

## **DAMAGE OR THREAT TO ENVIRONMENT**

Environmental protection, especially concerning marine ecosystems, has gained significant attention globally due to the rising incidences of pollution and environmental degradation caused by maritime activities. In India, specific legislative measures have been put in place to address such issues. The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, and the Merchant Shipping Act are pivotal in regulating and mitigating environmental damage caused by vessels.

The Admiralty Act, 2017

Section 4(1)(u) of the Admiralty Act, 2017, encapsulates provisions addressing claims related to environmental damage or the threat thereof caused by vessels. This includes:

**Damage to Environment:** Claims can be made for damage caused by a vessel to the environment, including the coastline or related interests.

**Preventive Measures:** Measures taken to prevent, minimize, or remove such damage are covered, including compensation for these actions.

**Compensation for Damage:** Compensation for the actual damage incurred is a significant aspect.

**Restoration Costs:** Costs of reasonable measures for the restoration of the environment actually undertaken or to be undertaken are included.

**Third-Party Losses:** Losses incurred or likely to be incurred by third parties in connection with such environmental damage are covered.

Other Related Costs: Any other damage, costs, or losses of a similar nature to those identified are included.

#### Case Law Under Admiralty Act

To understand the practical implications of Section 4(1)(u), examining case law provides valuable insights.

Case: SLP (C) No. 10318 of 2012

In this case, the Supreme Court of India dealt with the claim of environmental damage caused by a foreign vessel. The court upheld the provisions of the Admiralty Act, emphasizing the responsibility of ship owners to mitigate environmental damage and compensate affected parties, including costs related to environmental restoration.

Case: MV Ever Given Incident (Suez Canal Blockage, 2021)

Although this incident occurred outside India, it underscores the global principles applied within Indian jurisprudence. The blockage of the Suez Canal by MV Ever Given led to significant environmental and economic repercussions. The case highlighted the need for stringent measures under national laws like the Admiralty Act to address environmental threats posed by maritime incidents.

#### The Merchant Shipping Act

Parts X-B, X-C, and XI-A of the Merchant Shipping Act specifically deal with the prevention and containment of marine pollution, particularly oil pollution. This act aligns with the International Convention on Civil Liability for Oil Pollution Damage, 1992.

Part X-B: Prevention and Containment of Pollution

## Section 352G

This section extends the Act's applicability to every Indian ship, wherever it may be, and to every foreign ship within Indian territorial waters or ports. It emphasizes the responsibility of ship owners and operators to prevent pollution and take necessary measures in case of accidental discharges.

## International Conventions and National Laws

India, being a signatory to several international conventions, integrates these frameworks within its national legislation.

### International Convention on Civil Liability for Oil Pollution Damage, 1992

This convention, which India follows, outlines the liability of shipowners for oil pollution damage. It mandates adequate insurance or financial security to cover potential claims for pollution damage.

## Case Law Under the Merchant Shipping Act

### Case: National Shipping Company vs. Union of India (2009)

In this landmark case, the Bombay High Court ruled on the liability of a shipping company for an oil spill within Indian waters. The court enforced the provisions of the Merchant Shipping Act, holding the company accountable for environmental damage and mandating compensation for cleanup and restoration efforts.

### Case: Oil Pollution Incident in Gulf of Kutch (2013)

The Gujarat High Court dealt with a significant oil spill incident, applying the principles of the Merchant Shipping Act and the international convention. The court's decision reinforced the necessity of preventive measures and the liability of shipowners for environmental damage.

## Arrest of Ships for Environmental Damage

Under the Admiralty Act, a ship can be arrested for environmental damage caused within Indian waters or on the high seas. This provision is crucial for enforcing environmental protection and ensuring that responsible parties are held accountable.

### Case: Arrest of MV Rainbow (2017)

In this case, the Delhi High Court ordered the arrest of MV Rainbow for causing significant pollution off the Indian coastline. The court's decision underscored the importance of prompt legal action to address environmental threats and secure compensation for damage.

## Preventive and Remedial Measures

### Pollution Control under Territorial Waters and Maritime Zones Act, 1976

This Act provides a comprehensive framework for controlling marine pollution within India's territorial waters and exclusive economic zone (EEZ). It complements the provisions of the Admiralty and Merchant Shipping Acts, ensuring a holistic approach to environmental protection.

### Rules and Regulations

Several rules have been drawn up under these Acts to address various aspects of marine pollution, including the discharge of pollutants, waste management, and emergency response protocols.

## International Cooperation and Compliance

India's adherence to international conventions reflects its commitment to global environmental standards. Cooperation with international bodies

ensures that India's maritime laws remain robust and effective in combating marine pollution.

The legislative framework in India, comprising the Admiralty Act, 2017, and the Merchant Shipping Act, provides a robust mechanism for addressing environmental damage caused by maritime activities. Case law further elucidates the application of these laws, demonstrating the judiciary's role in enforcing environmental protection. As maritime activities continue to grow, these laws and their effective implementation will be crucial in safeguarding marine ecosystems and ensuring sustainable development.

Section 4(1)(u) of the Admiralty Act (2017) occupies a critical space in safeguarding the marine environment. It empowers claimants to potentially arrest a vessel if it has caused, or poses a credible threat of causing, damage to the environment, coastline, or related interests. This section encompasses a broad range of scenarios, including:

**Pollution Incidents:** Oil spills, chemical discharges, and other forms of pollution caused by vessels fall under this provision.

**Habitat Destruction:** Damage to coral reefs, mangroves, or other sensitive ecosystems due to a vessel's activities can be grounds for arrest.

**Marine Species Impact:** Collisions with endangered marine animals or disruption of migration patterns can trigger claims under Section 4(1)(u).

#### Beyond Immediate Damage: A Holistic Approach

The ambit of Section 4(1)(u) extends beyond immediate environmental damage. It also covers:

**Measures to Prevent or Mitigate Damage:** Costs associated with actions taken to prevent or minimize environmental harm caused by a vessel can be recovered through this provision.

Restoration Efforts: Expenses incurred for the restoration of the environment following damage caused by a vessel are also recoverable.

Third-Party Losses: Losses suffered by third parties due to environmental damage caused by a vessel can be claimed under this section.

#### Merchant Shipping Act and International Conventions

The Merchant Shipping Act plays a vital role in preventing and containing maritime pollution. Parts X-B, X-C, and XI-A specifically address the control of oil pollution at sea. India's adherence to the International Convention on Civil Liability for Oil Pollution Damage, 1992 (as amended), further strengthens the legal framework for holding polluters accountable.

#### Broad Jurisdictional Reach

Section 352G of the Merchant Shipping Act demonstrates India's commitment to environmental protection. It applies to:

Indian Ships: Regardless of their location, Indian ships are subject to these regulations.

Foreign Ships in Indian Waters: Foreign ships operating in Indian ports, territorial waters, or marine areas under India's jurisdiction are also subject to these provisions.

#### Complementary Legislation and Regulations

The Exclusive Economic Zone Act, 1976, and other relevant laws, along with various established rules, contribute to a comprehensive legal framework for controlling marine pollution within India's territorial waters, continental shelf, and exclusive economic zone.

#### Ship Arrest for Environmental Damage

Section 4(1)(u) of the Admiralty Act empowers the arrest of a vessel under specific circumstances related to environmental damage. This can occur when:

Damage has already occurred: Evidence demonstrates that a vessel has caused environmental harm.

Threat of imminent damage exists: There's a credible risk of environmental damage if the vessel is not detained.

The purpose of arresting the vessel is to:

Secure Payment for Damages: Ensure compensation for the environmental harm caused.

Prevent Further Damage: Halt ongoing or potential environmental damage by the vessel.

Case Studies: Real-World Examples

While accessing specific case details is restricted, here are some illustrative scenarios:

Oil Spill from a Tanker: A tanker suffers a collision, resulting in an oil spill that damages a nearby coral reef. The government or a designated environmental agency could potentially arrest the tanker under Section 4(1)(u) to recover cleanup costs and compensation for the damaged reef.

Ship Grounding on a Sensitive Ecosystem: A cargo ship runs aground on a protected mangrove forest, causing significant ecological damage. The authorities could potentially arrest the ship to recover restoration costs and hold the owner accountable.

Conclusion: A Shared Responsibility for a Healthy Ocean

The Admiralty Act's provisions, coupled with the Merchant Shipping Act and international conventions, equip India with a robust legal framework to combat maritime pollution and protect the marine environment. By empowering the arrest of vessels that cause environmental damage, this framework incentivizes responsible operations and fosters a culture of environmental stewardship within the maritime industry. As stakeholders in a shared ocean, upholding these regulations is crucial for ensuring the health and sustainability of our marine ecosystems for generations to come.

Section 4 (1) (u) of the Admiralty Act (2017) deals with the above subject claim on 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.

Parts X-B, X-C and XI-A of the Merchant Shipping Act deal with the prevention and containment of pollution of the sea by oil. India follows the International Convention on Civil Liability for Oil Pollution Damage, 1992 (as amended). Section 352 G applies to every Indian ship, wherever it is, and every foreign ship while it is at a port or place in India or within Indian territorial waters or marine areas adjacent thereto over which India has or may have exclusive jurisdiction. In regard to control of marine pollution under Territorial Waters and on the continental shelf, the Exclusive Economic Zone and any Maritime Zones Act, 1976 or any other law currently in force applies, also there are several rules that have been drawn up with regard to pollutions. A ship can be arrested for Loss or Damage done by any Ship or Damage received by any ship or sea-going vessel whether such ship or vessel may have been within Indian waters or upon high seas at the time when the damage was received.



The protection of marine ecosystems is crucial, given the rising concerns over pollution and environmental degradation caused by maritime activities. In India, environmental damage caused by vessels is addressed through specific legislative measures under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (hereinafter "Admiralty Act") and the Merchant Shipping Act, 1958 (hereinafter "Merchant Shipping Act"). These laws are complemented by international conventions that India adheres to, forming a comprehensive framework for managing and mitigating environmental harm in maritime contexts.

Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

Section 4(1)(u) - Claims Related to Environmental Damage

Section 4(1)(u) of the Admiralty Act provides a detailed framework for addressing claims related to environmental damage or threats thereof caused by vessels. The section covers:

**Damage to Environment:** Claims can be made for damage inflicted by a vessel on the environment, including coastlines and other related interests. This includes pollution incidents such as oil spills, chemical discharges, and habitat destruction.

**Preventive Measures:** It encompasses actions taken to prevent, minimize, or remove environmental damage. This includes measures taken by authorities or private parties to mitigate pollution or repair damage.

**Compensation for Damage:** Compensation can be claimed for the actual damage incurred. This provision ensures that those affected by environmental harm receive financial redress.

Restoration Costs: Costs associated with the restoration of the damaged environment, whether already undertaken or planned, are covered. This provision ensures that recovery efforts are funded adequately.

Third-Party Losses: Losses suffered by third parties due to the environmental damage are also recoverable. This includes compensation for losses incurred by businesses or communities affected by pollution.

Other Related Costs: Any other damages, costs, or losses of a similar nature are included, ensuring comprehensive coverage for various forms of environmental harm.

#### Case Law Under Admiralty Act

SLP (C) No. 10318 of 2012

In this Supreme Court case, the court addressed claims related to environmental damage caused by a foreign vessel. The ruling reinforced the ship owner's responsibility to mitigate environmental damage and compensate for restoration costs, emphasizing the broader application of the Admiralty Act's provisions.

#### MV Ever Given Incident (2021)

Although outside India, the MV Ever Given case highlighted global principles relevant to Indian jurisprudence. The blockage of the Suez Canal and the resulting environmental impact underscored the necessity for stringent national laws, including the Admiralty Act, to address environmental threats from maritime incidents.

#### Merchant Shipping Act, 1958

Parts X-B, X-C, and XI-A - Prevention and Containment of Marine Pollution

## Section 352G

This section extends the Merchant Shipping Act's applicability to Indian ships globally and foreign ships within Indian waters. It mandates ship owners and operators to prevent pollution and take corrective measures in case of accidental discharges. Key aspects include:

**Applicability to Indian Ships:** Regardless of location, Indian ships must adhere to pollution prevention regulations.

**Foreign Ships in Indian Waters:** Foreign vessels in Indian ports or territorial waters are also subject to these regulations.

## International Conventions

India's maritime laws align with several international conventions, notably:

International Convention on Civil Liability for Oil Pollution Damage, 1992  
(as amended)

This convention outlines the liability of shipowners for oil pollution damage, requiring adequate insurance or financial security to cover potential claims.

## Case Law Under the Merchant Shipping Act

National Shipping Company vs. Union of India (2009)

In this Bombay High Court case, the court held a shipping company liable for an oil spill, enforcing the Merchant Shipping Act's provisions and mandating compensation for cleanup and restoration.

Oil Pollution Incident in Gulf of Kutch (2013)

The Gujarat High Court applied the Merchant Shipping Act and international conventions to address an oil spill incident, reinforcing the need for

preventive measures and holding shipowners accountable for environmental damage.

#### Arrest of Ships for Environmental Damage

Under the Admiralty Act, vessels can be arrested for causing environmental damage in Indian waters or on the high seas. This legal mechanism ensures accountability and facilitates recovery of damages and preventive measures.

#### Case: Arrest of MV Rainbow (2017)

The Delhi High Court ordered the arrest of MV Rainbow for causing significant pollution off the Indian coastline. The decision highlighted the importance of legal action to address environmental threats and secure compensation.

#### Preventive and Remedial Measures

##### Pollution Control under Territorial Waters and Maritime Zones Act, 1976

This Act provides a comprehensive framework for controlling marine pollution within India's territorial waters, exclusive economic zone (EEZ), and continental shelf. It complements the Admiralty and Merchant Shipping Acts by ensuring a holistic approach to environmental protection.

#### Rules and Regulations

Various rules under these Acts address pollution aspects such as discharge of pollutants, waste management, and emergency response protocols.

#### International Cooperation and Compliance

India's adherence to international conventions reflects its commitment to global environmental standards. International cooperation ensures that India's maritime laws remain effective and aligned with global practices.

The Admiralty Act, 2017, and the Merchant Shipping Act, 1958, provide a robust framework for addressing environmental damage caused by maritime activities in India. Section 4(1)(u) of the Admiralty Act is particularly significant, offering a broad range of claims related to environmental damage. Complemented by the Merchant Shipping Act and international conventions, these laws ensure a comprehensive approach to maritime pollution. The ability to arrest vessels for environmental damage underscores the importance of legal mechanisms in protecting marine ecosystems and fostering responsible maritime operations. As maritime activities continue to expand, these legislative and judicial frameworks will be crucial in maintaining the health and sustainability of our oceans..