

## **MARINE CASUALTY IN INDIA: A DETAILED EXPLANATION**

A marine casualty refers to an incident at sea that causes damage to a vessel, its cargo, or the environment, or that results in injury or death to persons on board. In India, the legal framework governing marine casualties is primarily established by the Merchant Shipping Act, 1958 (MSA) alongside various international conventions that India has ratified. This section delves into the key provisions impacting the liability and response of interested parties in the event of a collision, grounding, or other major casualty.

### Legal Framework for Marine Casualties

#### 1.1 Key Provisions and Relevant Laws/Conventions

The following breakdown explores the legal framework applicable to different types of marine casualties:

##### Collision:

Applicable Law: Part X of the Merchant Shipping Act, 1958 (MSA)

##### Key Provisions:

Division of loss (Section 345): Liability apportioned based on the degree of fault of each ship involved.

Damages for personal injury (Section 346): Joint and several liability of owners of ships involved.

Right of contribution (Section 347): Allows recovery of excess damages paid by one shipowner from other at-fault ships.

Duty to assist (Section 348): Master of the ship involved in the collision must render assistance to the other vessel(s).

Reporting requirements (Sections 349 & 350): Recording the incident in the official logbook and reporting it to the Central Government of India.

Jurisdiction (established by case law):

Suits for damages on the high seas must be filed in the High Court on its Admiralty side, regardless of the vessel's flag (Indian or foreign).

Suits for loss of life on the high seas fall within the exclusive jurisdiction of the High Court's Admiralty side.

Pollution:

Applicable Law:

Part X-B, X-C, and XI-A of the MSA (prevention and containment of oil pollution)

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

Merchant Shipping (related Rules): These cover various aspects of pollution prevention, including oil, sewage, garbage, and harmful substances.

Key Provisions:

Section 352 G of MSA applies to Indian ships globally and foreign ships in Indian waters or ports.

The MSA and related rules establish civil liability for oil pollution damage and international oil compensation funds.

Salvage / General Average:

Applicable Law:

Part XIII of the MSA (Wreck and Salvage) (Sections 402 to 404)

Common Law & Contractual Provisions (for General Average)

Key Provisions:

The MSA governs wreck removal.

General Average is addressed by common law principles and contractual terms (often incorporating York Antwerp Rules for adjustments and security).

Claims for salvage or general average contribution are exempt from limitation of liability (Section 352A(3)(b)).

Wreck Removal:

Applicable Law: Part XIII of the MSA (Sections 390–404)

Key Provisions:

The receiver of the wreck takes charge of preservation, life-saving efforts, cargo, and equipment.

Investigations are carried out by the receiver for stranded or distressed vessels.

The receiver has the authority to order the immediate sale of wrecks under specific circumstances.

Procedures are outlined for finding, investigating, selling, and claiming ownership of wrecks.

## Marine Casualty and Limitation of Liability: The Interplay in India

Marine casualties, unfortunate events causing loss or damage during maritime operations, are a reality in the shipping industry. When such incidents occur, the issue of financial responsibility becomes paramount. This section delves into the concept of Limitation of Liability (LoL) in India, exploring the applicable laws, key provisions, and the intricate relationship with marine casualties.

### Applicable Law:

India adheres to a multi-layered legal framework for LoL in maritime claims. Here's a breakdown of the key components:

Convention on Limitation of Liability for Maritime Claims (LLMC) 1976 (as amended by 1996 Protocol): This international convention establishes a standardized approach to LoL for various maritime claims, including loss of life, personal injury, passenger luggage, cargo loss or damage, and pollution damage. India adopted the LLMC with the 1996 Protocol, which offers higher limitation funds compared to the original convention.

Part XA of the Merchant Shipping Act (MSA) 1958: This domestic legislation incorporates the principles of the LLMC and provides supplementary provisions for LoL in India. It outlines the entities entitled to limit liability, the circumstances under which limitation can be denied, and the process for establishing limitation funds.

Merchant Shipping (Limitation of Liability for Maritime Claims) Rules, 2015 & 2017: These rules elaborate on the procedures for invoking LoL under the MSA. They detail the specific steps involved in constituting limitation funds, filing claims, and obtaining the release of ships arrested due to claims.

### Key Provisions:

Here are some of the crucial aspects of LoL in India:

**Entities Entitled to Limit Liability:** Shipowners, charterers acting as carriers, ship managers and operators, crew members for personal acts or omissions, salvors, and their insurers can all potentially limit their financial liability under specific circumstances.

**Conditions for Limitation:** The right to limit liability is not absolute. Shipowners can be denied limitation if the loss or damage resulted from:

**Actual fault or privity:** This refers to personal knowledge, consent, or neglect on the part of the shipowner or someone high up in the management chain.

**Compulsory insurance non-compliance:** If the shipowner failed to maintain mandatory insurance coverage for the relevant liability.

**Burden of Proof:** The onus of proving "actual fault or privity" to deny limitation rests on the claimant seeking full compensation. This creates a high bar for claimants and strengthens the shipowner's position.

**Limitation Amounts:** The Ministry of Shipping, through notifications, specifies the limitation amounts for various claims under Section 352 A of the MSA. These amounts are typically expressed in Special Drawing Rights (SDRs), an International Monetary Fund (IMF) reserve asset. The 1996 Protocol generally offers higher limitation amounts compared to the original LLMC.

**Limitation Fund:** This mechanism allows claimants to share a predetermined pool of funds established by the shipowner to meet their claims. This prevents the complete financial ruin of the shipowner and ensures a fair distribution of available resources amongst all claimants. Part XA of the MSA and the related rules provide the framework for establishing limitation funds.

Consolidation of Claims: To ensure efficient management of claims arising from a single casualty, the legal framework allows for consolidating all claims into one judicial proceeding. This avoids conflicting rulings and simplifies the distribution process from the limitation fund.

Release of Ships: Ships arrested due to maritime claims can be released upon providing adequate security for the potential claims. This minimizes disruption to shipping operations while safeguarding the interests of claimants.

The Limitation Fund:

The Limitation Fund mechanism is a cornerstone of LoL in India. Let's delve deeper into this critical aspect with a focus on the following:

Types of Limitation Funds:

Compulsory Funds: Certain categories of claims, like passenger and crew claims, may require the shipowner to maintain compulsory insurance, which essentially acts as a pre-established limitation fund.

Voluntary Funds: Shipowners can voluntarily establish limitation funds for other types of claims, such as cargo loss or damage, exceeding the compulsory insurance coverage.

Establishment of Limitation Funds:

The process for establishing a limitation fund is outlined in the Merchant Shipping (Limitation of Liability for Maritime Claims) Rules.

The shipowner typically files a petition in a designated admiralty court, specifying the nature of the casualty, the estimated amount of the claims, and the proposed limitation amount based on the applicable limits.

The court reviews the petition and may order the shipowner to deposit security or provide a guarantee for the limitation amount.