



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL

TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and diploma in Public

a professional
Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal



Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

WHITE BLACK
LEGAL

NAVIGATING THE SEAS OF LIABILITY: **ASSESSING INDIA'S OIL SPILL** **LIABILITY FRAMEWORK**

AUTHORED BY - SIMRAN KAUR

Oil is one of the most transported goods among countries and the sea is the best mean for it. But with the boom, comes the bane, the issue of oil spill from ships, tankers, and offshore installations have created a lot of risks, not only for humans but for the whole biodiversity.

The Indian Ocean and its maritime trade make India vulnerable to oil spills from domestic and foreign sources, thus necessitating the development of regional and international co-operation to address cross-border oil spill occurrences and ensure effective international liability mechanisms. Merchant Shipping Act, 1958 is the primary legislation regulating liability for oil spill incidents in the country. This act includes provisions on prevention, response, and compensation in the event of oil pollution. This act is based on international conventions, including the International Convention for the Protection of Oil Pollution Victims (the CLC), the Fund Convention for the establishment of an International Oil Pollution Compensation Fund (the FOCF) and the CLC Protocol (1992). The CLC and FOCF conventions provide for limitation of liability and compensation mechanisms in the event of an oil pollution incident.

Thus, the manuscript seeks to elucidate India's liability framework for oil spills, providing useful information for policy makers, environmental activists, and those involved in disaster and environmental management.

In conclusion, the question of liability during such incidents requires better approach in comparison to the present stagnant and restricted laws.

Keywords: Oil Spill, Merchant Shipping Act, Liability, Ship, Oil Tankers, Offshore Installations.

INTRODUCTION

Globalization has always been considered a baby step towards the rapid development of countries. In recent years, technological advancements and globalization have flourished marine services. Shipping contributes at most 90% of global trade and is the least environmentally damaging mode of transport if done with all caution.¹ With the surge in trading, the problems associated with it have also increased. In the pile of issues linked to marine lines, the effects of oil spills still stand out to be the most dangerous among all.

Oil is the most transported good across the world and because of its composition, the sea is an appropriate medium for its transportation. Currently, 2900 million tons of crude oil and oil products are transported worldwide by sea every year.²

The development in the structure of oil tankers has decreased the number of oil leakage in recent years but even a single oil spill can affect millions of lives. *BP Deep Water Horizon* oil spill in Gulf Mexico and the *MV Wakashio* oil spill in Mauritius island depicts the latest calamity a marine accident can cause. Heavy oils not only affect the respiration, feeding, and thermoregulation of marine organisms but also the animal life that lives near the shore. The chemical components present in the oil temporarily disable the marine ecosystem and impact societies that depend on the said ecosystem to live. The major effect can be seen on the economy as well. Accidental pollution of oceans and seas caused by oil is inevitable. Such huge spills lead to huge clean-up costs. The major question that arises after summing up the situation is who will be held liable for such marine pollution?

OIL SPILL

Any persistent hydrocarbon mineral oil, whether carried on board a ship as cargo or in its bunker, is referred to as "oil", including crude oil, fuel oil, heavy diesel oil, and lubricating oil.³

Oil definition also includes whale oil in its definition under the International Convention on Civil Liability for Oil Pollution Damage, 1969.⁴

¹International Maritime Organization (IMO), Marine Environment, Para No.2, <https://www.imo.org/en/OurWork/Environment/Pages/Default.aspx>, Last visited on January 9, 2023.

² International Maritime Organization (IMO), Marine Environment, MARPOL Annex I – Prevention of Pollution by Oil- IMO, Para No.1, <https://www.imo.org/en/OurWork/Environment/Pages/OilPollution-Default.aspx>, Last visited on January 9, 2023

³ Section 352H (c), Merchant Shipping Act, 1958

⁴ Article 1, Section 5, Civil Liability for Oil Pollution Damage, 1969

Every time oil enters the sea, a variety of variables will determine how quickly the oil will deteriorate physically, chemically, and biologically in that region. Numerous processes, including weathering, spreading, dispersion, evaporation, disintegration, biodegradation, sedimentation, emulsification, solubilization, oxidation, fermentation, and many more, can take place once the oil is in the seawater.⁵

Oil spills, also known as oil discharges from shipping, oil extraction from the ocean, and oil transportation via pipelines, can be caused by “accidents” or “regular,” intentional operational discharges.⁶

A. OPERATIONAL DISCHARGE

Deliberate operational discharge is the routine disposal of oil into the sea from an oil tanker or a ship to avoid explosions. Also, the vessels which burn heavy fuel oil face the issue of fuel oil purification. A huge quantity of sludge is being produced in the sludge tanks due to the purification of fuel oil, but such quantity eventually needs to be discharged to the sea. The unpreventable small leakage of lubricating oil from machinery amounts to a considerable quantity. The discharge of oil ballast in the nearing port also affects the coastal area.

B. ACCIDENTAL DISCHARGE

Accidental discharge mainly occurs due to accidents during the operational procedure or through collisions. Lightening, ballasting, grounding, loading, or discharging of oil cargo are a few examples of accidents during operational discharge. Accidents and offshore installations contribute to 10 per cent of the annual oil entering the marine ecosystem.⁷ Although accidental discharge is not so frequent these days but involves a large number of oil spills in comparison to the other kind of spills. The world has seen a huge number of accidental discharges these days which has shaken the human senses to their core.

The United Nation Human Development Report shows 6,817 oil spills around Niger Delta between 1976 to 2001.⁸ In 2020 itself, three medium spills were recorded.

⁵ United Nations Environment Programme (UNEP), FAQ- Global Marine Oil Pollution Information Gateway, <http://oils.gpa.unep.org/facts/faqs.htm>, Last visited on February 09,2023

⁶ United Nations Environment Programme (UNEP), Accidental Discharges - Global Marine Oil Pollution Information Gateway, <http://oils.gpa.unep.org/facts/oilspills.htm>, Last visited on March 19,2023

⁷ Supra note 6

⁸ United Nations Development Programme Reports (UNDP), Para No. 45 (August 4, 2011)

Accumulation of tar balls in the seashore of Goa is the result of accidental discharge in the Mumbai high seas. The disaster remains the same from the Torrey Canyon oil spill in 1967 to the most recent Israel oil spill in February 2021. The recent *Milepost 14 incident*, the largest oil pipeline spill in U.S in nine years, caused by a fatigue crack during installation of a 36-inch Keystone pipeline resulted in massive pipeline spill, released 500,000 gallons of crude oil onto Kansas farmland and adjacent streams.⁹

STATISTICS

The International Tankers Owners Pollution Federation Limited (ITOPF), is a non-profit organisation founded in support of the world's shipowners to encourage an effective response to oil, chemical, and other hazardous substance spills in the ocean.

As per the ITOPF database, there has been a surge in oil spills in the year 2021 as compared to the previous year. In 2020 itself, there have been 7 medium spills while for the year 2021, one large spill (>700 tonnes) and 5 medium spills (7-700 tonnes) have been recorded. Approximately 10,000 tonnes volume of oil has been lost in tanker spills.¹⁰

According to U.S. NOAA, "Tankers and offshore installations do not account for the majority of oil spills when spills of all sizes are taken into account. However, the majority of the largest oil spills in the world are caused by tanker mishaps and incidents involving offshore infrastructure. Despite being less common than other types of oil spills, accidental accidents generally include considerable amounts of oil when compared to other types of oil spills".¹¹

Grounding and collisions are the prominent cause of most tragic oil spills now. Africa and North America faced the terror of medium spills whereas Asia saw the largest oil spill in 2021.¹²

The year 2022 saw three large spills, two occurred in Asia and one in Africa. In addition, medium

⁹ PAUL HAMMEL, Massive pipeline spill caused by crack created during installation, third-party review concludes, Kansas Reflector (April 21,2023)

¹⁰The International Tanker Owners Pollution Federation Limited (ITOPF), Oil Tanker Spill Statistics 2021, Page No. 4 (January 1, 2022)

¹¹ National Oceanic and Atmospheric Administration (NOAA), Oil and Chemical Spills - How NOAA responds to oil spills, <https://response.restoration.noaa.gov/oil-and-chemical-spills/oil-spills/how-noaa-responds-oil-spills.html>, Last visited on March 09,2023

¹² ROSER, MAX, HANNAH RITCHIE, Oil Spills, Our World in Data (August,2022), <https://ourworldindata.org/oil-spills>, Last visited on February 03,2023

spills were also recorded in North America, Africa, and Asia. This brings the total tanker oil spilled to the environment in 2022 was around 15,000 tonnes. Concluding, the decade average on par with the average of 2010's i.e., to almost 6 large spills a year.¹³

OIL SPILL IN INDIA

India has a 7516.6 km coastline which makes it prone to heavy marine pollution from different kinds of oil discharge. It affects an uncountable population of flora and fauna of the marine ecosystem and disables the earnings of numerous people who are dependent on coastal areas for their survival.

2017, the Ennore oil spill which occurred outside the Kamarajar Port in Ennore near Chennai in Tamil Nadu affected approximately 33,000 square meter area with the total spill estimated at 9.9 million US gallons.¹⁴ The 2010 Mumbai oil spill showed a huge disaster in which approx. 800 tons of oil escaped from the vessel.¹⁵

The Fourteenth National Oil Spill Disaster Contingency Plan (NOS-DCP) and Preparedness meeting of 2010 reviewed the preparedness and capabilities of all agencies to prepare them for future disasters. But the BP Spill in May 2010 established an important question in front of us: Are we prepared to tackle the threat that comes with technological advancement?

The Fifteenth National Disaster Contingency Plan, in response to the BP Spill, established many facilities in crucial ports, like, as the establishment of various organizations for addressing colossal oil spills, preparedness for oil pollution by the coastal states, legislative efforts for NOS-DCP, introducing bio- shield, observing oceans through satellites, usage of oil cess fund, etc.¹⁶

A. RESPONSE POLICY

Oil spill response necessitates inter-agency cooperation. The necessary preparedness measures must be addressed collectively, and a national-level contingency plan has been prepared to that end, outlining the essential details and functional responsibilities of various agencies.¹⁷

¹³ The International Tanker Owners Pollution Federation Limited (ITOPF), Oil Tanker Spill Statistics 2022, Page No. 4 (January 1, 2023)

¹⁴ CORRESPONDENT -SPECIAL, Report Pegs Ennore Oil Spill at 251 Tonnes, The Hindu (November 9, 2017)

¹⁵ RESHMA JATHAR, Mumbai Oil Spill: threat to marine life, coast, Down To Earth, (August 27, 2010)

¹⁶ The Indian Coast Guard, *The 15th National Oil Spill Disaster Contingency Plan (NOS-DCP) and Preparedness Meeting's details*, pg. 21(August, 2015)

¹⁷ The Indian Coast Guard, Marine Environment Protection, Para no.1(June 20, 2023)

India became one of the countries to accept the OPRC convention adopted by IMO in 1990 and finally updated in 1995. The Indian Coast Guard, a part of the Ministry of Defence, is appointed as the national authority for the Indian oil spill response under the NOS-DCP announced in 1996. This depicts the current regime to tackle the oil spill disaster in India.

The Indian Coast Guard is serving as the Central Coordinating agency for tackling the oil spill in several maritime zones, except in the port's water and within 500 metres of offshore platforms, associated facilities, and refineries. Offshore installations and oil handling facilities are expected to respond to all Tier 1 happenings and handle them in their designated areas, as per the National Plan. If the oil spill exceeds the capability of the concerned facility or if the response capability has not been developed, the Statutory Agency (Coast Guard or State Government authority) would take over the operation, with assistance from other National Plan stakeholders as needed.¹⁸

In ports, the relevant State Government body or port operator would be in charge of handling the response, with essential aid from other National Plan stakeholders as needed. Port facilities, oil terminals, and installations must maintain Tier 1 pollution response equipment weighing up to 700 tonnes. However, according to the provisions of the National Disaster Management Act of 2005, coastal state governments would be tasked with overseeing district and local administration and the operation of the National Plan for shoreline response.¹⁹

In the 24th National Oil Spill Disaster Contingency Plan and Preparedness Meeting at Chennai contingency plans to ensure collective preparedness to respond to any chemical and oil spill in Indian waters were reviewed.²⁰

LIABILITY REGIME IN INDIA

In many countries like the U.S, oil spill liability includes civil and criminal regimes. In the event of a marine disaster resulting in oil contamination, the liability and fund conventions provide restrictions on the shipowner's obligation. Strict liability, channelling of liability, and caps on liability limits are the guiding principles for the law governing liability for oil spills.

¹⁸ The Indian Coast Guard, Marine Environment Protection, Para no.1(June 20, 2023)

¹⁹ The International Tanker Owners Pollution Federation Limited (ITOPF), INDIA- A summary of Oil Spill Response Arrangements & Resources Worldwide, Page No. 4 (January 27, 2019)

²⁰ The Indian Coast Guard, *The 24th National Oil Spill Disaster Contingency Plan (NOS-DCP) and Preparedness Meeting's details*, pg. 21(November 30, 2015)

Unlike other jurisdictions, India only acknowledges civil liability. International custom, treaty law based on international conventions, decisions of Indian courts, and those of foreign countries recognized by Indian courts are the sources of liability law for maritime accidents in India. Maritime activities are governed by a plethora of disparate laws, with the Merchant Shipping Act of 1958 codifying the law relating to liability for maritime accidents.²¹

A. POLLUTER PAYS PRINCIPLE

In the 1996 judgment of the *Indian Council for Enviro-Legal Action v Union of India*²², the Court established polluter pays as an absolute liability of a person for the pollution of the environment. This concept includes not only compensation for those adversely affected by the pollution, but also costs associated with restoring the environment to its prior condition.

In addition to the definition above, paragraph 4 of the Organisation for Economic Co-operation and Development (OECD) Guiding Principles²³, which laid out this principle, also states that a polluter ‘...should ensure that the environment remains in an acceptable condition.’ This means that pollution should be reduced to an acceptable level, not necessarily eliminated. This definition also implies the possibility of ‘total elimination of pollution.’²⁴

In the event of pollution damage occurring on or in the territorial waters of a Contracting Party resulting from discharges from vessels, the ship owner is deemed to be responsible for the incident except in few conditions. This is based on the provisions of the International Convention for the Protection of Oil Pollution from Discharges (the 1992 Civil Liability Convention).

B. LIABILITY IN DIFFERENT SCENERIOS

1. Liability In Case Of Pollution From Ships

Part X of the Act determines liability in case of collisions and accidents at sea, based on the proportion to the degree to which each ship was at fault.²⁵ If different degrees of responsibility cannot be established, liability shall be allocated equally.²⁶ The owner will not be accountable for pollution damages if he succeeds in proving the damage was wholly caused by an act or omission

²¹ SINHA, PRABHAS C., Law of the sea: India’s policy options, Journal of the Indian Law Institute, Vol. 33, Issue No. 4 (October 1991)

²² Indian Council for Enviro-Legal Action v Union of India, 1996 SCC (3) 212

²³ OECD, ‘Recommendation of the Council on Guiding Principles concerning International Economic Aspects of Environmental Policies’ C (72) 128

²⁴ OECD, The Polluter Pays Principle: Definition Analysis Implementation (OECD 1975) 15

²⁵ Section 345H, Merchant Shipping Act, 1958

²⁶ Ibid, Section 345 (1) (a)

done with the intent to cause such damage by any other person.²⁷ Also, the owner may restrict his liability for pollution damages arising from a series of incidents of the same origin.²⁸

Limitation of liability protects the owner in case of maritime accidents worldwide causing damage to cargo, another vessel, or personal life, against claims far surpassing the value of the shipment and ship.²⁹ 352 I, 352 J asserts the owner's liability limitation but prohibits the owner from limiting liability in case of negligence.³⁰

The owner can avail of the benefit of limitation of liability by filing an application to the High Court for the constitution of a limitation fund.³¹ The limitation fund may be constituted either by depositing the sum with the High Court or by furnishing a bank guarantee or such other security as, in the opinion of the High Court, is satisfactory.³² Also, the financial security provided by any guarantor for the constitution of such fund shall have the same outcome as being created by the owner.³³ Also, such funds can be created when the owner can not limit his liability due to his negligence but does not prejudice the right of any claimant against the owner for full compensation exceeding the amount deposited.³⁴

An insurance or other financial security should be maintained by the owner of every Indian ship which bears 2000 tons or more oil, up to an amount parallel to one hundred and thirty-three Special Drawing Rights for each ton of the ship's tonnage; or fourteen million Special Drawing Rights, whichever is lower.³⁵

Where a claimant enduring pollution damage is unable to acquire adequate compensation under the terms of the Liability Convention³⁶ on any of the grounds specified in Article 4 of the Fund Convention³⁷, the International Oil Pollution Compensation Fund shall pay compensation in

²⁷ Ibid, Section 352 I (2) (b)

²⁸ Ibid, Section 352 H (a)

²⁹ World Tanker Corporation v. SNP Shipping Services Pvt. Ltd., AIR 1998 SC 2330

³⁰ Supra note 22, Section 352 J (2)

³¹ Ibid, Section 352 K (1) (a)

³² Ibid, Section 352 K (1) (b)

³³ Ibid, Section 352 K (2) (a).

³⁴ Ibid, Section 352 K (2) (b).

³⁵ Ibid, Section 352 N (1).

³⁶ International Convention on Civil for Oil Pollution Damage, 1992

³⁷ International Convention on the establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.

conformity with the provisions of the Fund Convention.³⁸ Section 352 U provides that the Assembly of the Fund determines the amount payable to the Fund by a person for any year.³⁹ The claims concerning Funds for compensation must be brought before High Court within three years from the date of damage, provided no action to enforce a claim shall be proposed after six years from the date of the incident.⁴⁰

Strict liability is imposed on all ship owners for oil pollution damage disregarding their nationality.⁴¹ The central government has the power to take appropriate measures to prevent or contain oil or noxious liquid substance pollution.⁴²

The Merchant Shipping Act, 1958 stresses the liability on the owner and not the other person, such as the crew members, master, salvor, or operator, except where such person causes damages recklessly and wilfully.⁴³ Most people who might have participated with the vessel during the oil spill or danger are exempted from liability. MSA also lacks provisions to prevent a negligence claim against a third party other than the mentioned excused person.

2. Liability For Pollution From Oil Tankers Of Ships.

Tarring is the result of operational discharge from oil bunkers to the sea. Oil chemically reacts with oxygen, either breaking down into soluble products or forming long-lasting components known as tars. Tars are formed as a result of the oxidation of thick layers of high-viscosity oils or emulsions.⁴⁴ Tar balls are a common sight from pre-monsoon to monsoon along India's west coast, from Gujarat in the north to Karwar in the south. The recent accumulation of tar balls on the seashore of Gujarat is the result of pollution from oil bunkers of vessels.⁴⁵

The first level of compensation is provided by the owner or insurer of a tanker under the International Convention on Civil Liability for Oil Pollution Damage when a release of persistent

³⁸ Supra note 22, Section 352W

³⁹ Article X & XII, International Convention on the establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.

⁴⁰ Supra note 22, Section 352WY

⁴¹ Ibid, Section 352I

⁴² Ibid, Section 352K

⁴³ Ibid, Section 352J

⁴⁴ United Nations Environment Programme (UNEP), What Happens to Oil in Sea Water? -Global Marine Oil Pollution Information Gateway,

<http://oils.gpa.unep.org/facts/fate.htm#:~:text=Oxidation%3A%20Oils%20react%20chemically%20with,it%20is%20exposed%20to%20sunlight> , Last visited on March 11,2023

⁴⁵ PTI, Oil from Bombay high cause for tar balls on Gujarat Coast: NIO, The Hindu (December 04, 2018)

hydrocarbon mineral oil results in pollution damage. The convention may apply to a release from an unladen tanker even though it typically only applies to tankers carrying persistent oil as cargo.

India has ratified the CLC 92 convention. Every ship that carries more than 2000 T of oil as cargo must maintain insurance covering the liabilities of the ship owner.⁴⁶ CLC applies strict liability to the registered shipowner for pollution damage. If it is established that the pollution damage was caused by the tanker owner's personal act or omission, the 1992 CLC's right to restrict culpability does not apply. However, the tanker owner is not responsible for pollution damage that was caused by a natural disaster, a third party acting maliciously, or public authorities failing to maintain lights or other navigational aids.

Action can be brought in any country that was affected by the pollution⁴⁷, and the ruling of the court where the claim was filed must be recognized by other states.⁴⁸ Claims must be filed under the CLC no later than three years after the date of the damage or six years after the date of the incident, whichever comes first.⁴⁹ If an action to enforce the claim is not brought within this time frame, the claim is completely lost, and the court has no discretion to consider it.⁵⁰

The 1992 Protocol's compensation caps were increased by 50% as a result of the 2000 revisions, as follows:

- Liability is capped at 4.51 million SDR (\$5.78 million) for ships with less than 5,000 gross tonnes.
- Liability is capped at 4.51 million SDR for ships with 5,000 to 140,000 gross tonnes of tonnage, plus 631 SDR for each gross tonne exceeding 5,000.
- Liability for ships with a gross tonnage over 140,000 is capped at 89.77 million SDR.

Bunker spills from ships other than tankers or spills from tankers' ballast are not covered under CLC. The Bunkers Convention 2001 is applied to a release of bunker fuel from a clean tanker or when the tanker has carried non-persistent oil. The government of India has approved the ratification of the BUNKER convention but has not ratified it yet. The Merchant Shipping

⁴⁶ Supra note 34, Article VII

⁴⁷ Ibid, Article IX

⁴⁸ Ibid, Article X

⁴⁹ Ibid, Article VIII

⁵⁰ The Cause Assuranceforeningen Skuld v. The International Oil Pollution Compensation Fund and Others (Outer House, Court of Session, Edinburgh) 1999 S.L.T 1405

(Amendment) Bill, 2022 addresses the clauses of the Bunker Convention but is yet to receive approval for its implementation. The Limitation of Liability of Maritime Claims (LLMC) Convention of 1976 addresses oil spill compensation for Bunker oil leaks. Part XA of the Merchant Shipping Act of 1958 incorporates the terms of the LLMC 1976 convention.

3. Liability In Case Of Pollution From Offshore Installations

Any installation, whether mobile or fixed, that is used or is intended to be used for undersea exploration or exploitation of crude oil, petroleum, or other similar mineral oils under a lease, licence, or other type of contractual arrangement is referred to as an "off-shore installation." This includes (a) any installation that could be moved from one location to another using its own motive power, as well as (b) a pipeline.⁵¹

A 2010 offshore oil rig explosion resulted in the spilling of millions of gallons of oil into the Gulf of Mexico. Over 1,000 miles of shoreline were poisoned by this environmental catastrophe, which also hurt the health of locals living along the coast.⁵² The oil well blowout in April 1977 at the North Sea in Ekofisk oil field resulted in the spillage of 81 million gallons of oil. The LAJPAT RAI in Bombay Port (1984) and PUPPY P (1989) occurred offshore but led to shoreline oiling.

157,000 barrels of oil are released annually on average due to leaks from platforms, pipelines, tankers, and coastal facilities. There are waste products produced, including bilge water, cement, garbage, and chemical compounds. The decommissioning of installation is also a potential problem.

The legal standing of an offshore installation is not clearly established under International law. Many countries like the UK include offshore installations under the definition of the "Ship."

The CLC 1992 provides a compensation regime for oil pollution but it fails to apply to offshore operations due to its restrictive definition of the term 'ship'. But the MARPOL applies to all 'ships,' which means all ships of any type whatsoever operating in the marine environment, from merchant ships to fixed or floating platforms to non-commercial ships⁵³.

⁵¹ Section 356B (i), Merchant Shipping Act, 1958

⁵² KEVIN LEE, What effects does oil drilling have on the ocean? Sciencing by Leaf group (March 10, 2018)

⁵³ Annexure 5, The International Convention for the Prevention of Pollution from Ships, 1973

In India, there is unfortunately no consolidating Act for covering the liability of shipping operations in Offshore Installations. Oil spill preparedness is funded by the concerned industry sectors whose activities pose the risk of a marine oil spill. In the event of an oil spill, the polluter is liable for all reasonable costs associated with the response.

Oil pollution from offshore installations is regulated by Part X B of the Merchant Shipping Act 1958. Central Government has the power to serve notice to the owner in order to reduce the pollution that has already occurred or to avoid the pollution that is about to occur.⁵⁴ However, the Proviso of Part XB clearly restricts the application of this Part to offshore installation which is included in the term 'Ship' under the meaning of the Act except in the event of pollution damage caused by any such offshore installation, the person who is liable for the damage may claim exoneration from any liability if he proves that such damage was (a) was entirely caused by an act of war, hostilities, civil war, insurgency, or a natural phenomenon of exceptional, unavoidable, and irresistible character; or (b) was entirely caused by an act or omission done with intent to cause that damage by any other person; or (c) was entirely caused by the negligence or other wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of its functions in that behalf.⁵⁵

CONCLUSION

One should not just compare data – the magnitude of the spill is not the only important aspect in determining how much environmental harm a spill might create. There is a minimal association between the amount of oil spilt and the effects on marine ecosystems. In an ecologically sensitive environment, even a minor leak can cause disaster.

The main demerit of recording oil spills is that it excludes minute oil spills (less than seven tonnes), which the ITOPF claims account for more than 80% of all oil spills at sea. According to the group, information on these minor leaks is difficult to get and frequently incomplete. The ITOPF data also fails to cover every type of vessel that could be transporting oil, potentially missing some tragedies.⁵⁶

The ratification of the CLC and Fund Convention and its incorporation in the Merchant Shipping

⁵⁴ Section 356J, Merchant Shipping Act, 1958

⁵⁵ Section 356K, Merchant Shipping Act, 1958

⁵⁶PETER MWAI, Mauritius oil spill: Are major incidents less frequent, BBC News (August 14, 2020)

Act, 1958 has so far provided a liability regime for the oil discharge which turned out to be an effective provision while dealing with such scenarios. But the current situation needs changes with the introduction of different types of vessels and oils one cannot depend on an old regime to tackle future problems.

Firstly, India currently only deals with civil liability, and there is a need to implement criminal liability on shipowners, crew members, and other associated staff for negligence which results in havoc in the marine environment and for marine dependant people.

The CLC gives a method for assessing the limitation of responsibility in article V but no such assessment method is mentioned in the Merchant Shipping Act, 1958. It simply states that "the owner shall be allowed to limit his culpability under this Part in respect of any one or more incidents, as stipulated."⁵⁷

Secondly, The Merchant Shipping Act, 1958, and The Merchant Shipping (Prevention of the Sea by Oil) Rules, 1974, concerns oil discharge, spills, and leakages only from vessels in the sea. These statutes overlook the cases of offshore installations as the liability process still rests on the question of the inclusion of offshore installations under the ambit of "ships."

Thirdly, there is no differentiation between the Accidental and Operational discharge of oil in the Merchant Shipping Act, 1958. India ratified the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 in 2015 itself and it has been included in the Merchant Shipping (Amendment) Bill, 2020 but has not still seen the light of implementation.

While India's liability regime is robust in theory, several challenges exist in practice. Ensuring proper implementation and enforcement remains a persistent issue. Additionally, the capacity of response agencies, including the Coast Guard and other authorities, needs continuous strengthening to tackle oil spills effectively.

The drawbacks of the Oil Spill regime in India need to be corrected and there is a need for an effective approach to handle future Oil spill situations.

⁵⁷Section 352, Merchant Shipping Act, 1958.