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OIL SPILL LIABILITY: LEGAL FRAMEWORK, CHALLENGES AND SOLUTIONS

AUTHORED BY - SHERICK MATTHEW

Abstract

With a 7516.6-kilometer-long coastline, India significantly relies on the maritime industry for bulk crude oil imports and other transportation activities. Although the state is still a signatory to the Civil Liability Convention (CLC 1992) and has shown legislative intent to join the Bunker Convention, combining both international conventions creates a grey area for determining accountability for oil pollution damage under the Indian framework. This is because, while both modern environmental law and Indian domestic law have largely embraced the Polluter Pays Principle, a core tenet of which is the responsibility for alternative restoration, including loss of use or damage to the environment itself, the CLC or Bunker Convention make no mention of the same. This Paper addresses how Indian courts may approach liability for oil pollution harm caused by this legislative vacuum by utilizing the Polluter-Pays concept in addition to the locally established idea of Absolute Liability.

Introduction

In the Indian context, the importance of oil spill liability is paramount due to the country's significant coastline, diverse ecosystems, and reliance on marine resources. The potential consequences of oil spills, whether from maritime accidents or industrial activities, can have severe environmental, economic, and social repercussions. As India continues to experience rapid industrialization and increased maritime trade, the risk of oil spills rises, making a robust liability framework crucial. The environmental impact of oil spills in India cannot be overstated. The nation's coastal regions host rich biodiversity, including delicate ecosystems like mangroves and coral reefs. Oil spills pose a direct threat to marine life, causing harm to fish, birds, and other species. The contamination of water bodies can lead to long-term ecological damage, affecting the balance of ecosystems and jeopardizing the livelihoods of coastal communities dependent on fisheries. Economically, India's dependence on maritime trade and fisheries heightens the vulnerability to oil spills. Disruptions in shipping routes, damage to ports, and the decline in fishery yields due to pollution can result in substantial financial losses. The tourism industry, often thriving along the picturesque coastlines, also

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faces a downturn when regions are marred by oil spills, affecting local businesses and communities. In the social sphere, oil spills impact the well-being of communities residing in coastal areas. These communities, often marginalized, bear the brunt of environmental degradation, loss of livelihoods, and adverse health effects.

Addressing oil spill liability is, therefore, crucial not only for environmental sustainability but also for ensuring social justice and safeguarding the rights of vulnerable populations. The legal framework surrounding oil spill liability in India plays a critical role in determining accountability, facilitating prompt response measures, and ensuring fair compensation for affected parties. It sets the standards for preventive measures, delineates the responsibilities of various stakeholders, and establishes mechanisms for swift and effective response in the aftermath of an oil spill.

When it comes to things harming the environment, the items that come in one's mind are mixing chemicals in water bodies by industries, harmful gases emitted by the industries, Automobiles, dumping of waste in the public and water bodies, etc. But no one thinks about oil spill which also affects the environment. More than that, even the Environment Protection Act, of 1986 doesn't cover the oil spill in the act. In this research paper, we will find why it is so and its liability.

Legal Framework

The legal framework governing oil spill liability in India is a multifaceted structure encompassing various statutes and regulations aimed at preventing, managing, and mitigating the environmental and socio-economic impacts of oil spills. One of the central pieces of legislation is the Merchant Shipping Act, 1958, which addresses liability and compensation for oil pollution damage. This Act outlines the responsibilities of shipowners, operators, and other stakeholders, providing a legal basis for addressing oil spills in Indian waters.

Additionally, the National Oil Spill Disaster Contingency Plan (NOS-DCP), formulated by the Ministry of Shipping, plays a pivotal role. This plan delineates the roles and responsibilities of different agencies involved in responding to oil spills, establishes procedures for an effective response, and outlines mechanisms for compensation to those affected. It serves as a comprehensive guideline for coordinating efforts to contain and remediate oil spills in Indian maritime zones.

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Under the umbrella of environmental protection, the Coastal Regulation Zone (CRZ) Notifications issued under the Environment (Protection) Act, 1986, regulate activities in coastal areas and may include provisions relevant to the prevention and mitigation of oil spills. These notifications contribute to maintaining the ecological balance in coastal regions and safeguarding marine ecosystems from the adverse effects of oil pollution.

The Water (Prevention and Control of Pollution) Act, 1974, administered by the Central Pollution Control Board (CPCB) and State Pollution Control Boards, addresses water pollution and may have relevance in cases of oil spills affecting water bodies. This legislation empowers regulatory bodies to enforce measures for the prevention and control of marine pollution, holding those responsible for oil spills accountable.

Moreover, the Indian Ports Act, 1908, empowers port authorities to regulate and control port operations, potentially including measures related to the prevention and management of oil spills within port areas. The legal framework also incorporates the Public Liability Insurance Act, 1991, which mandates industries handling hazardous substances, including oil, to take out insurance for liability arising from accidents, ensuring financial resources for compensating affected parties.

While these laws provide a foundational structure, the legal framework is dynamic and evolves to address emerging challenges. International conventions, such as the Civil Liability for Bunker Oil Pollution Damage Convention and the International Convention on Civil Liability for Oil Pollution Damage (CLC), also influence India's approach to oil spill liability, emphasizing the interconnectedness of global efforts to tackle this environmental issue. Continued vigilance, regulatory updates, and international cooperation remain essential for effective oil spill prevention, response, and liability management in India.

In recent years, there has been a global emphasis on bolstering environmental protection measures, and India is likely to align its legal framework accordingly. Increased attention to corporate responsibility, stricter penalties for non-compliance, and enhanced coordination among regulatory bodies may be areas of focus in potential legal amendments.

Moreover, in response to evolving international standards and conventions related to oil spill liability, India might consider aligning its domestic laws with these global agreements to ensure

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consistency and facilitate international cooperation in case of transboundary incidents.

Case Study

Ennore Oil Spill

The 2017 Ennore oil spill occurred outside the Kamarajar Port in Ennore, near Chennai, Tamil Nadu, India. The leak occurred on January 28, 2017, when the outbound empty tanker BW Maple collided with the inbound full oil tanker Dawn Kanchipuram around 04:00 local time. It was unexpected.

The incident took place two nautical miles off Kamarajar Port in Ennore, a natural port about 20 km north of Chennai on the Coromandel Coast. Ennore Creek (a swampy backwater that runs over 13 km between Pulicat Lake in the north and the Kosasthalaiyar River in the south before draining into the Bay of Bengal) divides the town of Ennore from the government-owned public business Kamarajar Port.

The two ships collided at 4 a.m. on January 27, 2017. The Kamarajar port authority issued a press statement this morning, stating that there has been no environmental damage and no casualties or injuries. It further stated that both vessels are safely anchored, and the degree of damage to the vessels is being assessed. By afternoon, an oil leak sheen was visible, with dead turtles washing ashore and inhabitants of neighboring coastal neighborhoods reported a heavy oil odor. The Indian Coast Guard indicated they were assessing the situation and offering help as needed. The Coast Guard also said the spill would be contained in less than 24 hours.

The investigation into the cause of the crash began on January 29, 2017.On January 30, 2017, the Kamarajar Port issued a statement indicating that there was no significant environmental damage or personal injury, but that some sheens of oil traces had been discovered. It further added that oil booms were set as a precautionary measure around the vessel Dawn Kanchipuram to prevent any seepage. The ship was then pulled into the port and berthed after its cargo was discharged, and vehicle checks for damage assessment revealed no sign of an oil spill other than some sheens of oil traces', according to the press note. The fishing community stated that hundreds of fish had died and that they were unable to go fishing because the spill had reached the shoreline.

On January 31, 2017, the District Collector of Thiruvallur stated in a news conference that an

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oil spill occurred following the event on January 28, with the Tamil Nadu Pollution Control Board and the Fisheries Department dispatched to investigate the situation. The Coast Guard conducted manual efforts to clean up the oil spill, as well as helicopter sorties to monitor its progress and help in its clearance. Chennai Corporation utilized three large buckets to remove the oil leak. On February 5, the then-Chief Minister of Tamil Nadu, O. Panneerselvam, visited the site and said that 90% of the cleanup work had been done, with the balance expected to be completed within a few days. He said testing showed the spill had no effect on marine life and that the fish were safe to eat. He also offered to help the local fishing community.[11] On February 6, it was revealed that the viscous heavy oil being cleaned was heavy bunker fuel caused by a leak in the fuel tanks of the oil tanker Dawn Kanchipuram, rather than its cargo.

As of 7 February, the attempts to manage the oil spill had yielded around 160 metric tons of sludge, removed by over 5700 persons. The Indian Coast Guard reported in February 2017 that an area of around 34,000 square meters (370,000 square feet) had been damaged. He added that 95 percent of the spill occurred north of the Chennai Port, with sludge piling over 800 meters (2,600 feet) distributed across 11 locations. He also stated that the coastlines of the city's Marina Beach were unaffected, although oil accumulated along the shoreline of the suburb Tiruvallur for 3 kilometers (1.9 miles). The spill's volume was estimated to be 9.9 million US gallons (37,000 cubic meters). The government of Tamil Nadu was criticized for its failure and crisis communication and contingency response.

2010 Mumbai Oil Spill

The 2010 Mumbai oil spill happened when the Panama-flagged MV MSC Chitra (IMO: 7814838) and MV Khalijia 3 (IMO: 8128690) collided off the coast of India near Mumbai on Saturday, August 7, 2010, at approximately 9:50 a.m. local time. MSC Chitra, departing from South Mumbai's Nava Sheva port, collided with the inbound Khalijia-III, causing around 200 cargo containers from MSC Chitra to be dumped into the Arabian Sea. Khalijia-III was reportedly engaged with another mishap on July 18, 2010.

Regulatory Authorities

In India, regulatory authorities play an important role in handling and regulating oil spills to protect the environment and limit any losses. The Ministry of Environment, Forest, and Climate Change (MoEFCC), the Central Pollution Control Board (CPCB), and the Indian Coast Guard are the primary regulatory authorities responsible for oil spill management in India.

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1) The Ministry of Environment, Forest and Climate Change (MoEFCC):

The MoEFCC is India's principal governing body in charge of establishing and implementing environmental policies and programmes. In the event of an oil leak, the MoEFCC develops regulatory frameworks and instructions for preventing and responding to such events. The ministry aims to guarantee that enterprises and organizations involved in oil exploration, production, and transportation follow environmental regulations and processes. It is also in charge of developing and implementing contingency plans for oil spill response.

2) The Central Pollution Control Board, or CPCB:

The CPCB is India's highest level of pollution control authority, reporting to the MoEFCC. It develops recommendations for monitoring and reducing pollution, especially that produced by oil spills. The CPCB collaborates closely with state pollution control boards and other relevant organizations to enforce regulations governing the handling and disposal of oil and hazardous substances. In an oil leak, the CPCB coordinates response operations and ensures adequate spill containment and cleanup methods are implemented.

3) The Indian Coastguard:

The Indian Coast Guard is a vital operational department that responds to maritime catastrophes such as oil spills. It is an important part of responding to coastal and marine pollution, and it is frequently the first line of defense in mitigating oil spills. The Coast Guard coordinates search and rescue operations, enforces maritime regulations, and deploys resources for oil spill containment and cleaning. Furthermore, it collaborates with other organizations, such as the Navy and state pollution control boards, to improve the effectiveness of response activities.

Together, these regulatory entities create a complete framework for oil spill management in India. Their responsibilities include establishing and enforcing regulations, organizing emergency response activities, conducting routine inspections, and guaranteeing the overall protection of the marine and coastal environment. The partnership between these institutions demonstrates a coordinated effort to solve the issues created by oil spills while also ensuring the country's environmental sustainability.

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Challenges in Implementation

Implementing oil spill liability legislation in India presents several obstacles, highlighting the issue's complexity and the necessity for a complete and effective regulatory framework.

1) Regulatory compliance and enforcement:

   One of the most significant issues is guaranteeing regulatory compliance and effective enforcement methods. Despite the presence of restrictions, ensuring that businesses follow the specified standards can be difficult. Inconsistent enforcement, insufficient resources, and potential opposition from industry stakeholders can all impair the effectiveness of oil spill liability legislation. Robust monitoring and inspection systems are required to overcome this difficulty.

2) Resource constraints:

   Adequate resources, both in terms of manpower and technology, are required for successful oil spill response and management. Many regulatory authorities in India may experience resource limits, reducing their ability to respond quickly to oil leak occurrences. Inadequate financing for research, technology development, and response personnel training can reduce the overall effectiveness of oil spill liability legislation.

3) Collaboration among stakeholders:

   Effective oil spill management necessitates close collaboration among all parties, including government agencies, commercial companies, and local people. This coordination can be difficult due to competing priorities, communication gaps, and a lack of standardised procedures. Establishing open lines of communication and coordination is critical for a quick and successful response to oil spills.

4) Technological improvements and Research:

   The oil and gas industry's dynamic nature necessitates ongoing technological and research improvements to enhance spill response capabilities. It is difficult to keep rules up to date to reflect the most recent technological advances and scientific discoveries. A lack of investment in R&D can limit the ability to implement novel solutions for oil spill prevention, containment, and cleanup.

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5) Public knowledge and Participation:

To effectively control oil spills, it's necessary to raise public knowledge about their possible consequences and the need of following regulations. A lack of public knowledge and involvement can lead to delayed event reporting and difficulties mobilising community support during response efforts. Education and outreach programmes are critical for instilling a sense of shared responsibility in the public.

6) International Cooperation:

Effective oil spill management requires international cooperation, as spills typically cross national borders. Due to differences in regulatory systems and geopolitical factors, it can be difficult to coordinate responses with neighboring countries and adhere to international best practices. Increasing multinational collaborations and coordinating regulatory measures can improve the overall efficacy of oil spills liability regulations. Addressing these issues needs a collaborative effort from regulatory organizations, industry stakeholders, and the public. Continuous evaluation and revision of rules, investment in technology and research, and promotion of collaboration among diverse stakeholders are critical elements for ensuring a strong and effective oil spill liability framework in India.

Comparative Analysis

The Indian legislative system for dealing with oil spills demonstrates a dedication to complying with international standards, while there are minor variances. India recognizes the global dimension of environmental challenges, particularly oil spills, and has worked to align its rules with international norms. One such international norm is the International Convention on Civil Liability for Oil Pollution Damage (CLC). While India is not a party to the CLC, it has enacted local laws, such as the Merchant Shipping Act, to address liability and compensation for oil pollution in accordance with CLC principles.

Despite this convergence, several differences remain. For example, the CLC limits shipowners' liability, although Indian law may set different standards. The failure to ratify some international treaties might lead to variances in the execution of best practices, reducing the overall efficacy of the legislative framework.

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The Indian legal framework is also consistent with the International Maritime Organization's (IMO) rules for oil spill response and contingency planning. Both emphasize the significance of stakeholder readiness, rapid reaction, and good cooperation. However, the intricacies in enforcement procedures and regulatory authorities' roles may change, reflecting India's unique legal and administrative frameworks.

Another notable international guideline is the Oil Pollution Preparedness, Response, and Cooperation (OPRC) Convention, to which India is a signatory. The convention specifies worldwide responses to oil spills. India has incorporated OPRC concepts into its National Oil Spill Disaster Contingency Plan (NOS-DCP), demonstrating a commitment to implementing best practices from the global community.

Conclusion

As India continues its economic growth trajectory with increasing maritime activity, the need for a balanced approach that harmonizes development with environmental protection becomes increasingly crucial. By addressing the identified regulatory gaps and implementation challenges, India can establish a more effective oil spill liability framework that upholds the principles of environmental justice while supporting sustainable maritime development. Such reforms would not only protect India's rich coastal biodiversity and the livelihoods dependent on marine resources but would also position India as a regional leader in marine environmental governance. The path forward requires continued judicial activism, policy innovation, and stakeholder collaboration to ensure that India's precious coastline remains protected for generations to come.