Liability and Compensation for Marine Pollution Damage

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Historical Evolution of the International Legal Regime

- International Convention of Civil Liability for Oil Pollution Damage, 1969
- International Convention on the Establishment of an International Fund for Oil Pollution Damage, 1971
- 1992- Protocols revising the above conventions
- 2000- Amendments to raise by 50% the limits of compensation payable to victims of pollution by oil from tankers
- 2001- International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001
- 2003- Supplementary ('third tier') fund established increasing amount of compensation to about USD 1.2 million.

CPC 1969-1992

- Primary rule: *"the owner of a ship at the time of an incident, or where 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"*
- Liability covers issues such as costs of clean up, loss to fishermen and measures taken to prevent or minimize the damage
- Geographical Scope: Applies exclusively to pollution damage in the territory, the territorial sea and in the Exclusive Economic Zone (EEZ) of a state-party to the convention.
- Scope of Application- 'Ship': Any “sea-going vessel and any sea borne craft of any type whatsoever, actually carrying oil in bulk as cargo”. It specifies that vessels, exclusively used for carrying oil in lakes or rivers and oil rigs fixed or mobile are excluded. Furthermore, tankers on ballast voyages, even if they are carrying bunkers and slops, are excluded.

- Application of the Convention when a ship is connected with the refinery or a single mooring buoy (‘SMB’) through flexible pipes and the oil spilled through a burst in the pipe: The Convention is applicable if the pipes are considered part of the ship. If the pipes are part of the SMB, the Convention will not apply to the pollution damage.
- Convention does not apply to war ships or vessels owned or operated by a State for noncommercial purposes

1992 Protocol- Definition of 'Ship'

- “any sea-going vessel and sea-borne 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 abroad”
- includes unladen tankers in ballast after carrying crude oil provided that it has no residues
- also applies to combination carriers engaged in the carriage of crude oil in bulk

- The question whether Floating Storage Units ('FSUs') and Floating Production, Storage and Offloading Units ('FPSOs') constitute a 'ship' within the meaning of CLC. 1969 CLC will apply only if the unit is actually carrying oil in bulk as cargo. The Convention contains no definition of 'cargo', and different views exist as to whether the phrase refers only to goods which are transported from one port to another, as distinct from those which are simply held in storage afloat for trans-shipment into shuttle tankers. Under 1992 CLC, there is greater scope for argument that an offshore unit is covered. The issue was debated by the 1992 Fund Assembly in 1998 in response to concerns by some member-states that the position be clarified. Doubts were expressed as to whether a capability to carry oil in bulk as cargo would be sufficient unless such carriage was the purpose for which the unit had been constructed or adapted.

Definition of Oil

- It was redefined by 1992 Protocol as “any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried onboard a ship as cargo or in the bunkers of such a ship”. The 1992 Protocol is clear that it covers only persistent hydrocarbon mineral oil. A spill of bunkers is now covered by the Convention provisions.
- There is a difficulty in clearly distinguishing between persistent and non-persistent oils. However, it was maintained that non-persistent oils were unlikely to cause real damage to the marine environment and could, at any rate, be covered by the Limitation of Liability for Maritime Claims, 1976.

Pollution Damage under the CLC

- The CLC establishes the liability of the owner of a ship for pollution damage caused by oil escaping from the ship as a result of an incident on the territory of a state-party (including its territorial sea), and covers preventive measures to minimize such damage. The Convention provides compensation only for ‘pollution damage’ which is defined as follows:
- (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 the environment other than losses of profit from such impairment shall be limited to costs of 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.

- Excludes pre-spill preventive measures

1992 Protocol attempts to remedy this deficiency by covering ‘threat’ situation so long as it is serious or is regulated as ‘grave and imminent’. ‘Incident’ is redefined as “any occurrence, or series of occurrences, having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage”.

- The Convention does not cover damage caused by substances other than oil, such as chemical substances. Also the damage which does not result from pollution by oil is not covered. Hence no compensation is payable under the convention for damage caused by oil catching fire or exploding.

- The Convention does not provide compensation for damage to the environment, i.e. impairment of environment, except for the costs incurred in restoring damaged environment, such as clean-up costs or other measures of restoration. No compensation is payable for ‘unquantified damage’ i.e. damages which cannot be repaired, quantified and are therefore irreparable. The 1969 CLC applies to personal damage to property, if the damage is caused by pollution by oil discharged or escaping from ship.
- The 1969 CLC places liability on the owner of the ship at the time of accident, which causes the damage.

THE FUND CONVENTION 1971-1992

- The International Convention on the Establishment of an International Fund for Oil Pollution Damage, 1971
- adopted to provide additional compensation for victims of oil pollution and to transfer some of the economic consequences of the damage to the owners of oil cargo, as well as the shipowners.
- ceased to be in force on May 24, 2002
- It encompasses damage caused in the Exclusive Economic Zone.The Fund may also be used to compensate those who may have taken preventive or other measures to minimize pollution damage.
- The provision on damage deals with two types of damage:
    - damage to the environment as such; and
    - pure economic loss.

International Oil Pollution Compensation Fund ('IOPCF')

- It consists of three organs: an Assembly, an Executive Committee, and a Secretariat.
- The IOPCF entertains in principle the claims of damage to property and costs of cleanup operations on shore and at sea and takes measures to prevent or minimize pollution damage. It also considers the consequential loss like loss of earnings suffered by the owners or users of property which have been contaminated as a result of the spill. In addition, the IOPCF reflects on loss of earnings by persons whose property has not been polluted i.e. pure economic loss on certain conditions.
- In order for a claim to be accepted by the IOPCF, it has to be proved that the claim is based on a real expense actually incurred, that there was a link between the expense and the incident and that the expense was made for reasonable purposes.

Provisions of the Merchant Shipping Act, 1958

- Section 352-A
- Part X-B: Section 352-G
- Section 352-H
- Section 352-I
- Section 352-J
- Section 352-K
- Section 352-L
- Section 352-M
- Section 352-N
- Part X-C

Samir Mehta vs. Union of India & Ors. 2016 SCC OnLine NGT 479

- Background:
  - August, 2011: M.V. Rak (owned by Respondent-5) carrying coal from Indonesia to Dahej, Gujarat
  - Sank approximately 20 NM from the coast of South Mumbai
  - Oil Spill
  - the ship was carrying more than 60000 MT of coal for Adani Enterprises Limited for its thermal power plant at Dahej in Gujarat
  - Damage to mangroves and marine ecology off the Bombay coast

MV Rak

- Applicant submitted that the ship owner as well as the person/company for whom the cargo is being transported is, therefore, liable to pay compensation and ensure restitution of environment.
- According to the Applicant, all the Respondents, namely, Respondent no. 5 who is the registered owner of the ship, Respondent nos. 7 and 11 who in fact are the sister concerns of Respondent no. 5 responsible for the voyage of the ship and its sinking and these Respondents along with other Respondents are also liable for all the damage caused.
- They are also liable to pay compensation for restitution and restoration of the ecology, ecosystem on the basis of ‘Polluter Pays Principle’.

- **32.** From the above judgments it is clear that *locus standi* of an Applicant cannot be given a strict construction under the environmental laws of our county. 'Environment' is not a subject which is person oriented but is society centric. The impact of environment is normally felt by a larger section of the society. Whenever environment is diluted or eroded the results are not person specific. If we were to adopt the reasoning given by the Respondents then it would lead to undesirable results. The provisions of a statute must be examined in the light of the scheme of the Act and the scheme of both the enactments afore referred do not permit recourse to such narrower interpretation. The Applicant admittedly is a resident of Mumbai and by the oil spills the coasts of various beaches in Mumbai including Juhu, Raigad, Uttan in Bhayandar and Gorai beach have been adversely impacted. The Applicant has raised a very substantial question of environment. The question relates to the protection, restoration, restitution and damages on the strength of the Act of 1986 (which is a scheduled Act to the NGT) and the provisions of the Act of 2010. The question is the impact of oil spill on the marine ecology and environment destruction of mangroves, its adverse impact on aquatic life, impact on fishermen and more importantly the impact of the sunken ship and cargo (60054 MT of coal lying in sea water being a continuous source of pollution

- Such an important question of law relating to the environment would certainly be a question falling within the ambit and scope of Section 14 of the Act of 2010 and would arise from implementation of the Acts, particularly, the Act of 1986 stated in Schedule I of the Act of 2010. To conclude the Applicant has the *locus standi* to file the present application, he has raised substantial question relating to environment arising in relation to the implementation of Scheduled Acts. The prayers of the Applicant, as stated in the application and in the subsequent orders of the Tribunal, are the reliefs which the Tribunal, if satisfied, can grant within the ambit and scope of the Act of 2010. Resultantly, issue no. 1 is answered against the Respondents.

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