

**ENVIRONMENTAL DISASTERS AND ACCOUNTABILITY OF OIL COMPANIES:
LESSONS TO BE LEARNT FROM BP OIL SPILLS: LEGAL SOLUTIONS.**

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ABSTRACT

This article aims at examining environmental disasters and their impacts in the light of the biggest oil spill in history, The BP oil spills. It aims at explaining how oil companies are accountable to the public for occurrence of catastrophic incidents like the BP oil spill. The company's accountability for the damage done to the environment is a matter of growing concern in the contemporary world. This article also throws light upon the lessons that we can learn from the BP oil spills, and provides legal solutions for the same to ensure that apart from the UN, the government and oil companies, each citizen can help in his/her own way to prevent the happening of such disasters and thus be able to mitigate the loss, if such an incident takes place.

INTRODUCTION

Environment refers to our surroundings. Everything that one is surrounded by and all the conditions in which one lives becomes one's environment. Albert Einstein was an active and enthusiastic environmentalist, who said "Environment is everything that isn't me". Environment, is everything that physically surrounds us- Air, water, space, land, animals, plants, etc. The monumentality of an environment lies, not only in presence of various factors but their co-operative or symbiotic relationship, which helps maintain a balance in the environment. Study of the relationship between humans and the nature, makes it easy to extrapolate that the humans shape, and are shaped by their environment, which helps us understand the influence of humanity on nature, the problems arising and begetting environment that meets all our needs in a sustainable manner.

Undoubtedly, man adapts himself to the changing situations of the environment, but this does not pull away from the fact that he isn't doing what he should, to improve the environmental kilter. The need of this day is to study the damages caused to the natural environment due to human activity, caused by technical accidents, mechanical failures, or mere carelessness. The moment man interferes with the functioning of the natural environment, arises before us environmental disasters, which can be natural, such as Hurricanes, Floods, Tsunamis, etc. or man-made/ technological, such as nuclear blasts, cyber-attacks, oil spills, etc. Controlling such disasters is a challenge in the contemporary world. Environmental disasters destroy all our environmental amenities and leave us struggling to reconstruct what has been destroyed. A classic example of an environmental disaster is the Ivory Coast toxic waste case, where more than 500 cubic meters of toxic waste from a panama registered cargo ship was dumped at public sites across Abidjan.¹ And the accident at the Chernobyl nuclear power plant, on April 26th, 1986, where a sudden surge of power during a reactor systems test destroyed unit 4 of the nuclear power station. The fire that followed released massive amounts of radioactive substances into the atmosphere, causing many deaths and medical problems.² The grounding of a supertanker, Torrey Canyon, on protruding granite rocks near the scilly isles made us acquainted with a new type of environmental disaster- Oil spills, stressing on the need to research on the demand to design ships

¹www.spacedaily.com/reports/lawyers_blast_verdict_in_ivory_coast_toxic_waste_case_999.html

² www.who.int/ionizing_radiation/chernobyl/en/

that will prevent the same.³Such disasters massively affect the agriculture, biodiversity, economy, cause pollution, loss of human life, and most of all damage the environment to such an extent that mitigating the loss suffered becomes very challenging.

An oil spill refers to the accidental release of liquid petroleum hydrocarbon into the surroundings due to human activity. The sources of accidental oil input into seas oil transportation by tankers and pipelines, offshore drilling, wells and spills of refined petroleum products such as petrol, diesel and their byproducts. Spilled oil poses sober-sided threats to fresh water and marine environments. It affects surface resources and a wide range of subsurface organisms that are linked in a complex food chain that includes human food resources. It can harm the environment in several ways, including the physical damages that directly impact wildlife, and the toxicity of the oil itself, which can poison exposed organisms.⁴

BP OIL SPILLS- WHAT, HOW, WHY?

The occurrence of large and catastrophic spills that release up to 30,000 tons of oil is relatively rare and happenings like these are less frequent these days. But there was an about-face when we experienced the worst and largest oil spill ever recorded in history, the Deep water horizon oil spill also known as the BP oil spills or the Gulf of Mexico oil spills. BP's Internal Investigation Team released a report that analyzed the events leading up to the accident, stating that the fire was caused by a release of hydrocarbons from the well, and then onto the oil rigs . Once the rig sank, it caused three breaks in the pipes.High-pressured gas ignited and lead to explosion, causing the oil spill. The results of this spill proved to be very detrimental. The oil spill had contaminated huge amount of water and coasts of Gulf of Mexico. Huge number of animals in and around the gulf died, comprising of approximately 4,768 creatures, as stated by H.M. Osofsky. The expedition lead by the biologist, Charles Fisher, has detected the death of coral community. There were 11 immediate deaths, injuries to 17, Economic impact being loss of \$37.2 & Loss of entire plant.⁵BP has spent billions of dollars for cleaning up, compensation and restoration of the environment and economy of the Gulf area, which has proved to be economically pernicious to the company. BP which was considered to be one of the major

³ Meleen,Nathan, Torrey canyon, environmental encyclopedia, 2003.

⁴ <https://archive.epa.gov/emergencies/content/learning/web/html/effects.html>

⁵National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, 2011.

companies that supplied the world with petroleum suffered as the reputation of BP was harmed by the activists in social networks and Greenpeace. The spill thus had caused an insurmountable damage, affecting the economy, environment and lives of many.

In response to the spill, was provided, immediate relief and assistance by the government, BP, the U.S. Coast Guard, environmental organizations and federal agencies. President Obama declared that U.S. would not allow further offshore drilling until the full investigation was conducted into whether the spill could have been prevented.⁶ A state of emergency was declared and steps were taken to avert oil from further damaging wetlands, marshes, beaches, properties, industries tourism and businesses.⁷ Various lawsuits had been filed against BP by various parties who were victims of this catastrophic incident, businesses, companies and workers involved in commercial fishing, charter boat operations, hotels, etc. A lot of commercial as well as residential property had been damaged along the Gulf coastline. Such property damage suits either demanded for aid in cleaning up or monetary compensation. After the executives of BP met President Obama, they established the Gulf Coast Claims Facility (GCCF), a \$20 billion fund to settle claims arising from such suits. Scientists and engineers were burning candles at both ends to ensure no more oil spill takes place. Later, the settlement claims through the GCCF was replaced by the court supervised settlement program and \$404 million in claims were paid and BP also spent \$105 million to set up a Gulf Coast health outreach programs.⁸ Later, the US Department of Justice held BP guilty of gross negligence and willful misconduct. Finally, BP and the US Department of Justice reached a settlement that BP will pay \$4.5 billion as fine and other payments.

ACCOUNTABILITY OF OIL COMPANIES

In any legal system, there always exists liability on those who fail to comply with the obligations imposed by law. International companies that do not pay sufficient attention to the legal, ethical and regulatory aspects and climate of the countries in which they invest in, are themselves inviting risks. Accountability of oil companies can be assessed by seeing if they are complying

⁶The New York Times April 30, 2010

⁷ Clingman Rachel, Testimony before the committee on the judiciary, united states house of representatives: liability issues surrounding the gulf coast oil disaster” may 27, 2010.

⁸Kunzelman, Michael (11 January 2013). "BP Seeks Gulf Oil Spill Size Ruling From Judge"

with the International conventions of the United Nations Organization. Companies must fulfill the world's contradictory demands, i.e.: environmental protection as well as economic development. Integrating and balancing the economic and environmental policies is called sustainable development, which was given a further boost in the Stockholm Declaration, 1972. The BP had violated the said principle on failure to maintain a balance between their economic and ecological imperatives. Social and economic decisions were to be made by the BP, both before and after the incident, keeping in mind the recommendations of Agenda 21, adopted at the UNCED.

BP was unsuccessful in complying with the recommendations of the Rio Declaration, such as “the right to development must be fulfilled so as to equitably meet development and environmental needs of present and future generations”⁹ and “the states shall develop national law regarding liability and compensation for the victims of pollution”¹⁰. During transportation of oil, or offshore drilling, an oil spill is one such incident that they were obligated to take measures to anticipate, prevent and attack. The Polluter pays principle is also applicable, which means that absolute liability for damaging the environment is extended to the cost of restoring the environment and not just limited to compensating the victims. The international convention on civil liability for oil pollution damage, 1969, was adopted to ensure that adequate compensation to persons who suffer oil pollution damage resulting from such maritime casualties. It places liability for such damage on the owner of the ship from which the polluting oil escaped or was discharged.¹¹

The International Convention for the Prevention of Pollution from Ships (MARPOL) covers prevention of pollution of the marine environment by ships from operational or accidental causes. Further, there is the International convention on oil pollution preparedness, response and co-operation, 1990, which requires ships to carry an oil pollution emergency plan, for responding promptly and effectively to oil pollution incidents.

Accountability has another aspect, The Legitimacy theory, whereby companies are in need of a positive societal association, to get resources in return. A threat to legitimacy questions the

⁹ Principle 3, Rio Declaration on Environment and Development.

¹⁰ Principle 22, Rio Declaration on Environment and Development.

¹¹ <http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-%28CLC%29.aspx>

continuance of the company, as withdrawal of stakeholders' support challenges the company's survival. One lacuna in BP's annual disclosure report was that it was made to appear 43% more positive than it actually was, and they tried making it similar to their 2009 report. The concept of corporate transparency is of great relevance here. The stakeholders of the company observe the company's actions and know if the company is being good or bad. So the company, by intentionally sharing information with them, is perceived to be a truthful corporation.

The corporate criminal liability principle comes into picture when we have to assess to what extent does the corporation, being an artificial person stand liable for the acts or omissions done by the natural persons employed. Any corporation can be held liable for an act of its agent or servant if she/he commits a crime, within the scope of employment and with the intent to benefit the corporation. Imposing criminal liability is one of the means of regulating corporations. It is to be noted here that, Article 10 of the Convention against Transnational Organized Crime establishes criminal liability of the corporation as a legal entity in addition to the individual liability of persons who may be acting on the corporate's behalf.

Criminal liability fell upon BP and other parties related, when the US justice department ordered the company not to shred its well blowout documents. Non-compliance is a conduct having an element of crime involved. Yes, it is indeed a criminal act committed by BP, i.e. to make false statements to the federal government. In the United States, criminal charges can be brought against a company that fails to comply with legislations like the Clean Water Act, Oil Pollution Act, Refuse Act, etc. The Clean Water Act in the US contains provisions about oil spill prevention, and control measures, civil and criminal liabilities regarding the same. The Refuse Act tells us about illegal dumping into waterways, the violation of which leads to criminal prosecution, this following the concept of strict liability, meaning that the company responsible for an occurrence of an oil spill is liable simply because the event occurred-accidentally or intentionally. Most of the oil spills are consequences of negligence.

As a corporation, BP has responsibility towards the people and the environment in which it operates. Problems arose when BP did not accept responsibility¹².

¹²The Times-Picayune, January 10, 2011

There were civil & criminal charges against BP. The first charge was filed against an engineer of BP for obstructing justice by deleting messages showing that BP was aware of the flow rate and the fact that it was three times higher than normal. Two site managers were charged with manslaughter, for acting negligently. Further, former vice-president of BP, David Rainey was charged with obstructing the congress. Corporate criminal liability of an oil company is not only circumscribed to the occurrence of the oil spill, but is also protracted to unwillingness to respond and help restore the environment.

Every business is vested with great deal of power, which should be accompanied by an equal amount of responsibility. A company should execute its operations, keeping in mind the consequences of its acts and the impact on the environment. Business ethics is concerned with truth and justice in conducting business affairs.¹³ The factors enhancing ethical standards of any company are in compliance with government regulations, public disclosure, well-informing the public, especially in case of a problem, etc. The Virtue Theory states that, for a business to function smoothly, they must be honest, courageous, just, etc. Misinterpreting figures about the amount of oil dispersed was a dishonest act. As per the Utilitarian theory, had this entire incident been avoided by taking proper precautions, BP could have used the billions of dollars to expand their business and self-development, rather than spending it on cleanups, donations and other restoration activities. The Kantian theory requires the company to respect people, which BP didn't; by failing to keep up to their words when in Texas City to clean and improve the environment. The company was obligated to compensate the eligible oil spill claims under the settlement agreement that promised to settle claims arising due to property damage and other economic losses. JPMorgan Chase calculated that the oil spill cleanup efforts actually boosted the economy in 2012. BP spent \$6 billion to hire 4000 people to help clean up, which contributed about \$700 million that was earlier lost in fishing and tourism jobs.¹⁴

Had the incident occurred in India, the company committing such an act would be liable under various spheres of Indian law. In India, writs can be used as remedies in environmental cases. Such writs can be issued by virtue of Art 32 and 226 of the Constitution of India, 1950. Criminal law remedies are provided under the IPC and the Cr.P.C, ex: public nuisance, as defined in

¹³Harold koontz, Heinz Weihrich, A ramachandra Aryasri, Principles of management, pg. 2.9

¹⁴ www.useconomy.about.com/od/suppl1/tp/BP_oil_spill/

section 268 of the Indian Penal Code, 1860. Indian courts also have the power to order a party to do / refrain from doing an act, known as injunction.

Public Interest Litigation is another remedy provided to ensure protection of people and the environment. In case of shriram food and fertilizers, the Supreme Court by means of a PIL directed the company that was manufacturing hazardous chemicals and gases to take all necessary safety measures before they reopen it, after being ordered to close down temporarily by the said court.¹⁵ This option is open to the Indian citizens, even in case of an oil spill by an oil company in India. Most importantly, the Right to a healthy environment is being guaranteed to us as a fundamental right, by virtue of the interpretation of Art 21-“No person shall be deprived of his life or personal liberty except according to procedure established by law.” Our constitution, on one hand, through directive principles, directs the state for protection and improvement of the environment, thus on the other hand the citizens owe a constitutional duty to protect the environment.

LESSONS LEARNT FROM BP SPILLS

In our line of work, mistakes can, and they do happen, But leaving them unattended is even bigger a mistake. The CEO of BP, Tony Hayward not only made awkward and insensitive statements like “I’d like my life back”, referring to the way the spill had taken over his time, but also while the oil was gushing out at the Gulf of Mexico, he was off the coast of London, watching his yacht compete in a race.¹⁶ Being the leader, instead of owning up and assuring to restore things to their place, said “The Gulf of Mexico is a very big ocean. The amount of volume of oil and dispersant we are putting into it is tiny in relation to the total water volume.”

¹⁷This teaches us that with leaders like these, the company isn’t going towards success.

Secondly, as Mark Twain said, “Honesty is the best policy-when there is money involved”. BP, by failing to tell the truth to the public, damaged their own reputation and credibility with the federal and state government as well as the people. Throughout 2010, the one question that the public didn’t get tired asking BP was about the amount of oil spilled. BP answered “5000

¹⁵ AIR (1986) 2 SCC 176

¹⁶NY times, June 20, 2010. A20.

¹⁷ <http://newsfeed.time.com/2010/05/14/quotes-bp-ceo-tony-hayward-on-gulf-oil-spill/>

barrels/day” in May and “19000 barrels/day” in June. The U.S.Geographical survey however gave us a completely different number- 20,000 to 40,000 barrels/day.

Thirdly, Crisis management is very essential. Our lives are full of ups and downs, when things get rough, like how it did with BP, people will judge you as per how well you manage during a crisis like the BP oil spills. It is important to manage the crisis before it gets to you. Since BP failed in this aspect, we are studying them as a case of ineffective corporate crisis management.

Fourthly, although the oil and gas industries are innovative and technologically advanced in hydrocarbon extraction, they should be taught adequate safety measures and techniques that would help avert happening of another Deep water horizon spill. Training, further, should be given for the worst-case scenario to identify potential hurdles and improve the organization's ability to handle such incidents in the future.

Fifthly, cost minimization must never make us compromise on safety. According to the Financial Times, 2010, the top management at BP was initially committed to effective safety procedures which changed due to the cost minimization policy. The BP opted for a relatively cheap procedure for well drilling from two alternatives. Cost is an essential factor for any industry, but not the only.

Sixthly, as it normally happens, before carrying out the operations of a major project, a tailoring plan that identifies quality, risk and safety precautions is executed, which hadn't been done in the case of BP. We must ensure, any project of such sort, at least in the future is made with great planning and considering all aspects of risk management.

Seventhly, the outcome for the residents depends on how deep the pockets of the oil companies are and extent to which they are willing to compensate. Had BP not satisfied the said conditions, it would have taken hundreds of thousands more of claims to settle this issue.

LEGAL SOULUTIONS

As we are all aware, prevention is better than cure. This holds true even in the case of the occurrence of an oil spill. If we take few preventive measures, we will have nothing to complain about later- neither the leakage of oil, nor its adverse impacts. Firstly, it is important that the employees dealing with the production, storage and transportation of oil across seas and other

water bodies are trained in operating the equipments, emergency operations, and should be taught the latest technologies which will augment their understanding and help increase the safety operations. Technology assessment and research and Best available and safest technologies are some of the programs being implemented in the US for research and development techniques with respect to preventing oil spills. Secondly, the panel members must be fully licensed certified and the respective governing bodies must exercise control over them to ensure professional and expert service. Thirdly, oil companies must consider usage of multiple redundancies, i.e. Presence of a backup system such as a blow-out preventer to prevent the loss of well controls. The design of the storage tank should adhere to leak prevention technology and be corrosion resistant. Fourthly, Safe operations of the equipments are to be ensured to minimize the risk of a spill and protect the health and safety of people .Specific spill prevention, control, and countermeasure plans (SPCC) are to be implemented as required by the EPA. Fifthly, 'Earthjustice' has been deeply engaged in curtailing expansion of offshore drilling. Through a series of lawsuits they aim to force federal agencies to do their jobs and stop being cozy with companies like BP which was allowed to drill recklessly without adequate plan to handle even a small oil spill. They also took efforts to force the EPA to reveal the ingredients of the oil dispersant.¹⁸ After the Deepwater horizon incident, US, to take preventive measures about oil spills, has the MMS (Minerals Management System) that makes preventive and emergency response plans. As global citizens, we can do our bit in preventing oil spills, like avoiding dumping oil or oily wastes into the garbage. We can also help reduce the usage of oil wherever possible such as save fuel and opt for bicycles, walking, carpooling or public transport. Only through education and spreading awareness can the people help prevent such disasters. Besides these, there are a number of legal aids available with regard to prevention, control, response and restoration of the environment after an oil spill. In the United States, they have a number of regulations and statutes that help deal with the above mentioned aspects of oil spills. The Clean Water Act had been amended and replaced by The Oil Pollution Act, 1990 that states that the companies must have "Plan to prevent spills that may occur." And have "Detailed containment and cleanup plan",for oil spills. CERCLA, The Comprehensive Environmental Response, Compensation and Liability Act extends the response of Clean Water Act to wide range of hazardous substances, and contaminants. The Oil Pollution Act established in its Title I, the Oil

¹⁸ www.earthjustice.org/features/preventive_measures_BP_type_oil_disaster/

Spill Liability Trust Fund (OSLTF) to help facilitate cleanup activities and compensate for the damages caused.¹⁹

The United Nations Organization, by means of their International Convention on Civil Liability for Oil Pollution Damage, 1969, renewed in 1992, and MARPOL ensure people that they will be provided with adequate compensation, where they have been affected by oil pollution caused by maritime casualties involving oil tankers. The International Convention on Oil Pollution (Preparedness, Response and Co-operation), 1990 helps establish the measures to deal with marine pollution and its impacts. The International Maritime Organization, further, requires all ships to carry with them a shipboard oil pollution emergency plan. The UNO has given us a number of conventions, through which we are ensured protection, compensation and a clean environment after the occurrence of an oil spill.

On one hand, we have the law of nature that balances the environment, and on the other hand, we have the law of nations that maintains the balance in law and justice in the international sphere. The UN strives to ensure that these two principles are upheld simultaneously, but this can happen only if we co-operate by adhering to these international conventions as it is the only way we can battle such disasters.

¹⁹ https://www.uscg.mil/npsc/about_npsc/osltf.asp