

Environmental Damage Caused by Shipwrecks in Sri Lanka: A Legal Analysis

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Abstract - Sri Lanka which is geographically located at the centre of international shipping lanes has had to frequently deal with shipwrecks. The X-Press Pearl shipwreck can be identified as an irreversible damage caused to the territorial sea. This research is expected to ascertain the effectiveness of the domestic laws in addressing the impacts of shipwrecks on marine biodiversity, its compatibility and inter-relationship with international laws governing the same and to identify the loopholes in the domestic law in conserving marine environmental resources against the environmental disasters linked with shipwrecks. The research methodology includes the black letter approach based on international conventions and case laws as primary sources and journal articles, books, web articles as secondary sources. The Marine Pollution Prevention Act, which was enacted to protect the marine system, provides for criminal and civil liability for those who pollute the ocean. The Coastal Conservation and Coastal Management Act can be indirectly identified as a unique act that includes provisions on the ocean and criminal liability that can be imposed on an offense committed under the Act. The National Environment Act deals with the protection of the territorial sea. Sri Lanka has not ratified vital conventions on maritime security and has lost the protection that comes with them. The failure of domestic law to be strengthened by International Conventions is a serious weakness. The research recommends the need to ratify International Conventions and thereby to take steps to strengthen domestic law including in the Constitution of Sri Lanka for protection of the marine environment and to establish a special court or tribunal for matters related to shipwrecks.

Keywords— *shipwrecks, domestic laws, international conventions*

I. INTRODUCTION

Shipwrecks are a global problem and pose little to quite harmful pollution threats. Sri Lanka which is geographically located at the center of International Shipping lanes has had to frequently deal with shipwrecks within its maritime boundaries particularly in recent years. The most recent of such incidents is the grave and irreversible damage caused to the Sri Lankan marine and coastal ecosystems and the animal communities by the MV X-PRESS Pearl ship that recently wrecked in the territorial sea of the country. This research expects to ascertain the effectiveness of the domestic laws in Sri Lanka in addressing the impact of shipwrecks on marine biodiversity and its compatibility and Inter-relationship with International Laws governing the same. The research also intends to identify the loopholes in the domestic law in Sri Lanka in conserving invaluable marine environmental disasters linked with shipwrecks.

Marine pollution has not obtained significant consideration by the public although it could adversely effects to the whole environment in terms of climate change, global warming, and degradation of natural resources. The research limits only to vessel source marine pollution, limits MV X-PRESS Pearl ship matter , United Nations Convention of Law of the Sea (UNCLOS), The International Convention for the prevention of pollution from the ship (MARPOL) and International Convention on Liability and carriage of Hazardous and Noxious substances by sea -1996 ,in terms of International legal Instrument limited to Marine pollution prevention Act No.35 of 2008, Coast Conservation and Coastal Resource Management Act No.57 of 1981(Amended),National Environment Act No.47 of 1980 of Sri Lanka in terms of domestic legal instruments and limited only to the data obtained through books, journals, web articles and case laws.

The research expects to achieve the objectives such as ascertaining the effectiveness of the domestic law in Sri Lanka in addressing the impacts of shipwrecks on Marine biodiversity and its compatibility and Inter-relationship with International Laws governing the same. The research also intends to identify the loopholes in the domestic law in Sri Lanka in conserving invaluable Marine environment resources against the environmental disasters linked with shipwrecks.

II. METHODOLOGY

The Methodology which is used in this research is Black letter methodology as this was doctrinal research. The Research base on statutes case laws as primary sources and journal articles, books and web articles as secondary sources. The research also uses the International and comparative research methodology based on International Conventions and case laws as primary sources.

III. DISCUSSION & CONCLUSION

Marine Pollution Prevention Act No.35 of 2008 is the currently existing law related to Marine Pollution in Sri Lanka. Marine Pollution Prevention Act for protecting Sri Lanka waters from pollution. Although there are provisions to control pollution from ships, harbors /ports and any facility used by ships and offshore petroleum exploration projects and to deal with offenses, imposing both Criminal and Civil liabilities for offenders. The Act section 37 provides for the prevention, reduction and control of pollution in Sri Lanka waters and gives effect to International Conventions for the prevention of pollution of the sea.

The emergence of this Act resulted from signing the United Nations Convention on the Law of the Sea (UNCLOS) and the International Convention on the prevention of pollution from ship 1973 modified by 1978 and 1997 (MARPOL) by the Sri Lankan government as a sovereign state.

Marine Pollution Prevention Act sets the legal background to national jurisdiction for enforcement of UNCLOS and MARPOL. The Act mentions that it is for prevention, control and reduction of the pollution of the marine environment of Sri Lanka to prevent the vessel source marine pollution emerging through various International and local legal instruments.

Article 06 of the Act states that Marine Pollution Prevention Act shall implement the provisions of the act in an effective and efficient manner by formulating and executing a scheme of works for

prevention , reduction ,controlling and managing of marine pollution arising out of ship-based activity conducting researches for the preservation of marine pollution take every measure to preserve the territorial waters of any other maritime zone of Sri Lanka ,providing adequate and effecting reception facilities, recommend adherence of International conventions to prevent marine pollution ,formulating and implementing the national plan, regulations, etc. Section 26 and 34 provide Criminal and civil liability for those who pollute the ocean.

According to the legal provisions of the coastal conservation and coastal Resource Management Act section 35A, the police officer may without an order from a Magistrate and without obtaining a warrant arrest any person reasonably suspected. According to section 35AA of the Act, a person who commits an offense under this act is guilty of a criminal offense.

Part IV B of the National Environment Act discuss "Environmental Quality" under section 23H (1) it is stated that "no person shall pollute any inland waters of Sri Lanka or cause or permit to cause pollution in the inland waters of Sri Lanka so that the physical ,chemical or biological condition of the waters is so changed as to make or reasonably expected to make those waters or any part of those waters unclean, noxious, ,impure, detrimental to the health, welfare, safety or property of human beings, poisonous or harmful to animals, birds, wildlife, fish, plants or others forms of life or detrimental to any beneficial use made of those waters." It discusses the pollution of inland waters of Sri Lanka Section 23H (3) discusses the penalty for pollution of inland waters in Sri Lanka. According to this section, the cost of the harm polluters will get the same fine, therefore, there is no way to identify the actual cost of harm.

Sri Lanka has been ratified and adopted the UNCLOS and MARPOL conventions. Under the part IIX of UNCLOS ,emphasizes the obligations of states to protect and preservation of Marine Environment including the measures of preventing reducing and controlling marine pollution ,global and regional cooperation of states for prevention of marine pollution, technical assistance ,monitoring and environmental assessment ,International rules and National legislation ,enforcements, safeguard, responsibility and liability, sovereign immunity, obligations under other conventions on the protection and preservation of the marine environment.

MARPOL –Article 1 clearly states that parties to the convention are bound to prevent marine pollution and act according to the convention in the cases of vessel source marine pollution. According to concerned International legal instrument states are obliged to protect marine environment as signatory parties to those conventions. Article 235 of UNCLOS mentions that states are responsible for protecting and preservation of the marine environment.

The most recent to the Sri Lankan marine and coastal ecosystems by the MV X-PRESS pearl ship that recently wrecked in the territorial sea of the country. The ship was carrying a consignment of hazardous chemicals, including Nitric Acid, Ethanol, Dust urea, grilled urea, Density polyethylene...etc. With the sang of the ship the released of the chemicals is a serious risk to the ocean and the coastal ecosystem.

In view of the recent shipwreck, we have not ratified any of these related International Conventions. Sri Lanka has not signed the International Convention on Liability and Compensation for damage in connection with the carriage of Hazardous and Noxious substances by sea 1996. That is why Sri Lanka is losing the ability to secure those conventions. The Law has addressed oil spills in the event of shipwrecks. But when a ship carrying chemical containers crashed no attention was paid to the situation. International legal instruments have not been completely implemented in Sri Lanka in relation to the vessel source marine pollution.

The Polluter Pays principle (PPP) is the main concept relating to Environment Issues. This principle was identified by principle 16 of the Rio Declaration. It spells out that the person or the authority who is involved in polluting the environment should take responsibility for the cost of the harm. The case of *Cambridge Water Company v. Eastern Counties Leather* (1994) is a significant case to analyze the use of the polluter pays principle. An early version of the PPP was developed by the Organization for Economic Cooperation and Development (“OECD”) in the 1970s in an effort to ensure that companies would pay the full cost of complying with pollution control laws and were not subsidized by the State. Therefore, it appears that the implementation of the PPP needs to amalgamate with other international environmental principles as well. Especially, the preventive action and precautionary principle are of utmost importance. Because prevention is the best mode to overcome environmental issues. Due to the gravity of the environmental harm, mere a fine might not

sufficiently recover the actual loss. Consequently, the PPP needs to connect with a precautionary principle as well. Furthermore, it shows that the first step needs to be a precaution and the second step should be the PPP. Sometimes, we can use the PPP as a deterrent to pollution. Through the deterrence, the polluters might hesitate to harm the environment. Thus, it will simultaneously preserve the environment and environmental resources for future generations.

Currently, in Sri Lanka the judiciary has taken certain progressive steps to promote the Polluter pays principle, with the command-and-control philosophy. Especially in the *Bulankulama and Others v. Secretary, Ministry of Industrial Development and Others* (2000) 2 SLR. 243 (Eppawala Phosphate Mining case) Justice Amarasinghe said ‘.....Today, environment protection, in light of the generally recognized ‘Polluter pays principle’, can no longer be permitted to be externalized by economists merely because they find it too insignificant or too difficult to include it as a cost associated with human activity. *Wilpattu Case –CA WRIT 291/2015* court decided that “Court issues an order in the nature of mandamus ordering the 1st Respondent (Conservator General, Department of Forest Conservation) to take action to implement a tree- planting program under and in terms of the provisions of the Forest Ordinance No. 16 of 1907 as amended in any area equivalent to the reserve forest area used for resettlement of IDPs.

The Polluter pays principle has been recognized within the jurisdiction of the Supreme Court of India, which has held that ‘along with the precautionary principle- the polluter pays principle is a part of customary international law’²³. The *M.C. Mehta v. Kamal Nath*²⁴ (1997) case extended the liability under this principle not only to compensate the victims of pollution but also to cover the cost of restoring the environmental degradation.

This study is able to understand some loopholes in the existing domestic legal framework relating to the prevention of marine environment pollution from vessel sources. The research expects to elaborate on those identified loopholes and recommend possible remedies to fill those gaps.

One of the loopholes is identified in the constitution of Sri Lanka. There was no provision to protect the marine environment. This research recommends including provisions relating to the marine environment. Secondly recommends establishing a special court or tribunal for such matters as currently

implemented through high courts of particular areas. Sri Lanka has ratified the most important conventions relating to shipwrecks. This failure is a serious weakness in our domestic law. Thirdly recommends ratifying the necessary International Conventions before the next disasters.

IV. CONCLUSION

This research could emphasize the importance of ratifying the International Conventions. This research explains the current legal framework to protect the marine environment and the loopholes of those existing laws and recommended solutions to fill the gaps.

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