

# Enforcement of maritime claims in bangladesh: admiralty jurisdiction and arrest o...

[Transportation](#)



' Maritime Claims' denotes claims in relation to maritime transport and some other navigational and non-navigational aspects arising out of ships or maritime vessels. The types of claims are not exclusive. Generally statutes provide the inclusive list of maritime claims which can be enforced by the claimants through judicial mechanism. Different parties are involved in legal relationships through various types of transactions in maritime sector.

Maritime claims generated from contractual relationship constitute a potential source of maritime dispute. Such claims generally arise out of ship ownership, ship building, ship mortgage, charter parties, bill of lading, marine insurance etc. Occurrences and incidents like collision, salvage, towage, cargo damage, bunker supplying, bottomry, marine pollution by ships etc. also create maritime claims in favour of the affected person or institution. World economy significantly depends on maritime trade.

Seaborne transport plays a vital role to accelerate economic development through export and import of goods.

Seagoing vessels transport cargoes (both bulk and containerised) from port of loading to port of destination moving across the ocean and carry goods, bunkers as well as their own hulls, machineries, and crews on decks. Carrier vessels face perils of the sea due to rough weather, and swelling and surge of sea water. Collisions occur due to negligence of the crews occasioning huge damage to other vessels or costal infrastructures. Disputes arise out of sale of ships, employment of crews, dock charges etc. also constitute maritime claims. Bangladesh has a considerable maritime trading, and other mercantile and non mercantile activities through marine carriers. The maxim ' ubi jus ibi remedium' indicates that where there is a right there is a

remedy. It is not enough to have the legal rights i. e. the claims in favour of the affected persons. The claimants have right to get their claims enforced by a proper authority.

The maritime claims are generally enforced by the court/s exercising the admiralty jurisdiction. In Bangladesh, The Admiralty Court Act, 2000 [এডমিরাল্টি কোর্ট আইন, ২০০০, hereinafter be called as ACA] provides the categories of maritime claims enforceable by the court under its admiralty jurisdiction. The High Court Division of the Supreme Court of Bangladesh is entrusted to exercise its jurisdiction to settle the maritime claims as the Court of Admiralty that bears a legacy of legal history evolved over the centuries in this sub-continent. The unique feature of admiralty jurisdiction is to enforce the maritime claims by action in rem whereby the admiralty court exercises its jurisdiction against the 'res' or ships. Arresting the ships is the powerful and effective weapon applied by the admiralty court to ascertain and secure the maritime claims. Seaborne trade is the 'engine' for sustainable growth and development as more than eighty per cent of global trade is carried out on board. For the purpose of creating a unified legal standard in world maritime enforcement, two international conventions relating to the arrest of ships are adopted in 1952 and 1999 respectively. These two conventions provide lists of maritime claims and prescribe some general rules for arrest of ships. Till today Bangladesh has not ratified any of the conventions, but almost all the categories of maritime claims embodied in the 1952 Arrest Convention are included in ACA.

The 1999 Arrest Convention has enlarged the extent of maritime claims and includes environmental damages, wreck removal costs, marine insurance premiums etc. in the list. It also specifies the area and procedure of ship arrest. Before enacting the ACA the admiralty jurisdiction had been exercised in Bangladesh under two colonial legislations named the Colonial Courts of Act, 1890 and the Colonial Courts of Admiralty Act India), 1891. The ACA of Bangladesh broadly incorporated the provisions of the Senior Courts Act, 1981 (hereinafter be mentioned as the SCA) of the United Kingdom applicable in England and Wales. Neither the ACA of Bangladesh nor the SCA of England considered the extended types of maritime claims incorporated in the 1999 Arrest Convention except claims in respect of oil pollution in England. Both the countries have not ratified the said Convention. South Africa has not ratified any of the arrest Conventions. But the South African legislation presents an extensive list of maritime claims. The Admiralty Jurisdiction Regulation Act of 1983 (hereinafter be mentioned as the AJRA) of South Africa not only contains all the types of claims of the 1999 Arrest Convention but also supplements some other claims arising out of limitation of liability, judgment or arbitral award, malicious proceedings, piracy etc.

This statute of South Africa also present liberal provisions relating to associated ship arrest that extends the scope of arresting the ships under the ‘ultimate beneficial’ ownership. Though the ACA of Bangladesh and the SCA of the U. K. contain provisions for the arrest of sister ship under the beneficial ownership in respect of ‘all the shares’ of the ship, the High Court of England and Wales expanded the concept of beneficial ownership while exercising its admiralty jurisdiction for arrest of ships. In Bangladesh, the

<https://assignbuster.com/enforcement-of-maritime-claims-in-bangladesh-admiralty-jurisdiction-and-arrest-of-ships/>

court recognised the arrest of sister ship under the beneficial ownership concept incorporated in the section 4(4) of the ACA. Because of having a large maritime area to the southern side of the country, a significant part of the Bay of Bengal, Bangladesh has prospect to be emerged as the maritime hub in the South and South-East Asia. Almost ninety seven per cent of total import and export in Bangladesh is carried out by seaborne transports. As our country successfully resolved the maritime boundary dispute with her two neighbouring countries through the verdict of two international adjudicatory bodies and thereby ascertained the authority over 111631 square kilometres water area of Bay of Bengal, Bangladesh needs to the adopt both legislative and judicial measures to protect the maritime security, smooth seaborne activities, and marine environment. Modern and updated legislations vis-à-vis an effective and functional admiralty court is the sine qua non for exercising sovereignty and ensuring admiralty justice in the maritime sector of the country.

The proposed study will try to examine the legal setup, and admiralty practice and procedures for enforcing maritime claims through arrest of ships in Bangladesh presenting a comparative analysis with some other world leading and dynamic jurisdictions.