

INDIEN ERLÄSST EIN PRISENGESETZ

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Am 27. November 1971 brach der offene Konflikt zwischen Indien und Pakistan aus: Indiens Truppen überschritten die Grenze von Ost-Pakistan (Bangla Desh). Knapp drei Wochen später, am 16. 12. 71, erließ Indien ein Prisengesetz, das vom Justizministerium (Ministry of Law and Justice) ausgearbeitet worden war¹.

An diesem Gesetz mit 20 Sections ist, abgesehen vom Inhalt, bemerkenswert, daß Indien damit der erste Staat Asiens ist, der nach dem Zweiten Weltkrieg das Prisenrecht gesetzlich regelt. Nach Japan (6. 10. 1914), Thailand (20. 7. 1917) und China (15. 12. 1932) ist Indien nun der vierte Staat Asiens mit einer Prisenordnung².

Das Gesetz regelt hauptsächlich Verfahrensfragen und ist also eher eine Prisengerichtsordnung als eine Prisenordnung. Dies entspricht vollkommen der anglo-amerikanischen Tradition. Großbritannien und die USA besitzen in ihren Prisen-gesetzen eine Regelung der Prisengerichtsbarkeit, während das materielle Prisenrecht erstens später und zweitens nur auf dem Weg von Instruktionen geregelt wurde. Im indischen Prisengesetz findet das seinen Niederschlag in Sec. 17, innerhalb welcher die Punkte (n) und (r) sich auf materielle Regelungen beziehen. Das kontinentaleuropäische System pflegt dagegen genau umgekehrt zu verfahren: Zuerst wird eine Prisenordnung erlassen und dann eine Prisengerichtsordnung.

Das durch Sec. 19 aufgehobene britische Prisengesetz³ vom 23. 6. 1864 (es hat 56 Sections) galt nach seiner Sec. 4 für alle britischen „Besitzungen“, d. h. nur für Britisch-Indien, nicht aber für die Hälfte Indiens, die aus britischen Protektoraten bestand (Fürstenstaaten). Erst das englische Prisengesetz vom 1. 9. 1939 erstreckte seine Geltungsmöglichkeit auch auf die Protektorate, die neben Britisch-Indien darin ausdrücklich genannt waren⁴. Aufgrund des Gesetzes von 1864 wurden im Zweiten Weltkrieg britische Prisen Gerichte in drei Gebieten des damaligen Indien errichtet, nämlich in Kalkutta, Madras und Sind⁵. Durch Sec. 18 (3) des India Independence Act, 1947, wurde das bisherige Recht, das in Britisch-Indien galt, auf das Gesamt-Dominion Indien (also auch auf die Fürstenstaaten) ausgedehnt⁶, so daß alle Vorschriften des bis dahin erlassenen britischen Prisenrechtes nunmehr als indisches Recht galten, soweit sie nicht von Indien in der Folgezeit ausdrücklich aufgehoben wurden. Die acht indischen Repealing and Amendment Acts von 1948—1964 betreffen jedoch ausschließlich in Indien erlassene Gesetzgebungsakte, nicht aber solche Großbritanniens. „The British Statutes (Application to India) Repeal Act“ No. 57 vom 26. 12. 1960 hob zahlreiche britische Gesetze in ihrer Geltung für Indien auf — beginnend mit der Magna Charta v. 1297 —, jedoch wurde darin das Prisenrecht nicht berührt⁷. Sec. 19 des indischen Prisengesetzes von 1971 hebt nun das britische

1 Veröff. in: Gazette of India v. 16. 12. 1971, Part II Sec. 1 Ext.; S. 671. Text auch in: All India Reporter (A.I.R.) 1971, Acts S. 111.

2 Texte der drei genannten Prisenordnungen in: Hecker/Tomson, Völkerrecht und Prisenrecht, Frankfurt 1965

3 Abgedruckt a.a.O., S. 211 i. d. F. v. 1948.

4 Dies Gesetz (2/3 Geo 6, c. 65) ist abgedruckt in: State Papers Bd. 143, S. 169.

5 Prize Court (Fees) Orders (S.R.O. 1940, Nr. 974—976).

6 Dieses Gesetz (10/1 Geo 6, c. 30) ist abgedruckt in: State Papers Bd. 147, S. 158.

7 Abgedruckt: A.I.R. 1960, S. 154.

Gesetz von 1864 und seine Änderungen und Ergänzungen bis einschließlich 1939 auf. Damit werden drei spätere Änderungen des britischen Prisengesetzes von 1864 nicht berücksichtigt⁸.

Im einzelnen wären an dem Gesetz folgende drei Punkte besonders hervorzuheben:

1) In Sec. 6 ist bestimmt, daß es im Prisenverfahren keinerlei Zweitinstanzen gibt, sondern nur innerhalb bestimmter Fristen einen „appeal“ an die Regierung. Diese Regelung bedeutet: Es gibt nur eine Art Gegenvorstellung als die vageste Art eines Rechtsbehelfs, und zwar gerade an die Instanz, die Gegner im Prisenverfahren war, nämlich an die Regierung. Ein solches Abschneiden der Berufungsmöglichkeit ist in anderen Ländern nicht üblich. Selbst das Dritte Reich konnte gegen Urteile der Prisengerichte eine Berufung an das Oberprisengericht.

2) In Sec. 4 (3) ist ausgesprochen, daß das Prisenrecht nicht nur für einen regelrechten Krieg, sondern auch für alle anderen Arten von Feindseligkeiten gilt, nämlich auch für Repressalien während eines bewaffneten Konfliktes und für Aktionen in Ausübung des Rechts zur Selbstverteidigung. Mit dieser Vorschrift setzt sich Indien deutlich in Widerspruch zu einer Erklärung seiner Regierung vom 26. 3. 1966 nach dem Konflikt mit Pakistan von 1965. Damals erklärte die indische Regierung folgendes⁹:

Aufgrund der UN-Charta sei heute jeder Krieg illegal. Es könne also kein Krieg mehr erklärt werden. Ohne Kriegserklärung sei aber die Ausübung des Prisenrechts rechtswidrig. Daher würde es illegal sein, noch Prisengerichtshöfe einzurichten — während Pakistan 1965 Prisengerichte eingesetzt haben soll¹⁰. Die Bestimmung von Sec. 4 (4), wonach das Prisengericht Völkerrecht anwenden kann, läßt sich dann auch so deuten, daß das Prisengericht die Anwendbarkeit des Prisengesetzes aufgrund von Völkerrecht ablehnen könnte, wenn nicht ein ordnungsgemäß erklärter Krieg vorliegt.

Die indische Zurückhaltung, das Prisenrecht in einem Konflikt anzuwenden, der nicht als Krieg betrachtet wird, zeigte sich 1965 auch in der Behandlung der Konterbande. Indien hatte damals aufgrund der Ermächtigung in Sec. 11 (1) des Zollgesetzes vom 13. 12. 1952 (customs act no. 52) eine Konterbandeliste erlassen¹¹, die jedoch keine Beschlagnahme des Konterbandegutes vorsah, sondern nur polizeiliche Maßnahmen der Zurückhaltung ohne Eigentumsübergang. Diese zunächst recht weit gestaltete Liste von Konterbandegütern wurde zwei Wochen später, als die bewaffnete Auseinandersetzung vorbei war, radikal verkürzt¹² und dann im Dezember 1965 ganz aufgehoben.

3) Das indische Gesetz erstreckt, wie sich schon aus seinem Titel ergibt, das Prisenrecht auch auf Flugzeuge. Dies ist wohl die völkerrechtlich bedenklichste Vorschrift. Das Prisenrecht ist eine vom allgemeinen Völkerrecht anerkannte Ausnahme vom Prinzip des Schutzes des Privateigentums im Krieg. Das Prisen-

⁸ Nämlich: Prize Salvage Act v. 1. 3. 1944 (7/8 Geo 6, c. 7); Crown Proceedings Act v. 31. 7. 1947 (10/1 Geo 6, c. 44), dessen Schedule 2 die Sec. 52 des Prisengesetzes v. 1864 aufhob (Petition of Rights); Prize Act v. 16. 12. 1948 (12/3 Geo 6, c. 9), der rückwirkend das Prisenrecht im II. Weltkrieg regelte und Sec. 42—44 des Gesetzes von 1864 aufhob, allerdings erst nach der Unabhängigkeit Indiens ergangen war.

⁹ Zitiert nach: McNair und Watts, Legal effects of war, Cambridge 1966, S. 457.

¹⁰ A.a.O., S. 457; diese Prisengerichte sollen auch Güter Neutraler eingezogen haben.

¹¹ Nur veröff. in: Indian Trade Journal v. 13. 10. 1965.

¹² Diesmal veröff. in: Gazette of India Part II, Sec. 3 (1) v. 27. 10. 1965.

recht gilt nur im Seekrieg, nicht aber im Landkrieg. Vom Priserecht würde noch gedeckt, wenn ein Wasserflugzeug auf See zum Landen gezwungen und aufgebracht würde. Wenn aber Sec. 2 (h) des indischen Prisengesetzes als Prise auch Güter an Bord eines Flugzeuges über oder auf dem Land beansprucht, dann geht das über den völkerrechtlich anerkannten Rahmen hinaus. Wenn auch bisher kaum Luftprisenfälle problematisch geworden sind¹³, so kann sich dies doch bei der zunehmenden Bedeutung des Luftverkehrs erheblich ändern. Die bisherige Rechtslage stellte sich wie folgt dar:

In den sog. Haager Luftkriegsregeln von 1923 war in Artikel 49—60 ein Luftprisenrecht vorgesehen¹⁴. Diese Regeln blieben aber ein privater Entwurf und wurden niemals geltendes Völkerrecht. Der erste Staat der Welt, der das Seebeuterecht auch generell auf Flugzeuge ausdehnte, war Italien mit Art. 248 bis 274 des Kriegsgesetzes¹⁵ vom 8. 7. 1938. Nachdem das faschistische Italien Abessinien erobert hatte und auf dem Höhepunkt seiner Macht stand, muß diese Regelung Mussolinis als ein Ausdruck seines Größenwahns angesehen werden. Das Überraschende und Bedenkliche ist aber nun, daß diesem faschistischen Vorbild jeweils mit einem Jahr Abstand drei Seemächte folgten, und zwar Großbritannien (1. 9. 1939), die Niederlande (3. 6. 1940) und die USA (24. 6. 1941)¹⁶. Es waren also ausgerechnet die Demokratien, die sich dem Vorbild Mussolinis anschlossen. Die Achsenmächte und überhaupt die totalitären Staaten übernahmen diese Einschränkung des Privateigentums dagegen gerade nicht. Die deutsche Prisenerordnung vom 28. 8. 1939 enthält keinerlei Ausdehnung auf den Luftkrieg¹⁷. Im Entwurf¹⁸ zu dieser Prisenerordnung war im Art. 87 folgende Regelung vorgesehen gewesen:

„Feindliche und neutrale Luftfahrzeuge unterliegen dem Priserecht in sinn­gemäßer Anwendung der vorstehenden Vorschriften, solange sie sich auf oder über der hohen See sowie auf oder über den Hoheitsgewässern des Reiches, seiner Verbündeten oder seiner Feinde befinden.“

Diese nicht in den Text aufgenommene Regelung hielt sich durchaus noch in dem zulässigen Rahmen des Seebeuterechts. Das neueste Prisengesetz eines Staates, dasjenige Jugoslawiens vom 14. 6. 1964, enthält ebenfalls keine Ausdehnung auf das Luftprisenrecht¹⁹.

So ist Indien heute dem Beispiel von vier anderen Staaten (Italien, Großbritannien, Niederlande und USA) gefolgt, von vier demokratischen Staaten, ohne daß anscheinend die völkerrechtlichen Bedenken gegen diesen Schritt bewußt geworden sind. Es hat den Anschein, daß Indien unbesehen die britische Regelung von 1939 übernommen hat.

13 Scheuner, in: Wtb. d. Völkerrechts Bd. II, 1961, S. 801, führt nur 3 Fälle aus dem I. Weltkrieg an.

14 Zu diesem Entwurf eine der Haager Landkriegsordnung entsprechenden Luftkriegsordnung vgl. Garner in: AJIL 1924, S. 56—81. Text in: Giese/Menzel, Deutsches Kriegführungsrecht, Berlin 1940, S. 197.

15 Text: Gazzetta Ufficiale Nr. 211 v. 15. 9. 1938 (Suppl.), ital. auch: ZÖR 1939, S. 238 (Art. 248ff, S. 287ff.). In Hecker/Tomson sind die Luftkriegsartikel nicht mit abgedruckt.

16 Alle drei Texte in Hecker/Tomson a.a.O.

17 Die niederl. Prisenerordnung v. 3. 6. 1940, abgedruckt in Hecker/Tomson, a.a.O., S. 372, das amerikanische Gesetz in: Statutes at large Bd. 55, S. 261.

18 Siehe a.a.O., S. 64, Anm. 25.

19 Abgedruckt a.a.O., S. 352.

THE NAVAL AND AIRCRAFT PRIZE ACT, 1971

No. 59 OF 1971



[16th December, 1971]

An Act to provide for the establishment and procedure of Prize Courts and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

1. This Act may be called the Naval and Aircraft Prize Act, 1971.

Short
title.

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

Defini-
tions.

(a) "aircraft" has the meaning assigned to it in clause (ii) of section 4 of the Air Force Act, 1950;

45 of 1950.

(b) "aircraft papers" includes all books, passes, charter parties, bills of lading, customs receipts, manifests, certificates, licences, lists, tickets, notes, letters and other documents and writings delivered up or found on board a captured aircraft;

(c) "Armed Forces" means the Army, Navy and Air Force or any part of any one or more of them and includes any other armed force in the service of, or employed with, the Army, Navy or Air Force during hostilities;

(d) "goods" includes all such things as may be subject to adjudication as prize, but in the case of a naval prize does not include any aircraft or boat unless the aircraft or boat is a part of the cargo of a ship;

(e) "Prize Court" means a prize court established under section 3;

(f) "Indian citizen" includes a company registered in India and having its principal place of business in India;

(g) "military aircraft" means any aircraft belonging to the Armed Forces and includes any armed aircraft in the service of the Armed Forces and any other aircraft used as a transport or auxiliary or in any other way for the purpose of prosecuting or aiding hostilities;

(h) "prize" means anything which, subject to this Act and the rules made thereunder, may be subjected to adjudication and includes a ship or an aircraft and goods carried therein, irrespective of whether the ship is captured at sea or seized in port or whether the aircraft is on or over land or sea at the time of capture or seizure;

(i) "ship" includes a vessel and a boat with the tackle, furniture and apparel of the ship, vessel or boat.

(j) "ship-of-war" means any ship belonging to the Armed Forces and includes any armed ship in the service of the Armed Forces and any other ship used as transport or auxiliary or in any other way for the purpose of prosecuting or aiding hostilities;

(k) "ship papers" includes all books, passes, sea briefs, charter parties, bills of lading, customs receipts, manifests, certificates, licences, lists, tickets, notes, letters and other documents and writings delivered up or found on board a ship captured at sea or seized in port.

Establish-
ment of
Prize
Courts.

3. (1) The Central Government may, by notification in the Official Gazette, constitute from time to time as many Prize Courts as the Central Government may determine to exercise the powers and discharge the functions conferred on a Prize Court by this Act and every such Prize Court shall exercise jurisdiction within the local limits of such area or areas as may be specified by the Central Government in the said notification.

(2) Every Prize Court shall consist of such one or more than one member as the Central Government may from time to time deem it necessary to appoint.

(3) A person shall not be qualified for appointment as a member of a Prize Court unless he is a citizen of India and has been or is qualified to be appointed as a Judge of a High Court.

(4) Subject to the provisions of section 18, the conditions of service of a member of a Prize Court shall be such as the Central Government may by order determine.

4. (1) Notwithstanding anything contained in any other law for the time being in force, every Prize Court shall have exclusive jurisdiction in respect of each prize and each proceeding for the condemnation of property as prize, whether such prize is taken before or after the commencement of this Act, if the prize is—

Juris-
diction
of prize
Courts
in prize
cases.

(a) brought into or seized within the territory of India;

(b) brought into or seized within a locality in the temporary or permanent possession of, or occupied by, the Armed Forces of the Union; or

(c) appropriated for the use of the Central Government,

and is brought within the territorial jurisdiction of that Prize Court:

Provided that in the case of a Naval prize, the Prize Court shall have jurisdiction only if the prize captured or seized is brought to a port or place lying within the territorial jurisdiction of that Prize Court.

(2) Every Prize Court shall also have exclusive jurisdiction in respect of a prize in which the prize property—

(a) is lost or entirely destroyed; or

(b) cannot be brought in for adjudication because of its nature and condition.

(3) Without prejudice to the generality of the powers conferred by sub-section (1), a Prize Court shall take cognizance of and judicially proceed upon all manners of captures, seizures, prizes and reprisals of all ships, vessels, aircrafts and goods that are captured or seized, and shall hear and determine the same, and in accordance with this Act and rules made thereunder, shall adjudicate and condemn all such ships, vessels, aircrafts and goods belonging to any country or State or the nationals, citizens or subjects thereof, as may be captured or seized as prize during a war or as a measure of reprisal during an armed conflict or in the exercise of the right of self-defence.

(4) Notwithstanding anything contained in this section, the Prize Court may in respect of any matter for which no provision or insufficient provision is made, by or under this Act, apply the principles of the International Law regulating that matter.

5. (1) Where proceedings are pending in any Prize Court against any ship, aircraft or goods, the Prize Court may, at any stage of the proceedings, on application being made by the proper officer of the Central Government and upon being satisfied that the proceedings so far as they relate to the ship, aircraft or goods, or any part thereof, would be more conveniently conducted in another Prize Court, make an order remitting the proceedings or the proceedings so far as they relate to the ship, aircraft or goods, or any part of the goods, as the case may be, to such other Prize Court.

Transfer
of cases.

(2) Where any proceedings have been so remitted to another Prize Court, that other Prize Court shall have the same jurisdiction to deal with the matter as if the subject matter of those proceedings had originally been seized within its jurisdiction or brought within its jurisdiction after capture or seizure, as the case may be, and any order made or action

taken in those proceedings before the order of remission shall be deemed to have been made or taken by or in that Court.

Appeals

6. (1) Any person aggrieved by an order or decree of the Prize Court may prefer an appeal to the Central Government within a period of ninety days from the date on which such order or decree has been made.

(2) The provisions of sections 5 and 12 of the Limitation Act, 1963, shall so far as may be, apply for computation of the period specified in sub-section (1).

General powers of Prize Courts.

7. (1) A Prize Court shall, for the purposes of this Act, have the same powers as are vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of persons and examining them on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copies thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) any other matter which may be prescribed by rules.

(2) Without prejudice to the provisions of sub-section (1), every Prize Court shall have the power to enforce—

- (a) any order or decree of another Prize Court passed in a prize proceeding under this Act;
- (b) any order of the Central Government passed in a prize appeal under section 6.

Procedure on capture of Prize

8. (1) Every ship and every aircraft taken as prize and brought into port or to a place within the jurisdiction of a Prize Court shall forthwith and without bulk broken, be delivered to the Marshal of the Court.

(2) If there is no such Marshal then the ship or aircraft shall be in like manner delivered to such person as the Central Government may appoint in this behalf.

(3) The ship or aircraft shall, subject to the orders of the Court, remain in the custody of the Marshal, or the person appointed under sub-section (2).

Ship and aircraft papers to be brought in Registry.

9. (1) The captors shall with all convenient speed after the ship or aircraft is brought into port or to a place within the jurisdiction of a Prize Court bring the ship papers or the aircraft papers, as the case may be, into the Registry of the Prize Court.

(2) The commanding officer or the captain of the capturing ship or aircraft or the commanding officer of the capturing force, or any other officer or person seizing the ship or aircraft at any port or aerodrome or any officer designated by the commanding officer or his superior authority as a Prize Officer or such other officer or person who was present at the capture and saw the ship papers or aircraft papers delivered

up or found on board shall make oath that they are brought in as they were taken without fraud, addition, or subduction or alteration or else shall account on oath to the satisfaction of the Prize Court for the absence or altered condition of the ship papers or aircraft papers or any of them.

(3) Where no ship papers or aircraft papers are delivered up or found on board the captured ship or captured aircraft, the commanding officer or the captain of the capturing ship or aircraft or the commanding officer of the capturing force or any other officer or person seizing the ship or aircraft or the Prize Officer or such other officer or person who was present at the capture shall make an oath to that effect.

10. The provisions of sections 8 and 9 relating to ships and aircraft shall, so far as may be, extend and apply to goods taken as prize on board a ship or aircraft and the Prize Court may direct such goods to be unladen, inventoried and warehoused. Goods.

11. Where a ship of a foreign State passing the seas or an aircraft of a foreign State, laden with military or victualling stores intended to be carried to any place under the control of an enemy is taken in circumstances making it subject to adjudication as prize, and is brought under the control of the Government of India, and the purchase of such stores for the service of the Central Government appears to the said Government expedient without the condemnation thereof in a Prize Court, then the Central Government may purchase on account or for the service of the Central Government all or any of such stores. Pre-emption.

12. Nothing in this Act shall apply to a ship-of-war or military aircraft of the enemy or any other ship or aircraft owned by the enemy whether or not registered in the territory of the enemy or goods carried therein and no proceedings of prize shall be necessary for the condemnation of such ship-of-war or military aircraft or other ship or aircraft or goods carried therein. Prize proceedings not to apply to enemy warships and military aircraft.

13. (1) Subject to the provisions of sub-section (2), all prizes captured by the Armed Forces of the Union and condemned where necessary in the Prize Court shall be the exclusive property of the Central Government. Capture to belong to Central Government.

(2) The Central Government may, at its discretion, out of the proceeds of the prize, make a grant of such sum of money as it deems fit to the benevolent funds of the Armed Forces of the Union.

14. (1) Where any ship or goods or aircraft belonging to an Indian citizen, after being taken as prize by the enemy is or are retaken from the enemy, the same shall be restored by decree of a Prize Court to the owner on his paying to the Central Government as prize salvage one-eighth part of the value of the prize to be decreed and ascertained by the Prize Court or such sum not exceeding one-eighth part of the estimated value of the prize as may be agreed upon between the owner and the Central Government and approved by the order of the Prize Court: Prize salvage.

Provided that where the recapture is made in the circumstances of special difficulty or danger, the Prize Court may if it thinks fit award to the Central Government as prize salvage a larger part than one-eighth but not exceeding in any case one-fourth part of the value of the prize:

Provided further that where a ship or aircraft after being so taken is set forth or used by the enemy as a ship-of-war or military aircraft, the aforesaid provision for restitution shall not apply and subject to such compensation to the owner as the Prize Court may determine, the ownership of such ship or aircraft shall vest in the Central Government.

(2) Where a ship belonging to any Indian citizen, after being taken as prize, is retaken from the enemy, such ship may, with the consent of the recaptors, prosecute her voyage and it will not be necessary for the Central Government to proceed to adjudication till her return to a port in India.

(3) The master or owner of the ship or his agent may, with the consent of the Central Government, unload and dispose of the goods on board the ship before adjudication.

(4) In case the ship does not return within six months to a port in India, the Central Government may nevertheless institute proceedings against the ship or goods in a Prize Court and the Prize Court may thereupon award prize salvage as aforesaid and may enforce payment thereof.

(5) The provisions of sub-sections (2), (3) and (4) shall *mutatis mutandis* apply also to an aircraft belonging to any Indian citizen which, after being taken as prize, is retaken from the enemy.

Offences in respect of prize.

15. Every person who is guilty of a prize offence, that is to say, an offence which if committed by a person subject to naval law would be punishable under section 63, section 64, section 65, section 66 or section 67 of the Navy Act, 1957, shall be punished with imprisonment which may extend to two years or with fine or both.

62 of 1957.

Indemnity against legal proceedings.

16. (1) Notwithstanding anything contained in any other law for the time being in force, no suit, prosecution or other legal proceedings shall lie against any officer of the Armed Forces of the Union or any other person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(2) Save as otherwise expressly provided under this Act, no suit or other legal proceedings shall lie against the Central Government for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

Power to make rules.

17. (1) The Central Government may, by notification in the Official Gazette, make rules for regulating the practice and procedure of a Prize Court and for generally carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the institution of cases, issue and service of writs, summons and other processes, and entering appearance and making of claims;

(b) affidavits concerning ship papers or aircraft papers and other affidavits to be or which may be made in a Prize Court or for the purpose of proceedings in a Prize Court;

- (c) pleadings, particulars, discovery and inspection of documents and facts, evidence and hearing;
- (d) issue of warrants for arrest of prize, and detention of prize;
- (e) sale, appraisalment, safe custody and inspection of prize;
- (f) bail and release;
- (g) requisition by Central Government of ships, aircraft or goods in the custody of a Prize Court;
- (h) appointment of assessors and their fees;
- (i) enforcement and execution of decrees and orders;
- (j) stay of proceedings;
- (k) costs of or incidental to any proceedings in the Prize Court and as to the fees to be charged in respect of proceedings therein and as to the taking of security of costs;
- (l) procedure for hearing appeals and other matters pertaining to appeals;
- (m) appointment, duties and conduct of the officers of a Prize Court and costs, charges and expenses to be allowed to petitioners therein;
- (n) the manner in which and the conditions subject to which the right of visit, search, detention or capture of any ship or aircraft or goods thereon may be exercised and the penalty for impeding the exercise of any such right;
- (o) the manner in which any such ship or aircraft or goods seized by or under the authority of any officer of the Armed Forces of the Union shall be kept in custody or disposed of;
- (p) the conditions for declaring any ship or aircraft or cargo thereon as hostile and for condemnation thereof;
- (q) the manner in which a ship or aircraft recaptured from the enemy may be disposed of;
- (r) the conditions subject to which a right of unhindered passage may be allowed to a ship or aircraft within the territory of India on the outbreak of hostilities or an armed conflict on the basis of reciprocity;
- (s) any other matter which may be, or is required to be, prescribed by rules.

(3) All rules made under this section shall be laid, as soon as may be, after they are made, before each House of Parliament while it is in session for a total period of thirty days, which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which they are so laid or the session immediately following, both Houses agree in making any modification in the rules or both Houses agree that the rules should not be made, the rules 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 those rules.

**Dissolu-
tion of
Prize
Courts.**

18. The Central Government may at any time when there is no prize proceeding pending before a Prize Court dissolve that Prize Court, and make such further orders as to the custody of the records of that Court as may be considered necessary.

Repeals.

19. The Naval Prize Act, 1864, the Naval Agency and Distribution Act, 1864, the Prize Courts Act, 1894, the Prize Courts Procedure Act, 1914, the Prize Courts Act, 1915, the Naval Prize Act, 1918, the Prize Act, 1939, in so far as they apply in India are hereby repealed.

Savings.

20. Nothing in this Act shall—

(a) give to the officers and seamen of the Indian Naval ships or officers and airmen of the Indian Military aircraft or to any other person concerned in the capture of the prize any right or claim in or to any ships, aircraft or goods taken as prize or the proceeds thereof; or

(b) affect the operation of any existing treaty or convention with any foreign State; or

(c) take away or abridge the powers of the Central Government to enter into any treaty or convention with any foreign State containing any stipulation that the Central Government may deem appropriate concerning any matter to which this Act relates.