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On the topic

**A COMPREHENSIVE ANALYSIS OF OIL SPILL LIABILITY AND
RESPONSIBILITIES IN INDIA AND INTERNATIONAL PERSPECTIVES**

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LIST OF ABBREVIATIONS

1. **ATB:** Articulated Tug and Barge.
2. **BNS:** Bharatiya Nyaya Sanhita.
3. **CLC:** Civil Liability Convention.
4. **CPCB:** Central Pollution Control Board.
5. **CRZ:** Coastal Regulation Zone.
6. **EPA:** Environment Protection ACT.
7. **FSU:** Floating Storage Unit.
8. **IMO:** International Maritime Organization.
9. **IOPC:** International Oil Pollution Compensation Fund.
10. **IPC:** Indian Penal Code.
11. **MARPOL:** International Convention for the Prevention of Pollution from Ships.
12. **MSA:** Merchant Shipping Act.
13. **NGT:** National Green Tribunal.
14. **NOSDCP:** National Oil Spill Disaster Contingency Plan.
15. **OECD:** Organization for Economic Co-operation and Development.
16. **PROT:** Protocol.
17. **SDR:** Special Drawing Rights.
18. **SMB:** Single Mooring Buoy.
19. **SPCB:** State Pollution Control Board.
20. **UNCLOS:** United Nations Convention on the Law of the Sea.

LIST OF CASES

- Indian Council for Enviro Legal Action v. Union of India. A.I.R. 1996 SC 1446.
- MC Mehta v. Union of India, A.I.R. 1987 SC 1086.
- MC Mehta v. Kamal Nath & Ors., A.I.R. 2002 SC 1515.
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- Samir Mehta v. Union of India, Original Application No. 24 of 2011.

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CHAPTER I INTRODUCTION

A COMPREHENSIVE ANALYSIS OF OIL SPILL LIABILITY AND RESPONSIBILITIES IN INDIA AND INTERNATIONAL PERSPECTIVES

1.1 Introduction

"Places change over time with or without oil spills, but humans are responsible for the Deep water Horizon gusher - and humans, as well as the corals, fish and other creatures, are suffering the consequences." ~ Sylvia Earle

The intersection of international trade and marine pollution, particularly in the context of oil spills, presents a multifaceted and serious challenge that demands comprehensive analysis. The consequences of oil spills at sea are not confined to environmental damage alone, they also involve legal, economic, and political scopes. As the global economy relies heavily on maritime transportation, the potential impact of oil pollution incidents on international trade cannot be underestimated. Furthermore, the legal frameworks in place to address such incidents, both at the international and national levels, often require a rigorous examination to ensure their effectiveness and equitable distribution of liability. Over 70% of the Earth's surface is made up of oceans, which provide vast routes for international trade. The foundation of this trade is maritime transportation, which allows goods to be moved on a scale never seen before. Ships of all sizes, from specialized oil tankers to enormous container ships, travel these waters to connect far-flung areas, maintain supply chains, and guarantee the availability of resources and goods. Oil, also known as "black gold," is essential to contemporary economies. Before the 20th century, nations worldwide ignored the sources of pollution caused by ships at sea in favor of the advantages of international trade. This changed with the expansion of seaborne trade and the practical implications and consequences of the current legal provision environment. As we enter the new millennium, it is abundantly obvious that global economic trends have fueled the demand for additional energy, the primary source of which is oil. This is also the time that people are becoming more conscious of the inherent worth of nature's resources and the risks that oil brings to them. The conflict that results from the increasing need for oil and the opposition to its detrimental effects on the environment has played a major role in the formation of international regimes that seek to address this problem.

Since oil pollution has the potential to harm the ecosystem, a lot of work has gone into creating regulations to avoid pollution, since prevention is still the most efficient means of fighting oil pollution. Pollution accidents are unavoidable, and pollution responsibility follows regardless of the implementation of safety management systems, enhanced manning standards, better ship design, construction, and equipment, and preventative programs. The need for developing internationally acceptable liability and compensation regimes is thus self-evident. With this aspect of the fight against pollution coming into play, ship-owners engaged in the transportation of crude oil in bulk as cargo have to face the consequences of their venture. Humanity's desire and claim, at times, the pursuit of an acceptable standard of living must be given top priority if future generations are to live in a respectable setting and make use of nature's comforts.¹

Spilled oil is highly toxic, posing lethal risks to adult animals even at relatively low concentrations. It can also cause physiological and behavioural disruptions in various species. Oil spills prevent normal feeding, respiration, and movement functions, affecting not only ocean wildlife but also marine life along the shoreline. Birds are particularly vulnerable to oil spills. Additionally, oil spills can lead to the tainting of fish and shellfish, sometimes causing seafood to have an oily taste or smell. An oil spill directly harms animals, plants, corals, and fisheries, and it also impacts human activities by damaging fishing boats, fishing gear, and floating fishing equipment.²

Oil spills impact not only the surrounding ocean space but also shorelines, open waters, the seabed, wetlands, and coral reefs. They damage fisheries and coastal amenities, with shorelines being especially vulnerable to potential damage. The extent of damage is unpredictable and does not depend solely on the size of the spill; rather, it is influenced by the proximity to the shoreline and the vulnerability of the affected area.³

Specifically, the oil pollution that resulted from the 1967 Torrey Canyon disaster may be examined. At the time, the ship, which had a capacity of 12,300 tons and was registered in Liberia, was among the largest in the world. It carries the practical

¹ Enaw, J.E.A. (2000) *Action and compensable damage: the Civil Liability and Fund Conventions in perspective*. Dissertation. World Maritime University.

https://commons.wmu.se/cgi/viewcontent.cgi?article=1057&context=all_dissertations

² Oil Pollution and International Marine Environmental Law Ekaterina Anyanova

file:///C:/Users/USERS/38092(last visited June 17th)

³ *Ibid.*

implications and consequences of current legal provisions causing a significant oil spill. That served as the primary catalyst for decision-makers, lawmakers, and the global society to recognize the gravity and immediacy of the marine pollution crisis. Furthermore, repairing the harm done is very expensive and takes time. It is quite difficult to make a compensation claim when it comes to the limitation and cleanup of the marine environment and the assessment of damages. The 1969 International Convention on Civil Liability for Oil Pollution Damage 1969 (1969 CLC) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971 FUND) are two international conventions that the International Maritime Organization (IMO) adopted in recognition of the serious effects of oil pollution. These conventions provide a legal framework for compensating for oil pollution caused by ship spills. The 1992 Civil Liability Convention and the International Fund for Compensation for Oil Pollution Damage (1992 FUND) are the two revised conventions that amended the 1969 CLC in 1992. The date of these conventions implementation was May 30, 1996. The IMO approved the Supplementary Fund Protocol in 2003, which offers further compensation for harm brought about by oil contamination in member states. The same requirements as in the International Oil Pollution Compensation Fund apply to be eligible for compensation from the Additional Fund.

In addition to the primary legal documents on oil pollution and marine environment protection, general principles of international environmental law also apply to cases of oil pollution. Concepts such as the “precautionary principle” and the “polluter pays principle” can be applied.

India is lined by two key global oil transport checkpoints, the Strait of Hormuz and the Strait of Malaca, which lie off its West and East coasts, respectively. India is a major importer of crude oil and remains highly susceptible to the risk of an oil spill. The National Oil Spill Disaster Contingency Plan acknowledges and quantifies this grave

risk: “About 70 percent of the world oil demand is ferried along the Indian coastline,” and major Indian ports handle over 7000 petroleum oil and lubricant tankers each year.⁴

Following its adoption by the International Maritime Organization (IMO) in 1990, India became one of the select few nations to promptly ratify the International Convention on Oil Pollution Preparedness, Response, and Co-operation the practical implications and consequences of current legal provisions responsible for coordinating the response to oil spills in India’s maritime zones, as per the government’s Oil Spill Disaster Contingency Plan (NOSDCP).⁵

There are numerous ways that oil pollution in the ocean can occur, including oil tanker crashes, seaport operations in coastal waters, oil spills from oil rigs, oil exploitation on the continental shelf, oil processing at the practical implications and consequences of current legal provisions ecological activity.

The regulation and management of oil spill liabilities and responsibilities have evolved significantly over the decades, both in India and internationally. Despite considerable advancements, several critical gaps remain unaddressed, necessitating a comprehensive analysis of the current legal frameworks. The Indian context of oil spill pollution is governed primarily by the Merchant Shipping Act of 1958, complemented by various international conventions to which India is a signatory, such as the International Convention on Civil Liability for Oil Pollution Damage. However, the effectiveness of these laws is often hindered by inadequate implementation, insufficient coordination among agencies, and limited public awareness.

Internationally, the framework for managing oil spill liabilities is robust, with well-established protocols and conventions like the International Convention for the Prevention of Pollution from Ships (MARPOL) Convention, the CLC, and the Fund Convention. These frameworks ensure that polluters are held accountable and that there are mechanisms for compensation and remediation. However, these Conventions did

⁴ OIL SPILL LIABILITY & RESPONSES UNDER INDIAN LAW: TIME FOR AN INTEGRATED REGULATORY FRAMEWORK?, <https://ijpiel.com/index.php/2021/09/02/oil-spill-liability-responses-under-indian-law-time-for-an-integrated-regulatory-framework/> (last visited Jan 15, 2024)

⁵ Rhythma Kaul, *INDIA’S RESPONSE TO MARINE OIL SPILLS: AN EVALUATION*, NATIONAL MARITIME FOUNDATION (2022) https://maritimeindia.org/16478-2/#_ftn12 (last visited Jan 15, 2024)

not account for damages suffered by the environment due to oil contamination. However, inconsistencies in enforcement across different jurisdictions, varying levels of compliance, and challenges in applying these conventions uniformly remain significant hurdles.

While India has ratified several international conventions, the domestic enforcement of these provisions is often lacking. Although comprehensive, the Merchant Shipping Act of 1958 does not fully integrate the latest international standards and practices. There is a need to examine how these laws are implemented and enforced. The research will examine whether these under international conventions like the CLC and the Fund Convention need to be critically analysed to assess their adequacy in covering the full mechanisms are sufficient and what improvements can be made.

Another significant gap lies in the technological and response capabilities for managing oil spills. The current state of preparedness and response mechanisms in India lacks effective legal enforcement. Effective oil spill management requires coordination among various stakeholders, including government agencies and the private sector.

Moreover, existing domestic legislation and international Conventions do not focus on preventive measures for oil spills. Most literature addresses issues related to compensation and remediation methods post-oil spill incidents.

Literatures also emphasize the necessity for India to adopt a unified framework for oil spill pollution, yet often fail to highlight the situation's gravity and seriousness. No Acts or Conventions impose criminal liability specifically for oil spill pollution.

Furthermore, many studies neglect to raise awareness about the havoc caused by oil pollution. Since these incidents typically occur at sea, the suffering is primarily borne by coastal communities. However, the chain effects of oil spill pollution, which adversely impact the economy and commerce, are frequently overlooked.

As previously mentioned, oil spills often occur in deep seas, and the general public may not fully grasp the severity of these incidents. This lack of public awareness could be a contributing factor to the government's hesitation in implementing a comprehensive legal framework for oil pollution.

1.2 RESEARCH PROBLEM

The complexity of oil pollution incidents in maritime trade, particularly those involving foreign vessels, exacerbates the challenge of seeking adequate compensation and implementing effective deterrence measures.

1.3 OBJECTIVES

This research aims to provide a comprehensive understanding of how international conventions clarify liability and responsibility for oil spills, assess the effectiveness of India's current legal framework, and offer practical recommendations for enhancing environmental protection and compensation mechanisms for oil pollution in India. Regarding the aim the set objectives are:

- Necessity and potential impact of enacting a unified framework legislation to address oil spills within the Indian legal system.
- Examine case studies of past oil spill incidents in international waters to understand current legal provisions practical implications and consequences.
- Compare Indian legislation with international maritime law to evaluate potential improvements and harmonization.
- Examine the relevant international treaties, Conventions, and agreements related to maritime trade and oil pollution prevention.

1.4 SCOPE OF STUDY

To critically examine and evaluate the extent to which international conventions on oil pollution clarify the liability and responsibility for oil spills at sea; review major international conventions addressing oil pollution, such as the International Convention on Civil Liability for Oil Pollution Damage (CLC), the International Oil Pollution Compensation Funds (IOPC Funds), and the International Convention for the Prevention of Pollution from Ships (MARPOL) examine the specific provisions related to liability and responsibility within these Conventions.

The research also aims to analyse oil pollution in India, comparing it with international standards and practices to identify areas for improvement and adoption of global best practices. Currently, it is difficult to claim for compensation not only for cases between domestic entities but especially for many cases caused by foreign vessels when an incident occurs due to the lack of separate compensation mechanisms for oil pollution damages. Enforcement measures are mostly limited to administrative orders, and the fine amount is insufficient to deter significant oil spill incidents. In this situation, the general research on the current status of national laws of India and the international treaties that India has ratified, as well as the analysis of international laws/Conventions on compensation for damages caused by oil pollution, is to make assessments and clarify the scientific basis for the improvement of existed legal regulations on compensation for oil pollution in India. The research reveals the advantages and disadvantages and limitations in implementation and enforcement. It recommends necessary solutions to improve the legal system on environmental protection in maritime activities.

1.5 RESEARCH QUESTIONS

- To what extent do international conventions on oil pollution clarify liability and responsibility for oil spills at sea?
- What are the existing legislative frameworks related to oil spills within Indian law, and how can we identify and analyze gaps in addressing liability and responsibility within these frameworks?

1.6 RESEARCH METHODOLOGY

The study is meant to be doctrinal and comparative, which seeks to refer to various legislations and policies, articles, and blogs. Doctrinal is a research methodology that focuses on analyzing and interpreting legal documents, such as statutes, case law, regulations, international conventions, and treaties in understanding legal concepts, principles, and doctrines. It is frequently employed in the field of legal studies, entails a thorough and methodical examination of legal texts, including statutes, case law, laws, and scholarly discussions. The aim is to gain a deep understanding, interpretation, and practical application of legal doctrines. Often referred to as “library-based” or “black-

letter” law research, this approach concentrates on the doctrinal aspects of legal rules and principles.

1.7 CHAPTERISATION

The research comprises the following chapters:

Chapter 1: Introduction

The first chapter is a brief introduction to the topic. The researcher shall also highlight the research problem, the research objective, the scope of the study- the research questions proposed - the research methodology adopted and the literature review carried out by the researcher, in this chapter.

Chapter 2: Overview of the 1992 Civil Liability Convention, and the 1992 Fund Convention

In this Chapter, the researcher will employ legal research methods to comprehensively understand the global framework governing civil liability and compensation for damages resulting from oil pollution. The study involves an in-depth review of key international conventions, such as the 1992 Civil Liability Convention (CLC), the 1992 Fund Convention, and the International Oil Pollution Compensation Funds (IOPC Funds). These Conventions are crucial as they specifically address the issues of civil liability and compensation for oil pollution damage. They are collectively recognized as the global regime for managing compensation and civil liability in cases of oil pollution damage. This chapter will focus on examining the core provisions within these conventions that pertain to compensation and civil liability for oil pollution damages.

Chapter 3: Overview of existing Indian laws and regulations related to maritime pollution and oil spill response; Identify gaps and challenges.

In this chapter the researcher will analyze the various national laws relating to oil pollution and steps they undertake to provide compensation to understand whether nation has an adequate legal framework in place to address the issue of oil spills in marine environment.

Chapter 4: Liability for Oil Spills Under the Indian Regime: An Examination of the Polluter Pays Principle.

This chapter provides a comprehensive exploration of liability for oil spills under the Indian regime, with a focus on the Polluter Pays Principle (PPP) and its significance in environmental law. It begins with a brief introduction to the concept of liability for oil spills and underscores its importance in the broader context of environmental protection. The chapter then offers an overview of the PPP, highlighting its relevance in addressing oil spill incidents and ensuring that those responsible for pollution bear the costs of its remediation. A detailed analysis of the PPP follows, examining its incorporation into Indian environmental law and discussing key legal instruments and policies that reflect this principle, including notable judicial pronouncements. It identifies and analyses the challenges in enforcing the PPP in the context of oil spills in India, particularly emphasizing the gaps in the legal framework that hinder effective implementation, especially in cases involving foreign vessels. Notable case studies are presented to highlight the application (or lack thereof) of the PPP in oil spill incidents in India, providing an analysis of how these cases were handled legally and the outcomes in terms of liability and compensation. This comprehensive examination aims to shed light on the strengths and weaknesses of the current framework and offer practical recommendations for enhancement.

Chapter 5: Conclusion and Suggestions

The Researcher hopes to come up with novel, concrete suggestions to improve the legal framework relating to oil pollution liabilities and compensation schemes in India - If the same is not found to be adequate, the researcher shall give conclusory remarks based on her observations and findings in this chapter.

CHAPTER 2: OVERVIEW OF THE 1992 CIVIL LIABILITY AND 1992 FUND CONVENTIONS

2.1. Introduction

Oil pollution remains a major threat to the marine environment due to the significant volume of oil frequently released into the oceans. The main causes of this pollution are maritime accidents and vessel operations, including routine maintenance and cleaning procedures. The significance of addressing compensation for oil pollution damage has been widely acknowledged, especially following the Torrey Canyon oil spill of 1967. This awareness was further intensified by notable incidents such as the Amoco Cadiz, Exxon Valdez, Braer, Sea Empress, Erika, and more recent cases like the Prestige in 2002 and the Hebei Spirit in 2007.⁶ The consequences of an oil spill can be extreme, particularly when evaluating and quantifying the resultant damages. Such damages include a wide range of impacts, as well as physical harm and economic losses, affecting both individuals and society as a whole. A catastrophic oil spill can severely impact the fishing and tourism industries, leading to significant economic constraints. The local economy may suffer further through reduced tax revenues and increased welfare expenditures if compensation is insufficient. Additionally, the state may bear social responsibility for clean-up costs. Therefore, examining the legal framework relating the liability and compensation for oil pollution damage is crucial.⁷

2.2.1 Definitions

“Oil”: included in the 1992 CLC, “oil” is defined as “any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil, and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.”⁸

⁶ IOPC FUNDS | Incident Map, <https://iopcfunds.org/incidents/incident-map> (last visited Jun 11, 2024).

⁷ R Bhanu Krishna Kiran, *LIABILITY AND COMPENSATION FOR OIL POLLUTION DAMAGE: AN EXAMINATION OF IMO CONVENTIONS* (2010).

⁸ International Convention on Civil Liability for Oil Pollution Damage, Nov. 27, 1992, art. 1(5), 1956 U.N.T.S. 255.

The definition of “oil” is the same as it is in the 1992 CLC, but the Fund Convention brings a new definition of the phrase “Contributing Oil,” which means crude oil and fuel oil as defined in sub-paragraphs (a) and (b) below:

- a) “Crude Oil” means any liquid hydrocarbon mixture occurring naturally on Earth, whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed (sometimes referred to as “topped crudes”) or to which certain distillate fractions have been added (sometimes referred to as “spiked” or “reconstituted” crudes)⁹
- b) “Fuel Oil” means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the ‘American Society for Testing and Materials’ Specification for Number Four Fuel Oil (Designation D 396-69), or heavier.¹⁰

On the other hand, based on the definitions in the 1992 CLC, Pollution damage means:

- “loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement undertaken or to be undertaken;¹¹
- The costs of preventive measures and further loss or damage caused by preventive measures.¹²

The CLC Convention defines a ship as: Any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

⁹ International Convention on Civil Liability for Oil Pollution Damage art. I(3)(a), Dec. 18, 1971, 1115 U.N.T.S.3

¹⁰ International Convention on Civil Liability for Oil Pollution Damage art. 1(3), Dec. 18, 1971, 1115 U.N.T.S. 3

¹¹International Convention Civil Liability for Oil Pollution Damage art. I(6)(a), Dec. 18, 1971, 1115 U.N.T.S. 3

¹² International Convention on Civil Liability for Oil Pollution Damage art. I(6)(b), Dec. 18, 1971, 1115 U.N.T.S. 3

2.2 Case Laws

Major oil spills have a history of causing enormous environmental harm and having a significant impact on marine ecosystems and populations all over the world. These instances have brought to light the grave implications of oil pollution, emphasizing the need for strong responsibility frameworks, efficient response plans, and preventive actions. Some of the major oil spill incidents are:

- **Torrey Canyon (1967):** The Torrey Canyon disaster off the coast of Cornwall, England, marked one of the earliest major oil spills. The oil tanker grounding released approximately 119,000 tons of crude oil into the English Channel, causing extensive harm to marine life, seabirds, and coastal habitats.¹³ This incident served as a wake-up call, drawing attention to the lack of preparedness and response capabilities for such disasters.
- **Exxon Valdez (1989):** Considered one of the most infamous oil spills, the Exxon Valdez spill in Alaska's Prince William Sound released around 11 million gallons of crude oil¹⁴. The spill devastated local wildlife, including sea otters, birds, and fish populations. The long-term ecological impact persisted for years despite extensive clean-up efforts, affecting the livelihoods of communities dependent on fishing and tourism.
- **Deep-water Horizon (2010):** The Deep-water Horizon oil spill in the Gulf of Mexico resulted from a well blowout on the offshore drilling rig. It released an estimated 210 million gallons of crude oil over several months, making it the largest marine oil spill in history.¹⁵ The environmental consequences were staggering, affecting marine biodiversity, coastal habitats, and fishing industries across several states, triggering long-term economic and ecological repercussions.

¹³ Van, Hanswyk Beth. "The 1984 Protocols to the International Convention on Civil Liability for Oil Pollution Damages and the International Fund for Compensation for Oil Pollution Damages: An Option for Needed Reform in United States Law." 1988, <https://core.ac.uk/download/216910923.pdf>.

¹⁴ Carroll, Jo Lynn, et al. "An Annual Profile of the Impacts of Simulated Oil Spills on the Northeast Arctic Cod and Haddock Fisheries." *Marine Pollution Bulletin*, 2022, <https://doi.org/10.1016/j.marpolbul.2022.114207>.

¹⁵ *Ibid.*

- **Prestige (2002):** The sinking of the oil tanker *Prestige* off the coast of Spain led to the release of approximately 20 million gallons of oil into the Atlantic Ocean. The oil slick affected extensive coastlines in Spain, France, and Portugal, causing severe damage to marine ecosystems, fisheries, and coastal communities.¹⁶
- **Gulf War Oil Spill (1991):** During the Gulf War, deliberate oil spills were caused by Iraqi forces, releasing millions of barrels of crude oil into the Persian Gulf. The environmental impact was catastrophic, affecting the region's marine life, coastal habitats, and water quality.¹⁷
- **Nathan E. Stewart ('Incident in Canada') (2016):** On 13 October 2016, the articulated tug-barge (ATB) composed of the tug *Nathan E. Stewart* and the tank barge *DBL 55* ran aground on Edge Reef near Athlone Island, at the entrance to Seaforth Channel, approximately 10 nautical miles west of Bella Bella, British Columbia, Canada. The tug's hull was eventually breached, and approximately 107552 liters of diesel bunker oil and 2240 liters of lubricants were released into the environment. The tug subsequently sank and separated from the barge.¹⁸

Oil spills cause immediate harm to marine species by oil coating, ingestion, and habitat disruption, which has a catastrophic effect on marine ecosystems. They affect delicate coastal habitats, including mangroves and coral reefs, upsetting food chains and fish populations. The incidents mentioned above have highlighted the necessity of strict regulations, enhanced preventive measures, efficient response strategies, and all-inclusive liability frameworks such as the Civil Liability Convention (CLC) to tackle the significant and long-lasting effects of oil spills on maritime environments and communities.

A crucial component of maritime law has been the creation of international treaties addressing responsibility for oil spills, which have developed in reaction to catastrophic oil spill disasters and their detrimental effects on the environment, the economy, and society. The international community's attempts to create legislative frameworks to control, mitigate, and make up for the harms of oil pollution are shown in this trend. The large oil leak that followed the grounding of the *Torrey Canyon*¹⁹ emphasized the

¹⁶ IOPC FUNDS | Incident Map, *supra* note 1.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Supra* note 9. Van, Hanswyk Beth. "The 1984 Protocols to the International Convention on Civil Liability for Oil Pollution Damages and the International Fund for Compensation for Oil Pollution

absence of international standards about liability and compensation for damage caused by oil pollution. International legal tools were developed as a result of this catastrophe. International legal reaction followed the Torrey Canyon²⁰ tragedy, with the world community realizing that having a single legal framework was necessary to deal with questions of compensation and culpability for oil contamination.

Two conventions, the International Convention on Civil Liability for Oil Pollution Damage, 1969 (“1969 CLC”), and the International Convention on the Establishment of an International Fund for Oil Pollution Damage, 1971 (“1971 Fund Convention”), establish a comprehensive two-tier compensation system for those who suffer losses due to oil spills within the jurisdictions of member states. Both conventions were amended by protocols adopted in 1992. The revised conventions are now known as the 1992 Liability Convention (“1992 CLC”) and the 1992 Fund Convention.²¹

2.3. Civil Liability Convention (1969 – 1992)

One important piece of international legislation created expressly to handle the complex and important problem of oil spill liability in marine transportation is the Civil Liability Convention (CLC). The core provision of the Convention states that “the owner of a ship at the time of an incident, or, if the incident consists of a series of occurrences, at the time of the first such occurrence, shall be liable for any pollution damage caused by the ship as a result of the incident”.²² As a result, the ship owner bears strict liability for oil pollution damage. This liability incorporates expenses for clean-up, losses incurred by fishermen, and measures taken to prevent or mitigate the damage. The Convention applies exclusively to pollution damage occurring within the territory, territorial sea, and Exclusive Economic Zone (EEZ) of a state party to the convention²³. The geographical scope has been expanded to enhance the powers of coastal states to

Damages: An Option for Needed Reform in United States Law." 1988, <https://core.ac.uk/download/216910923.pdf>.

²⁰ *Ibid.*

²¹ International Oil Pollution Compensation Fund, IOPCFund2004.pdf (2004), https://www.un.org/depts/los/general_assembly/contributions2004/IOPCFund2004.pdf (last visited Jun 11, 2024).

²²International Convention on Civil Liability for Oil Pollution Damage art. III (1), Nov. 29, 1969, as amended by Protocol to Amend the International Convention on Civil Liability for Oil Pollution Damage art. IV(1), Nov. 27, 1992, 1956 U.N.T.S. 255

²³ International Convention on Civil Liability for Oil Pollution Damage art. II, Nov. 29, 1969, replaced by Protocol to Amend the International Convention on Civil Liability for Oil Pollution Damage art. III, Nov. 27, 1992, 1956 U.N.T.S. 255.

intervene beyond territorial waters to undertake adequate environmental protection measures. Consequently, the regime now covers damaging events in all maritime zones. Therefore, ship-owners can be liable for oil spills happening in archipelagic waters and much further out on the high seas

2.3.1 Scope of Application

A). Ship

The CLC defines a ship as any “sea-going vessel and any sea-borne craft of any type whatsoever, carrying oil in bulk as cargo.”²⁴ It excludes vessels exclusively used for transporting oil in lakes or rivers and fixed or moveable oil rigs. Additionally, this definition does not cover tankers on ballast voyages, even if they carry bunkers and slops. It is important to analyse how the Convention applies when a ship is linked to a refinery or a single mooring buoy (SMB) through flexible pipes, and oil spillage occurs due to a burst in the pipe. The Convention’s applicability is dependent on whether these pipes are part of the ship.²⁵ If they are considered part of the SMB, then the Convention does not cover the pollution damage. Additionally, it is worth noting that the Convention excludes warships or vessels owned or operated by a State for non-commercial purposes.²⁶

The 1992 Protocol introduced modifications to the definition of ‘ship,’ expanding it to incorporate “any sea-going vessel and sea-borne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo. “However, it specifies that a vessel is only considered a ‘ship’ when it is actively transporting oil in bulk as cargo or during subsequent voyages if residues of such cargo are present unless proven otherwise.”²⁷ This definition includes unladen tankers in ballast after carrying crude oil, provided they have no residues. It also applies to combination carriers involved in bulk crude oil transportation. Consequently, the scope of the CLC 1969 and its 1992 Protocol is restricted to spills by tankers and oil-combined tankers. Persistent oil spills from

²⁴ International Convention on Civil Liability for Oil Pollution Damage art. I (1), Nov. 29, 1969, 973 U.N.T.S.3.

²⁵ Samir Mankabady, *International Shipping Law: IMO Rules* (Euromoney Books 1991).

²⁶ International Convention on Civil Liability for Oil Pollution Damage art. XI, Nov. 29, 1969, 973 U.N.T.S. 3

²⁷ International Convention on Civil Liability for Oil Pollution Damage, 1992 Protocol, art. II (1) (1992).

vessels other than bulk oil carriers, such as those involving ship bunkers, are not covered by the 1969 or 1992 CLC regimes.²⁸

The issue arises concerning whether Floating Storage Units (FSUs) and Floating Production, Storage, and Offloading Units (FPSOs) qualify as a “ship” under the definition outlined in the CLC.²⁹ The application of the 1969 CLC depends on whether the unit is actively transporting oil in bulk as cargo. Notably, the Convention lacks a precise definition of cargo, leading to different interpretations. Some argue that cargo exclusively relates to goods transported between ports, distinguishing them from those merely stored afloat for subsequent trans-shipment into shuttle tankers.

The matter was considered by the 1992 Fund Assembly in 1998 following ambiguities voiced by certain member states, urging clarity on the issue. There were reservations regarding whether merely having the capacity to carry oil in bulk as cargo would meet the criteria unless such transportation was the primary purpose for which the unit was built or modified. An alternate viewpoint proposed was to classify FSUs and FPSOs as ‘ships’ only when detached from production facilities and relocated with considerable quantities of oil on board.³⁰

B.) Oil

Article I (5) of the 1969 CLC defines oil, and this definition was revised by the 1992 Protocol to include “any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil, and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.”³¹ The 1992 Protocol explicitly covers only persistent

²⁸ *Ibid.*

²⁹ Sharmini Murugason, “Offshore Syndicate Claims Director,” Standard Bulletin Offshore Special Edition 557823, definition of a ship (2012), available at <https://www.standard-club.com/fileadmin/uploads/standardclub/Documents/Import/publications/bulletins/split-articles/2012/1557823> (last visited June 11, 2024).

³⁰ International Oil Pollution Compensation Funds, 1992 Fund General Rules, Version 6, January 2020 (https://documentservices.iopcfunds.org/wp-content/uploads/sites/2/2020/01/92FUND_WGR.2_6_en.pdf) (last visited Jun 11, 2024)

³¹ Article II (2) of the 1992 Protocol. While the term ‘persistent oil’ is not precisely defined in any of the conventions, the IOPC Fund has developed guidelines which have been widely accepted. Under these guidelines, an oil is considered non-persistent if at the time of shipment at least 50% of the hydrocarbon fractions, by volume, distill at a temperature of 340°C (645°F), and at least 95% of the hydrocarbon fractions, by volume, distill at a temperature of 370°C (700°F), when tested in accordance with the American Society for Testing and Materials’ Method D86/78 or any subsequent revision thereof. Oils which are normally classified as persistent include crude oils, fuel oils, heavy diesel, and lubricating oils. Non-persistent oils include gasoline, light diesel oil, and kerosene. Available at <http://www.itopf.org> (last visited June 12, 2024)

hydrocarbon mineral oils. Consequently, spills of bunkers are now included under the Convention's provision. Despite the challenge of clearly differentiating between persistent and non-persistent oils, it was argued that non-persistent oils are not likely to cause major harm to the marine environment and can be addressed under the Limitation of Liability for Maritime Claims, 1976³².

C.) Pollution Damage

The CLC mandates a ship owner's liability for pollution damage resulting from oil escaping from the ship due to an incident on the territory of a state party, including its territorial sea. It also incorporates preventive measures to mitigate such damage.³³ The Convention grants compensation solely for 'pollution damage,' which is defined as follows³⁴:

- (a) loss or damage caused outside the ship due to contamination from the escape or discharge of oil, regardless of where the escape or discharge occurs, provided that compensation for environmental damage, other than profit loss from such damage, is limited to the costs of reasonable restoration measures undertaken or planned;
- (b) The costs of preventive measures and any additional loss or damage resulting from these preventive measures.

The oil must have escaped or been discharged from the ship; accidental and intentional discharges are covered. However, if there was a grave and imminent threat of pollution damage that required prevention at considerable cost, the provisions of the Convention would not apply due to the actual escape or discharge.³⁵

Excluding pre-spill preventive measures from the Convention's scope contradicts its objective. The 1992 Protocol addresses this gap by including 'threat' situations,

³² Convention on Limitation of Liability for Maritime Claims (LLMC), International Maritime Organization, [https://www.imo.org/en/About/Conventions/Pages/Convention-on-Limitation-of-Liability-for-Maritime-Claims-\(LLMC\).aspx](https://www.imo.org/en/About/Conventions/Pages/Convention-on-Limitation-of-Liability-for-Maritime-Claims-(LLMC).aspx) (last visited June 12, 2024)

³³ Philippe Sands, *Principles of International Environmental Law* vol. 1, 2d ed. 658 (1995).

³⁴ International Convention on Civil Liability for Oil Pollution Damage art. I (6), Nov. 29, 1969, as amended by Protocol to Amend the International Convention on Civil Liability for Oil Pollution Damage art. II(6), Nov. 27, 1992, 1956 U.N.T.S. 255

³⁵Supra note 21 Samir Mankabady, *International Shipping Law: IMO Rules* (Euromoney Books 1991)

provided they are serious or classified as ‘grave and imminent.’ The term ‘incident’ is redefined as “any occurrence, or series of occurrences having the same origin, that causes pollution damage or creates a grave and imminent threat of causing such damage.”³⁶

The expenses associated with preventive measures undertaken by public authorities, victims, or ship owners are eligible for compensation as part of pollution damage. However, the Convention excludes damage caused by substances other than oil, such as chemical substances. Additionally, damage not resulting from oil pollution is not covered. Therefore, the Convention does not compensate for damage caused by oil catching fire or exploding.³⁷

The Convention does not offer compensation for environmental harm, namely, destruction of the environment, aside from expenses related to restoring the affected environment, such as clean-up costs or other remedial measures. Compensation is not provided for unquantified damage, referring to damages that cannot be repaired or quantified and are thus irreparable. The 1969 CLC relates to personal property damage if the damage results from oil pollution discharged or escaping from a ship.³⁸

There remains uncertainty regarding whether damage encompasses psychological conditions like stress, anxiety, and depression within the CLC regime. While the CLC does not provide a definitive answer, the Scottish Court in *Black v. The Braer Corporation* noted that damage extends to both physical injuries and psychological conditions such as stress, anxiety, and depression.³⁹

³⁶ Protocol to Amend the International Convention on Civil Liability for Oil Pollution Damage art. II (4), Nov. 27, 1992, 1956 U.N.T.S. 255.

³⁷ Infrastructure.gov.au, Maritime Liability Insurance, Claims for Pollution Damage by Oil Tankers, <https://www.infrastructure.gov.au/infrastructure-transport-vehicles/maritime/maritime-business/maritime-liability-insurance/claims-pollution-damage-oil-tankers> (last visited June 12, 2024).

³⁸ International Maritime Organization, Environment, <https://www.imo.org/en/OurWork/Environment/Pages/Default.aspx> (last visited June 12, 2024).

³⁹ Outer House, 30 July 1998, SCOTS LAW TIMES, Issue 39, December 3, 1999 & 2000 Dir. Mar. 999, available at http://www.comitemaritime.org/jurisp/ju_clc.html#Anchor-13507 (last visited June 12, 2024)

2.3.2 Liability

Parties responsible for the damage defined under the Convention are the ship owner, ship operator or charterer, and the owner of the oil that caused the destruction. As a compromise, the 1969 CLC assigns liability to the ship owner at the time of the accident that led to the damage. With several specific exceptions, the liability is strict for the owner of the ship from which the polluting oil escaped or was discharged. It is binding upon the owner to demonstrate in each instance that any exceptions should apply.⁴⁰

The Convention assigns liability solely to the owner and indicates only the owner can be held accountable under its provisions. Other individuals, such as the master and crew, operator, or salvor, cannot be held responsible except when such individuals intentionally or negligently cause damage. A wide range of persons is typically exempted from liability.⁴¹ They are:

- a) Persons employed by the owner or acting as agents of the owner, including crew members;
- b) Pilots or any other individuals who, although not crew members, provide services for the ship;
- c) Any charterer (regardless of description, including a bareboat charterer), manager, or operator of the ship;
- d) Persons conducting salvage operations with the owner's consent or under the instructions of a competent authority;
- e) Persons undertaking preventive measures;
- f) All persons employed by or acting as agents of persons mentioned in sub-paragraphs (c), (d), and (e).

⁴⁰ International Convention on Civil Liability for Oil Pollution Damage art. III (1), Nov. 29, 1969, as amended by Protocol to Amend the International Convention on Civil Liability for Oil Pollution Damage art. IV, Nov. 27, 1992, 1956 U.N.T.S. 255

⁴¹ Civil Liability Convention for Oil Pollution Damage, International Maritime Organization, Article III, November 29, 1969, available at <https://www.jus.uio.no/english/services/library/treaties/06/6-07/civil-liability-oil-pollution-consolidated.html> (last visited June 12, 2024)

It is only fair and just that those who engage in salvage operations should not be held legally liable under the provisions of the Convention. Salvors typically act as volunteers, responding to real dangers and emergencies to prevent or mitigate catastrophes. While the law acknowledges that salvors may be accountable for damages resulting from negligence, they are rightfully granted immunity from pollution liability, excepting instances of gross misconduct.⁴²

Article III, paragraph 4(b) of the CLC 1992, which includes “the pilot or any other persons who, without being a member of the crew, perform services for the ship,” has raised questions regarding whether it encompasses classification societies. In “The Erika,⁴³” the French tribunal determined that the referenced services under Article III paragraph 4(b) are directly involved in maritime operations and do not include classification societies. Conversely, a United States court concluded that a classification society falls under the definition of a person who, without being a crew member, performs services for a ship as outlined in Article III paragraph 4(b) of the CLC 1992.⁴⁴

The CLC does not explicitly prohibit claims of negligence against third parties. Remedial actions by the ship owner against third parties are explicitly preserved under the Convention. Therefore, if a third party is deemed to have contributed to the pollution damage through negligence or other wrongful acts, the ship owner retains the right to pursue legal recourse against that party to seek compensation for the damages incurred. This provision ensures that the ship owner has the option to hold accountable any additional parties whose actions may have contributed to the pollution incident, thereby potentially expanding the possibilities for seeking redress for the damage suffered.⁴⁵

The ship owner can evade liability if they can demonstrate that the discharge or escape was due to one of the following reasons⁴⁶:

⁴² Christopher Hill & Christopher Julius Star forth Hill, *Maritime Law* (6th ed., LLP 2003).

⁴³ "The Erika Case," *European Energy and Environmental Law Review*, vol. 22, no. 1, available at <https://kluwerlawonline.com/journalarticle/European+Energy+and+Environmental+Law+Review/22.1/EELR2013003> (last visited June 12, 2024).

⁴⁴ David Millstein, Class of 2010, "Volume 2, Issue 2 winter 2008-2009," *Admiralty Practicum*, available at https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=1195&context=admiralty_practicum (last visited June 12, 2024).

⁴⁵ International Convention on Civil Liability for Oil Pollution Damage, Nov. 29, 1969, art. III (5).

⁴⁶ Article III (2) of the International Convention on Civil Liability for Oil Pollution Damage, Nov. 29, 1969, 973 U.N.T.S. 3.

- a) It was caused by an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an extraordinary, unavoidable, and overwhelming nature.
- b) It was entirely the result of an intentional act or omission by a third party aimed at causing damage.
- c) It was solely due to negligence or another wrongful act by any government or authority responsible for maintaining navigational aids, such as lights, in performing their duties.

Liability is also waived for any war ship or any ship being utilized for non-commercial functions by a state government. When an oil spill involves multiple ships, and the resulting harm cannot be separately assigned to each owner, the CLC applies collective and individual liability to all the owners involved.⁴⁷

2.3.3 Persons Eligible to seek Compensation for Pollution Damage

Any individual or entity suffering harm can initiate a compensation claim. This includes government bodies engaged in mitigation or preventive measures, companies, and private citizens who suffer personal injury, damage to property, or financial losses such as income or profit decline due to pollution-related damage.⁴⁸

2.3.4 Jurisdictions

Article IX(1) of the CLC 1992 states that if an incident causes pollution damage within the territory, including the territorial sea, of one or more Contracting States, or if preventive measures are taken to avoid or reduce damage in such areas, compensation claims must be filed exclusively in the courts of any of these Contracting States. This provision should be understood to mean that the jurisdiction of the courts of the State where pollution damage occurred, including its territorial sea or the area specified in

⁴⁷ International Convention on Civil Liability for Oil Pollution Damage art. IV, Nov. 29, 1969, 973 U.N.T.S. 3. Protocol to Amend the International Convention on Civil Liability for Oil Pollution Damage art. 5, Nov. 27, 1992, 1956 U.N.T.S. 255.

⁴⁸ Liability and Compensation for Pollution Damage, UK Government Publishing Service, https://assets.publishing.service.gov.uk/media/5a74eac740f0b65f613234b4/130802_Liability_and_Compensation_for_Pollution_Damage.pdf (last visited June 12, 2014).

Article II, is not restricted solely to cases brought against the ship owner or its insurer but applies to any party against whom compensation claims are made.⁴⁹

A State party must initiate legal proceedings regarding pollution damage to its coastal areas exclusively within its domestic courts. Accordingly, in the case of *Reino de España v. The American Bureau of Shipping – The “Prestige”*⁵⁰, a United States district court determined that it lacks jurisdiction to entertain Spain’s claim against a U.S. company allegedly responsible for such pollution damage.⁵¹

2.3.5. Limitation of Liability

Under the International Convention on Civil Liability for Oil Pollution Damage (CLC), liability limitations are provided for ship-owners. The limitation of liability is based on the tonnage of the vessel.⁵² The CLC establishes a maximum limit of liability for pollution damage for which the ship owner can be held responsible. This limit is calculated based on the vessel’s tonnage, and it aims to ensure that ship owners are not subjected to unlimited liability for pollution incidents. The limitation of liability is to strike a balance between protecting the interests of those affected by pollution damage and ensuring that ship owners are not unduly burdened with excessive financial liabilities. The compensation limits are set as follows⁵³:

- For ships not exceeding 5,000 gross tonnage, liability is capped at 3 million Special Drawing Rights (SDR).
- For ships ranging from 5,000 to 140,000 gross tonnage, liability is capped at 3 million SDR, with an additional 420 SDR for each additional tonnage unit.
- For ships exceeding 140,000 gross tonnage, liability is capped at 59.7 million SDR.

⁴⁹ International Convention on Civil Liability for Oil Pollution Damage, art. IX (1), Nov. 27, 1992, 1956 U.N.T.S. 255.

⁵⁰ IOPC Funds | Incident Map, <https://iopcfunds.org/incidents/incident-map> (last visited June 12, 2024).

⁵¹ International Convention on Civil Liability for Oil Pollution Damage, art. X (1), Nov. 27, 1992, 1956 U.N.T.S. 255.

⁵² International Convention on Civil Liability for Oil Pollution Damage art. V (10), as amended by Protocol of 1992, art. VI (5).

⁵³ International Maritime Organization, International Convention on Civil Liability for Oil Pollution Damage (CLC), [https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-\(CLC\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-(CLC).aspx) (last visited June 12, 2024).

Under the 1969 CLC, a ship owner cannot limit liability if the incident resulted from his direct fault or involvement. The 1992 Protocol replaced the previous fault or privity standard.⁵⁴ Now, the liability cap doesn't apply to the ship owner if it is shown that the loss originated from their deliberate act or failure, done to cause such loss, or negligently and with the awareness that such loss was likely to occur.⁵⁵

The owner must establish a fund equivalent to the total sum representing the limit of their liability by the court or other competent authority of any Contracting State where legal action is initiated.⁵⁶ The distribution of this amount must strictly adhere to a pro-rata basis proportionate to the established individual claims, particularly if they collectively exceed the total liability limit.⁵⁷ Any claim made by the owner, along with expenses or efforts reasonably undertaken to prevent or minimize pollution, will be treated equally alongside other claims against the established fund. For example, if an owner or their representative has already settled a claim before constituting the limitation fund, they may seek subrogation for that amount against the established fund. Importantly, the Convention specifies that the owner's fund, once constituted, will be the exclusive source of compensation for claims. No other owner's assets may be accessed or affected.⁵⁸

Claims must be initiated within three years from the date when the cause of action arose or within six years after the occurrence or initial incident that led to the discharge or escape, thereby incurring liability.⁵⁹

2.3.6. Compulsory Insurance

The Convention mandates that ship owners carrying 2000 tons or more of oil as cargo must have insurance or financial security up to the applicable liability limit, known as compulsory insurance. A certificate of insurance is required on board at all times, and

⁵⁴ International Convention on Civil Liability for Oil Pollution Damage, art (2) Nov. 29, 1969, 973 U.N.T.S. 3

⁵⁵ Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, art. VI (2).

⁵⁶ International Convention on Civil Liability for Oil Pollution Damage, art. V (3), as amended by Protocol of 1992, art. VI (3).

⁵⁷ International Convention on Civil Liability for Oil Pollution Damage art. V (4) (1969).

⁵⁸ International Convention on Civil Liability for Oil Pollution Damage art. VI (1) (a) (1969).

⁵⁹ International Convention on Civil Liability for Oil Pollution Damage art. VIII (1969).

without it, the ship cannot trade, enter, or leave ports of Contracting States.⁶⁰ This obligation arises only when the ship carries over 2000 tons of oil in bulk as cargo; insurance is not required for ballast voyages carrying 2000 tons of bunkers or more.

Certificates are issued by the relevant authority of the Contracting State after ensuring adequate insurance or alternative security is in place, often provided by Protection & Indemnity clubs. This insurance covers third-party risks and oil pollution within Convention limits. Those who suffer damage can directly seek compensation from the insurer without involving the ship owner.⁶¹ The insurer acts as a guarantor and can limit liability independently, even if the ship owner has also invoked this right. Additionally, the insurer can raise defences, such as claiming pollution damage resulted from the owner's intentional misconduct.⁶²

The 1992 Protocol allows a State party to issue certificates to ships registered in non-party states, facilitating ship owners in obtaining certificates for both the 1969 and 1992 CLC, even if the ship is registered in a country not party to the 1992 Protocol.⁶³ This addresses challenges faced by ships solely governed by the 1969 CLC when conducting business with countries that have ratified the 1992 Protocol, which establishes higher liability limits.

2.4 The International oil Pollution Compensation Fund

The International Oil Pollution Compensation Fund (IOPCF) is an international entity with a legal personality. It comprises three bodies: an Assembly, an Executive Committee, and a Secretariat.⁶⁴ The 1969 Civil Liability Convention established an effective system for compensating oil pollution damage, but it did not adequately address all the legal, financial, and other issues discussed at the Conference that adopted the CLC. At the 1969 Brussels Conference, a compromise proposal was considered to create an international fund financed by cargo interests. This fund aimed to both

⁶⁰ International Convention on Civil Liability for Oil Pollution Damage, art. VII (1969), as amended by Protocol of 1992, art. VII.

⁶¹ International Convention on Civil Liability for Oil Pollution Damage art. VII (8) (1969).

⁶² Ibid.

⁶³ Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, art. VII.

⁶⁴ International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, art. XXIX (1971), as amended by Protocol of 1992, art. XXI.

alleviate the ship-owners obligations under the new Convention and provide additional compensation to victims of pollution damage.⁶⁵ The 1992 Fund Convention supplements the 1992 Civil Liability Convention (1992 CLC) by creating a system to compensate victims when the compensation provided by the 1992 CLC is inadequate or unavailable.⁶⁶ The International Oil Pollution Compensation Fund, 1992 (1992 Fund), functions under the guidelines of the 1992 Fund Convention.

For a claim to be accepted by the IOPCF, it must be demonstrated that the claim is based on a legitimate expense that was actually incurred, there is a connection between the expense and the incident, and the expense was for reasonable purposes. The following general criteria apply to all claims⁶⁷:

- a) Any expense or loss must have been actually incurred.
- b) Any expense must relate to measures that are considered reasonable and justifiable.
- c) A claimant's expense, loss, or damage is admissible only if and to the extent that it can be attributed to contamination.
- d) There must be a causal link between the expense, loss, or damage covered by the claim and the contamination caused by the spill.
- e) A claimant is entitled to compensation only if they have suffered a quantifiable economic loss.
- f) A claimant must prove the amount of their loss or damage by providing appropriate documents or other evidence.

The IOPCF generally accepts claims for property damage, costs associated with on-shore and offshore clean-up operations, and measures to prevent or reduce pollution

⁶⁵ International Maritime Organization, International Convention on Civil Liability for Oil Pollution Damage (CLC), [https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-\(CLC\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-(CLC).aspx) (last visited June 12, 2024)

⁶⁶ *Ibid.*

⁶⁷ International Oil Pollution Compensation Funds, Claims Manual (2019), https://iopcfunds.org/wp-content/uploads/2018/12/2019-Claims-Manual_e-1.pdf. (last visited June 12, 2024)

damage. It also considers significant losses, such as loss of earnings suffered by owners or users of contaminated property. Additionally, under certain conditions, the IOPCF evaluates claims for loss of earnings by individuals whose property has not been polluted, also known as pure economic loss.⁶⁸

In the case of **IOPCF v. M. Gouze**⁶⁹, Tevere Shipping, and Steamship Mutual Underwriting, the French Court of Appeal recognized its absolute power to interpret and enforce the legal definition of pollution damage within the framework of the IMO standards. The IOPCF's criteria for addressing pollution-related claims, while not obligatory for the courts but can only provide helpful guidance.

In another case,⁷⁰ a Korean tanker ran aground within Korea's territorial waters, leading to oil spillage reaching the coast of Japan's Tsushima Islands. In response, the Japanese government deployed its Self Defence Force and Coast Guard to mitigate pollution damage, incurring costs total of 50,755,568 Japanese yen. As the tanker's tonnage was 786 tons and no financial security had been provided, and the ship's owner was insolvent, Japan sought compensation from the IOPC Fund. The Fund contested the reasonableness of certain measures taken by the Self-Defence Force.

The Nagasaki District Court ruled as follows⁷¹:

- Aerial investigation conducted the day after the oil reached the coast was deemed reasonable as a preventive measure, as there was no evidence suggesting that oil pollution prevention could have been achieved to the same extent without reconnaissance.
- Taking photographs of the site was considered reasonable to accurately assess the situation.

⁶⁸ Comité Maritime International, Guidelines on Oil Pollution Damage, approved by the XXXVth Conference, Sydney, Oct. 8, 1994.

⁶⁹IOPCF v. M. Gouzer, -<https://comitemaritime.org/wp-content/uploads/2018/06/The-Fund-Convention-1971-and-its-1976-Protocol.docx> (last visited Jun 12, 2024).

⁷⁰ Japan v. The International Fund established by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971, Nagasaki District Court, Dec. 6, 2000.

⁷¹ <https://comitemaritime.org/wp-content/uploads/2018/06/The-Fund-Convention-1971-and-its-1976-Protocol.docx> (last visited Jun 12, 2024).

- Search operations conducted by naval vessels of the Self-Defence Force were deemed reasonable, even if simultaneous with activities by the Coast Guard.

From this case, it is well understood that the IOPCF has determined that for claims seeking compensation for the expenses associated with restoring the marine environment to be eligible, the costs of these proposed measures must be deemed reasonable.

2.4.1 Requirements for Contributions to the International Oil Pollution Compensation Fund.

The IOPC Funds are financed by contributions from individuals or entities that have received over 150,000 tonnes of crude oil or heavy fuel oil in a calendar year at ports or terminal installations in member states, following carriage by sea.⁷² The levy of contributions is based on reports submitted to the Secretariat by member State governments, with payments made directly to the IOPC Funds by contributors.⁷³ Governments are not obliged to make these payments unless they have voluntarily agreed to do so. Contributions are used to establish the Compensation Fund, which is financed by those who receive oil transported by sea to States Party to the 1971 Convention.⁷⁴ The Assembly of the Fund determines the contribution amounts⁷⁵, and each contracting State is responsible for ensuring that contributors within its territory fulfil their payment obligations.⁷⁶ A State may choose to assume the obligation of a liable contributor within its territory.⁷⁷ The assessment of each contributor's annual

⁷² International Oil Pollution Compensation Funds, Annual Report (1999), https://iopcfunds.org/wp-content/uploads/2018/12/1999_ENGLISH_ANNUAL_REPORT.pdf (last visited June 12, 2024).

⁷³ International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, art. XIII, XV, Nov. 27, 1971, as amended by Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, arts. XV, XVI, Nov. 27, 1992, 1310 U.N.T.S. 3.

⁷⁴ Intl. Conv. on the Establishment of an International Fund for Compensation for Oil Pollution Damage art. X, Nov. 18, 1971, 1110 U.N.T.S. 57, amended by Protocol of 1992 to amend the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, art. XII, Nov. 27, 1992, 1956 U.N.T.S. 255.

⁷⁵ Int'l Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage art. XI-XII, 1971, as amended by Protocol of 1992 to amend the 1971 Fund Convention, Nov. 27, 1992, arts. XIII-XIV.

⁷⁶ Articles XIII and XV of the 1971 Fund Convention as amended by Articles 15 and 16 of the 1992 Protocol

⁷⁷ Article XIV of the 1971 Fund Convention

contribution is calculated as a proportion of the total required by the Fund to cover its estimated annual expenses.⁷⁸ The 1992 Protocol introduces transitional provisions concerning contributions, setting a maximum limit of twenty-seven and one-half percent of the total Fund contributions for any single party for a period of up to five years.⁷⁹

2.5 International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001

The 2001 Bunkers Convention addresses pollution damage and is based on the 1969 CLC structure. This Convention specifically applies to pollution damage within the borders, territorial waters, and exclusive economic zones of States that are parties to it.⁸⁰ A critical requirement of this Convention is the mandate for vessel owners to have in place mandatory insurance coverage.⁸¹ The Convention mandates that ships exceeding 1,000 gross tonnage must maintain insurance or financial security, such as a bank guarantee or similar instrument. This requirement ensures coverage for the registered owner's liability related to pollution damage, up to the limits specified in the relevant national or international liability limitation regime. Additionally, the Convention permits direct action, enabling claims for pollution damage compensation to be directly pursued against insurers.⁸²

2.6 Conclusion

In conclusion, the 1992 Civil Liability and Fund conventions represent a comprehensive legal structure to tackle the complicated issue of oil pollution damage. These conventions emerged in response to the clear need for adequate compensation for those impacted by oil spills, informed by significant incidents and advancing environmental protection practices. The definitions and legal precedents outlined

⁷⁸ Article XII(2) and (3) of the 1971 Fund convention as amended by Article XIV of the 1992 Protocol

⁷⁹ Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 27 November 1992, art. XXVI, 1953 U.N.T.S. 330.

⁸⁰International Convention on Civil Liability for Bunker Oil Pollution Damage, 23 March 2001, art. II, 40 I.L.M. 1493.

⁸¹ International Convention on Civil Liability for Bunker Oil Pollution Damage art. 7, Mar. 23, 2001, 40 I.L.M. 1493.

⁸² International Convention on Civil Liability for Bunker Oil Pollution Damage art. VII (10), Mar. 23, 2001, 40 I.L.M. 1493.

underscore the wide-ranging factors considered, including oil types, damage assessments, and compensation measures. These conventions also emphasize the international commitment not only to resolve oil pollution effects but also to deter future incidents through financial accountability.

The liability and compensation framework established by both Conventions gathered a positive response in the international community. The Fund Convention's success in facilitating prompt compensation payments has led to an increasing number of states ratifying the Conventions, indicating a tendency toward harmonization in the legal and practical aspects of liability and compensation for oil pollution damage. States that have adopted both conventions have generally achieved comprehensive coverage of damages. The liability and compensation mechanisms have generally functioned effectively thus far, ensuring adequate compensation for damages in most cases. On the other hand, in States that have adopted only the CLC, the amounts payable under this Convention or national laws have often been insufficient to cover the damages incurred completely. However, as the maritime sector evolves and new environmental challenges arise, it is crucial to review and update this legal framework continuously. This ensures it remains effective in addressing the threat posed by oil pollution. The history of major spills serves as a significant reminder of the potential devastation, highlighting the critical importance of maintaining stringent safety standards, readiness in response capabilities, and a robust legal mechanism for compensation. This is essential to safeguard marine ecosystems, local economies, and communities worldwide.

The existing frameworks established by the CLC and Fund Conventions fail to adequately address the requirement for sufficient compensation for the environmental and economic impacts resulting from oil spills. While these conventions provide a streamlined process for submitting claims, they do not guarantee adequate compensation for victims affected by substantial oil spills, nor do they effectively encourage the oil industry to adopt preventative measures against such incidents.

The liability and compensation system established by the IMO Conventions requires absolute consistency and mutual cooperation among States. States must be prepared to relinquish certain sovereign rights in exchange for enhanced protection of their interests within the jurisdictions of other States.

CHAPTER 3: OVERVIEW OF EXISTING INDIAN LAWS AND REGULATIONS RELATED TO MARITIME POLLUTION AND OIL SPILL RESPONSE.

3.1 Introduction

India, a nation with a vast coastline and thriving maritime industry, recognizes the critical importance of protecting its marine environment. India has established a comprehensive legal framework to address the threats posed by maritime pollution, particularly oil spills⁸³. This framework integrates domestic legislation with international agreements, outlining prevention measures, response protocols, and liability regimes. Marine pollution, especially oil spills, poses significant risks to marine environments, coastal communities, and economic activities. Like many other countries, India has developed a comprehensive legal framework to prevent, mitigate, and respond to maritime pollution incidents.⁸⁴ This chapter offers a detailed analysis of India's legal framework concerning maritime pollution and oil spill response. It examines national laws, and policies governing this area, evaluates their effectiveness, and identifies any shortcomings and challenges. Through this analysis, the chapter aims to enhance understanding of India's readiness and response mechanisms for addressing maritime pollution and oil spills.

3.2 The Merchant Shipping Act, 1958

Aspects of Indian marine law, such as measures for responding to and preventing oil pollution, are covered by the Merchant Shipping Act of 1958. In particular, the Act complies with international norms and treaties like the International Convention for the Prevention of Contamination from Ships (MARPOL) by incorporating measures to reduce the danger of oil contamination from ships operating in Indian seas. The following are the main sections of the Merchant Shipping Act that deal with oil pollution:

Preventing Ship-Related Pollution⁸⁵: The legislation includes restrictions designed to stop ship-related contamination of the maritime environment, especially oil pollution. In order to reduce the negative effects on the environment, it strictly prohibits the

⁸³ Meera Gopal, *Of Sunken Ships and Oil Spills: Emergence of Marine Pollution from Ships.in Mainstream Environmental Jurisprudence in India*, 4 ENV't L. & SOC'y J. 1 (2018).

⁸⁴ Evan J. Criddle & Evan Fox-Decent, *Human Rights, Emergencies, and the Rule of Law*, 34 HUMANRIGHTS QUARTERLY 39 (2012).

⁸⁵ Merchant Shipping Act, 1958, § 348, No. 44, Acts of Parliament, 1958 (India).

release of oil and other greasy materials into the ocean. The act empowers the central government to make rules and regulations for preventing pollution of Indian waters by ships, including establishing prohibited zones and discharge standards.

3.2.1 Regulation of Oil Tankers⁸⁶: The act imposes specific requirements on oil tankers, including construction standards, equipment specifications, and operational procedures, to prevent oil spills and pollution incidents⁸⁷. It mandates using segregated ballast tanks, double hulls, and other safety features to reduce the risk of oil pollution in the event of accidents or collisions.

The act authorizes maritime authorities to conduct inspections, surveys, and audits of oil tankers to ensure compliance with its provisions and applicable regulations.

3.2.2 Oil Pollution Response: The act outlines procedures and responsibilities for responding to oil pollution incidents in Indian waters. It designates authorities, such as the Indian Coast Guard, port authorities, and designated officers, to coordinate and oversee oil spill response activities⁸⁸.

The act provides for the establishment of contingency plans, response strategies, and emergency measures to contain, control, and mitigate the effects of oil spills on marine ecosystems, coastal areas, and public health⁸⁹.

3.2.3 Liability and Compensation⁹⁰: The act addresses issues of liability and compensation for oil pollution damage caused by ships. It incorporates provisions of international conventions such as the International Convention on Civil Liability for Oil Pollution Damage⁹¹ to establish liability limits, compensation funds, and claims procedures for victims of oil pollution incidents. The act also outlines the legal framework for initiating claims, determining liability, and awarding compensation to affected parties, including coastal states, communities, and individuals.

⁸⁶ Merchant Shipping Act, 1958, § 356B(c), No. 44, Acts of Parliament, 1958 (India).

⁸⁷ Directorate General of Shipping, Merchant Shipping Act, <https://www.dgshipping.gov.in/Content/MerchantShippingAct.aspx> (last visited June 19, 2024).

⁸⁸ Merchant Shipping Act, 1958, § 356G, No. 44, Acts of Parliament, 1958 (India).

⁸⁹ Merchant Shipping Act, 1958, § 365H, No. 44, Acts of Parliament, 1958 (India).

⁹⁰ Merchant Shipping Act, 1958, §§ 352A-352E, No. 44, Acts of Parliament, 1958 (India).

⁹¹[https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-\(CLC\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-(CLC).aspx) .

3.2.4 Enforcement and Penalties: The act empowers designated authorities, including maritime officers, port state control inspectors, and environmental agencies, to enforce its provisions related to oil pollution prevention and response⁹².

It prescribes penalties for violations of the act, including fines, imprisonment, and forfeiture of ships or property, to deter non-compliance and ensure accountability. The act enables authorities to take enforcement actions, such as vessel detention, inspection, and detention, against ships suspected of causing or contributing to oil pollution incidents.

3.2.5 International Cooperation: The act facilitates international cooperation and collaboration in addressing oil pollution through adherence to international conventions, agreements, and protocols. It mandates compliance with MARPOL and other relevant international instruments to promote harmonized standards and best practices for oil pollution prevention and response⁹³.

The Act encourages information exchange, technical assistance, and mutual assistance among maritime states to enhance regional and global cooperation in combating oil pollution. The legal framework for attributing responsibility for maritime incidents within Indian jurisdiction incorporates a multidimensional approach comprising international customary law, ratified treaty provisions derived from global conventions, pronouncements by Indian judicial entities, and relevant foreign judgments that have been endorsed by Indian legal institutions. The Merchant Shipping Act of 1958 stands as a critical legislative instrument governing activities related to maritime vessels. Applicability of the Merchant Shipping Act extends to every Indian vessel, irrespective of its geographical location, as well as to all foreign vessels operating within Indian ports, territorial waters, or any maritime zone falling under The exclusive jurisdiction

⁹² Merchant Shipping Act, 1958, §§ 365-370, No. 44, Acts of Parliament, 1958 (India).

⁹³ Directorate General of Shipping, Ship Manual Chapter 16, https://www.dgshipping.gov.in/Content/PageUrl.aspx?page_name=ShipManualChap16 (last visited June 19, 2024).

over marine pollution held by India⁹⁴. It is noteworthy, however, that warships and ships owned or operated by a sovereign state and utilized for non-commercial, humanitarian purposes are delineated as exceptions to this rule⁹⁵. The Act delineates a comprehensive liability and insurance framework articulated across Parts IX, X, XA, XB, XC, and XIA, establishing a regulatory schema for all matters pertaining to maritime safety and liability. Part IX expressly codifies the entirety of safety norms applicable to vessels, thus serving as a foundational pillar in the legal architecture addressing accountability for maritime accidents within Indian territorial ambit. This legislative structure not only aligns with international norms but also effectively integrates obligation of India under various international conventions with domestic legal requirements, fostering a coherent and robust mechanism for the regulation of maritime activities and the adjudication of related disputes⁹⁶.

These provisions of the Merchant Shipping Act, 1958, are specifically tailored to address oil spill pollution prevention, liability, and compensation, enforcement, and investigation issues. They empower authorities to regulate and control the discharge of oil and other polluting substances from ships, ensure accountability for oil pollution incidents, and facilitate timely response and mitigation measures to protect marine environments and coastal communities from the adverse effects of oil pollution.

3.3 The Coastal Regulation Zone (CRZ) Notification, 2019

The Coastal Regulation Zone (CRZ) Notification of 2019 delineates several pivotal features aimed at addressing oil pollution and preserving the integrity of the coastal environment. This legislative framework underscores the necessity to mitigate oil spill incidents and prevent contamination of the coastal and marine ecosystems, which are

⁹⁴ Section 2(1): Unless otherwise expressly provided, the provisions of this Act which apply to Indian ships shall apply to all ships registered in India. **Section 2(2)**: The provisions of this Act applicable to other ships shall apply to all other ships while they are in India.

⁹⁵ **Section 3** of the Merchant Shipping Act, 1958, states: The provisions of this Act shall not apply to - (a) any ship belonging to the Indian Navy or any other armed forces of the Union; (b) any government ship used for military, customs, or police purposes; and (c) any ship belonging to a foreign government and used for non-commercial purposes.

⁹⁷ Directorate General of Shipping, Ship Manual Chapter 16, https://www.dgshipping.gov.in/Content/PageUrl.aspx?page_name=ShipManualChap16 (last visited June 19, 2024).

critical for biodiversity, livelihoods, and economic activities, including tourism and fisheries⁹⁷. The notification categorically outlines measures and stipulations to prevent oil spills, ensure prompt response mechanisms, and establish protocols for clean-up operations, thereby reinforcing the commitment to sustainable coastal zone management. The key features of the Coastal Regulation Zone (CRZ) Notification, 2019 related to oil pollution are as follows:

3.3.1 Protection of Fragile Ecosystems: The CRZ Notification 2019 highlights protecting environmentally delicate regions, including mangroves and coral reefs, from pollution and the impacts of climate change.⁹⁸

3.3.2 Pollution Prevention Measures: Specific measures outlined in the 2011 Notification to prevent pollution in coastal areas and waters are reiterated in the CRZ Notification, 2019. These measures aim to mitigate the risks of oil pollution and other forms of contamination in coastal regions. The CRZ Notification 2019 acknowledges the importance of safeguarding critically vulnerable coastal areas, such as the Sundarbans region of West Bengal and other ecologically sensitive areas⁹⁹. These areas are given special consideration and are managed through collaborative efforts with the coastal communities, including fisher folk, to promote sustainable livelihoods and environmental conservation.

3.3.3 Introduction of Hazard Line Concept: The CRZ Notification 2019 introduces a new concept known as the 'hazard line,' which is regulated by the Ministry of Environment, Forestry, and Climate Change. This line takes into account various factors such as tides, waves, sea level rise, and shoreline changes to mitigate natural

⁹⁷ Coastal Regulation Zone Notification, 2019, Gazette of India, pt. II sec. 3(ii), § 5.2, [https://crz.elaw.in/crz2019.html#:~:text=5.2%20CRZ%2DII&text=shall%20be%20permitted%20only%20on,side%20of%20an%20existing%20road](https://crz.elaw.in/crz2019.html#:~:text=5.2%20CRZ%2DII&text=shall%20be%20permitted%20only%20on,side%20of%20an%20existing%20road.). “Buildings shall be permitted only on the landward side of the existing road, or on the landward side of existing authorized structures.”(last visited 4 June,2024)

⁹⁸ For the purpose of conserving and protecting the coastal areas and marine waters, the CRZ area shall be classified as: 1. CRZ-I areas (environmentally most critical); 2. CRZ-II which shall constitute the developed land areas up to or close to the shoreline, within the existing municipal limits or in other existing legally designated urban areas; 3. CRZ-III including land areas that are relatively undisturbed and those which do not fall under CRZ-II; 4. CRZ- IV which constitutes the water areas. <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC213892/>

⁹⁹ Critically Vulnerable Coastal Areas (CVCA): Sundarbans region of West Bengal and other ecologically sensitive areas identified as under Environment (Protection) Act, 1986 such as Gulf of Khambat and Gulf of Kutchh in Gujarat, Malvan, Achra-Ratnagiri in Maharashtra, Karwar and Coondapur in Karnataka, Vembanad in Kerala, Gulf of Mannar in Tamil Nadu, Bhaitarkanika in Odisha, Coringa, East Godavari and Krishna in Andhra Pradesh shall be treated as Critical Vulnerable Coastal Areas (CVCA) and managed with the involvement of coastal communities including fisher folk who depend on coastal resources for their sustainable livelihood. <http://apczma.ap.gov.in/Assets/pdf/CRZ%20Notification%202019.pdf> (last visited 4 June,2024)

disasters like tsunamis and floods. These disasters have the potential to cause oil spills and other pollution incidents¹⁰⁰.

3.3.4 The management of activities in Coastal Regulation Zone-IV: (CRZ-IV) regions is focused on the oversight of different human and industrial activities within the water territories extending from the low tide line up to 12 nautical miles into the sea¹⁰¹. This area is designated as CRZ-IV under specific regulatory frameworks aimed at protecting coastal and marine environments. The exception to the regulation within these zones is for fishing and related activities, which are allowed to ensure the livelihoods of local communities and to maintain the ecological balance. The purpose behind restricting certain activities in CRZ-IV areas is primarily to minimize and prevent pollution, especially oil pollution, which poses significant risks to marine life, coastal ecosystems, and local economies dependent on these environments¹⁰². Oil spills and discharge from vessels, offshore drilling, and other maritime operations can cause extensive damage to the marine environment, thus these regulations are crucial for preserving these coastal stretches. By controlling the types of activities that can occur in these regions, the regulations aim to safeguard marine biodiversity, protect the integrity of coastal ecosystems, and ensure the health and safety of the oceanic environment and its inhabitants.

3.3.5 Improved Observation and Adherence: The Coastal Regulation Zone (CRZ) Notification issued in 2019 establishes a framework for monitoring projects in coastal areas after they have received the necessary clearances. This is an important step toward ensuring that the development and activities along the coast adhere to environmental standards and regulations, specifically focusing on preventing pollution and protecting the coastal ecosystem. One of the key components of this system is the requirement for

¹⁰⁰ A 'Hazard line' has been demarcated by the Survey of India (SOI) taking into account the extent of the flooding on the land area due to water level fluctuations, sea level rise and shoreline changes (erosion or accretion) occurring over a period of time. With a view to reduce the vulnerability of the coastal communities and ensuring sustainable livelihood, while drawing the CZMP, the land use planning for the area between the Hazard line and HTL shall take into account such impacts of climate change and shoreline changes. <http://apczma.ap.gov.in/Assets/pdf/CRZ%20Notification%202019.pdf>.

¹⁰¹ CRZ- IVA: The water area and the sea bed area between the Low Tide Line up to twelve nautical miles on the seaward side shall constitute CRZ-IV A. <http://apczma.ap.gov.in/Assets/pdf/CRZ%20Notification%202019.pdf>.

¹⁰² Prohibited activities within CRZ.- The following activities shall be prohibited, in general, within the entire CRZ and exceptions to these and other permissible and regulated activities in specific CRZ categories viz. CRZ-I, II, III and IV, shall be governed by the provisions of paragraph 5:- (i) Setting up of new industries and expansion of existing industries, operations or processes. (ii) Manufacture or handling of oil, storage or disposal of hazardous substances as specified in the notification of the Ministry of Environment, Forest and Climate Change number G.S.R.395 (E), dated the 4th April, 2016. <http://apczma.ap.gov.in/Assets/pdf/CRZ%20Notification%202019.pdf>.

project developers to submit reports every six months that demonstrate their compliance with the set regulations¹⁰³. These compliance reports are to be made publicly available on the website of the Ministry overseeing the CRZ regulations, providing transparency and enabling public scrutiny¹⁰⁴. This process is aimed at minimizing environmental damage, such as oil spills and other forms of contamination, ensuring that the natural beauty and biodiversity of coastal areas are preserved for future generations.

In conclusion, the establishment and enforcement of CRZ-IV regulations represent a significant step forward in the conservation and protection of India's coastal and marine ecosystems. By delineating specific zones like CRZ-IV for rigorous monitoring and regulation, the framework acknowledges the delicate balance between human activity and environmental preservation. The allowance for traditional fishing practices underscores a commitment to supporting local communities while still prioritizing ecological integrity. The 2019 CRZ Notification further strengthens this approach by enhancing oversight and demanding transparency through bi-annual compliance reporting¹⁰⁵. This rigorous system not only seeks to prevent pollution and protect marine biodiversity but also aims to foster a culture of accountability and environmental stewardship among industrial and community stakeholders. As we move forward, the success of these regulations will hinge on continuous monitoring, effective enforcement, and the collective efforts of all parties to uphold the health and beauty of coastal regions for generations to come.

¹⁰³ Post clearance monitoring:(a) It shall be mandatory for the project proponent to submit half-yearly compliance reports in respect of the stipulated terms and conditions of the environmental clearance in hard and soft copies to the regulatory authority(s) concerned, on the 1st June and 31st December of each calendar year and all such compliance reports submitted by the project proponent shall be published in public domain and its copies shall be given to any person on application to the concerned Coastal Zone Management Authority.

<https://crz.elaw.in/crz2019.html#:~:text=5.2%20CRZ%2DII&text=shall%20be%20permitted%20only%20on,side%20of%20an%20existing%20road>.

¹⁰⁴ b) The compliance report shall also be displayed on the website of the concerned regulatory authority.(vii) To maintain transparency in the working of the Coastal Zone Management Authority, it shall be the responsibility of the Coastal Zone Management Authority to create a dedicated website and post the agenda, minutes, decisions taken, clearance letters, violations, action taken on the violations and court matters including the Orders of the Hon'ble Court as also the approved CZMP of the respective State Government or Union

territory.<https://crz.elaw.in/crz2019.html#:~:text=5.2%20CRZ%2DII&text=shall%20be%20permitted%20only%20on,side%20of%20an%20existing%20road>.

¹⁰⁵ *Ibid.*

3.4 The Environment (Protection) Act of 1986

The EPA is an umbrella legislation. It fills up deficiencies in other laws relating to environment. It is through delegated legislation and delegated powers that EPA works. Many powers under it are delegated to the agencies provided for under the Water Act and Air Act¹⁰⁶. This Act delineates a multi-faceted approach towards environmental conservation and management, with a significant emphasis on the mitigation of air and water pollution, alongside provisions specifically addressing the issue of oil pollution¹⁰⁷. The following analysis elucidates key sections within the Act that pertain to the regulation of oil pollution:

3.4.1 Powers of the Central Government to Take Measures to Protect and Improve Environment: This provision vests the Central Government with authority to implement measures designed to safeguard and ameliorate environmental quality, thereby empowering it to prevent, control, and abate environmental pollution. It authorizes the issuance of notifications and guidelines addressing a spectrum of environmental concerns, inclusive of oil pollution, thereby laying the groundwork for comprehensive environmental governance.¹⁰⁸

3.4.2 Restrictions on the Location of Industries and the Carrying on of Processes and Operations in Different Areas This provision grants the Central Government the authority to regulate the initiation and implementation of industrial activities or processes that could have negative environmental consequences. Its primary objective is to limit operations that might cause pollution or environmental harm, such as those linked to the handling and storage of oil, thereby promoting a proactive approach to environmental management¹⁰⁹.

3.4.3 Directions by Central Government: The Central Government is empowered to direct any person, officer, or authority to undertake measures deemed necessary or expedient for the protection and improvement of the environment. Such directives may

¹⁰⁶ P Leelakrishnan, *Environmental Law Case Book*, 95, Lexis Nexis (2nd ed.2006)

¹⁰⁷ Environment (Protection) Act, 1986, §§ 3, 6, No. 29, Acts of Parliament, 1986 (India).

¹⁰⁸ Environment (Protection) Act, 1986, § 3, No. 29, Acts of Parliament, 1986 (India).

¹⁰⁹ Environment (Protection) Act, 1986, § 6, No. 29, Acts of Parliament, 1986 (India).

encompass specific actions for the prevention and control of oil pollution, signifying an adaptive response mechanism to environmental challenges¹¹⁰.

3.4.4 Penalties for Contravention of the Provisions of the Act or Rules, Orders, and Directions: This provision prescribes penalties for the contravention of the Act's stipulations or any rules, orders, or directions promulgated thereunder. Individuals found culpable of engendering oil pollution or infringing upon related regulations are liable to face punitive measures, including fines, thereby reinforcing the Act's regulatory framework¹¹¹.

3.4.5 Offenses by Companies: This clause enunciates the liability of corporate entities in instances of environmental offenses, stipulating that individuals at the helm of a company's operations at the time of the offense shall bear personal responsibility. This accountability mechanism ensures a heightened level of diligence among corporate actors regarding oil pollution and environmental compliance¹¹².

In summary, these provisions collectively empower the Central Government to regulate activities contributing to oil pollution, promulgate preventive and mitigatory guidelines, and enforce compliance through punitive measures. They constitute the legal foundation for combating oil pollution and fostering environmental stewardship in India, per The Environment (Protection) Act of 1986.

3.5 Indian Penal Code, 1860

In exploring the Indian Penal Code (IPC), 1860,¹¹³ and its application to maritime pollution, particularly oil spills, we find no direct mention of this specific type of environmental pollution. However, it's critical to understand that the IPC, as the

¹¹⁰ Environment (Protection) Act, 1986, § 15, No. 29, Acts of Parliament, 1986 (India).

¹¹¹ Environment (Protection) Act, 1986, § 17, No. 29, Acts of Parliament, 1986 (India).

¹¹² Environment (Protection) Act, 1986, § 19, No. 29, Acts of Parliament, 1986 (India).

¹¹³ The Bharatiya Nyaya Sanhita (BNS) is the official criminal code in the Republic of India. It was introduced in December 2023 to replace the Indian Penal Code. It will come in effect on July 1, 2024.

primary criminal code of India, encompasses a wide range of offenses, including those that can indirectly affect to environmental degradation¹¹⁴. Certain sections within the IPC can be interpreted and applied to address acts leading to maritime pollution and oil spill incidents, given their impact on public health, property, and the environment. Relevant sections of IPC are:

3.5.1 Public Nuisance

Defines public nuisance as an act or illegal omission causing injury, danger, or annoyance to the public or people in general who reside or occupy property in the vicinity. An oil spill that pollutes water bodies and affects the health, safety, or comfort of the public can be considered a public nuisance under this section¹¹⁵.

3.5.2 Making atmosphere noxious to health

This section penalizes anyone who voluntarily vitiates the atmosphere in any place, making it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way. An oil spill leading to the release of harmful fumes or contamination of air and water can be prosecuted under this section¹¹⁶.

3.5.3 Negligent conduct with respect to poisonous substance

This section applies to individuals who, through rash or negligent conduct, endanger human life or the safety of others with a poisonous substance. Oil, being hazardous to health and the environment, falls under the purview of this section if its mishandling leads to a spill¹¹⁷.

¹¹⁴ National Maritime Foundation, However, Oil Pollution Is a Continuing Problem..., <https://maritimeindia.org/164782/#:~:text=However%2C%20oil%20pollution%20is%20a,guilty%20for%20causing%20public%20nuisance> (last visited June 4, 2024).

¹¹⁵ Indian Penal Code, 1860, § 268, No. 45, Acts of Parliament, 1860 (India). BNS, 2024, § 292, No. 15, Acts of Parliament, 2024 (India).

¹¹⁶ Indian Penal Code, 1860, § 278, No. 45, Acts of Parliament, 1860 (India). BNS, 2024, § 280, No. 15, Acts of Parliament, 2024 (India).

¹¹⁷ Indian Penal Code, 1860, § 284, No. 45, Acts of Parliament, 1860 (India). BNS, 2024, § 286, No. 15, Acts of Parliament, 2024 (India).

3.5.4 Mischief

Defines mischief as an act where someone causes destruction or change of any property with the intention of causing or knowing that it is likely to cause wrongful loss or damage to the public or any person. Deliberate or reckless actions causing an oil spill could be prosecuted as mischief, particularly if it leads to environmental damage and economic loss.¹¹⁸

3.5.5 Mischief by injury to public road, bridge, river, or channel

Specifically addresses mischief causing injury to infrastructure like roads, bridges, rivers, or channels, making them unsafe or impeding their function. Oil spills contaminating rivers or channels and affecting their use fall under this provision¹¹⁹.

3.5.6 Section 432 Mischief by Causing Reduction of Supply of Water for Agricultural or other purposes

Penalizes actions that diminish the water supply required for agriculture or other purposes, including drinking and industrial use. An oil spill that contaminates water sources and disrupts their utility can be prosecuted under this section¹²⁰.

3.5.7 Application in the context of Oil spill pollution

While the Indian Penal Code (IPC) offers broad stipulations for addressing acts that lead to environmental degradation, more specialized regulations and frameworks, such as the Merchant Shipping Act of 1958 and the National Oil Spill Disaster Contingency Plan (NOS-DCP), possess greater applicability when dealing with oil spill pollution in maritime settings. These legislative frameworks elucidate several critical aspects:

¹¹⁸ Indian Penal Code, 1860, § 425, No. 45, Acts of Parliament, 1860 (India).BNS, 2024, § 324, No. 15, Acts of Parliament, 2024 (India).

¹¹⁹ Indian Penal Code, 1860, § 431, No. 45, Acts of Parliament, 1860 (India).BNS, 2024, § 326(b), No. 15, Acts of Parliament, 2024 (India).

¹²⁰ Indian Penal Code, 1860, § 432, No. 45, Acts of Parliament, 1860 (India).BNS, 2024, § 326(a), No.15, Acts of Parliament, 2024 (India).

- They delineate specific preventive measures and response strategies tailored to address oil spills.
- They define the roles and responsibilities of various governmental and non-governmental agencies in the mitigation and management of oil spill incidents.
- They establish provisions for the imposition of penalties and the pursuit of legal recourse in instances of maritime pollution.

3.5.8 Enforcement and Prosecution

The problem with enforcing rules under IPC for oil pollution is that the maximum fine of Rs. 500 is ridiculously low¹²¹. In order to effectively enforce laws and prosecute cases of oil spill pollution, it is imperative that authoritative bodies, including the Indian Coast Guard, the Directorate General of Shipping, and State Pollution Control Boards, engage in collaborative efforts with law enforcement agencies. This collaboration is fundamental in invoking relevant provisions within specialized maritime laws as well as the Indian Penal Code. Such a multidisciplinary approach ensures a thorough legal framework is available to address and hold responsible parties accountable for environmental infractions, notably those involving oil spills. This comprehensive legal recourse underscores the importance of inter-agency cooperation in safeguarding marine environments against pollutive activities.

3.6 The Water Act, 1974

The Water (Prevention and Control of Pollution) Act of 1974, often simply termed the Water Act, represents a significant legislative measure adopted to mitigate water pollution and preserve or reinstate water purity in India. Although the Act does not explicitly concentrate on oil spill incidents, its stipulations are applicable and can be employed to manage such scenarios. This analysis examines the relevance of the Water Act concerning oil spill pollution, detailing how its provisions encompass and can efficaciously address the complexities associated with oil spills¹²².

¹²¹ National Maritime Foundation, However, Oil Pollution Is a Continuing Problem..., <https://maritimeindia.org/164782/#:~:text=However%2C%20oil%20pollution%20is%20a,guilty%20for%20causing%20public%20nuisance> (last visited June 4, 2024). According to BNS which is effect from July 1st the fine is extend up to rs1000.

¹²² Section 24 of the Water Act, 1974: Prohibition on use of stream or well for disposal of polluting matter, etc.—(1) Subject to the provisions of this section, — (a) no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as

3.6.1 Definitions

Pollution: Under the Act, pollution is defined broadly to include contamination of water or alteration of its properties, which is likely to render it harmful or injurious to public health or to the health of other living creatures or plants or to the aquatic ecosystem¹²³.

Trade Effluent: Any liquid, gaseous, or solid substance discharged from any premises used for carrying on any industry, operation, or process, or treatment and disposal system, other than domestic sewage¹²⁴.

3.6.2 Establishment of Central and State Pollution Control Boards

The Act provides for the establishment of the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs), which are responsible for preventing and controlling water pollution. These boards are empowered to plan and execute nationwide programs for the prevention, control, and abatement of water pollution¹²⁵.

3.6.3 Functions of the Pollution Control Boards

CPCB: Advises the Central Government on any matter concerning the prevention and control of water pollution, coordinates activities of SPCBs, and provides technical assistance and guidance.

SPCBs: Advise state governments, plan comprehensive programs, inspect treatment plants, and ensure compliance with standards for effluent discharge.

3.6.4 Prevention and Control of Water Pollution

Section 24: Prohibits the discharge of any poisonous, noxious, or polluting matter into any stream, well, or sewer in excess of prescribed standards.

may be laid down by the State Board to enter (whether directly or indirectly). This provision can be interpreted to include oil spills.

¹²³ Water (Prevention and Control of Pollution) Act, 1974, § 2, No. 6, Acts of Parliament, 1974 (India).

¹²⁴ *Ibid.*

¹²⁵ Water (Prevention and Control of Pollution) Act, 1974, §§ 3-4, No. 6, Acts of Parliament, 1974 (India).

Section 25 and 26: Require prior consent from SPCBs for establishing or operating any industry, operation, or process likely to discharge sewage or trade effluent into a stream, well, sewer, or on land¹²⁶.

3.6.5 Penalties and Offenses

The Act prescribes penalties for non-compliance, including fines and imprisonment for individuals or entities responsible for polluting water bodies. Continuing offenses may attract additional fines for each day the violation continues¹²⁷.

3.6.6 Application to Oil Pollution

Prevention

Industries and entities involved in activities that could lead to oil spills (e.g., shipping companies, oil extraction and processing facilities) must obtain consent from SPCBs and adhere to prescribed effluent standards. SPCBs and CPCB can set specific guidelines and effluent standards for handling and transporting oil and petroleum products to minimize the risk of spills¹²⁸.

Control and Response

In the event of an oil spill, the relevant SPCB would be responsible for assessing the extent of pollution and initiating measures to control and mitigate the impact. SPCBs can work with the Indian Coast Guard and other agencies under frameworks like the National Oil Spill Disaster Contingency Plan (NOS-DCP) to coordinate response efforts¹²⁹.

¹²⁶ Water (Prevention and Control of Pollution) Act, 1974, §§ 24-26, No. 6, Acts of Parliament, 1974 (India).

¹²⁷ Water (Prevention and Control of Pollution) Act, 1974, §§ 41-45, No. 6, Acts of Parliament, 1974 (India).

¹²⁸ Water (Prevention and Control of Pollution) Act, 1974, §§ 17, 24, 25, 26, 33, No. 6, Acts of Parliament, 1974 (India).

¹²⁹ Water (Prevention and Control of Pollution) Act, 1974, §§ 19, 20, No. 6, Acts of Parliament, 1974 (India).

Penalties and Enforcement

Entities responsible for causing oil spills that result in water pollution can be prosecuted under the Water Act's provisions for discharging pollutants into water bodies. Penalties can include fines and imprisonment, depending on the severity of the pollution and the extent of non-compliance with the Act's provisions¹³⁰.

The Water (Prevention and Control of Pollution) Act of 1974 provides a legal framework for preventing and controlling water pollution in India. While it does not explicitly address oil spill pollution, its broad definitions and provisions can be applied to manage and mitigate the impacts of oil spills on water bodies. The Act empowers CPCB and SPCBs to take necessary actions, set standards, and enforce penalties to protect water resources from pollution, including oil spills.

3.7 The Indian Ports Act, 1908

The Indian Ports Act of 1908 stands as a central legislative structure that underpins the administration and regulatory oversight of ports across India. Within its ambit, it encompasses provisions that are instrumental for the management and mitigation of oil spill pollution incidents within port jurisdictions. This exposition seeks to elucidate the relationship between the Indian Ports Act and oil spill pollution management within the confines of port areas. Initially, it is imperative to understand the legislative intent behind the Indian Ports Act, 1908, which is to provide a coherent and comprehensive framework for the governance of ports in India. This framework includes, but is not limited to, the administration, control, and operation of ports and their facilities. Among the myriad provisions, specific clauses are dedicated to addressing environmental concerns, including pollution control measures relevant to oil spills¹³¹. Key Provisions of the Indian Ports Act, 1908 are:

3.7.1 Administration and Control

The Act empowers port authorities are responsible for the overall administration and management of ports, ensuring that ports operate smoothly and are well-maintained. To

¹³⁰ Water (Prevention and Control of Pollution) Act, 1974, §§ 43-44, No. 6, Acts of Parliament, 1974 (India).

¹³¹ Indian Ports Act, 1908, No. 15, Acts of Parliament, 1908 (India).

achieve this, the port authorities are given the power to establish their own rules and regulations. These rules and regulations are designed to guide the operation and maintenance of the ports effectively, covering various aspects such as safety, security, logistics, and environmental concerns, among others. The ultimate goal of these provisions is to facilitate the efficient and effective functioning of ports, which are critical nodes in global trade and transportation networks¹³².

3.7.2 Rules for Port Health and Safety

Port authorities are given the power to establish regulations to safeguard both people's health and the environment in port areas. This covers actions to avoid environmental contamination, for example, preventing oil leaks, and to maintain the cleanliness and safety of the port vicinity. Essentially, it's about making sure that ports are not only operational but also safe and environmentally responsible places¹³³.

3.7.3 Prevention and Management of Pollution

Specific provisions are in place to prevent the discharge of any oil, oily mixture, or other hazardous substances into the port waters. The Act empowers port authorities to take necessary measures to prevent and control pollution, including responding to oil spills¹³⁴.

3.7.4 Penalties for Violations

The Act prescribes penalties for any violations of the rules and regulations made by port authorities. This includes fines and other punitive measures for entities responsible for causing pollution¹³⁵.

¹³² Indian Ports Act, 1908, § 6, No. 15, Acts of Parliament, 1908 (India).

¹³³ Indian Ports Act, 1908, § 21, No. 15, Acts of Parliament, 1908 (India).

¹³⁴ Indian Ports Act, 1908, § 24, No. 15, Acts of Parliament, 1908 (India).

¹³⁵ Indian Ports Act, 1908, §§ 21, 24, No. 15, Acts of Parliament, 1908 (India).

3.7.5 Application to Oil Spill Pollution

Prevention

Port authorities can implement and enforce rules to prevent oil spills. This includes requiring ships to adhere to certain standards, ensuring proper maintenance of vessels, and regulating the handling and storage of oil and other hazardous substances within port limits¹³⁶.

Emergency Response and Contingency Plans

In examining the strategic role of port authorities in the realm of environmental protection, it becomes apparent that their responsibilities significantly encompass the formulation and execution of oil spill contingency plans. These meticulously devised schemes delineate a series of actions aimed at efficiently addressing petroleum discharge incidents, ensuring that measures for containment, recovery, and remediation are promptly and effectively initiated. The successful implementation of these plans necessitates a collaborative framework wherein port authorities engage in systematic coordination with pivotal institutions such as the Indian Coast Guard, among other pertinent bodies. This multi-agency collaboration is essential not only for the mobilization of resources but also for the integration of expertise necessary for a comprehensive and effective response to oil spills¹³⁷.

Central to this coordination effort is the National Oil Spill Disaster Contingency Plan (NOS-DCP), which establishes a standardized procedural blueprint for managing oil spill incidents. The NOS-DCP enhances the operational readiness of all involved entities, ensuring a coherent and unified approach towards minimizing environmental damage and facilitating swift recovery efforts. Therefore, the strategic engagement of port authorities in developing and implementing oil spill contingency plans, in concert with inter-agency collaboration, is crucial for safeguarding marine and coastal ecosystems against the adverse impacts of oil spills¹³⁸.

¹³⁶ Indian Ports Act, 1908, §§ 6, 21, 43, No. 15, Acts of Parliament, 1908 (India).

¹³⁷ Indian Ports Act, 1908, §§ 35-36, No. 15, Acts of Parliament, 1908 (India).

¹³⁸ Nilay Meshram & Suptdg Engineer, *Contingency Planning for Oil Spill Response*.
[https://www.cidm.in/presentations/Presentation%20by%20Nilay%20Meshram.\(2018\)](https://www.cidm.in/presentations/Presentation%20by%20Nilay%20Meshram.(2018))

Monitoring and Enforcement

Monitoring the waters and facilities within ports is crucial for making sure that they adhere to laws and rules designed to prevent pollution. The bodies governing ports have the authority to carry out inspections and keep watch over these areas to identify any possible sources that could lead to pollution. Implementing tough penalties for those who do not follow this pollution.

Collaboration with Other Agencies

Port authorities play a crucial role in dealing with oil spill incidents, and they do not act alone. Instead, they collaborate with various national and state-level agencies to ensure a comprehensive approach to managing and mitigating such environmental crises. These collaborations can include the Directorate General of Shipping, which oversees shipping operations and standards; State Pollution Control Boards, responsible for monitoring and preventing pollution at the state level¹³⁹; and the Ministry of Environment, Forest and Climate Change, which formulates policies and regulations for the protection of the environment, forests, and wildlife. By working together, these entities can pool their resources, expertise, and authority to address oil spills more effectively, minimize environmental damage, and ensure a coordinated response to such incidents¹⁴⁰.

3.7.6 Role of the Indian Coast Guard

While the Indian Ports Act gives port authorities the power to manage and prevent pollution within port limits, the Indian Coast Guard plays a critical role in the overall oil spill response framework in India. The Coast Guard is the central coordinating agency for oil spill response in the maritime zones of India, working under the guidelines of the NOS-DCP.

The Indian Ports Act, 1908, provides the legal framework for the administration, management, and regulation of ports in India. While it does not exclusively focus on

¹³⁹ *Ibid.*

¹⁴⁰ Website of Ministry of Environment and Forests| National Portal of India, <https://www.india.gov.in/official-website-ministry-environment-and-forests-0> (last visited Jun 5, 2024).

oil spill pollution, its provisions empower port authorities to take necessary measures to prevent, control, and respond to such incidents within port limits. This includes implementing preventive measures, developing emergency response plans, monitoring compliance, and enforcing violation penalties. Collaboration with other agencies, especially the Indian Coast Guard, is crucial for a comprehensive approach to managing oil spill pollution in Indian ports.

3.8 National Oil Spill Disaster Contingency Plan, 1996

In 1986, a significant shift took place in the management and coordination of marine oil spill responses. Specifically, on March 7 of that year, this crucial responsibility was passed from the Directorate General of Shipping to the Coast Guard. This change led to the development of a comprehensive plan to tackle oil spill disasters more effectively. By April 14, 1988, the Coast Guard had drafted the National Oil Spill Disaster Contingency Plan (NOS-DCP), a thoughtful framework designed to guide the response to marine oil spills. This draft was then shared with various relevant agencies to gather their feedback and insights, aiming to refine and enhance the plan¹⁴¹. It took a substantial period of review and revision before the NOS-DCP received the green light. The final version of the plan was endorsed by the Committee of Secretaries on November 4, 1993, marking a major milestone in the country's disaster management efforts. In July 1996, the NOS-DCP was officially published and distributed among a wide network. One hundred ninety agencies, units, and organizations received copies of this important document. Among these, sixty-seven were designated as participating agencies, playing active roles in the event of an oil spill. Within this group, thirty-seven were further classified as resource agencies, identified for their specific capabilities and resources that could be mobilized in response to a disaster¹⁴². This collective effort embodied a significant move towards more structured and coordinated responses to marine oil spills, emphasizing the importance of collaboration and preparedness in mitigating environmental disasters¹⁴³.

¹⁴¹ Nilay Meshram & Suptdg Engineer, *Contingency Planning for Oil Spill Response*.
<https://www.cidm.in/presentations/Presentation%20by%20Nilay%20Meshram> (last visited June 5)

¹⁴³ Indian Coast Guard, <https://indiancoastguard.gov.in/WriteReadData/bookpdf/201512281221565793127NOSDCPCGBR771.pdf> (last visited June 5, 2024).

¹⁴³ Website of Ministry of Environment and Forests| National Portal of India,
<https://www.india.gov.in/official-website-ministry-environment-and-forests-0> (last visited Jun 5, 2024).

3.8.1 Combined Resources

The plan described integrates resources from multiple sectors to create a comprehensive approach. It involves:

Government of India, including the Indian Coast Guard: This points towards utilizing national assets and capabilities, such as maritime law enforcement, search and rescue operations, and environmental protection initiatives, all spearheaded by central government agencies and the Indian Coast Guard¹⁴⁴.

State Governments, including their emergency services: This emphasizes the role of regional administrations and their assets, particularly those related to disaster response, medical emergencies, and local law enforcement, to ensure that the plan is executed efficiently across different states with their specific needs and contexts in mind.

Shipping, Ports, and Oil Industries: This involves collaborating with private sector stakeholders who are integral to maritime and coastal operations. It includes leveraging their infrastructure, expertise, and logistics for purposes such as pollution control, maritime security, and economic continuity during crises.

In essence, the plan aims to synergize the strengths of national and state-level government entities with pivotal industries related to maritime operations and energy, ensuring a well-rounded and robust approach to addressing wide-ranging challenges that may arise within maritime contexts¹⁴⁵.

3.8.2 Ministry Of Defence and Coast Guard Responsibilities

In an amendment to the Allocation of Business Rules dated 12 December 2002, a significant responsibility was vested in the Ministry of Defence through the operations of the Indian Coast Guard concerning environmental preservation and management within maritime zones. This delineation of duties underscores a comprehensive strategy towards addressing the persistent and detrimental issue of oil pollution in these areas. The roles assigned to the Indian Coast Guard are multifaceted and instrumental in not only responding to oil spill incidents but also in preventing them and mitigating their effects on marine ecosystems.

¹⁴⁴ *Ibid.*

¹⁴⁵ India - ITOPF, <https://www.itopf.org/knowledge-resources/countries-territories-regions/india/> (last visited Jun 5, 2024).

Firstly, the Indian Coast Guard is designated as the Central Coordinating Agency with the primary duty of combating oil pollution within maritime zones. This role involves orchestrating a cohesive response among various stakeholders, including national and international bodies, to manage and mitigate oil spills effectively. The effectiveness of the Coast Guard's coordination efforts is critical in ensuring swift and efficient responses to oil spill incidents, minimizing environmental damage¹⁴⁶.

Additionally, the implementation of the national contingency plan for oil spill disasters falls under the purview of the Indian Coast Guard. This aspect involves the operationalization of strategies and protocols designed to address oil spill incidents comprehensively. It includes preparedness measures, immediate response actions, and long-term rehabilitation efforts to restore affected maritime zones. The accurate execution of this national contingency plan is essential in safeguarding marine environments against the adverse impacts of oil spills¹⁴⁷.

Moreover, the responsibilities entail the surveillance of maritime zones to monitor for oil spills. This proactive measure is aimed at early detection of oil spills, which is pivotal in initiating prompt responses to contain and manage such incidents before they escalate into larger environmental catastrophes. Surveillance activities encompass regular patrolling and utilization of advanced technologies for effective monitoring of vast maritime areas.¹⁴⁸

In the combatting of oil spills, specific attention is directed towards addressing oil spills that occur in maritime zones, with the exclusion of ports and oil installations. This focus underscores the Indian Coast Guard's role in managing spills that occur in open water areas, which present unique challenges in terms of containment and clean-up operations. The ability to effectively respond to such incidents is crucial in minimizing the impacts on marine life and water quality.

Lastly, the roles encompass the prevention and control of oil pollution, which includes the inspection of ships and offshore platforms, although excluding areas within ports. This preventive measure aims to identify and address potential sources of oil pollution at their origin. By conducting inspections, the Indian Coast Guard plays a pivotal role

¹⁴⁶ ONGC - Carbon Management - en - ongcindia.com, EN, <https://ongcindia.com/web/eng/oil-spill-management> (last visited Jun 5, 2024).

¹⁴⁷ The legal basis for this national plan is section 14 of the Coast Guard Act, 1978 which vests the Coast Guard with duties to preserve and protect the marine environment and to prevent and control marine pollution and take such measures as it thinks fit in performance of its duties.

¹⁴⁸ *Id.*

in ensuring compliance with environmental regulations and standards, thereby reducing the likelihood of oil spill incidents.

In summary, the amendment to the Allocation of Business Rules on 12 December 2002, entrusting the Ministry of Defence through the Indian Coast Guard with these critical responsibilities, signifies a deliberate and structured approach toward combating oil pollution in maritime zones. It reflects an understanding of the multifaceted nature of oil spill management, encompassing prevention, preparedness, response, and recovery. Through its designated roles, the Indian Coast Guard is at the forefront of safeguarding marine environments against the malicious effects of oil spills, demonstrating a commitment to environmental stewardship and sustainable maritime practices.

3.8.3 Contingency Plan Hierarchy

The structure of the NOS-DCP includes multiple levels:

In the contemporary landscape of environmental disaster management, particularly in the context of oil spills, a hierarchical and comprehensive approach is paramount for effective mitigation and response. This model is compressed within various levels of contingency planning, reflecting an organized and scalable strategy to address the multifaceted challenges posed by oil spills across diverse geographical and administrative domains. At the apex of this strategic framework is the National Oil Spill Disaster Contingency Plan, which serves as a centralized blueprint for coordinating nationwide responses to oil spills. This plan ensures that a cohesive and uniform approach is maintained across the country, facilitating prompt and efficient action during disasters.

Complementing the national plan are the Regional Oil Spill Disaster Contingency Plans, which are meticulously tailored to cater to the specific environmental, economic, and social nuances of various regions. These plans enable a more focused response by taking into account the unique characteristics and needs of each region, thus enhancing the efficacy of mitigation and recovery efforts.

Parallel to the regional strategies are the District Oil Spill Disaster Contingency Plans. These are localized frameworks designed for district-level responses, offering an even more granular approach to addressing oil spill incidents. By focusing on localized

contexts, these plans ensure that district-specific challenges and resources are adequately considered, maximizing the impact of response measures.

Further diversification of contingency planning is evident in the State and Union Territory Plans. These are specialized frameworks developed for individual states and union territories, reflecting the diverse geographical, ecological, and administrative landscapes within the country. Such specificity allows for tailored strategies that align with the distinct priorities and capacities of each state or union territory.

Lastly, the Port and Industry Plans represent customized strategies for ports and industries, acknowledging the specific risks and requirements associated with these critical sectors. Given the heightened risk of oil spills in proximity to ports and industrial operations, these plans focus on pre-emptive measures, rapid response, and recovery mechanisms tailored to minimize environmental and economic impacts.

Overall, this hierarchical and differentiated approach to contingency planning illustrates a comprehensive and integrated strategy for oil spill disaster management. By recognizing and addressing the varied levels of risks and requirements across national to local scales, it ensures a robust and flexible response mechanism capable of effectively mitigating the consequences of oil spills.¹⁴⁹

3.9 Conclusion

An analysis of the legal framework for oil spills in India reveals several issues that must be resolved to determine liability and set a cap on compensation for the environmental harm caused by an oil spill. Numerous parties participate in the oil trade, each with varying degrees of liability and negligence. Often, it is relatively straightforward to demonstrate that the grounding or collision resulting in the spill and subsequent ecological damage was due to the negligence of one or more ship-owners. For instance, negligence by a ship-owner can be evidenced by a crew member's failure to exercise reasonable care, substandard construction, or insufficient maintenance.¹⁵⁰

¹⁴⁹ *Id.*

¹⁵⁰ Rhythma Kaul, *India's Response to Marine Oil Spills: An Evaluation*, Nov. 21, 2022, last visited June 14, 2024.

Oil spills fall strictly within the scope of civil liability, as the Act does not establish a framework for criminal liability to punish parties responsible for oil pollution.¹⁵¹ However, oil pollution is considered a public nuisance, and cases have been filed under the Indian Penal Code (IPC)¹⁵² for reckless navigation and endangering the lives of others. Section 268¹⁵³ of the IPC holds individuals accountable for causing public nuisance, while Section 278¹⁵⁴ permits prosecution of individuals for polluting the atmosphere to the extent that it becomes harmful to the health of people living, working, or passing through the affected area. Nonetheless, the challenge in applying this provision to oil pollution cases is the inadequately less penalty.

To effectively deter negligence resulting in oil spills within India's maritime zones, it is essential to bolster the associated liability regime. Substantial fines should be levied on all individuals closely involved with or responsible for the spill. A dedicated law for oil spills should be enacted, or amendments should be made to The Merchant Shipping Act of 1958.¹⁵⁵ Considering the difficulties in determining direct liability of parties for environmental damage under the current civil liability framework, a compensation fund should be established to address environmental damages caused by oil spills. Such a fund would ensure that environmental damages are remedied even when compensation cannot be obtained from the responsible parties, when no responsible parties are identified, or when the compensation is insufficient to cover the environmental damage incurred.¹⁵⁶

Marine oil spills have devastating effects on marine flora and fauna. A significant spill can cause severe damage to the marine environment, negatively impact the lives and livelihoods of coastal residents, hinder trade, and affect the entire Indian

¹⁵¹ Saadiya Suleman, *Oil Spills: Law on Liability with Special Reference to the Indian Regime*, *Research Gate* (2024), <https://www.researchgate.net/publication/256017933>.

¹⁵² The Bharatiya Nyaya Sanhita (BNS) is the official criminal code in the Republic of India. It was introduced in December 2023 to replace the Indian Penal Code (IPC), .It will come in effect on July 1, 2024.

¹⁵³ BNS, 2024, § 292, No. 15, Acts of Parliament, 2024 (India).

¹⁵⁴ BNS, 2024, § 278, No. 15, Acts of Parliament, 2024 (India).

¹⁵⁵ Oil Spill Liability Responses under Indian Law: Time for an Integrated Regulatory Framework, *IJPIEL* (Sep. 2, 2021), <https://ijpiel.com/index.php/2021/09/02/oil-spill-liability-responses-under-indian-law-time-for-an-integrated-regulatory-framework/>

¹⁵⁶ Rhythma Kaul, *India's Response to Marine Oil Spills: An Evaluation*, Nov. 21, 2022, last visited June 14, 2024

economy¹⁵⁷. Although the majority of compensation claims have been amicably settled through negotiations, there has been little effort to assess the financial impact of the damage caused to the marine environment by an oil spill. It is important to recognize that each oil spill is unique, involving various factors and circumstances, making it impossible to calculate an average cost for an oil spill or the expense of mitigating its ecological impact.¹⁵⁸

¹⁵⁷ Saadiya Suleman, *Oil Spills: Law on Liability with Special Reference to the Indian Regime*, *Research Gate* (2024), <https://www.researchgate.net/publication/256017933>.

¹⁵⁸ Oil Spill Liability Responses under Indian Law: Time for an Integrated Regulatory Framework, *IJPIEL* (Sep. 2, 2021), <https://ijpiel.com/index.php/2021/09/02/oil-spill-liability-responses-under-indian-law-time-for-an-integrated-regulatory-framework/>

CHAPTER 4: LIABILITY FOR OIL SPILLS UNDER THE INDIAN REGIME: AN EXAMINATION OF THE POLLUTER PAYS PRINCIPLE

4.1 Introduction

The vast majority of marine pollution is caused by human activities, with the degradation of marine waters now extending beyond coastal areas to the deep seas and remote polar regions. The issue of marine pollution is intensified by the belief in the limitless nature of ocean resources and the principle of unrestricted access to the seas.¹⁵⁹ The maritime industry, particularly ship operations, is the main source of marine pollution, including accidents during oil transport on the high seas. While international lawmakers have made some efforts to prevent marine pollution, the development of regulations for oil pollution has lagged behind the growth of maritime traffic and the increasing size of oil tankers, which pose significant risks to the marine environment. Given the irreparable and catastrophic nature of marine accidents, it is crucial to identify the party responsible for the damage. Although most countries have their own domestic laws, maritime oil pollution is a global concern, making it ideal to establish a consistent international convention applicable to all parties equally. Currently, numerous instances of marine pollution result from oil spills by vessels. These incidents profoundly impact the marine environment and pose serious threats to human life. Consequently, stringent law enforcement is essential. The Polluter Pays Principle is one effective approach to addressing this issue. This principle is articulated in Principle 16 of the Rio Declaration on Environment and Development, established in 2002.¹⁶⁰ According to this principle, the costs associated with pollution should be borne by those who are responsible for it. National authorities are encouraged to promote the internalization of environmental costs and to employ economic instruments to manage these expenses.

¹⁵⁹ Marsuadi Triatmodjo, *Pengembangan Pengaturan Hukum dan Kelembagaan Pencemaran Laut Oleh Sumber Dari Darat di Kawasan Asia Tenggara*, Disertasi, Universitas Gadjah Mada, Yogyakarta, 2001.

¹⁶⁰ U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, <https://sustainabledevelopment.un.org/content/documents/1127rioprinciples.pdf> (last visited June 7, 2024).

The CLC 1969 adopted on November 29, 1969, was designed to ensure adequate compensation for those affected by oil pollution from maritime accidents involving oil-carrying ships. The CLC imposed strict but limited liability on ship owners for clean-up costs and private damages, along with mandatory liability insurance. Two years later, the 1971 Fund Convention created an international fund to provide compensation beyond the ship owner's liability under the CLC or in cases where the owner was insolvent or not liable under the CLC. In 1992, the IMO Convention approved the Protocol of 1992 to update the CLC 1969. The CLC 1969 and CLC PROT 1992 are read together as a single document, known as the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 1992). As of December 2020, the 1992 CLC had been ratified by 141 States, and the 1992 Fund Convention by 118 States. Additionally, 32 states are parties to the 2003 Supplementary Fund Protocol¹⁶¹, which provides an additional layer of compensation for pollution damage.

For the first time in maritime law history the CLC 1992 established strict liability for oil pollution damage and mandated compulsory liability insurance¹⁶². Additionally, the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunker Convention), adopted on March 23, 2001, ensures that individuals affected by spills of oil carried as fuel in ships bunkers receive adequate, prompt, and effective compensation.¹⁶³

India, with its extensive coastline of 7516.6 km, relies heavily on the shipping industry for bulk imports of crude oil¹⁶⁴ and other transportation activities. Although India ratified the original CLC in 1981¹⁶⁵, it did not ratify the 1992 version of the CLC due to concerns over national interest. However, India is still a party to the CLC PROT 1992¹⁶⁶, with its relevant provisions incorporated into the Merchant Shipping Act, 1958

¹⁶¹ States Parties to both the 1992 Civil Liability Convention and the 1992 Fund Convention (and therefore Members of the 1992 Fund), International Oil Pollution Compensation Funds.

¹⁶² Liability and compensation for oil pollution damage -Texts of the Conventions, International Oil Pollution Compensation Funds, https://iopcfunds.org/wp-content/uploads/2018/06/Text-of-Conventions_e.pdf

¹⁶³ International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKER)

¹⁶⁴ Invest India, Oil&Gas, <https://www.investindia.gov.in/sector/oil-gas#:~:text=As%20on%20Apr%202022%2C%20estimated,2030%20from%20about%206.7%25%20now> (last visited June 6, 2024).

¹⁶⁵ Directorate General of Shipping, Ship Manual Chapter 10, https://www.dgshipping.gov.in/Content/PageUrl.aspx?page_name=ShipManualChap10 (last visited June 19, 2024).

¹⁶⁶ *Ibid.*

through a 2002 amendment. In 2015, India also signed the Bunker Convention and introduced a Bill to incorporate its relevant sections into Part XBA of the Merchant Shipping Act.¹⁶⁷ Despite this though eight years have passed since the Bill was introduced in Parliament, and it has not yet been enacted into law, complicating the ability of Indian courts to adjudicate remedial measures under the Merchant Shipping Act.

It is important to note that the legislative intent was to accede to both the CLC 1992 and the Bunker Convention. The Supreme Court, in the case of **M.V. Elisabeth vs. Harwan Investment and Trading**¹⁶⁸, stated that India is falling behind many other countries in ratifying and adopting the beneficial provisions of various conventions aimed at facilitating international trade. Although these conventions have not been enacted into Indian law, the principles they embody are derived from the common law of nations and reflect the essential needs of international trade. As such, they are considered part of India's general law and are applicable in enforcing maritime claims against foreign ships.¹⁶⁹

The integration of the CLC and Bunker Convention provisions into the Merchant Shipping Act introduces another area of ambiguity. While modern environmental law and Indian domestic law have largely embraced the Polluter Pays Principle¹⁷⁰, which includes the responsibility for alternative restoration and addressing environmental damage and loss of use, this principle is not explicitly mentioned in the CLC or Bunker Convention. Compensation for pollution damage under the CLC/Bunker Convention is limited to loss of profit and the remedial measures of reinstatement that have been or will be undertaken.¹⁷¹

In instances of environmental pollution, economic losses can be divided into two categories: consequential and pure. Consequential economic loss concerns damages to property, such as a fisherman suffering business losses due to damaged equipment from an oil spill. Pure economic loss, on the other hand, involves losses not directly related to property damage, like coastal hotels or tourist destinations experiencing reduced profits due to the spill, or businesses reliant on beach activities for income. Inadequate

¹⁶⁷ The Merchant Shipping (Amendment) Bill, 2015.

¹⁶⁸ AIR 1993 SC 1014.

¹⁶⁹ *Ibid.*

¹⁷⁰ *Indian Council for Enviro-Legal Action v. Union of India* (1996) 3 SCC 2012.

¹⁷¹ *Indian Council for Enviro-Legal Action v. Union of India* (1996) 3 SCC 2012.

compensation can have adverse effects on the local economy, resulting in significant indirect costs for the State, including reduced tax revenue and increased welfare programs, as well as the financial burden of cleanup efforts. As a result, a critical analysis of the legislation governing liability and compensation for oil pollution damage is essential.¹⁷²

The CLC has traditionally placed the responsibility for covering the expenses related to cleaning up oil spills from tankers on the costs of removing the oil from affected areas and repairing any property damage. However, it is now evident that it is equally important to consider the economic losses experienced by individuals, such as fishermen and coastal businesses.¹⁷³ In major oil spill incidents, a significant portion of compensation claims has been attributed to these losses, even though many of these claims have been for relatively small amounts.

The admissibility of claims under the CLC/Fund Convention is determined by the definition of pollution damage as clarified in the 1992 revision of the 1969 CLC, with an additional provision in 1971 calling for further clarification regarding the extent to which damage from marine pollution is eligible for a claim.

According to the revised 1992 CLC, pollution damage means –

(a) Loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of environment shall be limited to costs or reasonable measures of reinstatement actually undertaken or to be undertaken;

(b) The costs of preventive measures and further loss or damage caused by preventive measures.¹⁷⁴

The new definition may have created some room for the admissibility of costs related to the restoration of the marine environment however, it excludes other secondary economic claims related to the marine environment.¹⁷⁵ Additionally, the proviso states

¹⁷² R Bhanu Krishna Kiran, *LIABILITY AND COMPENSATION FOR OIL POLLUTION DAMAGE: AN EXAMINATION OF IMO CONVENTIONS* (2010).

¹⁷³ *Landcatch Ltd. v. The International Oil Pollution Compensation Fund* (The Braer) [1999] 2 Lloyd's Rep 316.

¹⁷⁴ Article I.6, CLC 1992.

¹⁷⁵ Mojgan Momeni Farahani, *Liability and Compensation Regime for Oil Pollution Damage under International Conventions*.

that loss of profit due to environmental damage is included in the definition of pollution damage, though it remains unclear how extensive claimant's rights are in such cases. The IOPC has adopted a stringent approach to compensating for loss of profit.¹⁷⁶ Despite attempts to address concerns regarding claims for environmental impairment, the challenges to other claims remain unchanged.

The 1971 Fund Working Group determined that for claims of pure economic loss to be eligible for compensation there must be a close and direct relationship between the contamination and the loss or damage suffered.¹⁷⁷ This was reinforced by the 2019 edition of the Claims Manual, which specifies that the starting point is the pollution, not the incident itself.¹⁷⁸ The Working Group also outlined several factors to consider when determining whether this requirement has been met.¹⁷⁹ These factors include the proximity of the claimant's business to the contaminated area, the economic dependence of the claimant's business on the affected resource, the availability of alternative supply sources or business opportunities, and the extent to which the claimant's business is integral to the economic activity in the area affected by the spill. Thus, the legislative intent of the CLC clearly leaves no room for admitting unique claims related to pure economic loss that fall outside its defined scope.

This point is reiterated in the IOPC Executive Committee Report on the Braer¹⁸⁰ incident, which noted that Landcatch's claim for compensation for its smolt-rearing activities categorized as pure economic loss, was different from previously accepted claims by the IOPC Fund. Landcatch's activities were considered geographically more remote from the contamination compared to other claimants such as salmon farmers and fish processors, who had received compensation from the Braer¹⁸¹ incident or similar cases. The Director's view was that Landcatch's smolt-rearing activities did not

¹⁷⁶ Liability and compensation for oil pollution damage -Texts of the Conventions, International Oil Pollution Compensation Funds, <https://iopcfunds.org/wp-content/uploads/2018/06/Text-of-Conventions>.(last visited June 6 2024).

¹⁷⁷ Working_Groups_of_the_1971_Fund-1.pdf, https://iopcfunds.org/wp-content/uploads/2020/05/Working_Groups_of_the_1971_Fund-1.pdf (last visited Jun 6, 2024).

¹⁷⁸ 2019-Claims-Manual_e-1.pdf, https://iopcfunds.org/wp-content/uploads/2018/12/2019-Claims-Manual_e-1.pdf (last visited Jun 6, 2024).

¹⁷⁹ Working_Groups_of_the_1971_Fund-1.pdf, https://iopcfunds.org/wp-content/uploads/2020/05/Working_Groups_of_the_1971_Fund-1.pdf (last visited Jun 6, 2024).

¹⁸⁰ The Braer oil spill incident refers to a significant environmental disaster that occurred on January 5, 1993, when the oil tanker MV Braer ran aground during a severe storm off the coast of Shetland, Scotland. The incident resulted in the spillage of approximately 85,000 tons (about 25 million gallons) of crude oil into the North Sea. International Tanker Owners Pollution Federation (ITOPF), Braer Oil Spill Incident (last visited Jun. 17, 2024).

¹⁸¹ Braer, UK, 1993, <https://www.itopf.org/in-action/case-studies/braer-uk-1993/> (last visited Jun 6, 2024).

form an integral part of the economic activity in the area affected by the oil spill despite the fact that Landcatch supplied 25-30% of the smolt to Shetland salmon farmers¹⁸².

The Polluter-Pays Principle is a cornerstone of sustainable development principles within both international environmental law and India's domestic legal system. At first glance, the principle might seem to impose a strict liability on the individual or entity responsible for causing environmental harm. However, the Polluter-Pays Principle encompasses a broader and more intricate spectrum of responsibilities. This principle not only holds polluters accountable for the direct costs of pollution but also entails a range of measures for remediation and prevention, extending to various forms of liability and compensation.

In spite of its comprehensive framework, the Civil Liability Convention does not fully embrace the extensive reach of the Polluter-Pays Principle. One significant shortcoming of the CLC is its failure to include compensation for pure economic loss as part of its alternative restoration measures. Pure economic loss, which refers to financial loss unaccompanied by any physical damage to a person or property, remains unaddressed within the CLC's provisions. This omission limits the principle's effectiveness in ensuring that all forms of environmental damage, including indirect economic impacts, are adequately compensated. As a result, the full potential of the Polluter-Pays Principle, particularly in terms of economic restitution and comprehensive environmental restoration¹⁸³, is not fully realized within the CLC framework.

According to the 1972 and 1974 OECD Recommendations, the Polluter-Pays Principle asserts that the polluter should cover the costs of pollution prevention and control measures, which are defined as actions taken by public authorities to maintain the environment in an acceptable state. This means that the polluter is responsible not only for compensating pollution victims but also for covering the costs of rehabilitating environmental damage they caused.¹⁸⁴Essentially, the Polluter Pays Principle internalizes any economic loss that is not direct or immediate through alternative

¹⁸² *Ibid.*

¹⁸³, Asian Development Bank, <https://events.development.asia/system/files/materials/2016/12/201612-environmental-law-principles-polluter-pays.pdf> (last visited June 6, 2024).

¹⁸⁴ *Id.*

restoration. This process requires the polluter to restore the affected environment to its original condition.

The Polluter Pays Principle has been an integral part of Indian environmental law since the Supreme Court's ruling in *Indian Council for Enviro-Legal Action v. Union of India*¹⁸⁵. With the enactment of the National Green Tribunal Act (NGT Act) in 2010, this principle was formally incorporated into Indian environmental regulation. NGT Act explicitly states that the Polluter-Pays Principle is a guiding framework for the National Green Tribunal (NGT) in rendering any order, judgment, or award. Under this Act, the NGT's relief measures encompass compensation to pollution victims, restitution of damaged property, and restoration of the environment.¹⁸⁶

In the MV Rak oil spill case¹⁸⁷, the NGT upheld that Section 17 ('No-fault' liability) in conjunction with Section 20 of the NGT Act (Polluter-Pays) necessitates the application of the Principle of Strict Liability against the ship's owners. They are liable to pay damages and environmental compensation and also comply with other directives based on the Polluter Pays Principle.¹⁸⁸ Emphasizing alternative restoration as a crucial aspect of the Polluter Pays Principle, the Supreme Court has ruled that remediation of the damaged environment is integral to sustainable development, and therefore, the polluter is responsible for covering the costs of restoring the damaged ecology¹⁸⁹, both to affected individuals and to the environment as a whole. Consequently, instances of pure economic loss, which are indirectly linked to pollution but still traceable, such as Landcatch's smolt-rearing activity, should be encompassed within the broad scope of rehabilitation provided by the Polluter-Pays Principle in the Indian context.

The CLC does not offer recourse for claims of pure economic loss. It focuses solely on covering the costs of rehabilitating the damaged environment to restore lost services as

¹⁸⁵ AIR 1996 SC 1446

¹⁸⁶ National Green Tribunal Act, 2010, § 20, No. 19, Acts of Parliament, 2010 (India)

¹⁸⁷ Panjwani and Gopal - COUNSEL FOR APPLICANT.pdf,

<http://www.indiaenvironmentportal.org.in/files/oil%20spill%20M%20V%20Rak%20NGT%20order%20mumbai%20coastline.pdf> (last visited Jun 6, 2024).

¹⁸⁸ *Ibid.*

¹⁸⁹ Vellore Citizens Welfare Forum v. Union of India, AIR 1996 S.C. 2715

far as possible.¹⁹⁰ According to the standards set, this entails restoring a biological community where the species distinctive of that community are present and functioning normally, but it does not necessarily mean returning the ecosystem to its pre-spill condition.¹⁹¹ This underscores the potential conflict between legal regimes that compare the CLC and the Polluter-Pays Principle. Specifically, when it comes to compensating victims, the CLC lacks a definitive provision governing alternative restoration for environmental and property damage, which is a fundamental aspect of the compensation mechanism envisioned under the Polluter-Pays Principle.

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act of 2017 marks a significant modernization of Indian Admiralty law, reflecting contemporary needs and environmental concerns. By replacing the colonial-era Admiralty Courts Act, the new legislation grants comprehensive admiralty jurisdiction to the High Courts in coastal States, empowering them to adjudicate a wide range of maritime claims. Section 4 of the Act enumerates the types of claims these courts can handle, and specifically, Section 4(1) (u) includes claims related to environmental damage caused by marine pollution. This provision is crucial as it explicitly recognizes the right to seek legal recourse for environmental harm, thereby addressing the legal vacuum that existed under the previous framework.¹⁹²

4.2 The Polluter Pays Principle in International Law.

The Polluter Pays Principle, a cornerstone of international environmental law, holds accountable those who deliberately or inadvertently pollute the environment by requiring them to bear the costs associated with their actions. It stands as a fundamental tenet of contemporary environmental policies, both domestically and globally, asserting

¹⁹⁰ IOPC_Environmental_Guidelines_ENGLISH_2018_WEB_01.pdf, https://iopcfunds.org/wp-content/uploads/2018/12/IOPC_Environmental_Guidelines_ENGLISH_2018_WEB_01.pdf (last visited Jun 6, 2024).

¹⁹¹ Andrew E. Jahn & Gordon A. Robilliard, *A Practical Resource Restoration Option Following Oil Spills*, in IOSC Proceedings: International Oil Spill Conference, Issue 1 (1997).

¹⁹² Section 4 (1) (u) of the Act of 2017 includes under the ambit of the term “maritime claim”, the following: “damage or threat of damage caused by the vessel to the environment, coastline or related interests; measures taken to prevent, minimise, or remove such damage; compensation for such damage; costs of reasonable measures for the restoration of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; or any other damage, costs, or loss of a similar nature to those identified in this clause.”

that the polluters rather than governments should bear the expenses incurred for mitigating pollution.¹⁹³

The Polluter Pays Principle not only addresses the distribution of costs related to preventing, mitigating, and compensating for environmental harm but also justifies direct regulatory actions such as orders and prohibitions, as well as the imposition of financial incentives and legal claims to compel responsible parties to take action or be held liable under civil law. Consequently, this principle holds significant weight in determining accountability for environmental impact, hazards, and risks.¹⁹⁴

The Polluter Pays Principle primarily focuses on assigning liability. It mandates that polluters internalize the pollution costs resulting from their actions, ensuring that the cost of their goods and services reflects the true costs of the measures the State adopts to eliminate, reduce, and treat the polluter's emissions. This principle asserts that polluters should be held accountable for their actions. Additionally, the Polluter Pays Principle allows the State to charge the cost of rectifying environmental damage to the responsible polluter, provided the polluter can be identified.¹⁹⁵

Applying the Polluter Pays Principle recognizes regulatory intervention as a precious tool for achieving prompt outcomes or for accelerating pollution reduction to protect public health or mitigate intolerable nuisances.¹⁹⁶ It identifies regulatory measures as a key mechanism for enforcing the Polluter Pays Principle.¹⁹⁷ Additionally, when addressing accidental pollution, the principle may encompass administrative actions taken by authorities prior to an incident to prevent accidents in hazardous installations or to undertake corrective measures in the event of accidental pollution.¹⁹⁸

The OECD¹⁹⁹ formulated the Polluter Pays Principle and recognized it as an internationally agreed-upon principle in 1972. Initially conceived as an economic

¹⁹³ Westone, Gregory & Rosencranz, A, "Transboundary Air Pollution: The Search for an International Response", the Harvard Environmental Law Review, 8, 1984.

¹⁹⁴ AsianDevelopmentBank, <https://events.development.asia/system/files/materials/2016/12/201612-environmental-law-principles-polluter-pays.pdf> (last visited June 7, 2024).

¹⁹⁵ Ayobami Olaniyan, Imposing Liability for Oil Spill Clean-Ups in Nigeria: An Examination of the Role of the Polluter-Pays Principle, 40 J.L. Pol'y & Global. (2015).

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid.*

¹⁹⁸ OECD, GD (92)81, <https://one.oecd.org/document/OCDE/GD%2892%2981/En/pdf> (last visited June 7, 2024).

¹⁹⁹ OECD Legal Instruments, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0102> (last visited Jun 8, 2024).

principle²⁰⁰, it aimed to allocate pollution control costs. According to the preamble of this declaration, the statements were made while working towards international agreements.²⁰¹ This implies that the declarations in the document are not binding provisions but are founded on recognized principles crucial for protecting the integrity of the global environmental and developmental system.

The Polluter Pays Principle is also recognized under the European Community Treaty²⁰². Article 191(2) states that “Union policy on the environment shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should be rectified at its source as a priority and that the polluter should pay.” This article reinforces the Polluter Pays Principle at the European Union level.

The polluter-pays principle, or its variations, is also recognized in other environmental treaties, such as the International Convention on Oil Pollution Preparedness, Response and Co-operation²⁰³. Article 1(6) (a) of the CLC clarifies this, stating it refers to “loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship.”²⁰⁴ Established as the 1969 International Convention on Civil Liability for Oil Pollution Damage (the 1969 CLC),²⁰⁵ the principle is further detailed in Articles II and III of the 1992 CLC.

UNCLOS 1982 addresses sea pollution across multiple articles. Article 194(2) outlines measures for preventing, reducing, and controlling marine environment pollution. It mandates that States must take all necessary measures to ensure that activities within their jurisdiction or control do not cause pollution damage to other States and their

²⁰⁰ OECD, GD (92)81, <https://one.oecd.org/document/OCDE/GD%2892%2981/En/pdf> (last visited June 7, 2024).

²⁰¹ U.N. Conference on Environment and Development, Rio Declaration on Environment and Development, <https://sustainabledevelopment.un.org/content/documents/1127rioprinciples.pdf> (last visited June 7, 2024).

²⁰² Consolidated version of the Treaty on the Functioning of the European Union#PART Three - Union Policies And Internal Actions Title Xx - ENVIRONMENT#Article 191 (ex Article 174 TEC), 202 OJ C (2016), http://data.europa.eu/eli/treaty/tfeu_2016/art_191/oj/eng (last visited Jun 8, 2024).

²⁰³ International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), [https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Oil-Pollution-Preparedness,-Response-and-Co-operation-\(OPRC\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Oil-Pollution-Preparedness,-Response-and-Co-operation-(OPRC).aspx) (last visited Jun 8, 2024).

²⁰⁴ International Convention on Civil Liability for Oil Pollution Damage (CLC), [https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-\(CLC\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-(CLC).aspx) (last visited Jun 7, 2024).

²⁰⁵ IOPC_Environmental_Guidelines_ENGLISH_2018_WEB_01.pdf, *supra* note 31.

environments. Additionally, they must prevent pollution from incidents or activities under their jurisdiction or control from spreading beyond the areas where they exercise sovereign rights under the Convention.²⁰⁶

Article 194(3) (b) of UNCLOS 1982 addresses measures for combating pollution in the marine environment. It specifies that these measures should encompass all sources of marine pollution, including vessel pollution. This entails preventive actions to avoid accidents, managing emergencies, ensuring safe maritime operations, preventing both intentional and unintentional discharges, and regulating various aspects of vessel design, construction, equipment, operation, and crewing. Pollution from vessels can arise from operational activities like tank cleaning or ballast discharge, as well as from discharges occurring as a result of accidents²⁰⁷.

Article 235 of UNCLOS 1982 affirms the individual responsibility of each nation to uphold international obligations for protecting and preserving the marine environment. Every country endeavours to establish a legal framework outlining procedures for obtaining sufficient and appropriate compensation for damages caused by individuals or legal entities. It is incumbent upon each nation to enact laws that adhere to international regulations governing the responsibilities and procedures for compensation and payments.²⁰⁸

The International Convention for the Prevention of Pollution from Ships 1973 (MARPOL) empowers participating nations to regulate and mitigate pollution caused by ships.²⁰⁹ It came into force in 1983 with the aim of safeguarding the marine environment by eliminating international pollution from oil and other harmful substances and minimizing accidental discharges of such substances. The convention comprises five annexes covering oil, noxious liquids, harmful substances, sewage, and garbage.²¹⁰

²⁰⁶ OECD, GD (92)81, <https://one.oecd.org/document/OCDE/GD%2892%2981/En/pdf> (last visited June 19, 2024).

²⁰⁷ *Id.*

²⁰⁸ PREAMBLE TO THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, https://www.un.org/depts/los/convention_agreements/texts/unclos/part12.htm (last visited Jun 7, 2024).

²⁰⁹ International Convention for the Prevention of Pollution from Ships (MARPOL), [https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx) (last visited Jun 7, 2024).

²¹⁰ *Ibid.*

Another international treaty addressing dispute resolution for marine pollution is the Protocol of 1992, amending the CLC for Oil Pollution Damage. The CLC governs compensation for marine environmental pollution caused by tanker oil spillage. The convention was established to guarantee sufficient compensation for individuals affected by oil pollution resulting from maritime incidents involving oil-carrying vessels.²¹¹

The Convention outlines pollution damage as the loss or harm experienced outside the vessel due to contamination resulting from oil escaping or being discharged from the ship, irrespective of the location of such escape or discharge. Nonetheless, compensation for environmental harm, excluding profit loss from such harm, is restricted to the expenses incurred or to be incurred for reasonable reinstatement measures. It defines an “incident” as any event or sequence of events with a common origin, leading to pollution damage or presenting a serious and imminent risk of causing such damage.²¹²

Civil liability applies exclusively to damage resulting from oil spills originating from tankers and does not encompass situations where no oil was spilled from tankers, such as pure prevention efforts. Additionally, States are required to establish national legislation concerning liability and compensation for victims of pollution and other environmental damage. Moreover, they must collaborate more actively and promptly to develop additional international laws concerning liability and compensation for the adverse effects of environmental damage caused by activities under their jurisdiction or control, extending to areas beyond their jurisdiction.²¹³

4.3. The Polluter Pays Principle as Per Indian Law.

In the Indian context, the established principle of Absolute Liability²¹⁴ generally mandates the inclusion of pure economic loss in cases of environmental damage, such

²¹¹ International Convention on Civil Liability for Oil Pollution Damage (CLC),

²¹² *Ibid.*

²¹³ *Ibid.*

²¹⁴ If any individual or any industry is engaged in an inherently dangerous or hazardous activity and any harm is caused to anyone while carrying out such activity, the said individual carrying out such activity should be absolutely liable; *M.C. Mehta v. Union of India*, 1987 (1) SCC 395.

as oil spills governed by the CLC. Consequently, in instances where large ships spill oil in Indian waters, the polluter would be obligated to compensate for the loss of profit, regardless of whether there is damage to the victim's property.

In applying the deterrence theory to environmental restoration, the Supreme Court has asserted that the compensation amount should be proportionate to the size and capacity of the enterprise to serve as an effective deterrent. Thus, the larger and more affluent the enterprise, the higher the compensation it should be required to pay.²¹⁵

From an initial examination of the NGT's approach, it is evident that Indian courts adopt a strict stance on environmental offenses like oil spills, in contrast to the more lenient provisions of the CLC. Indian courts are likely to uphold their deterrent perspective, even addressing claims of pure economic loss under the principle of Absolute Liability, which the CLC explicitly excludes. Despite integrating the CLC into the Merchant Shipping Act, courts will continue to apply both Absolute Liability and Polluter Pays Principle when resolving oil pollution cases. This means that a polluter found responsible under the Merchant Shipping Act will be required to compensate victims and restore environmental damage, whether it is directly or indirectly related to pollution. This dual approach in the Indian context involves assigning liability for pure economic loss under Absolute Liability and then determining the compensation amount using the Polluter Pays Principle. However, the language of the CLC does not encompass either of these principles.²¹⁶ This raises concerns, especially regarding the Polluter Pays Principle. Although Absolute Liability is a concept developed within domestic jurisprudence, Polluter Pays Principle is a vital element of customary international law.²¹⁷ Consequently, foreign vessels responsible for oil spills in Indian territorial waters will be held to the Polluter Pays standard as applied by Indian courts, regardless of their signatory status to the CLC.

On August 23, 2016, the National Green Tribunal delivered its judgment in the case of *Samir Mehta v. Union of India & Ors.* This case dealt with marine and coastal pollution resulting from an oil spill caused by the sinking of the MV Rak, which occurred about

²¹⁵ *M.C. Mehta v. Union of India* AIR 1987 SC 1086.

²¹⁶ IELRC.ORG - Polluter Pays Principle in India: Assessing Conceptual Boundaries and Implementation Issues, 7 (2021).

²¹⁷ OECD, GD (92)81 (1992), <https://one.oecd.org/document/OCDE/GD%2892%2981/En/pdf> (last visited June 7, 2024).

20 nautical miles off the Mumbai Coast in August 2011. The MV Rak, a vessel owned by Qatar-based Delta Shipping Marine Services SA, transported 60,054 metric tons of coal for Adani Enterprises Ltd., destined for its thermal power plant in Dahej, Gujarat. The ship had embarked on its journey from Indonesia to the Dahej Port in Gujarat, India. During the four-year-long proceedings, the Tribunal broadened the scope of the case to address the pollution caused by the shipwreck and the environmental impact of the 60,054 metric tons of coal cargo.²¹⁸

This judgment is pioneering in several aspects and undeniably a milestone in developing, the Polluter Pays Principle in India, particularly concerning marine pollution. For the first time, the Tribunal held a foreign company accountable for damages resulting from marine pollution caused by an oil spill and pollution from the shipwreck and its cargo. The Tribunal imposed a penalty of Rs. 100 cores on the Qatar-based company, its agent, and charterer for environmental damages. Additionally, it fined the consignee, Adani Enterprises, Rs. 5 cores for failing to take effective measures to prevent pollution from the cargo.²¹⁹ The ruling underscores numerous fundamental concerns associated with marine pollution, especially pertaining to the ascertainment of liability and the competence of statutory bodies to enact effective interventions in mitigating these issues.

The Tribunal, noting that Adani Enterprises had chartered an unseaworthy ship to transport its hazardous cargo, held Adani liable under the strict no-fault liability principle, imposing an environmental compensation of Rs 5 crore. It further observed that Adani Enterprises failed to take effective steps to remove the cargo from the seabed and prevent contamination or marine pollution from the oil spill.²²⁰ The Tribunal's decision was based on an extensive discussion of the liability provisions of the Merchant Shipping Act of 1956 and various international marine pollution conventions. These include the MARPOL Convention²²¹, the International Convention on Civil

²¹⁸India Env'tl. Portal, <http://www.indiaenvironmentportal.org.in/files/environmental%20compensation%20NGT%20Order.pdf> (last visited June 7, 2024)

²¹⁹ *Ibid.*

²²⁰ *Ibid.*

²²¹ International Convention for the Prevention of Pollution from Ships (MARPOL), [https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx) (last visited Jun 7, 2024)..

Liability for Oil Pollution Damage²²², the UN Convention on the Law of the Sea, the Nairobi Wreck Removal Convention, 2007²²³, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal²²⁴, and the Bunker Convention.²²⁵

The Tribunal noted that the coal cargo contained hazardous substances listed in the Basel Convention's annexed schedule. A common and significant preliminary objection raised by several parties, including the ship owner and the consignee, was that the Tribunal lacked jurisdiction to entertain the case due to the provisions of the Merchant Shipping Act, 1956.²²⁶ They argued that proceedings were already in progress against the ship owner under Section 356J²²⁷ of the Merchant Shipping Act, 1956. Furthermore, since the vessel had sunk in the contiguous zone, they contended that the Tribunal could not exercise jurisdiction beyond the country's territorial waters according to the Territorial Waters, Continental Shelf, Exclusive Economic Zone, and Other Maritime Zones Act of 1976 (Maritime Zones Act), which delineates the Central Government's powers in each maritime zone of India²²⁸. They also argued that the National Green Tribunal Act of 2010 did not apply to this case because the Merchant Shipping Act and the Maritime Zones Act of 1976 are not included in the Act's schedule.

²²² International Convention on Civil Liability for Oil Pollution Damage (CLC), [https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-\(CLC\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-(CLC).aspx) (last visited Jun 7, 2024).

²²³ Nairobi International Convention on the Removal of Wrecks, <https://www.imo.org/en/About/Conventions/Pages/Nairobi-International-Convention-on-the-Removal-of-Wrecks.aspx> (last visited Jun 7, 2024).

²²⁴ International Tanker Owners Pollution Federation (ITOPF), Braer Oil Spill Incident (last visited Jun. 17, 2024)

²²⁵ Simone Leyers, *Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001*.

²²⁶ Section 14 of the NGT Act, 2010 confers Jurisdiction to the Tribunal only with respect to civil cases arising out of non-compliance of the enactments enumerated in Schedule I of the Act which includes the following: Air (Prevention and Control of Pollution) Act, 1981; Water (Prevention and Control of Pollution) Act, 1974; Water (Prevention and Control of Pollution) Cess Act, 1977; Environment (Protection) Act, 1986, Biological Diversity Act, 2002; Forest (Conservation) Act, 1980 and the Public Liability Insurance Act, 1991.

²²⁷ 3 Section 356J of the Merchant Shipping Act, 1956 confers power on the Central Government to issue notice to take action regarding pollution from oil spill, to an owner/agent/master/charterer of a tanker/ship other than a tanker or a mobile offshore installation, if it is satisfied that oil is escaping or is likely to escape from a tanker, a ship other than a tanker or any off-shore installation; and the oil so escaped or likely to escape is causing or threatens to cause pollution of any part of coasts or coastal waters of India.

²²⁸ A1976-80.pdf, <https://www.indiacode.nic.in/bitstream/123456789/1484/2/A1976-80.pdf> (last visited Jun 7, 2024).

When deliberating on jurisdiction, the Tribunal extensively reviewed the provisions of the Maritime Zones Act, which grants specific sovereign rights to the Central Government regarding marine environment preservation and the prevention of marine pollution. Following a meticulous examination of these provisions, alongside Indian environmental legislation and relevant international conventions on marine pollution, the Tribunal concluded that a purposive interpretation should be applied²²⁹. It stressed that these provisions do not restrict the jurisdiction of either the Central Government or the Tribunal in addressing and adjudicating on such matters. The Tribunal emphasized that the rights conferred by the Maritime Zones Act, 1976, can only be effectively exercised with the assistance of laws relating to the marine environment and the prevention and control of marine pollution. Hence, environmental laws concerning the marine environment play a crucial role in realizing the objectives and safeguarding the rights delineated in these conventions.²³⁰

The Tribunal also rejected the argument that its jurisdiction would be negated due to ongoing proceedings under the Merchant Shipping Act of 1958. It noted that the jurisdiction under the Merchant Shipping Act of 1958 does not pertain to compensation and environmental damage, especially in cases where pollution and damage are continuing offenses.²³¹

The Tribunal acknowledged that calculating environmental compensation precisely in this case is challenging due to various factors, including the ongoing nature of the pollution. The judgment referenced the Supreme Court's decision in the Sterlite Industries case²³², where the Court applied the Principle of Strict Liability and imposed a penalty of Rs. 100 crores based on an approximate assessment, noting that exact determination of pollution damage was not feasible. The Tribunal also referred to the MC Mehta judgment²³³ and other Tribunal rulings where environmental compensation was levied on polluting industries.

²²⁹ Meera Gopal, *Of Sunken Ships and Oil Spills: Emergence of Marine Pollution from Ships in Mainstream Environmental Jurisprudence in India*, 4 ENV't L. & SOC'y J. 1 (2018).

²³⁰ *Ibid.*

²³¹ India Env'tl. Portal, <http://www.indiaenvironmentportal.org.in/files/environmental%20compensation%20NGT%20Order.pdf> (last visited June 7, 2024).

²³² *M/s. Sterlite Industries (India) Ltd. v. Union of India*, 2013 (4) SCC 575.

²³³ *M.C. Mehta v. Kamal Nath & Ors.* AIR 2002 SC 1515.

The Tribunal noted that “dumping should be discouraged in all events in case it becomes a regular feature for economic interests and an ‘easy option’ for disposing of ships which are not seaworthy. Thus, an approach which would help to suppress the mischief should be adopted²³⁴.” It further stated that “no country enjoys the privilege of sailing an unseaworthy ship to another country and dumping it in the territorial waters, contiguous zone, or exclusive economic zone of that country. Every country has a right to protect its marine environment”²³⁵. This judicial observation occurs when ship dumping occurs regularly in Indian waters due to weak laws and implementation issues. This judgment is a step towards a stricter regime against such activities and will hopefully act as a deterrent.

In November 2016, Adani Enterprises appealed to the Supreme Court, challenging the NGT’s judgment on several grounds. These included questions about whether the Tribunal had overstepped its jurisdiction by exercising powers not granted under the statute, whether the Merchant Shipping Act imposed any obligations on the cargo consignee²³⁶, and whether the knowledge of the ship’s unseaworthiness was incorrectly attributed to the consignee. The Supreme Court, upon admitting the appeal, directed Adani to deposit the specified amount with the NGT. Subsequently, an Execution Application titled *Samir Mehta v Union of India*²³⁷ was filed when the directions of the NGT’s main judgment were not implemented. The primary challenge faced by the Tribunal was to enforce the judgment and recover the 100 crores from the ship owner, charterer, or agent. Through several orders, the Tribunal urged the Government of India to take steps to execute the decree, as the fine was to be deposited with the Central Government²³⁸.

Finally, the Tribunal expressed its deep disappointment, noting that “this is a typical case where the Union of India, despite being given numerous opportunities, has failed to execute the decree for Rs. 100 crores passed in its favour. Consequently, the matter

²³⁴ International Convention for the Prevention of Pollution from Ships (MARPOL), [https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx) (last visited Jun 7, 2024).

²³⁵ *Ibid.*

²³⁶ *Adani Enterprises Ltd v. Samir Mehta and Ors.* Civil Appeal No. 10312 of 2016.

²³⁷ Execution Application No.34 of 2016.

²³⁸ Orders dated 7th February 2017, 7th March 2017, 21st March 2017, 23rd May 2017, 14th July 2017, and 17th August 2017 in Execution Application No.34 of 2016.

was closed for non-prosecution.”²³⁹ Thus ended the story of M.V. Rak, now resting on India’s continental shelf, while those responsible for the oil spill and marine pollution remain unpunished.

India’s heavy reliance on maritime trade and commerce is well known. However, despite a global decline in shipping casualties, incidents along the Indian coast have increased.²⁴⁰²⁴¹ These incidents highlight the inadequate enforcement of legal standards for vessel seaworthiness in India and expose gaps in Indian laws regarding the handling and removing wrecks, which allow offenders to evade consequences. The proceedings during the execution phase before the National Green Tribunal reveal that the Central Government lacks the initiative and drive to act against foreign-based polluters. There is a noticeable absence of a conventional approach to safeguarding and preserving the marine environment. Additionally, responsible parties have not been held accountable for the damage caused, nor have they been actively involved in restoration efforts. A lack of human resources for handling maritime cases is also a significant obstacle, leading to lengthy investigations to assess losses from sea accidents. The shortage of personnel with expertise in marine science, including coral reef and marine conservation specialists, results in prolonged examinations of damage and the potential loss of accurate data on the extent of the harm.

This case shows no regulated application of the Polluter Pays Principle in India, especially in the context of marine pollution. There is also no umbrella legislation to prevent oil spills, so the scattering of legislation will result in loopholes for polluters to escape liability. Also, there are no coordinated efforts by the authorities to prevent this havoc. Even in the Environment (Protection) Act of 1987, the Polluter Pays Principle is not mentioned explicitly. It is implied through different sections of the Act. Oil Spills from vessels cause several environmental damages, such as coral reef degradation, and contaminate the marine environment, affecting food supplies and tourism in affected areas. Oil can soak through rocks, polluting the groundwater. Sometimes, manual

²³⁹ Order dated 13th November, 2017 in the Execution Application.

²⁴⁰ Incident of oil spill of the Chennai Coast involving collision of two ships, namely “M. TB WMaple” which was transporting LPG and “M. T. Dawn Kanchipuram” which was transporting POL (Petroleum, Oil and Lubricant) outside the Harbour of the Kamarajar Port in Ennore on 28.01.2017 which resulted in the spillage of more than 100 tonnes of bunker oil from the MT Dawn Kanchipuram.

²⁴¹ Directorate General of Shipping, CASULATY_REPORT_2014-16_NT.pdf, https://www.dgshipping.gov.in/writereaddata/ShippingNotices/201907180516294513521Casulaty_Report_2014-16_NT.pdf (last visited June 20, 2024).

efforts are needed to clean the spill area, exposing the persons to health hazards. The connection between the Polluter Pays Principle and oil spills is evident but not immediately obvious. Their relationship is primarily based on liability. They intersect at the point where the polluter is identified and held accountable for environmental damage.²⁴² The Polluter Pays Principle becomes applicable after an oil spill occurs, determining who bears responsibility for the incident. It identifies the party responsible for the oil spill, which subsequently causes oil pollution. Thus, oil pollution links the Polluter Pays Principle to oil spills, with the principle pinpointing the accountable party.²⁴³

From the discussion thus far, particularly regarding the nature of the Polluter Pays Principle, it is evident that it cannot effectively deter future oil spills in its current form. Specific measures must be implemented to enhance efficiency and serve as a deterrent. An examination of prominent oil spill incidents also indicates that the mere existence of the principle does not prevent oil spills from occurring.²⁴⁴

The principle of deterrence is based on the idea that the prospect of having to pay damages will influence the behaviour of similarly situated parties in the future.²⁴⁵ This means that if potential polluters are aware that they will have to pay significant damages for their actions, they will be less likely to engage in such actions. However whether oil companies or vessel owners have altered their behaviour over time, knowing they will face heavy damages for oil spills caused by their activities or those of their companies, remains uncertain. The answer is not straightforward. This complexity arises because multiple factors often contribute to oil spills, and these factors are not typically the result of deliberate actions by the individuals or companies involved.

Oil spill incidents can result from either deliberate actions or accidents. Knowing that deliberate spills will lead to heavy fines and punitive measures may deter oil companies and vessel owners from engaging in such behavior. Consequently, other companies

²⁴² Nicolas De Sadeleer, *Liability for Oil Pollution Damage versus Liability for Waste Management: The Polluter Pays Principle at The Rescue Of The Victims*, 21 JOURNAL OF ENVIRONMENTAL LAW 299 (2009).

²⁴³ Ayobami Olaniyan, *Imposing Liability for Oil Spill Clean-Ups in Nigeria: An Examination of the Role of the Polluter-Pays Principle* (2015).

²⁴⁴ S. Shergold, D. Beggs, & S. Boileau, United Kingdom: Incidents at Offshore Facilities - Who is Responsible for Environmental Damage? 6 IELR 179 (2010).

²⁴⁵ A. Mitchell Polinsky & Steven Shavell, *Punitive Damages: An Economic Analysis*, 111 Harv. L. Rev. 1996 (1996).

might be compelled to enhance their oil spill response capabilities to avoid the high costs of responding to future oil spill disasters. This may also lead companies exploring new frontiers, like the Arctic region, to reconsider their plans or to better equip themselves financially and technologically to meet the challenges and prevent oil spills.²⁴⁶

4.4 Challenges Impeding the Imposition of Liability for Oil Spill Clean-Up in India.

The effectiveness of the Polluter Pays Principle in preventing and managing oil spills in India is questioned due to various challenges, which will be analysed later. This is especially evident in cases of vandalism and sabotage, where the perpetrators are often unidentified. In such instances, the Polluter Pays principle becomes irrelevant and impractical as it is impossible to assign liability to anyone.

India's legal framework concerning environmental regulations and liability for oil spills is complex and often challenging to implement. One of the primary hurdles lies in the overlapping jurisdiction among various regulatory bodies. This overlap can confuse which entity holds authority in specific oil spill incidents. As a result, determining the responsible party for enforcing liability and overseeing clean-up efforts becomes difficult. This complication in the legal circumstance can hinder prompt and effective responses to oil spill incidents, potentially worsening environmental damage and delaying remedial efforts.

Identifying the responsible parties for an oil spill poses an important challenge. This difficulty originates from various factors, including the complexity of modern industrial operations, involvement of multiple stakeholders, and the unpredictable nature of some spills. Additionally, determining liability may be slowed down by inadequate record keeping or documentation of activities leading up to the spill. Without clear identification of the responsible parties, holding them accountable for the clean-up and remedial efforts becomes a problematic task, delaying the instant and effective resolution of oil spill incidents.

²⁴⁶ Jeremy Wilkinson, *Oil Spill Response Capabilities and Technologies for Ice-Covered Arctic Marine Waters: A Review of Recent Developments and Established Practices*, PMC (2017).

Inadequate enforcement of liability and clean-up obligations, even after identifying responsible parties, can be attributed to several factors. One key issue is the limited resources or capacity within regulatory agencies supervising and enforcing environmental regulations. These agencies may face budgetary limitations, understaffing, or lack of specialized expertise in oil spill response and clean-up also, regulatory agencies may come across challenges in enforcing liability due to legal lacunae in existing regulations. For example, there may be ambiguities regarding the extent of liability or the specific obligations of responsible parties in certain circumstances. Furthermore, political considerations or industry influence can sometimes hinder severe enforcement efforts. Regulatory agencies may face pressure to prioritize other issues or to adopt lenient approaches towards non-compliant entities, particularly if those entities have significant economic or political influence. Overall, resource limitations, legal ambiguities, and lack of technical experts can undermine the enforcement of liability and clean-up obligations, resulting in inadequate responses to oil spill incidents and prolonged environmental damage.

Existing regulations might have been established decades ago when the nature of oil exploration, production, and transportation differed from the modern era. These regulations may not adequately address the complexities and challenges of modern oil spill incidents. Technological advances and changes in industry practices over the years necessitate updated regulations to effectively manage contemporary oil spill situations. Current laws might not cover all aspects of oil spill management comprehensively. This includes prevention, immediate response, long-term clean-up, and restoration efforts. There may be a lack of detailed provisions specifying the extent of liability for different parties involved in an oil spill, including ship owners, oil companies, and third-party contractors. Even if some regulations exist, their enforcement can be inconsistent across different regions and jurisdictions within India. This can be due to overlapping of regulatory capacity and resource availability. Ambiguities in existing regulations can lead to challenges in enforcement, with different interpretations causing delays and inefficiencies in holding responsible parties accountable. India's regulations may not fully support international standards and best practices for oil spill response and liability. This discrepancy can hinder cooperation with international stakeholders and compliance with global environmental treaties. Additionally, incorporating international best practices into national regulations can help create a robust framework

for managing oil spills effectively. Financial constraints are another major limitation in oil spill liability and remedial measures. Economic priorities might sometimes overshadow environmental considerations, weakening regulations and enforcement, Political influences and lobbying by powerful industry players can lead to regulatory capture, where regulations are shaped more by industry interests than by environmental and public health concerns.

The importance of maintaining a pollution-free environment cannot be overstated. Those responsible for oil spills must be identified, held accountable for their actions, and be required to clean up the affected areas and compensate those harmed by the spill. Deficiencies in the regulatory framework addressing oil spill incidents in India must be regularly reviewed and rectified by oil and gas industry stakeholders.²⁴⁷ Furthermore, environmental laws must be effectively implemented and enforced, particularly those addressing oil pollution and spills. This would facilitate the early containment of spilled oil and help prevent extensive environmental damage. It is believed that if the Polluter Pays Principle is rigorously enforced, the frequency of oil spills in India would significantly decrease.

²⁴⁷ OECD, "Recommendation of the Council on Guiding Principles concerning International Economic Aspects of Environmental Policies," C (72) 128.

CHAPTER 5: SUGGESTIONS AND CONCLUSION

5.1 Introduction

Marine transportation is a cornerstone of international trade, with a history as one of the oldest forms of global commerce. The preservation of marine biodiversity is acknowledged as an issue of international law, with both general and specific treaties being enacted to protect and restore marine biodiversity²⁴⁸. However, various types of pollution, especially oil spills, pose significant environmental threats. Oil pollution in marine environments is particularly problematic due to its unique impacts. Oil slicks can obstruct navigation routes and spread to different ports, creating widespread contamination. Clean-up operations often require manual intervention, exposing workers to severe health hazards and diseases.²⁴⁹ Additionally, oil spills can devastate local tourism and fishing industries, severely impacting the livelihoods of people in affected areas. Marine habitats, including coral reefs, suffer greatly, with oil pollution disrupting ecosystems and entering the food chain, ultimately posing risks to human health.

International trade is integral to daily life and global relations. Any disruption to the smooth facilitation of trade, such as those caused by oil pollution, poses a threat to international peace and security. Incidents of oil pollution can lead to trade delays and disputes over liability and compensation. Without adequate relief for victims, tensions between countries can escalate. Thus, effective legal mechanisms for pollution prevention and compensation are crucial for maintaining International harmony.

Despite the global shift towards renewable energy, oil remains an essential resource, often referred to as “black gold” due to its critical role in daily life and international negotiations. Oil is not only the most in-demand commodity but also the most frequently transported globally. Due to its physical and chemical properties, transporting oil by sea is the most convenient method. Oil pollution represents not only

²⁴⁸ Robin Kundis Craig, *Comparative Ocean Governance: Place –Based protections in an Era of Climate Change*, 86, Edward Elgar, (2012).

²⁴⁹ Rhythma Kaul, *India’s Response to Marine Oil Spills: An Evaluation*, Nov. 21, 2022, last visited June 14, 2024.

a waste of this valuable resource, costing billions, but also causes significant, and often irreparable, environmental damage. Therefore, trade and environmental protection must be balanced. As trade flourishes, it must be conducted in ways that minimize environmental harm. Oil pollution can damage port facilities, docks, and coastal infrastructure, necessitating costly repairs and maintenance, disrupting port operations, and reducing the efficiency of International trade logistics.

Maritime transport is a crucial mode of transportation, facilitating the intercontinental movement of passengers and cargo. It is highly efficient and capable of handling large volumes of goods.²⁵⁰ Oil, a primary commodity transported by sea, has seen a significant increase in shipping volumes in recent years. While marine oil shipping provides substantial economic benefits to many countries, it also poses considerable risks to health, life, property, and the environment. Despite technological advancements improving safety conditions, oil transportation remains as a high-risk activity. The beginning of oil pollution in the sea aligned with the use of oil fuel in ships and accelerated with the bulk transport of oil cargo. This pollution has continually increased over time. Oil spills can occur due to vessel collisions, accidental leaks, or intentional actions by a ship's master to lighten a damaged vessel.

The international oil transport by sea and the methods for addressing oil spills have evolved significantly since the super tanker Torrey Canyon disaster in 1967²⁵¹. This incident, one of the most severe oil spills, occurred when the super tanker ran aground off the southwest coast of the United Kingdom, releasing approximately 119,328 tonnes of crude oil. The lack of adequate technical and compensatory measures at the time led to substantial environmental and economic damage to Britain and France, contaminating about 190 km of the Cornish coast and 80 km of the French coast. This disaster prompted significant changes in oil spill response protocols.

The international framework focuses on preventing maritime accidents and regulating operational oil discharges from tankers ballast tanks. For decades, international Conventions have addressed civil liability for oil pollution. In jurisdictions like the

²⁵⁰ Saadiya Suleman, Oil Spills: Law on Liability with Special Reference to the Indian Regime, *Research Gate* (2024), <https://www.researchgate.net/publication/256017933>.

²⁵¹ Van, Hanswyk Beth. "The 1984 Protocols to the International Convention on Civil Liability for Oil Pollution Damages and the International Fund for Compensation for Oil Pollution Damages: An Option for Needed Reform

U.S., oil spill liability incorporates both civil and criminal regimes.²⁵² Liability and compensation Conventions limit a ship owner's liability in maritime oil pollution incidents. Key principles include strict liability or no fault liability and liability caps. However, questions arise regarding the effectiveness of these caps given the severe environmental, economic, and resource damage caused by catastrophic oil spills.

CLC and Fund Convention effectively provided compensation and other remedial measures for oil pollution from vessels. But still these Conventions have to go a long way. Also these Conventions doesn't extend their coverage to environmental damage to the affected area and it also excludes war ship and ships used for non-commercial purposes. Additionally definition of ship in CLC excludes tankers on ballast voyages, even if they carry bunkers and slops. It's crucial to examine the Convention's application when a ship is connected to a refinery or a single mooring buoy (SMB) via flexible pipes, and an oil spill occurs due to a pipe burst. The Convention's applicability depends on whether these pipes are considered part of the ship. If they are deemed part of the SMB, the Convention does not cover the pollution damage. This fact implies that definition of ship under the Convention is narrow. The purpose of the legislation is to attribute strict liability to the persons or entity causing pollution through oil contamination. So the Convention must attempt to extend its authority to machineries that functions in alignment with ships and oil tankers. In researcher's point of reference the Convention only concentrated on oil spill from ships and oil tankers but didn't gave emphasize to various machineries that are part and parcel of the vessel in its day to day functioning.

The aim of the CLC is to ensure that adequate compensation is available to those who suffer damage caused by oil spills from tankers. It establishes the liability of ship owners for oil pollution damage but this Convention excludes the oil escaping from river and lake vessels. Contamination of oil from these vessels are not considered as marine pollution. Here, once again the Convention fails to provide justice to the purpose behind its establishment.

²⁵² Saadiya Suleman, Oil Spills: Law on Liability with Special Reference to the Indian Regime, ResearchGate, https://www.researchgate.net/publication/256017933_Oil_Spills_Law_on_Liability_with_Special_Reference_to_the_Indian_Regime (last visited June 7, 2024).

Persistence of oil is an important factor according to Convention. Non-persistent oils, such as gasoline, light diesel oil, and kerosene, evaporate quickly, so spills rarely need active response measures. Unlike persistent oil, non-persistent oil does not need active response, so the Convention excludes non-persistent oil. However, they can still cause impacts such as damaging paint coatings in marinas and harbors. At high concentrations, they can also be acutely toxic to marine organisms.²⁵³

Another limitation of the Convention is that it doesn't apply to non-members. It is already the established fact that the havoc resulting from oil pollution in marine environment is irreparable and that it affects economy and social life of the affected area. So, a Convention like this shall apply internationally and must not discriminate between members and non-members.

Causing environmental damage is generally not considered as a serious crime so mainly civil liability is attributed. But when environmental pollution harms human life there has to be criminal liability. Criminal law also serves as the ultimate measure to protect society from crime, effectively curbing illicit behaviour.²⁵⁴ Similarly, the best way to protect the environment is through enforcement of the criminal law. So if the Convention adopts criminal liability it will be a more effective measure of deterrence.

When it comes to the Indian context, first of all India lacks a comprehensive legislation of oil spill pollution. Provisions of the Merchant Shipping Act is dealing with oil spill liability and compensation. Provisions of CLC is incorporated under Merchant Shipping Act 1958 so limitations of the Convention also applies to the Act. The Act only covers commercial vessels excluding non-commercial and Government vessels. It may not fully encompass all sources and forms of oil pollution, particularly those originating from inland waterways or involving non-persistent oils, and might not cover all hazardous substances. While the Act does outline several provisions regarding oil-spill-related liabilities, it lacks specific clauses that determine the extent of liability for environmental damage or specify the necessary funding for clean-up and ecological restoration. This gap represents a notable deficiency that India should prioritize

²⁵³The Fate of Oil Spills, *ITOPF*, <https://www.itopf.org/knowledge-resources/documents-guides/fate-of-oil-spills/> (last visited June 16, 2024).

²⁵⁴ Saadiya Suleman, Oil Spills: Law on Liability with Special Reference to the Indian Regime, *Research Gate* (2024), <https://www.researchgate.net/publication/256017933>.

addressing.²⁵⁵ However, the Act does not preclude claims of negligence against third parties or those exempted above. Instead, Sections 352 I (3), (4), and (6) of the Act require the establishment of the mental element “mens rea”. This complexity becomes pronounced in cases involving collisions and subsequent oil pollution, particularly when considered alongside Section 286 of the Merchant Shipping Act 1958, which addresses adherence to collision regulations.

National Oil spill Disaster Contingency plan is action-oriented and addresses various aspects such as reporting, communication, alerting, assessment, operations, administration, finances, public relations, and coordination with neighbouring states. It assigns specific responsibilities to relevant government departments and agencies, and identifies trained personnel, equipment, surface craft, aircraft, and means of accessing these resources.²⁵⁶ Anyway this plan lack statutory backing so this a roadblock in effective enforcement. Without legal authority, it is difficult to enforce compliance with the plan’s provisions among various stakeholders. Limited statutory support can lead to inadequate funding and resource allocation for effective oil spill response and preparedness. The absence of legislative mandates can hinder effective coordination between government agencies, private entities, and other stakeholders. Without statutory backing, it is challenging to hold parties accountable for non-compliance or inadequate response efforts. The effectiveness of the plan’s implementation may be compromised due to the lack of legal requirements for adherence.

Incidents involving oil discharge that are not classified as oil spills are instead addressed as accidental discharges under the EPA of 1986. This classification implies that such incidents are managed within the broader framework of environmental protection, which includes regulations and guidelines for preventing, controlling, and mitigating accidental releases of hazardous substances into the environment. Accordingly, these incidents fall under the EPA’s provisions, focusing on overall environmental health and safety rather than the specific protocols typically associated with oil spill responses.

²⁵⁵ Oil Pollution: Public Nuisance and Liability, *National Maritime Foundation*, <https://maritimeindia.org/16478-2/> (last visited June 16, 2024).

²⁵⁶ National Oil Spill Disaster Contingency Plan, Ministry of Defence, Government of India (2015).

Oil spills are exclusively governed by civil liability under the Act, and there is no provision for criminal liability to punish parties responsible for oil pollution. However, oil pollution constitutes a public nuisance, and cases have been filed under the Indian Penal Code (IPC) for reckless navigation and endangerment of other's lives. Section 268 of the IPC holds individuals accountable for causing a public nuisance, while Section 278 allows for responsibility when actions pollute the atmosphere to the detriment of public health. Yet, applying these provisions to oil pollution is challenging due to the minimal penalty prescribed.

India primarily acknowledged Polluter Pays Principle in Indian Council of Environmental Action vs. Union of India²⁵⁷. The National Green Tribunal Act (NGT Act) of 2010 formally integrates the Polluter Pays Principle into Indian environmental regulation. According to this legislation, the NGT is mandated to apply the Polluter Pays Principle when issuing orders, judgments, or awards. The NGT's remedial measures include compensating pollution victims, restoring damaged property, and undertaking environmental restoration efforts. This legal framework underscores India's commitment to holding polluters accountable for their actions and ensuring the protection and restoration of the environment. Identifying the responsible parties can be extremely difficult in instances of vandalism or sabotage leading to oil spills. This impedes the enforcement of the polluter pays principle because liability and accountability cannot be clearly assigned. Without clear identification of perpetrators, legal action and enforcement become complicated. Authorities may struggle to determine who should bear the costs of clean-up and restoration under the polluter pays principle. The financial burden of addressing oil spills caused by vandalism or sabotage often falls on public funds or affected communities, rather than on the actual polluters. This undermines the effectiveness of the principle in ensuring that those responsible for environmental damage bear the costs. Delayed or inadequate response to oil spills due to unidentified perpetrators can exacerbate environmental damage. Prompt and effective action is crucial to minimizing the impact on ecosystems, biodiversity, and local communities. The uncertainty surrounding the identity of perpetrators may deter proactive preventive measures.

²⁵⁷ AIR 1996 SC 1446.

The National Green Tribunal was established in India under the NGT Act of 2010 with a specific mandate to adjudicate on environmental matters. The NGT's jurisdiction is limited to the environmental issues listed in Schedule I of the NGT Act, 2010. This includes the enforcement of various environmental laws such as the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981. While oil pollution can fall under these categories, the tribunal's focus is primarily on these specified laws. Despite this NGT has decided handful of cases relating to oil spill but a major defense raised by the parties is that oil pollution-related laws, such as the Merchant Shipping Act of 1958, are not listed under Schedule I, thus the tribunal lacks the power to adjudicate matters relating to oil pollution. Oil pollution incidents often involve multiple regulatory bodies, this overlap can complicate jurisdictional clarity and sometimes limit the NGT's ability to act independently. Additionally The NGT is ordained by law to follow international environmental law principles of sustainable development, precautionary principle and Polluter Pays Principle. However, nowhere in the statute, these principles have been defined. So it again put onus on the judges to interpret these principles.²⁵⁸

5.2 Findings and Suggestions

Based on the research study conducted, the findings reached and their respective solutions are given as below:

Finding 1: CLC does not extend its scope to include vessels exclusively used for transporting oil in lakes or rivers and fixed or moveable oil rigs. Additionally, this definition does not cover tankers on ballast voyages, even if they carry bunkers and slops. Also the Convention excludes warships or vessels owned or operated by a State for non-commercial purposes. Additionally Persistent oil spills from vessels other than bulk oil carriers, such as those involving ship bunkers, are not covered by CLC regimes. The Convention's primary objective is to address remedial measures following an oil spill, with less emphasis on preventive methods.

²⁵⁸ Gurdip Singh, Environmental Law, 414, Eastern Book Company, (2nd ed. 2016)

Suggestion: Amendments to the CLC to extend its scope include vessels exclusively used for transporting oil in lakes and rivers and fixed and movable oil rigs. Expand scope of definition of ship for the inclusion of tankers on ballast voyages within the CLC’s jurisdiction, particularly focusing on those carrying bunkers and slops. Also include warships and state-owned vessels used for non-commercial purposes within the CLC regime, or alternatively, propose a separate but equivalent liability regime for these vessels. There has to be development of extended liability regimes under the CLC or separate protocols to cover persistent oil spills from vessels other than bulk oil carriers, such as those involving ship bunkers.

A comparative study may be conducted with the U.S Environment Protection Agency’s Spill Prevention, Control, and Countermeasure (SPCC) Regulation²⁵⁹. The purpose of the Spill Prevention, Control, and Countermeasure (SPCC) rule is to help facilities prevent a discharge of oil into navigable waters or adjoining shorelines.

Finding 2: The CLC’s definition of oil excludes non-persistent oil because it does not require active response for clean-up. However, non-persistent oil also harms the marine ecosystem.

Suggestion: Amendment to the CLC to include non-persistent oils within its definition of oil. This change would recognize the environmental harm caused by all types of oil spills. Provisions of SPCC can be compared, in SPCC Oil of any type and in any form is covered, including, but not limited to petroleum, fuel oil, sludge, oil refuse, oil mixed with wastes other than dredged spoil, fats, oils or greases of animal, fish, or marine mammal origin; vegetable oils, including oil from seeds, nuts, fruits, or kernels, and other oils and greases, including synthetic oils and mineral oils.²⁶⁰

²⁵⁹The Purpose of the Spill Prevention, Control, and Countermeasure (SPCC) Rule, *EPA*, <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/spill-prevention-control-and-countermeasure-spcc-rule>.(last visited June 16, 2024)..

²⁶⁰U.S. Env’tl. Prot. Agency, Spill Prevention, Control, and Countermeasure (SPCC) Rule, *EPA*, <https://www.epa.gov/sites/default/files/documents/spccbluebroch.pdf> (last visited June 16, 2024).

Finding 3: A non-member state is not legally liable under the CLC because the Convention applies to its contracting states and their registered ships.

Suggestion: Amendment to the CLC that imposes certain responsibilities on ships registered in non-member states when they operate in the waters of contracting states. Create awards or recognition programs for countries that join the CLC and demonstrate exemplary practices in maritime environmental protection. Public recognition can motivate governments to align with international standards. Offer non-member states leadership roles in international maritime organizations or committees to incentivize adopting the CLC framework. This can enhance their influence and prestige in the global maritime community. Negotiate with international marine insurers to offer reduced insurance premiums for ships registered in states that join the CLC.

Finding 4: The CLC Convention applies only if the oil has been discharged or escaped from the ship. However, if there was a grave and imminent threat of pollution damage that required prevention at considerable cost, the provisions of the Convention would not apply due to the actual escape or discharge.

Suggestion: Amendment to the CLC to explicitly cover preventive actions taken to mitigate grave and imminent threats of pollution damage, even before any actual discharge or escape of oil. Incorporate precautionary principle into CLC and also creation of an international fund under the CLC framework specifically designated for covering costs incurred during preventive actions against imminent threats of pollution.

Finding 5: The Convention does not provide compensation for environmental harm, such as the destruction of the environment, except for expenses related to restoring the affected area, like clean-up costs or other remedial measures. Compensation is not granted for unquantified damage, which refers to damages that cannot be repaired or measured and are therefore irreparable.

Suggestion: Propose amendments through the IMO or relevant international bodies to ensure that compensation extends to cover long-term or permanent environmental impacts that cannot be adequately repaired or restored provisions for criminal liability for intentional pollution must also be incorporated.

Finding 6: India lacks comprehensive umbrella legislation specifically addressing oil pollution. There is no single, complete legislation that broadly covers all facets of oil pollution management.

Suggestion: The enactment of a comprehensive Oil Pollution Management Act consolidates all aspects of oil pollution prevention, control, response, and remediation under a single legislative framework. The Act should cover oil spills from ships, offshore platforms, and pipelines, addressing both marine and inland waterway pollution. Include provisions for criminal liability and stringent penalties for intentional oil pollution and gross negligence, serving as a strong deterrent against environmental violations. Ensure transparency in reporting and monitoring oil spill incidents and response efforts, making information readily accessible to the public. Creates a fund financed by a tax on oil companies to cover costs related to oil spill clean-up and damages when responsible parties are unable to pay.

Finding 7: The National Oil Spill Disaster Contingency Plan (NOS-DCP) itself is a framework and set of guidelines rather than an entity with inherent power or authority. However, it derives its effectiveness and enforcement capabilities through the statutory powers of the Indian Coast Guard and other designated authorities. The effectiveness of the NOS-DCP is compromised if the Coast Guard fails to function properly.

Suggestion: Legislative amendments to provide explicit statutory recognition to the NOS-DCP. Define the mandate, roles, and responsibilities of various authorities, including the Indian Coast Guard, within the legislation to ensure clarity and accountability in oil spill response and prevention. Conduct periodic simulation exercises and drills based on NOS-

DCP scenarios to test readiness and improve coordination among various response agencies and stakeholders.

Finding 8: The National Green Tribunal (NGT) has a specific and presumably limited jurisdiction, primarily rooted in Section 14 of the NGT Act. This section empowers the Tribunal to hear all civil cases that meet two essential criteria: the case must involve a substantial question related to the environment, and such questions must concern the implementation of the specific enactments listed in Schedule I of the Act.

Suggestion: An amendment to the NGT Act to broaden the scope of Section 14, allowing the NGT to hear cases that involve a wider range of environmental issues beyond those listed in Schedule I. Update Schedule I to include more environmental laws and regulations, thus expanding the NGT's authority to address a broader spectrum of environmental concerns. The NGT should also identify institutions and experts who can provide scientific estimates of environmental damages, compensation, and fines on a case-by-case basis.

Finding 9: The Polluter Pays Principle is not explicitly stated in the Environment (Protection) Act, 1986 or any other environmental laws in India.

Suggestion: Environment (Protection) Act, 1986 amendment to explicitly incorporate the Polluter Pays Principle. This amendment should clearly define the principle and outline its application in various environmental contexts. Additionally Integrate the Polluter Pays Principle into existing environmental regulations, such as the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981. Develop detailed guidelines and policies that outline the implementation of the Polluter Pays Principle in various sectors, including industry, agriculture, and urban development.

The relationship between trade and the environment is not a new concept. They both complement and conflict with each other. However, it is a well-established fact that

trade inevitably leads to environmental pollution. International communities and national laws promote and integrate various environmental principles when the safety and security of nature are at risk.

It is important to emphasize that while oil spills and individual catastrophes are highly visible, also pollution from other sources causes greater harm to the marine environment. Additionally, it should be noted that small amounts of oil are continuously seeping into the seas and being assimilated into the ocean ecosystem. Many chemicals transported by sea are inherently much more detrimental to the marine environment. Although oil pollution accounts for only a small fraction of the overall pollution in the maritime environment, the effects of oil spills and oil waste profoundly harm the marine landscape and ocean inhabitants.²⁶¹

Since the mid-20th century, numerous international legislative measures and national laws and regulations have been adopted to prevent oil pollution in the marine environment. This new legislation not only reflected the evolving legal stance on various issues but also incorporated advancements in construction technology, such as improved tank stripping pumps, the load-on-top system, and other innovations. These preventive measures have significantly reduced pollution from both vessels and offshore oil development. Law must keep pace with rapidly changing socio-economic needs. Innovations in the modern era lead to various types of pollution, requiring legal mechanisms to be updated accordingly.²⁶² However, there remains a significant gap between legal regulations and the effective prevention of oil spills from ships. The primary focus should be on prevention as the old adage states, “an ounce of prevention is worth a pound of cure.”

²⁶¹ Oil Pollution and International Marine Environmental Law Ekaterina Anyanova (last visited June 17th)

²⁶² Ibid

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APPENDIX

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