



IMO
INTERNATIONAL MARITIME LAW INSTITUTE
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A specialized agency of the United Nations



**An Act to Incorporate the International
Convention on Civil Liability for Bunker Oil
Pollution Damage 2001 into the Merchant
Shipping Act 1958**

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Laws
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DEDICATION

**To my parents Mrs Girija Ramachandran and Mr N.
Ramachandran**

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**INCORPORATION OF THE INTERNATIONAL
CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL
POLLUTION DAMAGE 2001 INTO THE MERCHANT
SHIPPING ACT 1958 OF INDIA**

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EXPLANATORY NOTE

PART I: THE BACKGROUND

The threats to the marine environment caused due to spillage of crude oil and other petroleum products from ships and offshore structures have been assuming alarming proportions over the years. The International Maritime Organization (IMO) has been seized of this problem and has done tremendous amount of work to spread awareness among member States about this menace and also to put in place appropriate legal framework and administrative machinery for prevention of environmental damage. Earlier, it was believed that the largest oil spillage threats emanated from oil tankers used for transportation of crude oil. However, experience has shown that the spillage caused from the bunkers carried on board ships are as much a source of pollution and it was considered necessary to address this problem as well. The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 is the most recent effort on the part of the IMO as part of a series of international conventions to enable member states to deal with the problem of oil pollution in the marine environment.

The Bunker Convention was developed as a preventive measure for the reduction and control of pollution of the marine environment as well as a mechanism for providing compensation for damage caused by the pollution of the marine environment.¹ It establishes strict liability for a number of persons concerned with the ownership or operation of the vessel coupled with compulsory insurance for the owner and direct action against the insurer. The Convention does not affect any right of limitation of liability established in national legislation or by international conventions although it does give a clear suggestion to parties that the Protocol of

¹ Tsimplis, Michael, The Bunker Pollution Convention 2001: completing and harmonizing the liability regime for oil pollution from ships?, Lloyd's Maritime and Commercial Law Quarterly, 2005.

1996 to the Convention on Limitation of Liability for Maritime Claims (1996) provides the best background for its application.

The rationale for the development of another pollution convention was the lack of an international legislation covering bunker pollution damage coupled with the ability of even small quantities of most types of fuel oils to cause significant pollution damage and to incur high clean up costs.²

The International Convention on Civil Liability for Oil Pollution Damage 1969 and the International Convention for establishment of an International Fund for Compensation for Oil Pollution Damage 1971 apply to tankers carrying oil in bulk as cargo. They exclude from their ambit spills caused by the escape of bunker oil from all other types of vessels. It is to address this very vital category of oil spills that the Bunker Convention was adopted.

The final text of the Bunker Convention was adopted at IMO Headquarters in London in March 2001. Under the terms of the Convention, it enters into force one year after the date on which 18 states, including 5 states with ships whose combined gross tonnage is not less than 1 million have ratified it. With the accession by Sierra Leone on 21st November 2007 the Convention has been ratified by 18 states with a combined gross tonnage of 114,484,743 representing 15.86% of world merchant shipping tonnage. Thus the Convention entered into force on 21st November 2008.

Oil Spills: Why are they harmful?

An oil spill is the release of liquid petroleum hydrocarbon into the environment due to human activity and is a form of pollution. The term often refers to marine oil spills where oil is released into the ocean or coastal waters.

² Ibid.

Oil spills have devastating effects on the environment. Crude oil contains polycyclic aromatic hydrocarbons (PAHs) which are very difficult to clean up, and last for years in the sediment and marine environment. Marine species constantly exposed to PAHs can exhibit developmental problems, susceptibility to disease, and abnormal reproductive cycles.³

Short term public health impacts from oil spills include accidents suffered by those on damaged tankers or those involved in the clean up and illnesses caused by toxic fumes or by eating contaminated fish. However there are other less obvious public health impacts including losses and disruptions of commercial and recreational fisheries, seaweed harvesting, boating and a variety of other uses of affected water. There are also emotional, aesthetic and economic losses. In both cases of the shipwrecks of the Exxon Valdez and the Amoco Cadiz there were permanent changes to the social and cultural communities residing in the region which had permanent public health consequences including chronic psychological stress.

By the sheer amount of oil carried, modern oil tankers must be considered something of a threat to the environment. An oil tanker can carry 2 million barrels (320,000 m³) of crude oil, or 62,000,000 gallons. This is more than six times the amount spilled in the widely known *Exxon Valdez* incident. In this spill, the ship ran aground and dumped 10.8 million gallons of oil into the ocean in March of 1989. Despite efforts of scientists, managers, and volunteers, over 400,000 seabirds, about 1,000 sea otters, and immense numbers of fish were killed.⁴ While these were caused from ships used for transportation of oil, there has been an increasing realization that the quantity of oil being spilled from the tens of thousands of ships that ply in different parts of the globe are also causing tremendous damage to the environment, although the quantity of spills from individual ships may be miniscule.

It was in this backdrop that the IMO spearheaded the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.

³ http://en.wikipedia.org/wiki/Ships#Oil_spills

⁴ Ibid.

An overview of the Bunker Convention

Article 1

Article 1 sets out the main definitions on the various important terms used in the Convention. Ship is defined as ‘any seagoing vessel and seaborne craft of any type whatsoever’. Shipowner means ‘the owner including the registered owner, bareboat charterer, manager and operator of the ship’. ‘Bunker oil’ means ‘any hydrocarbon mineral oil including lubricating oil used or intended to be used for the operation or propulsion of the ship and any residues of such oil.’

Article 2

Article 2 sets out the scope of application. It says that the Convention shall apply exclusively to pollution damage caused in the territory including the territorial sea of a state party and in the exclusive economic zone of a state party.

Article 3

Article 3 sets out the liability of the shipowner. The shipowner is made liable for pollution damage caused by any bunker oil on board the ship. The shipowner is exempted from liability if he shows that the damage resulted from an act of war or Act of God; if he shows that the damage was caused with the intent to cause damage by a third party or that the damage was caused by the negligence of Government or other authorities who were responsible for the maintenance of lights or other navigational aids.

Article 4

Article 4 sets out the exclusions. The Convention does not apply to pollution damage as defined in the Civil Liability Convention. The Convention doesn’t apply to warships, naval auxiliary and other ships operated by a State.

Article 5

Article 5 lays down that in an accident involving 2 or more ships and with resultant pollution damage the shipowners of all ships concerned shall be jointly and severally liable.

Article 6

Article 6 lays down that shipowners and persons providing insurance have the right to limit liability under any applicable national or international regime.

India is a party to the Limitation of Liability for Maritime Claims 1976. The Indian government being aware of the fact that the limits are lower under the 1976 Convention has decided to adopt the 1996 Protocol. With the adoption of the 1996 Protocol the regime would be in line with the latest developments.

Article 7

Article 7 deals with compulsory insurance or financial security. The registered owner of a ship having gross tonnage greater than 1000, registered in a state party will have to maintain insurance to cover the liability of registered owner in an amount equal to the limits of liability under the national law but not exceeding the amount as laid down in the Convention on Limitation of Liability for Maritime Claims 1976, as amended.

A certificate attesting that insurance has been taken by the shipowner is to be issued to each ship. The certificate is required to be issued in the official language of the issuing state. If the language used is not English, French or Spanish a translation of the text into one of these languages is required.

Shipowners and insurers were keen to set a high gross tonnage figure as a threshold at which the compulsory insurance requirement applies. The lower the tonnage threshold figure, the greater the number of vessels which would require insurance and certification. On the other hand those states with vulnerable coast lines and few ships flying the flag of their state were keen to see the threshold figure as low as possible thus ensuring that as many potentially polluting vessels as possible come within the compulsory insurance requirement.⁵

Debate developed as to whether domestic voyages should be defined simply as voyages starting and finishing within a state's territory or territorial sea or whether it

⁵ www.bmla.org.uk/documents/imo-bunker-convention.doc – the website was visited in November 2008.

should be extended to include voyages beginning and ending in the much wider area constituted by a state's Exclusive Economic Zone. A number of states with complex island or archipelagic waters were keen to see the exclusion extended to the Exclusive Economic Zone on the basis that many inter-island voyages go outside the 12 mile limit of the territorial sea. On the other hand a number of Mediterranean countries (Cyprus, Malta, Italy) were keen to restrict the exclusion to territorial seas on the basis that the Exclusive Economic Zone of adjacent Mediterranean States overlap and vessels belonging to neighboring states and operating within their Exclusive Economic Zone could represent a serious pollution threat.⁶ Finally the Chairman's proposal that exclusion would apply only to the territorial sea was adopted.

Article 8

Article 8 sets out the limitation period for the right to compensation. The time period for bringing an action for compensation is 3 years from the date when the damage occurred.

Article 9

Article 9 deals with jurisdiction. The delegates to the diplomatic conference sought to give claimants as many options as possible to pursue their claims of compensation. In the event no great choice is available claimants may pursue claims before the courts of the state/ states in which pollution has occurred or where measures to prevent or minimize pollution have taken place.

The conference which adopted the Bunker Convention also adopted 3 resolutions.

1. *Resolution on limitation of liability* – The resolution urges all states that have not yet done so to ratify or accede to the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims 1976. The 1996 LLMC Protocol raises the limits of liability and therefore amounts of compensation payable in the event of an incident compared to the 1976 Convention.

⁶ Ibid.

2. *Resolution on promotion of technical co-operation* – The resolution urges all IMO member states in cooperation with IMO and other interested states to promote and provide, directly or through IMO, support to states that require technical assistance for –

- a. the assessment of the implications of ratifying, accepting, approving or acceding to and complying with the convention.
- b. the development of national legislation to give effect to the convention.
- c. The introduction of other measures for and the training of personnel charged with the effective implementation and enforcement of the convention.

The resolution also urges all states to initiate action without awaiting the entry into force of the convention.

3. *Resolution on protection for persons taking measures to prevent or minimize the effects of oil pollution* - The resolution urges states when implementing the convention to consider the need to introduce legal provisions for protection for persons taking measures to prevent or minimize the effects of bunker oil pollution. It recommends that persons taking reasonable measures to prevent or minimize the effects of oil pollution be exempt from liability unless the liability in question resulted from their personal act or omission committed with the intent to cause damage or recklessly and with knowledge that such damage would probably result. It also recommends that states consider the relevant provisions of the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 as a model for their legislation.

PART II: WHY INDIA NEEDS TO ADOPT THE BUNKER CONVENTION

India occupies a strategic place in the Indian ocean and has been seen as a major maritime power in Asia. All the major trade routes from South Asia and South East Asia to and from Europe and the rest of the world pass the Indian ocean. The international maritime routes pass through the Indian Waters.

India has a long coastline extending over 7515 kilometres. It has 12 major ports administered by the Central (Federal) Government, besides 280 non major ports on its coastline. Several new ports are under construction and the number of ‘non-major’ ports has been steadily increasing. It is also worth mentioning that 95% of India’s export-import trade takes place through her seaports.

The Indian economy has registered high growth in the last few years and it is expected to maintain the growth rate in the coming years. Even during the current fiscal, when most countries have been registering negative economic growth due to the international economic slide, India is expected to maintain a 7-8% of growth in GDP. As India’s trade with the rest of the world increases, the number of ships plying in the Indian waters is also on the increase.

The problem of oil pollution of the sea is of particular concern to India. On the one hand, India imports 70% of its crude oil requirements through the sea route, requiring handling of large volumes of crude oil at her seaports. On the other hand, the ever increasing number of ships handled in India’s ports is also seen to be discharging accidentally or otherwise, petroleum products carried on board as bunkers. Such discharge also takes place from ships plying on the international route, into the territorial waters or continental shelf, or Exclusive Economic Zones of the country. While these spillages occur ‘silently’ and may not attract public attention, they are equally dangerous. In fact, they could be more dangerous because often they pass unnoticed and unattended.

Another problem is that of the threat of pollution posed by ageing vessels. The chances of old ships running aground and also developing leakage of oil are far more than those in the case of modern ships. According to the Indian Ministry of Shipping, 17,000 ships are overage in the world. The Government of India is in the process of finalizing a policy to ban ships older than 25 years in the first instance and 17 years subsequently and also ships with bad track records and Flags Of Convenience (FoC) (where ships are granted certification without major checks).⁷

Some of the incidents reported from Indian waters, involving oil pollution from ships are given below:

1. On 30 May 2006, a bulk carrier, MV *Ocean Seraya* ran aground along the Karwar coast spilling 650 tonnes of oil. Due to the rough SW monsoon, the spill spread to some beaches in south Goa. The immediate impact of oil spill on benthic ecology was studied by the scientists of National Institute of Oceanography . According to this study, although the spills occurring along the west coast are of small volume, frequent occurrence, particularly during the critical stages of the life cycle of organism, may have a long-term impact on the marine biota.⁸
2. The merchant ship MV Amanath Shah, 158 metres in length and registered in Bangladesh had sunk 12 miles off Galle, Sri Lanka, during the early hours of 8th September 2006. The vessel, a general cargo carrier carrying timber logs and pulses had also on board approximately 180 tonnes of fuel which was spilling and accordingly the assistance of the Government of India was sought. Total neutralization of the slick was achieved by judicious application of oil spill dispersant.
3. A Norwegian flag LPG carrier MV Kew Bridge ran aground due to rough sea and strong wind conditions prevailing on 14th September 2006 while coming alongside Finolex jetty at Ratnagiri Harbour. The incident took place while the pilot was onboard the vessel and it was being escorted by 2 tugs. However

⁷ The Economic Times of 7th August 2007

⁸ <http://www.indiaenvironmentportal.org.in/category/author/s-sivadas>

attempt made by both tugs to pull the grounded vessel failed and the vessel is presently resting on soft sand off Ratnagiri Harbour. The vessel is reportedly carrying 558 MT of heavy fuel oil, 94.2 MT of Marine gas oil and 62 KL of lubricating oil in addition to 6000 MT of Butane and 1500 MT of propane.

The incidents quoted above are only indicative and do not constitute an exhaustive list of such accidents. Thus, the danger of oil spillage is posed not only by vessels used for transportation of oil, but also other bulk ships. In fact, as every vessel carries bunkers on board, they pose a threat of spillage both accidentally and by negligent behaviour of its handlers. Moreover, in all cases where ships have sunk in the sea due to various reasons, the bunkers on board have been found to pose the danger of spillage.

The problem of spillage of oil into the sea at Ports is also very acute in Indian Ports. The incidence of a thin layer of oil floating in the Port waters has been found to be very common in many ports. Although these incidents are of very small magnitude, their cumulative effect could be dangerous to the environment. Apart from harming the flora and fauna, it also could bring about direct harm to humans who consume contaminated fish etc.

India needs to wake up to this danger urgently.

The International Context

India is one of the member countries of IMO. It has ratified several conventions adopted by the IMO. The prevention of oil pollution in India is tackled on the basis of International conventions, the Merchant Shipping Act 1958 and the Merchant Shipping (Prevention of Pollution of the Sea by Oil) Rules 1974. These rules are applicable to all tankers of 150 tons gross or more and all other ships of 300 tons gross or more. The rules specify the limits of the prohibited zones, the equipment to be carried on board the ship and general precautions to be taken for prevention of leakage and accidental discharges as well as precautions to be taken while loading,

transferring and unloading oil by tankers. The rules also require all vessels to maintain oil records books to indicate any operations carried out on board with respect to oil. However, it is worth mentioning that the existing laws are specifically meant to deal with oil spillage from tankers or vessels specifically used for transportation of oil.

As a responsible member State of the IMO, India considers it necessary to adopt the Bunkers Conventions with a view to bringing about a regime for strict action against polluting vessels and persons acting negligently.

Under the above circumstances, it is proposed to enact a legislation incorporating into Indian Law, the provisions of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001. Such a law will have effective preventive as well as punitive provisions.

PART III: THE PROCEDURE FOR LEGISLATION IN INDIA AND HOW THE BUNKERS CONVENTION WILL BE INCORPORATED INTO INDIAN LAW

Summary

Once an international treaty is signed, it does not automatically become part of Indian law. It needs to be incorporated into the legal system by suitable legislation. According to article 253 of the Constitution of India, the Parliament of India has the authority to make law for the whole or any part of the territory of India for the implementation of any treaty, agreement or convention with any other country or for decisions taken at international conferences.

International treaties and conventions are ratified by Parliament. After this has been achieved the treaty is incorporated into Indian law by enactment of a new law in the subject matter or amending the existing law.

Legal experts in the concerned administrative ministries after consulting officials in the Ministry of Law and Justice prepare a draft Bill. The Bill is first sent for approval of the Cabinet, after which it is introduced along with the statement of objects and reasons in either house of Parliament.

A Bill is the draft of a legislative proposal. It has to pass through various stages before it becomes an Act of Parliament.

First Reading of the Bill

The legislative process starts with the introduction of a Bill in either House of Parliament-Lok Sabha (the Lower House or House of People) or Rajya Sabha (Upper House or House of Representatives). A Bill can be introduced either by a Minister or by a private member. In the former case it is known as a Government Bill and in the latter case it is known as a Private Member's Bill.

It is necessary for a member-in-charge of the Bill to ask for leave to introduce the Bill. If leave is granted by the House, the Bill is introduced. This stage is known as the First Reading of the Bill. If the motion for leave to introduce a Bill is opposed, the Speaker may, in his discretion, allow brief explanatory statement to be made by the member who opposes the motion and the member-in-charge who moved the motion. Where a motion for leave to introduce a Bill is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker may permit a full discussion thereon. Thereafter, the question is put to the vote of the House. However, the motion for leave to introduce a Finance Bill or an Appropriation Bill is forthwith put to the vote of the House.

Publication in Gazette

After a Bill has been introduced, it is published in the Official Gazette. Even before introduction, a Bill might, with the permission of the Speaker, be published in the Gazette.

In such cases, leave to introduce the Bill in the House is not asked for and the Bill is straightaway introduced.

Reference of Bill to Standing Committee

After a Bill has been introduced, the Presiding Officer of the concerned House can refer the Bill to the concerned Standing Committee for examination and make report thereon.

If a Bill is referred to Standing Committee, the Committee shall consider the general principles and clauses of the Bill referred to them and make reports thereon. The Committee can also take expert opinion or the public opinion of those who are interested in the matter. After the Bill has thus been considered, the Committee submits its report to the House. The report of the Committee, being of persuasive value shall be treated as considered advice given by the Committees.

Second Reading

The Second Reading consists of consideration of the Bill which is in two stages.

First Stage: The first stage consists of general discussion on the Bill as a whole when the principle underlying the Bill is discussed. At this stage it is open to the House to refer the Bill to a Select Committee of the House or a Joint Committee of the two Houses or to circulate it for the purpose of eliciting opinion thereon or to straightaway take it into consideration.

If a Bill is referred to a Select/Joint Committee, the Committee considers the Bill clause-by-clause just as the House does. Amendments can be moved to the various clauses by members of the Committee. The Committee can also take evidence of associations, public bodies or experts who are interested in the measure. After the Bill has thus been considered, the Committee submits its report to the House which considers the Bill again as reported by the Committee. If a Bill is circulated for the purpose of eliciting public opinion thereon, such opinions are obtained through the Governments of the States and Union Territories. Opinions so received are laid on the Table of the House and the next motion in regard to the Bill must be for its reference to a Select/Joint Committee. It is not ordinarily permissible at this stage to move the motion for consideration of the Bill.

Second Stage: The second stage of the Second Reading consists of clause-by-clause consideration of the Bill as introduced or as reported by Select/Joint Committee.

Discussion takes place on each clause of the Bill and amendments to clauses can be moved at this stage. Amendments to a clause have been moved but not withdrawn are put to the vote of the House before the relevant clause is disposed of by the House. The amendments become part of the Bill if they are accepted by a majority of members present and voting. After the clauses have been adopted by the House, the Second Reading is deemed to be over.

Third Reading

Thereafter, the member-in-charge can move that the Bill be passed. This stage is known as the Third Reading of the Bill. At this stage the debate is confined to arguments either in support or rejection of the Bill without referring to the details thereof further than that are absolutely necessary. Only formal, verbal or consequential amendments are allowed to be moved at this stage. In passing an ordinary Bill, a simple majority of members present and voting is necessary. But in the case of a Bill to amend the Constitution, a majority of the total membership of the House and a majority of not less than two-thirds of the members present and voting is required in each House of Parliament.

Bill in the other House

After the Bill is passed by one House, it is sent to the other House for concurrence with a message to that effect, and there also it goes through the stages described above except the introduction stage.

Money Bills

Bills which exclusively contain provisions for imposition and abolition of taxes, for appropriation of moneys out of the Consolidated Fund, etc., are certified as Money Bills. Money Bills can be introduced *only* in Lok Sabha. Rajya Sabha cannot *make* amendments in a Money Bill passed by Lok Sabha and transmitted to it. It can, however, recommend amendments in a Money Bill, but must return all Money Bills to Lok Sabha within fourteen days from the date of their receipt. It is open to Lok Sabha to accept or reject any or all of the recommendations of Rajya Sabha with regard to a Money Bill. If Lok Sabha accepts any of the recommendations of Rajya Sabha, the Money Bill is deemed to have been passed by both Houses with amendments recommended by Rajya Sabha and accepted by Lok Sabha and if Lok Sabha does not accept any of the recommendations of Rajya Sabha, Money Bill is deemed to have been passed by both Houses in the form in which it was passed by Lok Sabha without any of the amendments recommended by Rajya Sabha. If a

Money Bill passed by Lok Sabha and transmitted to Rajya Sabha for its recommendations is not returned to Lok Sabha within the said period of fourteen days, it is deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by Lok Sabha.

Incorporation of the Bunkers Convention into Indian Law

In India, all matters relating to administration and formulation of policy relating to shipping and ports are dealt with by the Ministry of Shipping, headed by the Cabinet Minister for Shipping. Under the Minister is the Shipping Secretary, assisted by Additional Secretary, Joint Secretaries, Deputy Secretaries etc and the Secretariat of the Ministry of Shipping.

All major policy decisions are taken at the level of the Shipping Minister. Important matters will need to be discussed by the Cabinet, which is chaired by the Prime Minister. Policy decisions regarding enactment of new laws are invariably discussed in the Cabinet and approved, before being tabled in the Parliament.

Under the Ministry of Shipping, is the Directorate General of Shipping, which is a Statutory Authority constituted under Merchant Shipping Act, 1958. Major functions of DG (Shipping) are :-

- Administration of Merchant Shipping Laws and matters affecting Merchant Shipping and Navigation.
- Ensuring safety of life and ships at sea.
- Development of Indian Shipping.
- Dealing with matters relating to International Conventions on maritime matters.
- Providing facilities for training of officers and ratings of the Merchant Navy.
- Employment Regulation and Welfare of seamen.

The Director General of Shipping (DGS) is usually the authority to move the Government of India to enact the legislation relating to shipping matters. The DGS would prepare a paper on the context in which the International Convention has been

conceived, its purported advantages and how it is sought to be incorporated into Indian Law. After obtaining the administrative approval of the Secretary Shipping, the DGS, through its technical and legal experts, would prepare a draft legislative bill and a statement of objectives and submit it to the Ministry of Shipping. The Ministry of Shipping would refer the draft bill together with the statement of objectives to the Ministry of Law, Justice and Company Affairs for their vetting. The Law Ministry in turn is expected to ensure that the proposed draft is fully in consonance with and not ultra vires of the Constitution of India. It may be mentioned here that the Supreme Court of India has the powers to invoke the Doctrine of Judicial Review and if any legislation is found to be discordant with any provision of the Constitution, such law would be struck down.

After the vetting of the draft Bill by the Law Ministry, it is forwarded by the Shipping Ministry to the Cabinet Secretariat, for consideration of the Cabinet. Once the Cabinet nod is received, the Bill is to sent to the Parliament Secretariat for inclusion in the Schedule of Business of both Houses of Parliament, as discussed above. The bill will be accompanied by a statement of objects and reasons.

Statement of objects and reasons

The Merchant Shipping Act 1958 governs matters relating to shipping in India. This Bill therefore seeks to amend the Merchant Shipping Act 1958, for the purpose of giving effect to the International Convention on Civil Liability for Bunker Oil pollution Damage 2001 (the Bunker Convention).

The Bunker Convention was developed as a preventive measure for the reduction and control of pollution of the marine environment as well as a mechanism providing compensation for damage caused by the pollution of the marine environment.

The rationale for the development of another pollution convention was the lack of international legislation covering bunker pollution damage coupled with the ability of even small quantities of most types of fuel oil to cause significant pollution damage and to incur high clean up costs. The earlier International conventions that dealt with oil pollution on the sea did not address the issue of pollution from bunkers. It is to address this problem – pollution of the sea from bunker oil that the convention was legislated.

The Convention establishes strict liability for a number of persons concerned with the ownership or the operation of the vessel coupled with compulsory insurance for the owner and direct action against the insurer.

The Convention has been ratified by 18 states representing 15.86% of world merchant shipping tonnage. The provisions of the Convention have entered into force on 21st November 2008.

Oil pollution of the sea and marine environment is one of the major challenges in marine science today. Pollution raises grave health risks to human beings. It also affects plants, fish and other aquatic life adversely. These in turn affect human beings. Pollution also affects the economies of countries by directly affecting international trade. India had had its own share of marine accidents. The costs that the State and the economy have to incur are immense. Thus it is in India's own interests that it signs the Bunker Convention which through its preventive and punitive measures seeks to check pollution of the marine environment.

The Merchant shipping
(Liability for Bunker Oil Pollution Damage - Amendment) Act
2009

No _____ of 2009

An act to further amend the Merchant Shipping Act, 1958

Be it enacted by Parliament in the sixtieth year of the Republic of India as follows

1. **Short Title and commencement:** This Act may be called the Merchant Shipping (Liability for Bunker Oil Pollution Damage - Amendment) Act 2009.
2. It shall come into force on such date as the Central government, may by notification in the Official Gazette appoint.
3. **Insertion of new chapter Part XD after Part XC :** In the Merchant Shipping Act 1958 , after Chapter XC, a new chapter entitled as chapter XD shall be inserted as follows:

PART XD
CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE

352 GG Definitions: In this Part unless the context otherwise requires the following shall have the meanings herein stated—

- (a) “Bunker Oil” means any hydrocarbon mineral oil including lubricating oil, used or intended to be used for the operation or propulsion of the ship and any residues of such oil.
- (b) “Civil Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage 1992 as amended from time to time.
- (c) “Convention” means the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001.
- (d) “Director General” means the Director General of the Directorate General of Shipping and includes any person established by law acting under his authority.
- (e) “Gross tonnage” means gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 of the International Convention on Tonnage Measurement of Ships 1969.
- (f) “Incident” means 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.

(g) “Organization” means the International Maritime Organization.
(h) “Person” means any individual or partnership or any public or private body whether corporate or not including India or any of its constituent subdivisions.

(i) “Pollution Damage” means

(i) loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker 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 actually undertaken or to be undertaken;

and

(ii) the costs of preventive measures and further loss or damage caused by preventive measures

(j) “Preventive measures” means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.

(k) “Registered owner” means the person or persons registered as the owner of the ship or in absence of registration the person or persons owning the ship.

(l) “Secretary General” means the Secretary General of the Organization.

(m) “Ship” means any sea going vessel and sea borne craft of any type whatsoever.

(n) “Ship owner” means the owner including the registered owner, bareboat charterer, manager and operator of the ship.

(o) “State” means the Republic of India.

(p) “State of the ship’s registry” means in relation to a registered ship India and in relation to an unregistered ship the State whose flag the ship is flying.

(q) “The Act” means the Merchant Shipping Act Of India 1958.

352HH Scope of Application: The provisions of this Part shall apply exclusively

(a) To pollution damage caused

(i) in the territory including the territorial sea of India under Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act 1976.

(ii) In the Exclusive Economic Zone of India established in accordance with International Law, under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act 1976

- (b) To preventive measures wherever taken to prevent or minimize such damage.
- (c) To ships registered in India wherever they may be.

352II Liability of the Ship owner for pollution by bunker oil

(1) Except as provided in subsections (3) and (4) below, the ship owner at the time of an incident shall be liable for pollution damage caused by any bunker oil on board or originating from the ship, provided that, if an incident consists of a series of occurrences having the same origin, the liability shall attach to the ship owner at the time of the first of such occurrences.

(2) Where more than one person is liable in accordance with sub section 1 their liability shall be joint and several

(3) No liability for pollution damage shall attach to the ship owner if the ship owner proves that

- (a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character or

- (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party or

- (c) the damage was wholly caused by the negligence or other wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

(4) If the ship owner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered damage from the negligence of that person the ship owner maybe exonerated wholly or partially from liability to such person.

(5) Subject to paragraph 7, no claim for compensation for damage under this Convention or otherwise may be made against:

- a. any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority.

- b. any person taking preventive measures.

- c. the servants or agents of persons mentioned in (a) and (b).

(6) No claim for compensation for pollution damage shall be made against the ship owner otherwise than in accordance with this Part.

(7) Nothing in this Part shall prejudice any right of recourse of the ship owner which exists independently.

352 JJ - Exclusions:

(1) This Part shall not apply to pollution damage as defined in the Civil Liability Convention whether or not compensation is payable in respect of it under that Convention.

(2) This Part shall not apply to any warship, naval auxiliary or other ship owned or operated by a State and used for the time being on Government non-commercial service.

352KK Incidents involving two or more ships: When an incident involving two or more ships occurs and pollution damage results therefrom the ship owners of all ships concerned, unless exonerated under 352 II, shall be jointly and severally liable for all such damage which is not reasonably separable.

352 LL Limitation of Liability: Nothing in this Part shall affect the right of the ship owner and the person or persons providing insurance or other financial security to limit liability under Part XA of this Act.

352MM – Compulsory Insurance Cover or financial security:

(1) It shall be the duty of the registered owner of a ship having a gross tonnage greater than 1000, registered in India, and every foreign ship having a gross tonnage greater than 1000, entering Indian territory including Port or other offshore facilities to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution to cover the liability of the registered owner for pollution damage in an amount equal to the limits of liability under Part XA of this Chapter.

(2) A certificate attesting that insurance is in force in accordance with the provisions of this Part shall be issued to each ship registered in India by the Director General of Shipping. With respect to a ship flying the flag of a non-contracting State such certificate may be issued by the Director General of Shipping if the conditions mentioned in paragraph 1 are fulfilled. This certificate shall be in the form of the model set out in the Annexure to the Act and shall contain the following particulars:

- a. Name of the ship, distinctive number or letters and port of registry
- b. Name and principal place of business of the registered owner
- c. IMO Ship Identification number
- d. Type and duration of security
- e. Name and principal place of business of insurer or other person giving security and where appropriate place of business where the insurance or security is established.

f. Period of validity of the certificate which shall not be longer than the period of validity of the insurance or other security.

(3) (a) The Directorate General of Shipping shall inform the Government of India (Department of Shipping) of the issue of each certificate. It shall be the responsibility of the Director General of Shipping to ensure the completeness and accuracy of the certificate so issued.

(b) The Directorate General of Shipping which is authorized to issue certificates or certify in accordance with this section is authorized to withdraw such certificates if the conditions under which they have been issued are not maintained. In all cases the Directorate General of Shipping shall report such withdrawal to the Government of India (Department of Shipping) on whose behalf the certificate was issued.

(4) The certificate shall be in English.

(5) The certificate shall be carried on board the ship and if the certificate is issued by the Director General of Shipping a copy shall be deposited with the Directorate General of Shipping.

(6) An insurance or other financial security shall not satisfy the requirements of this article, if it can cease, for reasons other than the expiry of the period of validity of the insurance or the security specified in the certificate under sub section 2 of this article before 3 months have elapsed from the date on which notice of its termination is given to the authorities referred to in sub section 5 of this article unless the certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this section.

(7) The Government of India shall, subject to the provisions of this section determine the conditions of issue and validity of the certificate.

(8) Nothing in this Part shall be construed as preventing the Government of India from relying on information obtained from other states or organizations or other international organizations relating to the financial standing of providers of insurance or financial security for the purposes of this Part.

(9) Certificates issued by other State parties shall be accepted in India. The Director General of Shipping may at any time request consultation with the issuing or certifying state should it believe that the insurer or guarantor named in the insurance certificate is not financially capable of meeting the obligations imposed by this Part.

(10) Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the registered owner's liability for pollution damage. In such a case the defendant may invoke the defences (other than bankruptcy or winding up of the shipowner) which the ship owner would have been entitled to invoke including limitation pursuant to section 352LL. Furthermore, even if the ship

owner is not entitled to limitation of liability according to section 352LL the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with sub-section 1 of this section. Moreover the defendant may invoke the defence that the pollution damage resulted from the wilful misconduct of the shipowner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the shipowner against the defendant. The defendant shall in any event have the right to require the shipowner to be joined in the proceedings.

(11) No ship flying the Indian flag shall be allowed to operate at any time unless a certificate has been issued under paragraphs 2 or 14.

(12) Notwithstanding the provisions of sub-section 5, the Director General of Shipping may notify the Secretary-General that, for the purposes of sub-section 1 above, ships are not required to carry on board or to produce the certificate required by sub-section 2, when entering or leaving ports or arriving at or leaving from offshore facilities in Indian territory, provided that the State Party which issues the certificate required by sub-section 2 has notified the Secretary-General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under sub-section 1

(13) If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this section relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authority of the State of the Ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limit prescribed in accordance with sub-section 1. Such a certificate shall follow as closely as possible the model prescribed by sub-section 2.

352NN Time Limits: Rights to compensation under this Part shall be extinguished unless an action is brought thereunder within three years from the date when the damage occurred. However in no case shall an action be brought more than six years from the date of the incident, which caused the damage. Where the incident consists of a series of occurrences, the six-year period shall run from the date of the first such occurrence.

352OO Jurisdiction: (1)Where an incident has caused pollution damage in the territory, including the territorial sea, or in an area referred to in section 352HH(a)(ii) of India and/or States Parties, or preventive measures have been taken to prevent or minimize pollution damage in such territory, including the territorial sea, or in such area, actions for compensation against the ship owner, insurer or other person providing security for the ship owner's liability may be brought only in the courts of India or the States Parties concerned.

(2)Reasonable notice of any action taken under sub-section 1 shall be given to each defendant.

(3) All High Courts in India shall have jurisdiction under Article 226 of the Constitution of India, to entertain actions for compensation under this Part.

352PP Recognition and Enforcement: (1) Any judgment given by a court in a State Party where it is no longer subject to ordinary forms of review shall be recognized in India, except:

- (a) where the judgment was obtained by fraud; or
- (b) where the defendant was not given reasonable notice and a fair opportunity to present his or her case.

(2) A judgment recognized under sub-section (1) shall be enforceable in India as soon as the formalities required in India have been complied with. The formalities shall not permit the merits of the case to be reopened.

352QQ Power to make rules: The Central Government may make rules prescribing-

- (a) the form of certificate to be issued by the Director General under sub-section (2) of section 352MM.
- (b) fees which may be charged for issue of certificates under section 352MM.

ANNEX

GOVERNMENT OF INDIA
MINISTRY OF SHIPPING, ROAD TRANSPORT & HIGHWAYS
(Department of Shipping)
New Delhi, the 1st January, 2009

NOTIFICATION

G.S.R. NO. (---).- In exercise of the powers conferred by Section 352-KK of the Merchant Shipping Act, 1958 (44 of 1958) as amended, the Central Government hereby promulgates the following rules, namely:-

1. Short title and commencement:- (i) **These rules may be called the Merchant Shipping (Form of Certificate of Insurance for Civil Liability for Bunker Oil Pollution Damage) Rules, 2009.**

(ii) These rules shall come into force on the date of their publication in the Official Gazette.
2. Definitions:- In these rules, unless the context otherwise requires:-
 - (a) “Act” means the Merchant Shipping Act, 1958 (44 of 1958) as amended;
 - (b) “Form” means a Form annexed to these rules.
 - (c) Words and expression used in these rules but not defined shall have the meaning respectively assigned to them under the Act.
3. Particulars of Insurance or other financial security:-
 - (i) The owner of every Indian ship of 1000 Gross Tonnage and above shall apply in Form ‘A’ appended hereto, to the Director

General of Shipping for the issue of a Certificate of Insurance or other financial security maintained in respect of such ship.

- (ii) The owner or agent of any foreign ship of 1000 Gross Tonnage and above may also apply in Form "A", to the Director General of Shipping for the issue of a certificate of Insurance or other financial security maintained in respect of such ship.

4. Issue of Certificate of Insurance or other Financial Security:- The Director General of Shipping shall, after satisfying himself about the maintenance of Insurance or other financial security in respect of the ship for which the application under Rule 3 has been made, issue the Certificate in Form "B" to the owner or agent of the ship.

5. Issue of duplicate certificate:- When a certificate of Insurance or other security issued under Rule 4, has been destroyed, defaced or otherwise lost, the owner or agent of the ship may obtain from the Director General of Shipping, a duplicate certificate.

6. Fees:- (1) Every application for issue of a certificate of Insurance or other financial security under Rule 4, shall be accompanied by a fee of Rs. 250/-.

(2) A duplicate copy of the certificate under Rule 5 shall be issued to the owner or Agent as the case may be, on payment of fee of Rs. 200/-.

FORM "A"

(See Rule 3)

Form of Application for issue of a certificate of Insurance or other Financial security maintained under the Merchant Shipping Act, 1958.

1. Name of applicant :
(Owner/Agent)
2. Name of Ship :
3. Official Number :
4. Port of Registry :
5. Name of Owner :
6. (i) Gross Tonnage :
(ii) Net Tonnage (Attach a photo copy of Certificate of Registry)
(iii) Tonnage for limitation :
[as per section 352 ---]
7. (a) Particulars of Insurance or other financial security maintained :
(b) Limits of the Liability :
(d) Period of validity (Attach copy of documents in Support) :

I hereby solemnly declare that to the best of my knowledge and belief, the particulars given in this form are true and correct. A certificate may be issued to the ship under Section 352KK of the Merchant Shipping Act, 1958.

*I have been authorised by the owner to make this application.

Place :

Date :

Signature of Applicant

Name :

Address :

* Strike out if not applicable.

Note: Any existing/expired certificate should also be sent with this application.

FORM "B"
(See Rule 4)

Issued by Govt. of India.

No.

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Certificate of Insurance or other Financial Security in respect of Civil Liability for Bunker Oil Pollution Damage under Section 352 KK of the Merchant Shipping Act, 1958.

(Issued under Rule 4 of the Merchant Shipping – (Form of Certificate of Insurance for Civil Liability for Bunker Oil Pollution Damage) Rules, 2009)

Name of Ship	Distinctive number or letters	Port of Register
Name and address of owner		

This is to certify that there is in force in respect of the above named ship a policy of insurance or other financial security satisfying the requirement of section 352 KK of the Merchant Shipping Act, 1958.

Type of security-----

.....
.....

Duration of Security from ----- To: -----

Name and address of the Insurance (s) and/or Guarantor (s)

.....

Address.....

.....

This Certificate is valid until -----

.....

.....

..... Issued at

On

SEAL:

Director General of Shipping

Date:

[File No. -----]

Name, Under Secretary to Government of India.