic delays and tangles. We have considered the possibilities of our direct contribution in this regard. We have, however, come to the conclusion that as ratification (or otherwise) of international conventions will primarily be a matter of State policy and as decisions on the issue will depend upon up-to-date information regarding the attitudes of other countries, procedural and other difficulties that the country and the trade may face and appreciation of technical data: it will not be

feasible or practical for the Commission itself to take on this exercise. We would, therefore, recommend that the Government should immediately constitute a Review Committee to undertake this task, the Committee may comprise of officers of the status of Additional Secretaries in the Home Ministry, the Legal and treaties Division of the External Affairs Ministry, the Ministry of Surface Transport and the Department of Legal Affairs in the Ministry of Law. The Committee may examine in detail, in respect of each of the several conventions/protocols and agreements which have been ratified by India but still remain to be implemented, the cause for delay and ensure that speedy action is taken to implement these international conventions without further delay. The Committee may also review the latest position in respect of other protocols and conventions which have been adopted by other countries and are internationally in force but which are yet to be ratified by the Indian Government and make recommendations as to their ratification or otherwise in the immediate future.

10.4. It has been pointed out earlier that the Admiralty Jurisdiction, despite the peculiarities of its origin and growth is a part of the totality of jurisdiction vested in the High Court as a superior court of record, and it is not a distinct and separate jurisdiction as was once the position in England before the unification of courts. The 1890 and 1891 Acts specifically conferred admiralty jurisdiction on the Indian High Courts by reason of their being courts of unlimited jurisdiction. These Acts did not create any separate or distinct and separate jurisdiction, but merely equated the Indian High Courts to the position of the English High Court (united and consolidated as that Court has been since 1875) for the exercise of admiralty powers within the jurisdiction of the former. The contrary view expressed in some of the decisions of the High Courts referred to earlier was clearly wrong. We have also pointed out that it is not permissible or desirable to take away the jurisdiction of the High Courts in admiralty matters and vest the same in separate courts constituted for the purpose as recommended by the *Parveen Singh Committee*. As it is proposed that admiralty jurisdiction should extend over all navigable waters in the country, it is not necessary to limit the jurisdiction only to High Courts whose territories have a coastal belt. Hence, it is recommended that the Admiralty Jurisdiction must continue with all Indian High Courts as part of their original jurisdiction, with a provision empowering the extension of this jurisdiction to other principal civil courts in case a necessity therefor should arise in future. Details of this recommendation have been dealt with in Chapter 9.

10.5. The Commission has earlier pointed out that once a foreign ship is arrested in Indian waters by an order, the High Court, in exercise of the admiralty jurisdiction vested in it by statute, or inherent in it as a court of record, in respect of any maritime claim against its owner, wherever the cause of action may have arisen, and whether or not the ship is subsequently released by the owner on furnishing security, proceedings must continue against the owners as in any other suit. The arrest of the vessel while in Indian waters by an order of the concerned High Court attracts the jurisdiction of the competent court to proceed with the trial, as in the case of any other suit, as an action against the owner, and any decree obtained by the plaintiff should be executable against any property of the owner available within its jurisdiction, including the security furnished by him for release of the vessel. However, as discussed earlier, it is recommended that the question whether any action should be instituted or permitted to continue *in rem* or *in personam* should be left to the concerned High Court which will examine each case on its merits and take appropriate action in the interests of justice. This aspect and other recommendations as to the nature and extent of court's jurisdiction in admiralty matters have been discussed in detail in Chapter 8.

10.6. Reference has been made earlier in the report to a question of delay in courts focussed by the *Parveen Singh Committee*. This has been dealt with in detail earlier in Chapter 9. As a further step to counter the problems of delay, we recommend the incorporation of a provision for arbitration in proceedings in admiralty matters which, we expect, will prove effective in the atmosphere currently prevalent everywhere reflecting a tendency to settle disputes by arbitration in preference to litigation. Another special feature of the proposed legislation is a provision on the line of Section 140 of the Code of Civil Procedure enabling the Court to avail of the assistance of assessors in technical matters.

10.7. In the light of the discussions contained in earlier Chapters of this report, it is also recommended—

- (i) that the wide range of subjects now definitely within Indian Admiralty Jurisdiction, particularly those relating to maritime crimes, contracts, torts, etc. should continue with the admiralty courts;
- (ii) that the Indian Admiralty Courts extend the jurisdiction to all waters that are infact navigable regardless of whether they are influenced by the tide or landlocked or open, or salt or fresh;
- (iii) that the Indian Admiralty Jurisdiction extend to all ships on the High Seas (except sovereign ships) and over injurious acts done on the High Seas if any Indian element is involved.

10.8. A draft legislation, incorporating the above recommendations and suggestions, is annexed to the Report. In preparing this draft, due regard has been taken of the various provisions contained in the draft Admiralty Act of India proposed by the *Parveen Singh Committee* as well as the relevant provisions of the British Statute on the subject *viz.*, Supreme Court Act, 1981. No elaborate discussion of the various provisions of the draft legislation is, however, entered upon here as the draft enactment only embodies the conclusions earlier discussed in detail in this report.

10.9. It is necessary to point out that in case the draft legislation proposed is accepted and enacted, certain existing legislations on the subject would become redundant. It is, therefore, recommended that the following Acts should be repealed:

1. Admiralty Offences (Colonial) Act, 1849;
2. Admiralty Jurisdiction (India) Act, 1860;
3. Admiralty Court Act, 1861;
4. Colonial Courts of Admiralty (India) Act, 1891;
5. Clauses pertaining to admiralty jurisdiction in the Letters Patent relating to the High Courts of Bombay, Calcutta & Madras.

A provision to this effect has been included in the draft legislation.

10.10. Substantially speaking, our major recommendations are two in number:

- (i) a legislation dealing with the courts to exercise jurisdiction on admiralty powers and the nature and extent of their jurisdiction on the lines embodied in Annexure VIII to this Report be enacted; and
- (ii) a Committee of high departmental officials be set up to review the process of implementation of international conventions, protocols and agreements and expedite the same.

Both these reforms are long overdue, and their urgency has also been emphasised by the Supreme Court in *Elizabeth's case*¹. We hope the Government shall give top priority to this Report and take expeditious action in pursuance thereof.

(Sd.)

(JUSTICE K. N. SINGH)
CHAIRMAN

(Sd.)

(JUSTICE S. RANGANATHAN)
MEMBER

(Sd.)

(Prof D. N. SANDANSHIV)
MEMBER

(Sd.)

(P. M. BAKSHI)
MEMBER (PART-TIME)

(Sd.)

(M. MARCUS)
MEMBER (PART-TIME)

(Sd.)

(CH. PRABHAKARA RAO)
MEMBER-SECRETARY

FOOTNOTES—CHAPTER 10

1. *Elizabeth's Case* (1992) 2 JT (SC) 65.
2. Like Sovereign and Diplomatic Immunities, etc.
3. *Id.*, at 1.

ANNEXURE I

(The) Admiralty Offences (Colonial) Act. 1849

(12 & 13 Vict. c. 96)

An Act to provide for the Prosecution and Trial in Her Majesty's Colonies of Offences committed within the Jurisdiction of the Admiralty.

(1st August, 1849)

(Repealed)

(Preamble—Repealed by 54 and 55 Vict. c. 67)

1. **Trial of Admiralty offences in colonies.**—If any person within any colony shall be charged with the commission of any treason, piracy, felony, robbery, murder, conspiracy or other offence of what nature or kind soever, committed upon the sea, or in any haven, river, creek or place where the admiral or admirals have however, authority, or jurisdiction or if any person charged with the commission of any such offence upon the sea or in any such haven, river, creek or place shall be brought for trial to any colony.

Then and in every such case all magistrates, justices of the peace, public prosecutors, juries, judges, courts, public officers and other persons in such colony shall have and exercise, the same jurisdiction and authorities for inquiring of, trying, hearing, determining and adjudging such offences, and they are hereby respectively authorised, empowered, and required to institute and carry on all such proceedings for the bringing of such person so charged as aforesaid to trial, and for and auxiliary to and consequent, upon the trial of any such person for any such offence; wherewith he may be charged as aforesaid as by the law of such colony would and ought to have been had and exercised or instituted and carried on by them respectively if such offence had been committed, and such person had been charged with having committed the same, upon any waters situate within the limits of any such colony, and within the limits of the local jurisdiction of the Courts of Criminal justice of such colony.

(a) Introductory words were repealed by 54 and 55 Vict. c. 67.

2. (Repealed by 54 and 55 Vict. c. 67).

3. Provision, etc., where death in the colony or at sea, etc. follows from injuries inflicted on the sea, etc., where any person shall die in any colony of any stroke, poisoning, or hurt, such person having been feloniously stricken, poisoned, or hurt upon the sea or in any haven, creek, or place where the admiral or admirals have power, authority, or jurisdiction, or at any place out of such colony, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory before the fact to murder, or after the fact to murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished in such colony, in the same manner and in all respects as if such offence had been wholly committed in that colony:

and if any person in any colony shall be charged with any such offence as aforesaid in respect of the death of any person who, having been feloniously stricken, poisoned or otherwise hurt, shall have died of such stroke, poisoning, or hurt, upon the sea, or in any haven, river, creek or place where the admiral or admirals have power, authority, or jurisdiction, such offence shall be held for the purpose of this Act to have been wholly committed upon the sea.

(a) Introductory words were repealed by 54 and 55 Vict. c. 67.

4. (Omitted as being inapplicable to India).

5. Interpretation of "colony".—For the purposes of this Act the word "colony" shall mean any island, plantation, colony, dominion, fort or factory of Her Majesty, except any island within the United Kingdom and the Islands of Man, Guernsey, Jersey, Alderney, and Sark, and the lands adjacent thereto respectively.

(a) Introductory words were repealed by 54 and 55 Vict. c. 67.

(b) And includes British India, see 23 and 24 Vict. c. 88 S. 1 page 22a. *supra.*

(c) Words repealed by 44 and 45 Vict. c. 59.

6. Repealed by 41 and 42 Vict. c. 79.

ANNEXURE II

(The) Admiralty Jurisdiction (India) Act, 1860

(23 & 24 Vict. c. 88)

An Act to extend certain provisions for Admiralty Jurisdiction in the Colonies in Her Majesty's Territories in India.

(13th August, 1860)

(Preamble reciting 12 and 13 Vict. c. 96 S. 5; and enacting words were repealed by 55 and 56 Vict. c. 19)

1. **Applicability of principal Act to British India and British Burma.**—The Admiralty Offences (Colonial) Act, 1849 shall apply to British India and British Burma as it applies to colonies.

(a) Substituted by A.A.P.O. 1937

2. **Proceedings in case of persons entitled to be tried by the Supreme Court of a Presidency.**—Provided always that where any person within any place in India is charged with the commission of any offence in respect of which jurisdiction is given by the said Act, or where any person charged with the commission of any such offence is brought for trial under the said Act to any place in India, if at any time before his trial he makes it appear to the Court exercising criminal jurisdiction in the place where he is so charged or brought for trial, that in case the offence charged had been committed in such place he could have been tried only in the Supreme Court of one of the three Presidencies in India, and claim to be tried by such a Supreme Court accordingly, the said Court exercising criminal jurisdiction as aforesaid shall certify the fact and claim to the Governor of such place or chief local authority thereof; and such Governor or Chief local authority thereupon shall order and cause the person charged to be sent in custody to such one of the Presidencies as such Governor shall think fit for trial before the Supreme Court of such Presidency; and the said Supreme Court and all public officers and other persons in the Presidency shall have the same jurisdiction and authorities and proceed in the same manner in relation to the person charged with such offence as if the same had been committed or originally charged to have been committed within the limits of the ordinary jurisdiction of such Supreme Court.

ANNEXURE III

Admiralty Court Act, 1861

(24 and 25 Vict. c. 10)

A.D. 1861.

An Act to extend the Jurisdiction and improve the practice of the High Court of Admiralty.

(17th May, 1861)

(Preamble)

1. **Short title.**—This Act may be cited for all purposes as "the Admiralty Court Act, 1861".

2. **Interpretation of terms.**—In the interpretation and for the purposes of this Act (if not inconsistent with the context or subject) the following terms shall have the respective meanings hereinafter assigned to them; that is to say,

"ship" shall include any description of vessel used in navigation not propelled by oars;

"Cause" shall include any cause, suit, action or other proceeding in the Court of Admiralty.

* * * * *

16. **Proceedings where a claim is made to goods taken in execution.**—If any claim shall be made to any goods or chattels taken in execution under any process of the High Court of Admiralty, or in respect of the seizure thereof, or any act or matter connected therewith or in respect of the proceeds or value of any such goods or chattels, by any landlord for rent, or by any person not being the party against whom the process has issued, the registrar of the said Court may, upon application of the officer charged with the execution of the process, whether before or after any action brought against such officer, issue a summons calling before the said Court both the party issuing such process and the party making the claim; and thereupon any action which shall have been brought in any of Her Majesty's Superior Courts of Record, or in any local or inferior court, in respect of such claim, seizure, act or matter as aforesaid, shall be stayed; and the Court in which such action shall have been brought or any judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution may order the party bringing the action to pay the costs of all proceedings had upon the action after issue of the summons out of the said Admiralty Court; and the Judge of the said Admiralty Court shall adjudicate upon the claim, and make such order between the parties in respect thereof and of the costs of the proceedings, as to him shall seem fit and such order shall be enforced in like manner as any order made in any suit brought in the said Court. Where any such claim shall be made as aforesaid, the claimant may deposit with the officer charged with the execution of the process either the amount or value of the goods claimed, the value to be fixed by appraisement in case of dispute, to be by the officer paid into Court to abide the decision of the Judge upon the claim, or the sum which the officer shall be allowed to charge as costs for keeping possession of the goods until such decision can be obtained; and in default of the claimant so doing, the officer may sell the goods as if no such claim had been made, and shall pay into Court the proceeds of the sale, to abide the decision of the judge.

18. **Party in Court of Admiralty may apply for an order for inspection by Trinity Masters, and c.**—Any party in a cause in the High Court of Admiralty shall be at liberty to apply to the said Court for an order for the inspection by the Trinity Masters or others appointed for the trial of the said cause, or

by the party himself or his witnesses, of any ship or other personal or real property, the inspection of which may be material to the issue of the cause; and the Court may take such order in respect of the costs arising thereout as to it shall seem fit.

25. Powers of Registrar and of Deputy or Assistant Registrar.—The registrar of the High Court of Admiralty may exercise, with reference to causes and matters in the said Court, the same powers as any surrogate of the judge of the said Court sitting in chambers might or could have heretofore lawfully exercised; and all powers and authorities by this or any other Act conferred upon or vested in the registrar of the said High Court of Admiralty may be exercised by any deputy or assistant registrar of the said Court.

26. Registrar may administer oaths.—The registrar of the said Court of Admiralty shall have power to administer oaths in relation to any cause or matter depending in the said Court;.....

28. Qualification of Examiners.—Any advocate, barrister-at-law, proctor, attorney, or solicitor may be appointed an examiner of the High Court of Admiralty.

33. Bail may be taken in the Court of Admiralty for the Court of Appeal, and c.—In any cause in the High Court of Admiralty bail may be taken to answer the judgment as well of the said court as of the Court of Appeal, and the said High Court of Admiralty may withhold the release of any property under its arrest until such bail has been given: and in any appeal from any decree or order of the High Court of Admiralty the Court of Appeal may make and enforce its order against the surety or sureties who may have signed any such bail bond in the same manner as if the bail had been given in the Court of Appeal.

34. Hearing of Cross Cases.—The High Court of Admiralty may, on the application of the defendant in any cause of damage, and on his instituting a cross cause for the damage sustained by him in respect of the same collision, direct that the principal cause and the cross cause be heard at the same time and upon the same evidence; and if in the principal cause the ship of the defendant has been arrested or security given by him to answer judgment, and in the cross cause the ship of the plaintiff cannot be arrested, and security has not been given to answer judgment therein, the Court may, if it thinks fit, suspend the proceedings in the principal cause, until security has been given to answer judgment in the cross cause.

ANNEXURE IV

Colonial Courts of Admiralty Act, 1890

(53 and 54 Vict. c. 27)

A.D. 1890

An Act to amend the Law respecting the exercise of Admiralty jurisdiction in Her Majesty's Dominions and elsewhere out of the United Kingdom (25th July, 1890).

1. This Act may be cited as the Colonial Courts of Admiralty Act, 1890.

2. (i) Every Court of Law in a British possession, which is for the time being declared in pursuance of this Act to be a court of Admiralty, or which, if no such declaration is in force in the possession, has therein original unlimited civil jurisdiction, shall be a court of Admiralty, with the jurisdiction in this Act mentioned and may for the purpose of that jurisdiction exercise all the powers which it possesses for the purpose of its other civil jurisdiction and such court in reference to the jurisdiction conferred by this Act is in this Act referred to as a Colonial Court of Admiralty. Where in a British possession the Governor is the sole judicial authority, the expression "court of law" for the purpose of this action includes such Governor.

(ii) The jurisdiction of a Colonial Court of Admiralty shall, subject to the provisions of this Act, be 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 the Colonial Court of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High Court in England, and shall have the same regard as that Court to international law and the comity of nations.

(iii) Subject to the provisions of this Act, any enactment referring to a Vice-Admiralty Court, which is contained in an Act of the Imperial Parliament or in a Colonial law, shall apply to a Colonial Court of Admiralty, and be read as if the expression "Colonial Court of Admiralty" were therein substituted for "Vice-Admiralty Court" or for other expressions respectively referring to such Vice-Admiralty Courts or the judge thereof, and the Colonial Court of Admiralty shall have jurisdiction accordingly:

Provided as follows:

- (a) Any enactment in an Act of the Imperial Parliament referring to the Admiralty Jurisdiction of the High Court in England, when applied to a Colonial Court of Admiralty in a British possession, shall be read as if the name of that possession were therein substituted for England and Wales; and
- (b) A Colonial Court of Admiralty shall have under the Naval Prize Act, 1864, and under the Slave Trade Act, 1873, and any trade, the jurisdiction thereby conferred on a Vice-Admiralty Court and not the jurisdiction thereby conferred exclusively on the High Court of Admiralty or the High Court of Justice; but, unless for the time being duly authorised, shall not by virtue of this Act exercise any jurisdiction under the Naval Prize Act, 1864, or otherwise in relation to the prize; and
- (c) A Colonial Court of Admiralty shall not have jurisdiction under this Act to try or punish a person for an offence which according to the law of England is punishable on indictment; and

(d) A Colonial of Admiralty shall not have any greater jurisdiction in relation to the laws and regulations relating to Her Majesty's Navy at Sea or consider any Act providing for the discipline of Her Majesty's Navy than may be from time to time conferred on such court by Order in Council.

(iv) Where a Court in a British possession exercises in respect of matters arising outside the body of a country or other like part of a British possession any jurisdiction exercisable under this Act, that jurisdiction shall be deemed to be exercised under this Act and not otherwise.

3. Power of Colonial Legislature as to Admiralty Jurisdiction.—The legislature of a British possession may be any Colonial law—

(a) declare any court of unlimited civil jurisdiction, whether original or appellate, in that possession to be a Colonial Court of Admiralty, and provide for the exercise by such court of its jurisdiction under this Act, and limit territorially, or otherwise, the extent of such jurisdiction; and

(b) confer upon any inferior or subordinate court in that possession such partial or limited Admiralty jurisdiction under such regulations and with such appeal (if any) as may seem fit:

Provided that any such Colonial law shall not confer any jurisdiction which is not by this Act conferred upon a Colonial Court of Admiralty.

4. Reservation of Colonial Law for Her Majesty's assent.—Every Colonial law which is made in pursuance of this Act, or affects the jurisdiction of or practice or procedure in any court of such possession in respect of the jurisdiction conferred by this Act, or alters any such Colonial Law as above in this section mentioned, which has been previously passed, shall, unless previously approved by Her Majesty through a Secretary of State, either be reserved for the signification of Her Majesty's pleasure thereon, or contain a suspending clause providing that such law shall not come into operation until Her Majesty's pleasure thereon has been publicly signified in the British possession in which it has been passed.

(This section shall not apply to Indian laws.....).

5. Local Admiralty Appeal.—Subject to the rules of court under this Act, judgment of a court in a British possession given or made in the exercise of the jurisdiction conferred on it by this Act, shall be subject to the like local appeal, if any, as judgments of the court in the exercise of its ordinary civil jurisdiction, and the court having cognisance of such appeal shall for the purpose thereof possess all the jurisdiction, by this Act conferred upon a Colonial Court of Admiralty.

6. Admiralty Appeal to the Queen-in-Council.—(1) The appeal from the judgment of any court in a British possession in the exercise of the jurisdiction conferred by this Act, either where there is as of right no local appeal or after a decision on local appeal, lies to Her Majesty the Queen in Council.

(2) Save as may be otherwise specially allowed in a particular case by Her Majesty the Queen in Council, an appeal under section shall not be allowed—

- (a) from any judgment not having the effect of a definite judgment unless the court appealed from has given leave for such appeal, nor
- (b) from any judgment unless the petition of appeal has been lodged within the time prescribed by rules, or if no time is prescribed within six months from the date of the judgment appealed against, or if leave to appeal has been given then from the date of such leave.

(3) For this purpose of appeals under this Act, Her Majesty the Queen in Council and the Judicial Committee of the Privy Council shall, subject to

rules under this section, have all such powers for making and enforcing judgments, whether interlocutory or final, for punishing contempts, for requiring the payment of money into court, or for any other purpose, as may be necessary, or as were possessed by the High Court of Delegates before the passing of the Act transferring the powers of such court to Her Majesty in Council, or as are for the time being possessed by the High Court in England or by the Court appealed from in relation to the like matters as those forming the subject of appeals under this Act.

(4) All orders of the Queen in Council or the Judicial Committee of the Privy Council for the purposes aforesaid or otherwise in relation to appeals under this Act shall have full effect throughout Her Majesty's dominions, and in all places where Her Majesty's has jurisdiction.

(5) This section shall be in addition to and not in derogation of the authority of Her Majesty in Council or the Judicial Committee of the Privy Council arising otherwise than under this Act, and all enactments relating to appeals to Her Majesty in Council or to the powers of Her Majesty in Council or the Judicial Committee of the Privy Council in relation to those appeals, whether for making rules and orders or otherwise, shall extend, save as otherwise directed by Her Majesty in Council to appeals to Her Majesty in Council under this Act.

7. Rules of Court.—(1) Rules of court for regulating the procedure and practice (including fees and costs) in a court in a British possession in the exercise of the jurisdiction conferred by this Act, whether original or appellate, may be made by the same authority and in the same manner as rules touching the practice, procedure, fees and costs in the said court in the exercise of its ordinary civil jurisdiction respectively are made:

Provided that the rules under this section shall not, save as provided by this Act extend to matters relating to the slave trade, and shall not (save as provided by this section) come into operation until they have been approved by Her Majesty in Council, but on coming into operation shall have full effect as if enacted in this Act, and any enactment inconsistent therewith shall so far as it is so inconsistent, be repealed.

(2) It shall be lawful for Her Majesty in Council, in approving rules made under this section to declare that the rules so made with respect to any matters of detail or of local concern may be revoked, varied, or added to without the approval required by this section.

(3) Such rules may provide for the exercise of any jurisdiction conferred by this Act by the full court, or by any judge or judges thereof, and subject to any rules, where the ordinary civil jurisdiction of the court can in any case be exercised by a single judge and jurisdiction conferred by this act may in the like case be exercised by a single judge.

8. Droits of Admiralty and of the Crown.—(1) Subject to the provisions of this section nothing in this Act shall alter the application of any droits of Admiralty or droits of or forfeitures to the Crown in a British possession: and such droits and forfeitures, when condemned by a court of a British possession in the Act, shall, save as is otherwise provided by any other Act, be notified, accounted for, and dealt with in such manner as the Treasury from time to time direct, and the Offers of every Colonial Court of Admiralty and of every other Court in a British possession exercising Admiralty jurisdiction shall obey such directions in respect of the said droits and forfeitures as may be from time to time given by the Treasury.

(2) It shall be lawful for Her Majesty the Queen in Council by Order to direct that, subject to any conditions, exceptions, reservations, and regulations contained in the Order, the said droits and forfeitures condemned by a court in a British possession shall form part of the revenues of that possession either for ever or for such limited term or subject to such revocation as may be specified in the Order.

(3) If and so long as any of such ~~droits~~ or forfeitures by virtue of this Act or any other Act from part of the revenues of the said possession the ~~same~~ shall, subject to the provisions of any law for the time being applicable thereto be directed by the Government of the possession, and the Treasury shall not have any power in relation thereto.

9. Power to establish Vice-Admiralty Court.—(1) It shall be lawful for Her Majesty, by commission under the Great Seal, to empower the Admiralty to establish in a British possession any Vice-Admiralty Court or Courts.

(2) Upon the establishment of a Vice-Admiralty Court in a British possession, the Admiralty, by writing under their hands and the seal of the office of Admiralty, in such form as the Admiralty direct, may appoint a judge, registrar marshal, and other officers of the court and may cancel any such appointment; and in addition to any other jurisdiction of such court, may (subject to the limits imposed by this Act or the said commission from Her Majesty) vest in such court the whole or any part of the jurisdiction by or by virtue of this Act conferred upon any courts of that British possession, and may vary or revoke such vesting, and while such vesting is in force the power of such last-mentioned courts to exercise the jurisdiction so vested shall be suspended:

Provided that—

(a) nothing in this section shall authorise a Vice-Admiralty Court so established in India (.....or in any other British possession) having a representative legislature to exercise any jurisdiction, except for some purpose relating to prize, to Her Majesty's Navy, to the slave trade, to the matters dealt with by the Foreign Enlistment Act, 1870, or the Pacific Islanders Protection Acts 1872 and 1875, or to matters in which questions arise relating to treaties or conventions with foreign countries, or to international law; and

(b) In the event of a vacancy in the office of judge, registrar, marshal, or other officer of any Vice-Admiralty Courts in a British possession, the Governor of that possession may appoint a fit person to fill the vacancy until an appointment to the office is made by the Admiralty.

(3) The provisions of this Act with respect to appeals to Her Majesty in Council from courts in British possessions in the exercise of the jurisdiction conferred by this Act shall apply to appeals from Vice-Admiralty Courts, but the rules and orders made in relation to appeals from Vice-Admiralty Courts may differ from the rule made in relation to appeals from the said courts in British possessions.

(4) If Her Majesty at any time by commission under the Great Seal so directs, the Admiralty shall by writing under their hands and the seal of the office of Admiralty abolish a Vice-Admiralty Court established in any British possession under this section, and upon such abolition the jurisdiction of any Colonial Court of Admiralty in that possession which was previously suspended shall be revised.

10. Power to appoint a Vice-Admiral.—Nothing in this Act shall affect any power of appointing a Vice-Admiral in and for any British possession or any place therein; and whenever there is not a formally appointed Vice-Admiral in a British possession or any place therein the Governor of the possession shall be ex-officio Vice-Admiral thereof.

11. Exception of Channel Island and other possession.—(1) The provisions of this Act with respect to Colonial Courts of Admiralty shall not apply to the Channel Island.

(2) It shall be lawful for the Queen in Council by order to declare, with respect to any British legislature, that the jurisdiction conferred by this Act on Colonial Courts of Admiralty shall not be vested in any court of such possession, or shall be vested only to the partial or limited extent specified in the Order.

12. Application of Act to Courts under Foreign Jurisdiction Acts.—It shall be lawful for Her Majesty the Queen in Council by Order to direct that this Act shall, subject to the conditions, exceptions, and qualifications (if any) contained in the Order, apply to any Court established by Her Majesty for the exercise of jurisdiction in any place out of Her Majesty's dominions which is named in the Order, as if that Court were a Colonial Court of Admiralty, and to provide for carrying into effect such application.

13. Rules for Procedure in Slave Trade matters.—(1) It shall be lawful for Her Majesty the Queen in Council by Order to make rules as to the practice and procedure (including fees and costs) to be observed in and the returns to be made from Colonial Courts of Admiralty and Vice-Admiralty Courts in the exercise of their jurisdiction in matters relating to the slave trade, and in and from East African Courts as defined by the Slave Trade (East African Courts) Acts, 1873 and 1879.

(2) Except when inconsistent with such Order in Council, the rules of court for the time being in force in a Colonial Court of Admiralty or Vice-Admiralty Court shall, so far as applicable extend to proceedings in such court in matters relating to the slave trade.

(3) The provisions of this Act with respect to appeals to Her Majesty in Council, from courts in British possessions in the exercise of the jurisdiction conferred by this Act, shall apply, with the necessary modifications, to appeals from judgments of any East African court made or purporting to be made in exercise of the jurisdiction under the Slave Trade (East African Courts) Acts, 1873 and 1879.

14. Orders-in-Council.—It shall be lawful for Her Majesty in Council from time to time to make Orders for the purposes authorised by this Act, and to revoke and vary such Orders, and every such Order while in operation shall have effect as if it were part of this Act.

15. Interpretation.—In the construction of this Act, unless the context otherwise requires—

The expression “representative legislature” means, in relation to a British possession, a legislature comprising a legislative body of which at least one-half are elected by inhabitants of the British possession.

The expression “unlimited civil jurisdiction” means civil jurisdiction unlimited as to the value of the subject matter at issue, or as to the amount that may be claimed or recovered.

The expression “judgment” includes a decree, order, and sentence.

The expression “appeal” means any appeal, rehearing, or review; and the expression “local appeal” means an appeal to any court inferior to Her Majesty in Council.

The expression “Colonial Law” means any Act, ordinance or other law having the force of legislative enactment in a British possession and made by any authority, other than the Imperial Parliament or Her Majesty in Council competent to make laws for such possession.

16. Commencement of Act.—(1) This Act, shall save as otherwise in this Act provided, come into force in every British possession on the first day of July one thousand eight hundred and ninety-one:

Provided that—

(a) This Act shall not come into force in any of the British possessions named in the First Schedule to this Act until Her Majesty so directs by (Order in Council) and until the day named in that behalf in such order; and

(b) If before any day above mentioned rules of court for the Colonial Court of Admiralty in any British possession have been approved by Her Majesty in Council, this Act may be proclaimed in that possession by the Governor thereof, and on such proclamation shall come into force on the day named in the proclamation.

(2) The day upon which this Act comes into force in any British possession shall, as regards that British possession, be deemed to be the commencement of this Act.

(3) If, on the commencement of this Act in any British possession, rules of court have not been approved by Her Majesty in pursuance of this Act, the rules in force at such commencement under the Vice-Admiralty Courts Act, 1863 and in India the rules in force at such commencement regulating the respective Vice-Admiralty Courts or Courts of Admiralty in India, including any rules made with reference to proceedings instituted on behalf of Her Majesty's ships, shall, so far as applicable, have effect in the Colonial Court or Courts of Admiralty of such possession, and in any Vice-Admiralty Court established under this Act, in that possession as rules of Court under this Act may be revoked and varied accordingly; and all fees payable under such rules may be taken in such manner as the Colonial Court may direct, so however that the amount of each such fee shall so nearly as practicable be paid to the same officer or person who but for the passing of this Act would have been entitled to receive the same in respect of like business. So far as any such rules are inapplicable or do not extend, the rules of court for the exercise by a court of its ordinary civil jurisdiction shall have effect as rules for the exercise by the same court of the jurisdiction conferred by this Act.

(4) At any time after the passing of this Act any Colonial law may be passed, and any Vice-Admiralty Court may be established and jurisdiction vested in such Court, but any such law, established or vesting shall not come into effect until the commencement of this Act.

17. Abolition of Vice-Admiralty Courts.—On the commencement of the Act in any British possession, but subject to the provisions of this Act, every Vice-Admiralty Court in that possession shall be abolished; subject to as follows:

- (1) All judgments of such Vice-Admiralty Court shall be executed and may be appealed from in like manner as if this Act had not passed, and all appeals from any Vice-Admiralty Court pending at the commencement of this Act shall be heard and determined, and the judgment thereon executed as nearly as may be in the like manner as if this Act had not passed;
- (2) All proceedings pending in the Vice-Admiralty Court in any British possession at the commencement of this Act shall, notwithstanding the repeal of any enactment by this Act, be continued in a Colonial Court of Admiralty of the possession in manner directed by rules of Court, and, so far as no such rule extends, in like manner, as nearly as may be, as if they had been originally begun in such court;
- (3) Where any person holding an office, whether that of judge, registrar, or marshal, or any other office in any such Vice-Admiralty Court in a British possession, suffers any pecuniary loss in consequence of the abolition of such court, the Government of the British possession on complain of such person, shall provide that such person shall receive reasonable compensation (by way of an increase of salary or a capital sum, or otherwise) in respect of his loss, subject nevertheless to the performance, if required by the said Government, of the like duties as before such abolition;
- (4) All books, papers, documents, office furniture, and other things at the commencement of this Act belonging or appertaining to any Vice-Admiralty Court, shall be delivered over to the proper office of the Colonial Court of Admiralty or be otherwise dealt with in such manner as subject to any directions from Her Majesty, the Governor may direct;

(5) Where, at the commencement of this Act in a British possession, any person holds a commission to act as advocate in any Vice-Admiralty Court abolished by this Act, either for Her Majesty or for the Admiralty, such commission shall be of the same avail in every court of the same British possession exercising jurisdiction under this Act as if, such court were the court mentioned or referred to in such commission.

ANNEXURE V

DRAFT

Admiralty Act of India, 1987

(ACT OF 1987)

An Act to amend the Law relating to Admiralty Jurisdiction, legal proceedings in connection with the ships and the arrest of ships and other property and for purposes connected therewith.

BE IT ENACTED BY PARLIAMENT in the Thirty Eighth Year of the Republic of India as follows :

CHAPTER I

PRELIMINARY

1. **Short title, commencement and application.**—(1) This Act may be called "The Admiralty Act of India, 1987".

(2) It shall come into force on such date as the Central Government may, by notification, in the Official Gazette, appoint.

(3) It applies to the Courts of Admiralty constituted by the Central Government from time to time under (the Admiralty Courts Act) this Act.

2. **Definitions.**—In this Act, unless the context otherwise requires:

- (a) "Admiralty Court" means a Court constituted as an Admiralty Court, or any other High Court in India which has been vested with Admiralty Jurisdiction;
- (b) "Ship" includes any vessel made for the conveyance (mainly by Water) of human being or of property but excludes sailing vessels and any class of vessels as may be notified by the Central Government by notification in the Official Gazette.

CHAPTER II

ADMIRALTY JURISDICTION AND OTHER PROVISIONS AS TO SHIPS

3. **Admiralty Jurisdiction of the Court.**—(1) The Admiralty Jurisdiction of the Court shall be as follows, that is to say, Jurisdiction to hear and determine any of the following questions or claims:

- (a) Any claim to the possession or ownership of a ship or to the ownership of any share therein;
- (b) Any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
- (c) Any claim in respect of a mortgage of or charge on a ship or any share therein;
- (d) Any claim for damage done by a ship; including civil liability for oil pollution damage under Part XB of the Merchant Shipping Act;
- (e) Any claim for damage received by a ship;

- (f) Any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the Master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
- (g) Any claim for loss of or damage to goods carried in a ship;
- (h) 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;
- (i) Any claim in the nature of salvage of life, vessel, cargo property, equipment or wreck, or preservation thereof;
- (j) Any claim in the nature of towage in respect of a ship or any aircraft;
- (k) Any claim in the nature of pilotage in respect of a ship or an aircraft;
- (l) Any claim in respect of goods, materials, bunker or other necessaries supplied to a ship for her operation or maintenance;
- (m) Any claim in respect of the construction, repairs or equipment of a ship or any charges or dues of the Port Authorities under the Indian Ports Act, 1908 or the Major Port Trusts Act, 1963;
- (n) Any claim by a Master or member of the crew of a ship for wages and any claim by or in respect of a Master or member of the crew of a ship for any money or property which, under the provisions of any Law is recoverable as wages and in the manner in which wages may be recovered;
- (o) Any claim by a Master, Shipper, Charterer or Agent in respect of disbursement made on account of a ship;
- (p) Any claim arising out of an act which is or is claimed to be a general average act;
- (q) Any claim arising out of bottomry;
- (r) Any claim for services rendered to a ship for her operation or maintenance;
- (s) Any claim for the forfeiture or condemnation of a Ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure; and,
- (t) Any action by shipowners or other persons under Part XA or Part XB of the Merchant Shipping Act (Act 44) of 1958 as amended from time to time for the limitation of the amount of their liability in connection with the ship or other property together with any other jurisdiction which either was vested in High Court of Admiralty at Bombay, Calcutta and Madras under the Admiralty Act, 1841 and 1861 and the Colonial Courts of (India) Act, 1891 as being Courts with Admiralty Jurisdiction and any other Admiralty Jurisdiction vested in the High Courts at Bombay, Calcutta and Madras.

(2) The jurisdiction of the Admiralty Courts under clause (b) of Sub-section (1) of this Section includes power to settle any account outstanding and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, shall be sold, and to make such other order as the Court thinks fit.

(3) The preceding provisions of this section apply—

- (a) in relation to all ships whether Indian or not and whether registered or not and whenever the residence or domicile of their Owners may be;
- (b) in relation to all claims, wheresoever arising (including, in the case of cargo or wreck of salvage, claims in respect of cargo or wreck found on land); and
- (c) so far as they relate to mortgages or charges, to all mortgages or charges whether registered or not and whether legal or equitable, including mortgages and charges created under Foreign Law.

4. **Mode of exercise of Admiralty Jurisdiction.**—(1) Subject to the provisions of Section 5 of this Act, the Jurisdiction of the Admiralty Court may in all cases be invoked by an action *in personam*.

(2) The Jurisdiction of the Admiralty Court may, in the cases mentioned in paragraphs (a) to (c) and (s) Sub-section (1) of Section 3 of this Act be invoked by an action *in rem* against the ship or property in question by its arrest.

(3) In any case in which there is a maritime lien or other charge on any ship, or other property including bunker for the amount claimed, the Admiralty Jurisdiction of the Court, may be invoked an action *in rem* against that ship or property in question by its arrest.

(4) In the case of any such claim as is mentioned in paragraphs (d) and (f) to (r) of Sub-section (1) of Section 3 of this Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action *in personam* was, when the cause of action arose, the Owner or Charterer of, or in possession or in control of, the ship (whether the claim gives rise to a maritime lien on the ship or not) may be invoked by an action *in rem* by an arrest as aforesaid against—

(a) that ship, if at the time when the action is brought she is beneficially owned in respect of all the shares therein by that person; or the charterer if it is under a party by demise

OR

(b) any other ship which, at the time when the action is brought, she is beneficially owned in respect of all her shares thereon.

(5) Notwithstanding anything in the preceding provisions of this section, the Jurisdiction of the Admiralty Court shall not be invoked by an action *in rem* in the case of any such claim as it mentioned in clause (n) of Sub-section (1) of Section 3 of this Act unless the claim relates wholly or partly to wages only.

(6) Where, in the exercise of its Jurisdiction, the Admiralty Court orders any ship or other property to be sold, the Admiralty Court shall have jurisdiction to hear and determine any question arising as to the title to the proceeds of sale.

(7) In determining for the purposes of Sub-section (4) of this Section whether a person would be liable on a claim in an action *in personam* it shall be assumed that he has his habitual residence or a place of business within India.

(8) Notwithstanding anything contained in this Act, the Jurisdiction of the Admiralty Court shall not be invoked by an action *in rem* by arrest of a ship, in the case of a ship registered in India as an Indian ship, unless six clear days notice in writing is served upon the registered owners or the Master of the ship intended to be proceeded against, stating the cause of action and the quantum of claim and the date and the time of application to the court for arrest and calling upon the owners or Master to provide security for the claim to the satisfaction of the Admiralty Court in lieu of the arrest, and where such a security is provided the court shall entertain the action without arresting the ship and shall order arrest of the ship only in the event of failure to provide such security.

5. Jurisdiction in personam.—(1) The Admiralty Court shall not entertain an action *in personam* to enforce a claim to which this section applies UNLESS

- (a) the defendant at the commencement of the action, actually and voluntarily resides or carries on business or personally works for gain in India;
- (b) the cause of action wholly or in part arose in India including inland waters of India or within the limits of a Port of India;

OR

- (c) an action arising out of the same incident or series of incidents is proceeding in the Admiralty Court or has been heard and determined in the Admiralty Court.

(2) The Admiralty Court shall not entertain an action *in personam* to enforce a claim to which this Section applies until any proceedings previously brought by the plaintiff in any Court outside India against the same defendant in respect of the same incident or series of incidents, have been discontinued or otherwise come to an end.

(3) The preceding provisions of this Section shall apply to counter claims (not being counterclaims in proceedings arising out of the same incident or series of incidents) as they apply to actions *in personam* but as if the reference to this plaintiff and the defendant were respectively references to the plaintiff on the counterclaim and the defendant to the counterclaim.

(4) The preceding provisions of this Section shall not apply to any action or counterclaim if the defendant thereto submits or has agreed to submit to the Jurisdiction of the Admiralty Court.

(5) Subject to the provisions of Sub-section (2) of this Section, the Admiralty Court shall have jurisdiction to entertain an action *in personam* to enforce a claim to which this Section applies whenever any of the conditions specified in paragraphs (a) to (c) Sub-section (1) of this sections are satisfied, and the Rules of the Court relating to the service of process outside the Jurisdiction shall make such provisions as may appear to the rule-making authority to be appropriate having regard to the provisions of this sub-section.

(6) The claim to which the Section applies are claims for damage, loss of life or personal injury arising out of a collision between ships or out of the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships or out of non-compliance on the part of one or more of two or more of two or more ships, within the Collision Regulations.

(7) In this Section—

“Inland Waters” includes any part of the sea adjacent to the Coast of India within the territorial sovereignty of the Republic of India; “Port” means any port, harbour, river, estuary, haven, dock, canal or other place so long as a person or body of persons is empowered by or under an Act to make charges in respect of ships entering it or using the facilities therein and “limits of a port” means the limits thereof as fixed

by or under the Indian Ports Act or the Major Port Trusts Act; "Collision Regulation" means regulations and rules made under the Merchant Shipping Act and any Rules, Byelaws and/or Regulations made under the Indian Ports Act, 1908 or the Major Port Trusts Act, 1963.

6. Jurisdiction for Wages.—(1) Notwithstanding the provisions contained in Section 146 of the Merchant Shipping Act, 1958 the Admiralty Court shall have jurisdiction to entertain an action for wages.

(2) Nothing in this part of the Act shall be construed as limiting the jurisdiction of the Court to entertain an action for wages by the Master or a member of the crew of a ship, not being an Indian ship.

7. (1) WHEREIN a suit *in rem* the Admiralty Court has ordered the property proceeded against to be sold, any party who has obtained or obtains a decree or order against the said property or the proceeds of sale thereof **may after obtaining judgment apply to the Admiralty Court by a notice of motion for an order determining the order or priority of the claims against the proceeds of sale of the said property.**

(2) WHEREIN a suit *in rem* the Admiralty Courts orders the property proceeded against to be sold, IT SHALL FURTHER ORDER that a notice be given in one international and one national newspaper as the Admiralty Court may specify that the property has been sold by the Order of the Admiralty court in a suit *in rem* giving the number of suit and the names of the parties to the suits, and that the gross sale proceeds, specifying the amount thereof, have been paid into the Admiralty Court and that the order of priority of the claims the said proceeds will be determined only after the expiration of a period of ninety days from the date of the publication of the said notice and that any party having a claim against the property or the proceeds of sale thereof, should apply to the Court for leave to intervene and prove its claim before the Admiralty Court by filing a suit and obtaining a decree before the expiration of that period.

(3) The Admiralty Court may extend the period of ninety days on the application of any party who has instituted proceedings before the Court as provided in sub-section (2) or before any other Admiralty Court of competent jurisdiction in India for obtaining a decree against the property or proceeds of sale and the court shall not disburse the sale proceeds and/or determine priority until thirty days after the disposal of the said suit or any appeal filed therefrom.

(4) Notwithstanding what is stated in Sub-section 3 above, the Admiralty Court may determine priority and direct payment out of the sale proceeds on an application by any party who has obtained a decree or order against the property or the sale proceeds if the Admiralty Court is of the opinion that the claim of the applicant is in any event on priority to the claim for which a suit has been instituted PROVIDED THAT the Admiralty Court shall hear all parties who have made claims and filed suits against the property or sale proceeds within the prescribed period of 90 days before determining priority and directing disbursement out of sale proceeds.

8. Vesting of right on sale of ship.—On a sale of a ship by an Admiralty Court, the ship shall vest in the purchaser free from all encumbrances including mortgages, charges, Hypothecation and maritime liens.

9. Power to make rules.—The Central Government may make Rules for regulating the procedure and practice in cases brought before the Courts of Admiralty under this Act.

10. Maritime liens.—(1) Maritime lien shall attach to a ship or a property in the following instances of claim and the date of such accrual of maritime lien shall be date of which the operations giving rise to the said claims were performed:

(a) Claim for salvage of life, ship or property.

- (b) Wages and other sums due to the Master or the members of the crew of the ship in respect of their employment on the ship.
 - (c) Port and canal and other waterway dues and pilotage dues.
 - (d) Loss of life or personal injury in direct connection with the operation of the ship.
 - (e) Claim for contribution of general average, and
 - (f) Claim based on tort arising out of physical loss or damage caused by the operation of the ship other than the loss or damage to cargo, containers and passengers' effects carried on the ship.
- (2) A maritime lien shall be extinguished on the expiry of one year from the date on which the lien has been attached to the property, provided that the claim, if any, not barred by the law of limitation, may be enforced by an action *in personam*. This period of one year shall be extended further if the claimant of lien is unable to commence an action to enforce the lien against the vessel for reasons beyond his control.

11. **Order of Priority of Claims.**—(1) The order of claim for determining inter se priority in an admiralty action shall be as follows:

- (a) A claim where there is a maritime lien on any ship or other property including bunker, against which action is proceeded with.
 - (b) Mortgages and charges of the ship or other property against which the action is proceeded with.
 - (c) All other claims.
- (2) The priority among the claims inter se in clause 1(a) above shall be as follows:
- (a) Claim for salvage of life, ship or property provided that salvage of life shall take priority over other salvages.
 - (b) Wages and other sums due to the Master or the members of the crew of the ship in respect of their employment in the ship not exceeding four month's wages.
 - (c) Port, canal and other waterway dues and pilotage dues.
 - (d) Balance of wages and other sums due to the Master or the members of the crew of the ship in respect of their employment on the ship after deducting the amount paid under clause (b) above.
 - (e) (i) Loss of life or personal injury in direct connection with the operation of the ship;
 - (ii) Claim for contribution for general average;
 - (iii) Claim based on tort arising out of physical damage or damages caused by the operation of the ship other than loss or damage to cargo, containers, and passengers' effects carried on the ship.
 - (iv) Bottomry.
- (3) (i) Claims prior in order of priority shall exclude subsequent;
- (ii) If there are more claims than one in each of the category of priority, they shall rank pari passu.
- (iii) Claim for various salvages shall rank in inverse order of time when the claim secured thereto accrue.
- (iv) Claims for salvage, port, dues, wages, and the nature of general average shall take priority over all other claims mentioned in Clause D(e) above which are attached to ship prior to the time when the operations giving rise to the said claims were performed.

12. In all suits under this Act, the nationality of the ship proceeded against shall be stated in the plaint, and if the ship is a foreign ship, notice or institution of the suit shall be given to the Consul of the State to which the ship belongs if there be one resident in the City where the Admiralty Court is situated. A statement of service of such notice or a statement that there is no such Consul present in the City, shall be made in the affidavit, in support of any application for arrest of the ship. If a notice is served on the Consul, a copy of the said notice shall be annexed to the affidavit.

ANNEXURE VI

DRAFT

Admiralty Courts Act, 1987

Preamble

This is an Act to constitute Admiralty Courts relating to ships and the arrest of a ship and other property and for purposes connected therewith and to establish a Special Court for the same.

BE IT ENACTED BY PARLIAMENT in the Thirty-eighth year of the Republic of India as follows:

1. This Act may be called, "The Admiralty Courts Act of India, 1987".
2. It shall come into force on such date as the Central Government by a Notification in their Gazette appoint.
3. The Central Government shall constitute and establish Admiralty Courts in the Cities of Bombay, Calcutta, Madras and Cochin and all the Admiralty Courts shall have Jurisdiction throughout the Territory of India and throughout the Coast of India and including inland and territorial waters.
4. The Jurisdiction of the Admiralty Courts shall be to exercise exclusive jurisdiction in regard to all matters arising under the Admiralty Act of India, 1987 and/or any other Law for the time being in force.
5. An Admiralty Court shall be presided over by one Judge and the Central Government shall stand empowered to constitute such number of Benches as it deems fit in each of the Cities referred to in Section 3 to hear such suits as may fall within the definition of "Admiralty Jurisdiction", as it may appear necessary for the Central Government to do so.
6. An Admiralty Judge shall be appointed from among persons who have necessary qualifications as required for the appointment of a Judge of a High Court of any State and shall be appointed by the President of India in the same manner as a Judge of the High Court of any State PROVIDED THAT the consultation for such appointment shall be with the Chief Justice of India.
7. The salary, perquisites and protocols applicable to an Admiralty Judge shall be the same as that of a Judge of the High Court.
8. The Central Government shall constitute an Appeal Court of Admiralty at Bombay and the Appeal Court shall be presided over by two Judges which shall hear all Appeals against the decision of the Admiralty Courts.
9. Admiralty Courts shall be subject to the general superintendence of the Supreme Court of India.
10. The provisions in this Act shall have effect in respect of any cause of action arising before coming into operation hereof and all the proceedings pending in any High Court exercising Admiralty Jurisdiction shall forthwith stand transferred to the nearest Courts constituted under this Act, and this Court shall dispose of all such cases in accordance with the provisions of Law in force when the cause of action arose.
11. A suit before the Admiralty Court shall be commenced by a plaint signed and verified according to the provisions of the Code of Civil Procedure, 1973.

12. The Central Government shall frame Rules and Regulations for regulating the procedure and practice in the Admiralty Courts or for any other matter including the payment of court fees, poundage and other charges for the enforcement of the provisions of this Act.

13. Any person aggrieved by any order or judgment of the Court of Admiralty may prefer an appeal to the Appeal Court of Admiralty.

14. Notwithstanding what is stated in any other Law for the time being in force, no appeals or revision shall lie against an order of the Appeal Court of Admiralty to any court PROVIDED THAT subject to the grant of special leave by the Supreme Court of India under Article 132 of the Constitution of India, an appeal may be preferred to the Supreme Court of India on a question of law, jurisdiction or any other question of national or international importance.

15. The provisions of the Civil Procedure Code shall apply to all the proceedings before the Admiralty Court in so far as it is not inconsistent with or contrary to the provisions made hereunder or the Admiralty Act 1987, or rules made under any of these Acts.

16. The Central Government shall publish in the Official Gazette a list of assessors containing the names of 10 persons who have specialised qualifications or experience in Admiralty and Maritime matters for each of the Admiralty Courts in the cities of Bombay, Madras, Calcutta and Cochin, to assist the Court of Admiralty or the Appeal Court of Admiralty Assessors.

17. In any proceeding before the Admiralty Court either in its original or Appellate or Jurisdiction, the Court shall on request of either party to such cause a summons to its assistance, in such manner as it may direct or it may or Appellate or Jurisdiction. the Court shall on request of either party to such such Assessors shall attend and assist the Court accordingly. Every such assessor shall receive fees for his attendance as prescribed by the rules to be paid by such of the parties as the court may direct.

18. Appointment of Assessors shall not be a bar to any of the parties examining an expert witness.

19. The provisions of clause 32 of the Letters Patent dated 28th December 1865 for the Courts of Bombay, Madras and Calcutta are hereby repealed.

ANNEXURE VII

GOVERNMENT OF INDIA

Ministry of Surface Transport (Shipping Wing)

No. SR-10011/10/86-MA

New Delhi, the 3rd December, 1986

To

The Director General of Shipping,
'Jahaz Bhavan',
Walchand Hirachand Marg.
BOMBAY-400 001.

SUBJECT: Review of the Maritime Law and Admiralty Jurisdiction—Setting up of a Committee—Reg.

Sir,

In the light of the need expressed by the shipping industry in general, including shipping agents, seafarer's community, shippers etc., to make India's Maritime Law and Admiralty Jurisdiction up-to-date and more responsive to the needs of the industry and to make it more conducive to the efficient and speedy disposal of disputes, the undersigned is directed to say that Government have decided to set up a Committee for this purpose with the following composition:

- | | |
|---|-------------------------|
| 1. Shri Parveen Singh,
Director-General of Shipping. | <i>Chairman</i> |
| 2. Shri K.C. Sidhwani,
Sr. Central Government Advocate,
Ministry of Law,
Justice & Company Affairs,
Bombay. | <i>Member</i> |
| 3. Dr. S.N. Sanklacha.
INSA, Bombay. | <i>Member</i> |
| 4. Shri H.N. Fotedar,
Managing Director,
Indian Ports Association, New Delhi. | <i>Member</i> |
| 5. Shri S. Venkateswaran,
Advocate,
High Court, Bombay. | <i>Member</i> |
| 6. Dr. Leo Barnes,
General Secretary,
NUSI, Bombay. | <i>Member</i> |
| 7. Shri B.S. Bhesania,
Mulla & Mulla & Craigie,
Blunt & Caroe, Bombay. | <i>Member</i> |
| 8. Shri C.M. Shetye
Dy. Director General of Shipping,
Bombay. | <i>Member-Secretary</i> |

2. The terms of reference of the above Committee may be as follows:

- (a) To study the various aspects concerning Admiralty Jurisdiction including the advances made in other countries and international conventions adopted on this Jurisdiction;
- (b) To recommend what up-to-date consolidated Maritime Legislation could be introduced supported by a report explaining the statements, objects and reasons; and
- (c) To make specific suggestions to establish separate Admiralty Jurisdiction/Admiralty Courts/Tribunals for the purpose of more effectively dealing with Admiralty and Maritime Disputes.

3. The Committee may co-opt any persons or interests as necessary and meet or consult various interest/organisations for the purpose of finalising its work.

4. The above Committee will function in Bombay with immediate effect and shall submit its report to the Government within six months.

5. The expenses of non-official Members on travel and stay in connection with the meetings of the Committee will be met by their respective organisations. Similar expenses of official Members shall be met by their respective Departments.

6. Office of the Director General of Shipping shall provide the Secretarial assistance to the Committee.

Yours faithfully,

Sd/-
(D.O. SOOD)
Under Secretary to the Govt. of India.

ANNEXURE VIII

Admiralty Act, 199

(Act No. of 199)

An Act to consolidate and amend the law relating to the admiralty jurisdiction of courts in India, of legal proceedings in connection with ships their arrest, detention and sale and matters connected therewith.

BE IT ENACTED BY PARLIAMENT IN THE FORTY
YEAR OF THE REPUBLIC OF INDIA AS FOLLOWS:

CHAPTER I

PRELIMINARY

1. Short title and commencement.—(1) This Act may be called 'The Admiralty Act, 199'.

(2) It shall come into force on such date as the Central Government may by notification in the Official Gazette appoint.

2. Definition.—In this Act, unless the context otherwise requires:

- (a) "Charge" means any charge with the exception of light dues, local light dues and any other charges in respect of lighthouses, buoys or beacons and of charges in respect of pilotage;
 - (b) "collision regulations" means rules and regulations made under the Merchant Shipping Act (Act 44 of 1958) or any rules, bye-laws and regulations made under the Indian Ports Act (Act 15 of 1908) or the Major Port Trusts Act (Act 38 of 1963);
 - (c) "Court" means the High Court or other court in seisin of admiralty proceedings under Section 3 or Section 4;
 - (d) "goods" include baggage;
 - (e) "inland waters" includes (i) all waters that are in fact navigable, irrespective of whether they are affected by tides or are land-locked or open or contain salt or fresh waters and (ii) also any part of the sea adjacent to the coast of India certified by a Secretary to the Government of India to be designated in this behalf to be waters falling by international law to be treated as within the territorial sovereignty of India apart from the operation of that law in relation to "territorial waters";
 - (f) "maritime lien" means the maritime lien specified in Section 13;
 - (g) "master" has the same meaning as in the Merchant Shipping Act (Act 44 of 1958) and includes every person (except a sailor) having command or charge of a ship;
 - (h) "port" means any port, harbour, river, estuary, haven, dock, canal, or other place so long as a person or body of persons is empowered by or under an Act to make charges in respect of ships entering it or using the facilities therein; and
- "limits of a port" means the limits thereof as fixed by or under the Indian Ports Act (Act 15 of 1908) or the Major Port Trusts Act (Act 38 of 1963);

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- (i) "ship" includes any vessel for the conveyance (mainly by water) of human beings or property, but excludes hovercraft and any other class of vessels as may be notified by the Central Government in this behalf in the official gazette;
 - (j) "towage" and "pilotage" in relation to an aircraft mean towage and pilotage while the aircraft is water-borne.

CHAPTER II

JURISDICTION OF COURTS

3. Courts to exercise civil jurisdiction.—(1) Subject to the provisions of sub-section (2), the civil jurisdiction in respect of all claims under this Act shall vest exclusively in the High Court and be exercisable in accordance with the provisions hereinafter contained in this Chapter.

(2) If, at any time, the Central Government is of opinion that the volume of claims in any High Court is unduly large, it may, in consultation with the Chief Justice of India and the Chief Justice of the concerned High Court, by notification in the Official Gazette, also confer jurisdiction in such matters, wholly or to the extent considered necessary, on such of the principal civil courts of the State as may be specified in the notification.

(3) Any notification issued under sub-section (2) may make provisions ancillary or incidental to the above purpose, including those governing the institution of such cases in, or transfer of pending cases to, such courts.

4. Transfer of actions from one High Court to another.—(1) The Supreme Court may, *suo motu or on the application* of any party, transfer any proceedings in admiralty jurisdiction from one High Court to any other High Court competent to exercise such jurisdiction under Section 3 at any stage of the proceedings if, for any reason, it considers it necessary to do so.

(2) Order of transfer under sub-section (1) shall be passed after giving all the parties to the action opportunity of being heard and the transferred proceedings may be continued in the High Court to which they may be transferred from the stage at which they stood at the time of transfer.

5. Admiralty Jurisdiction.—(1) The Admiralty Jurisdiction of the Court shall be as follows, that is to say—

- (a) jurisdiction to hear and determine any of the questions and claims mentioned in sub-section (2);
- (b) jurisdiction in relation to any of the proceedings mentioned in sub-section (3);
- (c) any other admiralty jurisdiction which it had immediately before the commencement of the Act by virtue of the Admiralty Act, 1861 or the Colonial Court of Admiralty Act, 1890 or the Colonial Courts of Admiralty (India) Act (Act XVI of 1891) or otherwise howsoever;
- (d) any jurisdiction connected with ships or aircraft which is vested in the High Court apart from this section and is for the time being, by rules of court made or coming into force after the commencement of this Act, assigned and directed to be exercised by the Admiralty Court.

(2) The questions and claims referred to in sub-section (1)(a) include—

- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein;

- (b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
- (c) any claim in respect of a mortgage of or charge on a ship or any share therein;
- (d) any claim for damage received by a ship during her stay, business or voyage;
- (e) any claim for damage done by a ship including civil liability for oil pollution damage under Part X-B of the Merchant Shipping Act (Act 44 of 1958);
- (f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of—
 - (i) the owners, charterers or persons in possession or control of a ship; or
 - (ii) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible,

being an act, neglect or default, in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
- (g) any claim for loss of or damage to goods carried on in a ship;
- (h) 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;
- (i) any claim in the nature of salvage of life, vessel, cargo, property, equipment or wreck or preservation thereof;
- (j) any claim in the nature of towage in respect of a ship or an aircraft;
- (k) any claim in the nature of pilotage in respect of a ship or an aircraft;
- (l) any claim in respect of goods, materials, bunker or other necessities supplied to a ship or any services rendered to a ship for her operation or maintenance;
- (m) any claim in respect of a construction, repair or equipment of a ship or in respect of any charges or dues to the Port Authorities under the Indian Ports Act (Act 15 of 1908) or the Major Port Trusts Act (Act 38 of 1963);
- (n) any claim by a master or member of the crew of a ship for wages including any sum allotted out of wages or adjudged to be due by way of wages and any claim by or in respect of a master or member of the crew of a ship for any money or property which, under the provisions of any law, is recoverable as wages and in the manner in which wages may be recovered;
- (o) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
- (p) any claim arising out of an act which is or is claimed to be a general average act;
- (q) any claim arising out of bottomry;
- (r) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for debts of Admiralty.

(3) The proceedings referred to in sub-section (1) (b) include:

- (a) any application to the High Court under the Merchant Shipping Act (Act 44 of 1958) for the appointment of a person to act as a substitute for a person incapable of acting;
- (b) any action to enforce a claim for damage, loss of life or personal injury arising out of—
 - (i) a collision between ships; or
 - (ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships; or
 - (iii) non-compliance, on the part of one or more of two or more ships, with the collision regulations;
- (c) any action by shipowners or other persons under the Merchant Shipping Act (Act 44 of 1958) for the limitation of the amount of their liability in connection with a ship or other property.

(4) The jurisdiction of the Court under sub-section (2) (b) includes power to settle any account outstanding and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, shall be sold, and to make such other order as the court thinks fit.

(5) The reference in sub-section (2) (i) to claim in the nature of salvage includes a reference to such claims for services rendered in saving life from a ship or in preserving cargo, apparel or wreck as under section 390-404 of the Merchant Shipping Act (Act 44 of 1958), are authorised to be made in connection with a ship.

(6) The preceding provisions of this section shall apply—

- (a) in relation to all ships or aircraft, whether Indian or not and wherever the residence or domicile of their owners may be;
- (b) in relation to all claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and
- (c) so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law:

Provided that nothing in this sub-section shall be construed as extending to cases in which money or property is recoverable under any of the provisions of the Merchant Shipping Act (Act 44 of 1958).

6. **Mode of exercise of admiralty jurisdiction.**—(1) Subject to the provisions of section 7 of this Act, the jurisdiction of the Admiralty Court may in all cases be invoked by an action *in personam*.

(2) The jurisdiction of the Admiralty Court may, in the cases mentioned in clauses (a) to (c) and (r) of sub-section (1) of Section 5 of this Act, be invoked by an action *in rem* against the ship or property in question by its arrest.

(3) In any case in which there is a maritime lien or other charge on any ship, or other property including bunker for the amount claimed, the Admiralty Jurisdiction of the Court may be, invoked by an action *in rem* against that ship or property in question.

(4) In the case of any such claim as is mentioned in section 5 (2) (e) to (r), where—

- (a) the claim arises in connection with a ship; and
- (b) the person who would be liable in the claim in an action *in personam* (hereinafter referred to as 'the relevant person') was, when the cause

of action arose, the owner, or charterer of, or in possession, or in control of a ship, admiralty jurisdiction may be invoked (whether or not the claim gives rise to a maritime lien on that ship) by an action *in rem* against—

- (i) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or
- (ii) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.

(5) Notwithstanding anything in the preceding provisions of this section, the jurisdiction of the Admiralty Court shall not be invoked by an action *in rem* in the case of any such claim as is mentioned in paragraph (n) of sub-section (2) of Section 5 of this Act unless the claim relates wholly or partly to wages.

(6) Where, in the exercise of its Admiralty jurisdiction, the Court orders any ship or other property to be sold, the court shall have jurisdiction to hear and determine any question arising as to the title to the proceeds of sale.

(7) In determining for the purposes of sub-section (4) of this section whether a person would be liable on a claim in an action *in personam*, the Court may presume that such person, at the commencement of the action, actually and voluntarily resides or carries on business or personally works for gain in India.

(8) Notwithstanding anything contained in this Act, the jurisdiction of the Admiralty Court shall not be invoked by an action *in rem* by arrest of a ship, in the case of a ship registered in India as an Indian ship, unless six clear days' notice in writing is served upon the registered owners or the master of the ship intended to be proceeded against, stating the cause of action and the quantum of claim and the date and time of application to the court for arrest and calling upon the owners or master to provide security for the claim to the satisfaction of the Admiralty Court in lieu of the arrest, and where such a security is provided the court shall entertain the action without arresting the ship and shall order arrest of the ship only in the event of failure to provide such security.

7. **Jurisdiction in personam.**—(1) This section applies to any claim for damage, loss of life or personal injury arising out of—

- (a) a collision between ships; or
- (b) the carrying out of, or omission to carry out, a manoeuvre in the case of one or more of two or more ships; or
- (c) non-compliance, on the part of one or more of two or more ships, with the collision regulations.

(2) Subject to the provisions of any law a Court in India having Admiralty jurisdiction shall not entertain any action *in personam* as against any defendant, unless

- (a) the defendant or all the defendants (where there are more than one), at the time of the commencement of the action, actually and voluntarily reside or carry on business or personally work for gain in India:

Provided that an action can be entertained where there are more defendants that one who, at the time of the action, do not actually and voluntarily reside or carry on business or personally work for gain in India either if the leave of the court is given for, or each of such defendants acquiesces in, such institution; or

- (b) the cause of action wholly or in part arose in India including inland waters of India or within the limits of a port of India; or

- (c) an action arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined by the court; or
- (d) a ship is beneficially owned or chartered by demise by the defendant has been arrested and those proceedings are pending.

(3) The Court shall not entertain any action *in personam* to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside India against the same defendant in respect of the same incident or series of incidents have been discontinued or have otherwise come to an end.

(4) Sub-sections (2) and (3) shall apply to counterclaims (except counter-claims in proceedings arising out of the same incident or series of incidents) as they apply to actions, the reference to the plaintiff and the defendant being for this purpose read as reference to the plaintiff on the counterclaim and the defendant to the counterclaim respectively.

(5) Sub-sections (2) and (3) shall not apply to any action or counterclaim if the defendant thereto submits or has agreed to submit to the jurisdiction of the Court.

(6) Subject to the provisions of sub-section 3), the Court shall have jurisdiction to entertain an action *in personam* to enforce a claim to which this section applies whenever any of the conditions specified in sub-section (2) (a) to (d) is satisfied and the rules of court relating to the service of process outside the jurisdiction shall make such provision as may appear to the rule-making authority to be appropriate having regard to the provisions of this subsection.

(7) Nothing in this section shall prevent an action which is brought in accordance with the provisions of this section in the High Court from being transferred, in accordance with the enactments in that behalf, to some other court.

8. Discretion of Court.—Notwithstanding anything contained in sections 6 and 7 of this Act, it will be open to the Court, at any stage of the proceedings and wholly in its discretion, to treat the proceedings as *in rem* or *in personam*, in whole or in part, and to grant such reliefs and make such directions and orders (including amendments to pleadings) as it may consider appropriate and just notwithstanding that the action may have been described by the parties as belonging to one or the other category.

9. Supplementary provisions.—(1) The Admiralty Court shall have jurisdiction to entertain an action for wages notwithstanding anything contained in the Merchant Shipping Act, (Act 44 of 1958).

(2) Nothing in this Act shall,—

- (a) be construed as limiting the jurisdiction of the Court to refuse to entertain an action for wages by the master or a member of the crew of a ship, not being an Indian Ship;
- (b) affect the provisions of Part XIII of the Merchant Shipping Act, 1958 (Act 44 of 1958) (power of a receiver to wreck to detain a ship in respect of a salvage claim); or
- (c) authorise proceedings *in rem* in respect of any claim against the State or the arrest, detention or sale of any ship belonging to any State.

10. Vesting of rights on sale of ship.—On the sale of a ship by Court, the ship shall vest in the purchaser free from all encumbrances including mortgages, charges, hypothecations and maritime liens.

11. Distribution of sale proceeds.—(1) Wherein an action *in rem* the Court has ordered the property proceeded against to be sold, any party who

has obtained or obtains a decree or order against the said property or the proceeds of sale thereof may after obtaining judgement apply to the Court by a notice of motion for an order determining the order of priority of the claims against the proceeds of sale of the said property.

(2) Wherein an action *in rem* the Court orders the property proceeded against to be sold and the property has been sold, the Court shall order that a notice be given in one international and one national newspaper as the Court may specify that the property has been sold by the order of the Court in an action *in rem* giving the number of the action and the names of the parties thereto and that the gross sale proceeds, specifying the amount thereof, have been paid into the Court and that the order of priority of the claims of the said proceeds will be determined only after the expiration of a period of ninety days from the date of the publication of the said notice and that any party having a claim against the property or the proceeds of sale thereof should apply to the Court for leave to intervene and prove its claim before the Court by filing an action before it or filing a suit before any other appropriate court before the expiration of that period.

(3) The Court may extend the period of ninety days on the application of any party who has instituted proceedings before the Court as provided in subsection (2) or before any other Court of competent jurisdiction in India for obtaining a decree against the property or proceeds of sale and the court shall not disburse the sale proceeds and/or determine priority until thirty days after the disposal of the said suit or action or any appeal filed therefrom.

(4) Notwithstanding the provisions contained in subsection (3) above, the Court may determine priority and direct payment out of the sale proceeds on an application by any party who has obtained a decree or order against the property or the sale proceeds if the Court is of the opinion that the claim of the applicant is in any event entitled to priority over the claim for which a suit or action has been instituted:

Provided that the Court shall hear all parties who may have made claims and filed suit or action against the property or sale proceeds within the prescribed period of 90 days before determining priority and directing disbursement out of the sale proceeds.

12. Order of Priority of Claims.—(1) The order of claim determining *inter se* priority in an admiralty action shall be as follows:

- (a) A claim where there is a maritime lien on any ship or other property including bunker, against which action is proceeded with.
- (b) Mortgages and charges on the ship or other property against which the action is proceeded with.
- (c) All other claims.

(2) The priority among the claims *inter se* in clause 1(a) above shall be as follows:

- (a) Claims for salvage of life, ship or property provided that salvage of life shall take priority over other salvages.
- (b) Wages and other sums due to the master or the members of the crew of the ship in respect of their employment in the ship not exceeding six months' wages.
- (c) Port, canal and other waterway dues and Pilotage dues.
- (d) Balance of wages and other sums due to the master or the members of the crew of the ship in respect of their employment on the ship after deducting the amount paid under clause (b) above.
- (e) (i) Claims in respect of the loss of life or personal injury in direct connection with the operation of the ship;
- (ii) Claims for contribution for general average;

(iii) Claims based on tort arising out of physical damage or damage caused by the operation of the ship other than loss or damage to cargo containers and passengers' effects carried on the ship;

(iv) Bottomry.

(3) The following rules shall apply in determining the priority of claims *inter se*—

- (i) Claims prior in order of priority shall exclude subsequent ones.
- (ii) If there are more claims than one in any category of priority, they shall rank *pari passu*.
- (iii) Claims for various salvages shall rank in inverse order of time when the claim secured thereto accrue.
- (iv) Claims for salvage, port dues, wages and claims in the nature of general average shall take priority over all other claims mentioned in clause 2(e) above which are attached to ship prior to the time when the operations giving rise to the said claims were performed.

13. **Maritime Lien.**—(1) Maritime lien shall attach to a ship or a property in the following instances of claim and the date of accrual of such maritime lien shall be the date on which the operations giving rise to the said claim were performed:

- (a) Claims for salvage of life, ship or property.
- (b) Wages and other sums due to the master or the members of the crew of the ship in respect of their employment on the ship.
- (c) Port and canal and other waterway dues and pilotage dues.
- (d) Claims for loss of life or personal injury having a direct connection with the operation of the ship.
- (e) Claims for contribution to general average.
- (f) Claims based on tort arising out of physical loss or damage caused by the operation of the ship other than the loss or damage to cargo, containers and passengers' effects carried on the ship.

(2) A maritime lien shall stand extinguished on the expiry of one year from the date on which the lien has attached to the ship or property:

Provided that the claim, if any, not barred by, limitation, may be enforced by an action *in personam*:

Provided further that the period of one year shall be extended further if the claimant of lien is unable to commence an action to enforce the lien against the ship or property for reasons beyond his control

14. **Procedure in respect of foreign ships.**—(1) In all actions under this Act, the nationality of the ship proceeded against shall be stated in the plaint, and if the ship is a foreign ship, notice or institution of the suit shall be given to the Consul of the State to which the ship belongs if there be one resident in a city where the Court is situated.

(2) A statement of service of such notice or a statement that there is no such Consul present in the City, shall be made in the affidavit in support of any application for arrest of the ship.

(3) If a notice is served on the Consul, a copy of the said notice shall be annexed to the affidavit.

CHAPTER III

PROCEDURE AND APPEALS

15. Code of Civil Procedure to apply.—(1) The provisions of the Code of Civil Procedure (Act V of 1908) shall govern all the proceedings before the Court in so far as they are not inconsistent with or contrary to the provisions of this Act or the rules made thereunder.

(2) The Admiralty Court shall have all the powers of a Civil Court in dealing with interlocutory applications and of passing such interim and other orders, as it may consider necessary and appropriate, to protect the interests of the parties before it.

16. Assistance of Assessors.—(1) The provisions of S. 140 of the Code of Civil Procedure (Act V of 1908) shall be applicable to all proceedings under this Act.

(2) The Central Government shall publish in the Official Gazette a list of assessors containing the names of persons who have specialised qualifications or experience in admiralty and maritime matters who may be called upon to assist the court as Assessors.

(3) The appointment of assessors under this section shall not be construed as a bar to the examination of expert witnesses by any of the parties.

(4) The Central Government may make rules prescribing the qualifications for assessors, the nature of duties to be performed by, and the fees to be paid to them and other ancillary and incidental matters.

17. Reference to Arbitration.—Notwithstanding anything contained in the provisions of any other law, it shall be open to the Court in admiralty proceedings to refer, with the written consent of all concerned parties, the entire dispute before it or such questions of law or fact raised thereby as the court may consider necessary, to arbitration and dispose of the dispute or the questions, as the case may be, in conformity with the award as upheld or modified by the court.

18. Appeals.—An appeal shall lie from any judgment, decree or final order of a Single Judge of the High Court or any other court exercising admiralty jurisdiction under this Chapter to a Division Bench of the High Court.

CHAPTER IV

MISCELLANEOUS

19. Power to make rules.—(1) The Central Government may, by notification in the Gazette of India, make rules for the whole or any part of India for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for regulating the practice and procedure in the Admiralty Courts under this Act as well as for regulating fees, costs and expenses in such proceedings.

(3) Until the rules are made under subsection (1) by the Central Government, the rules at present governing the exercise of admiralty jurisdiction in the High Courts shall continue to be applicable.

(4) The Central Government shall cause every rule made, or notification issued, under this Act to be laid as soon as may be after the rule is made or notification issued before each House of Parliament while it is in session for a

total period of thirty days (comprised in one session or in two or more successive sessions) and, if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made or issued, that rule or notification shall thereafter have effect, only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

CHAPTER V

REPEALS & SAVINGS

20. Repeals and Savings.—(1) The following enactments are hereby repealed:

- (a) (The) Admiralty Offences (Colonial) Act, 1849 (12 & 13 Vict. c. 96);
- (b) (The) Admiralty Jurisdiction (India) Act, 1860 (23 & 24 Vict. c. 96);
- (c) (The) Admiralty Court Act, 1861 (24 & 25 Vict. c. 10);
- (d) (The) Colonial Courts of Admiralty (India) Act, 1891 (Act XVI of 1891);
- (e) Letters Patent, 1865 (in so far as it applies to the Admiralty Jurisdiction of the Bombay, Calcutta and Madras High Courts).

(2) Notwithstanding the repeal of any of the enactments mentioned in subsection (1) any rule, notification, regulation, bye-law or order issued or made under any such enactment shall, until revoked, continue in force as if it had been issued or made under the corresponding provisions of this Act.

(3) The mention of particular matters in this section shall not prejudice or affect the application of section 6 of the General Clauses Act, (Act X of 1897) with regard to the effect of repeals.