

# A CRITICAL ANALYSIS RELATING TO IMPLEMENTATION OF ENVIRONMENTAL LAW IN SRI LANKA: MARINE POLLUTION

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**Abstract** - The issue of marine pollution is a global menace of marine debris and toxic substances entering our oceans. These substances come from mainly land – based sources and sea based sources. In more general terms, oceans are used as dumping sites for various materials and substances that should not be there hence this is very dangerous to our eco systems. The Marine Pollution Prevention Act No. 35 of 2008 of Sri Lanka has attempted to address the areas with regard to marine pollution, yet the problem keeps recurring in spite of a number of regional and global conventions attempting to deal with this issue.

**Keywords** - Marine Pollution: Environment: Global menace: Authority Penalties

## I. INTRODUCTION

Sri Lanka has sovereignty over maritime zones due to the provisions of Maritime Zone Law No.22 of 1976<sup>1</sup> of Sri Lanka and Presidential Proclamation hereunder of 15th January 1977 and United Nations Convention of the Law of the Sea. Due to the reasons of rising population, agriculture activities, growth of industrial activities (mainly tourism), expansion of ports in Colombo and Hambantota, Sri Lanka is at greater risk of being subject to marine pollution.

According to the United Nation definition, “marine pollution refers to direct or indirect introduction by humans of substances or energy into the marine environment (including estuaries), resulting in harm to

living resources, hazards to human health, hindrances to marine activities including fishing, impairment of the quality of sea water and reduction of amenities.”<sup>2</sup>

Therefore, “it is inevitable that Sri Lanka is prone to pollution and is in need of effective protection of its marine environment”<sup>3</sup>. The Marine Pollution Prevention Act No.35 of 2008 can be pointed out as the main legislation dealing with this particular issue enacted for prevention, control and reduction of marine pollution in Sri Lanka by strengthening the legal powers vested in the Marine Environment Protection Authority for acting to prevent, mitigate and control marine pollution and for implementing international Conventions on marine pollution applicable to Sri Lanka.<sup>4</sup>

This study focuses on the salient features of the Marine Pollution Prevention Act, the challenges in implementing its provisions, critical analysis of its contribution to the phenomenon of environmental jurisprudence in Sri Lanka and recommendations for the purpose of ensuring the marine environment.

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<sup>1</sup>Piyadasa, H. (2014). Marine environment protection from offshore oil and gas: activities in Sri Lanka. MASTER OF SCIENCE in MARITIME AFFAIRS (MARITIME SAFETY AND ENVIRONMENTAL ADMINISTRATION).

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<sup>2</sup>Convention On The Law Of The Sea. Article 1 (4).

<sup>3</sup>Marine environment of Sri Lanka includes the territorial waters, maritime zone, coastal zone and fore-shore.

<sup>4</sup>Marine Pollution Prevention Act No.35 of 2008. (Current act repeals the Marine pollution prevention Act No 59 of 1981 which prevailed earlier with the object of establishing the Marine Environment Protection Authority as an effective and efficient body.)

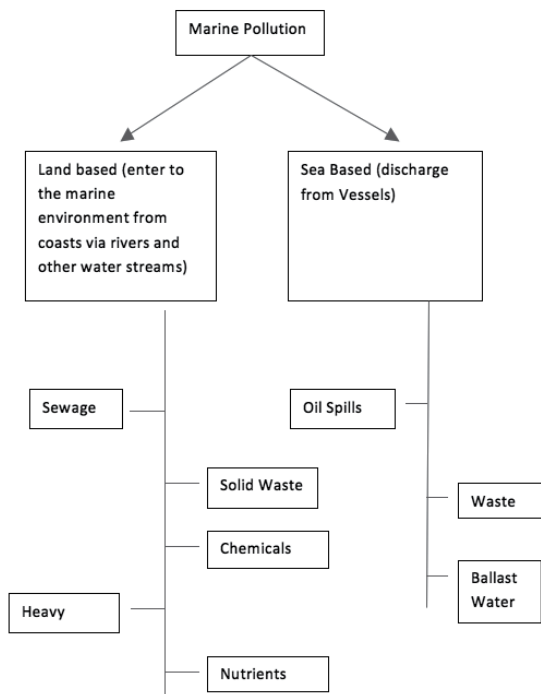


Figure 1. Factors Contributing To Marine Pollution

## II. SALIENT FEATURES OF THE MARINE POLLUTION PREVENTION ACT NO. 35 OF 2008

According to the Preamble the use of the words 'prevention' and 'control' signify that principles regarding the international environmental law<sup>3</sup> have been incorporated to the national domain. The Part I states the Establishment of the Marine Environment Pollution Authority and therefore The Minister of environment shall appoint the Board of Directors of this authority who will be made responsible for the implementation of the Act. Furthermore, the Authority has been vested with the power to take any effective action to achieve the purposes of this Act within Sri Lankan territorial jurisdiction.<sup>6</sup> According to Part II which includes the Functions of the Authority states that the Authority (under the Minister) has been given absolute discretion to enjoy and carry out the following powers and functions:

- Effectively & efficiently implement the provisions and regulations<sup>7</sup>
- Formulate & execute a scheme to prevent, reduce, control and manage pollution arising from both ship and shore based activities in territorial waters, maritime zone, fore shore and coastal zone.<sup>8</sup>
- Conduct research with both government and private agencies for the above purposes.<sup>9</sup>
- Manage, safeguard and preserve from pollution caused oil, harmful substance or any other pollutant.<sup>10</sup>
- Provide adequate and effective reception facilities for any oil or other harmful substance pollution.<sup>11</sup>
- Recommend adherence to international conventions and protocols which the government may ratify, accept, accede or approve.<sup>12</sup>
- Formulate and implement the National Oil Pollution Contingency Plan.<sup>13</sup>
- Regulate the conduct of contractors and sub-contractors conducting explorations of natural resources, including petroleum/ related activities.<sup>14</sup>
- Create awareness about marine environment preservation.<sup>15</sup>
- Do other acts which are necessary to carry out the above functions.<sup>16</sup>
- Conduct investigations to institute legal action on relevant matters.<sup>17</sup>
- Oversee sea transport of oil and bunkering.<sup>18</sup>
- Acquire, hold, take, give on lease, hire, mortgage, pledge, sell, dispose any movable or immovable property.<sup>19</sup>
- Inspect and survey any land or premises or ship<sup>20</sup> order to take necessary preventive steps<sup>21</sup> power to detain any ship<sup>22</sup> and arrest any person who violates the rules and regulations.<sup>23</sup>

According to the Part III, it establishes the Marine Environmental Council. Thus a Council is established to

<sup>7</sup> Section 6(a)

<sup>8</sup> Section 6(b)

<sup>9</sup> Section 6(c)

<sup>10</sup> Section 6(d)

<sup>11</sup> Section 6(e)

<sup>12</sup> Section 6(f)

<sup>13</sup> Section 6(g)

<sup>14</sup> Section 6(h)

<sup>15</sup> Section 6(i)

<sup>16</sup> Section 6(j)

<sup>17</sup> Section 7(b)

<sup>18</sup> Section 7(c)

<sup>19</sup> Section 7(d)

<sup>20</sup> Section 9

<sup>21</sup> Section 10

<sup>22</sup> Section 11

<sup>23</sup> Section 12

<sup>3</sup>Marine Pollution Prevention Act No.35 of 2008:The principles of 'precautionary and sustainable development Section 9

advise the authority on matters connected to the exercise, performance and discharge of powers and duties<sup>24</sup> and on any matter referred to it by the Authority.<sup>25</sup> Furthermore the Part V relates to Finance and thus the authority is required to maintain a fund to purchase equipment's to provide necessary facilities and other related activities.<sup>26</sup> Moreover the Part VI is regarding the Reception facilities and prevention measures against pollution. As precautions, the Act itself has adopted the following requirements to safeguard the marine environment and its surroundings:

- Establishment of a waste management scheme.<sup>27</sup>
- Maintenance of a record books relating to oils and pollutants.<sup>28</sup>
- Possession of equipment to prevent pollution.<sup>29</sup>

Furthermore the Part VII relates to Maritime Casualties and therefore where the pollution is caused or when there is an imminent threat of pollution, the Authority has the power to take necessary preventive measures with regard to all ships which enter the marine environment of Sri Lanka and take actions against any failure.<sup>30</sup> The Part VIII and IX include the provisions with regard to the Prevention of Pollution – Civil & Criminal Liability/ granting permits. The Act have recognized reactive methods to prevent marine pollution by imposing criminal on sea based and land based pollutants.<sup>31</sup> To comply with sustainable development and precautionary principles, authority shall grant permits for dump any oil, harmful substances or other pollutants to the marine environment of Sri Lanka.<sup>32</sup> The Part XI deals with the Miscellaneous Provisions. The Minister may make regulations for matters required by this Act without prejudice to the generality of the powers conferred to him.<sup>33</sup>

### III. CHALLENGES IN IMPLEMENTATION

#### Lack of central co-ordination

As there are several Acts and regulations relating to marine environment, there is no central data and information and

coordination system with regard to prevention of marine pollution in Sri Lanka.

#### Over-lapping mandates

Land-based sources are handled by a variety of agencies that include the CEA<sup>34</sup>, CCD<sup>35</sup> and municipal authorities. Land based activities do not fall under the purview of this act and as a consequence the MEPA does not have the legal capacity to control such activities. Sri Lanka's efforts to manage land-based pollution can hardly be considered as a success story and hence the landward side of the problem is not under proper control which can be considered as a challenge encountered in the implementation of the Marine Pollution Protection Act. Moreover, ships belonging to the Sri Lankan Navy, the Sri Lanka Army, or the Sri Lanka Air Force has been excluded from the scope of this Act and are covered by the Army Act, Navy Act and the Air Force Act respectively.<sup>36</sup>

#### No adequate human resource

"Sri Lanka experiences marine pollution originating from a variety of sources. Heavy metal pollution can be seen in certain areas, which could be due to land-based activities. Some studies also have reported heavy metal accumulation in edible species in coastal water bodies. This has been reported from the Negombo lagoon, Bolgoda Lake and in sediments of Galle harbor. Among the types of heavy metal reported were Ferrous (Fe), Zinc (Zn), Cadmium (Cd), Copper (Cu) and Lead (Pb). These pollutants have been reported in concentrations higher than permissible levels of coastal waters. Apparently, industrial (e.g. Katunayake and Ekala industrial zones) and municipal sources in surrounding areas are responsible for this situation."<sup>37</sup>

Lack of policies, resources and proper procedures

"Another problem is the invasive alien species (IAS) brought in with ballast water which is the water studies have reported 26 previously unrecorded species from the inner harbor area of Colombo, some of which are found in the ballast water of ships."<sup>38</sup> The IMO<sup>39</sup> ballast

<sup>24</sup>Section 14(3)(a)

<sup>25</sup>Section 14(3)(b)

<sup>26</sup>Section 18

<sup>27</sup>Section 21

<sup>28</sup>Section 22

<sup>29</sup>Section 23

<sup>30</sup>Section 25(2) - The penalty would be a fine not less than rupees fifteen million and not exceeding rupees thirty five million section

<sup>31</sup>Part VIII

<sup>32</sup>Sections 26,27 and 28

<sup>33</sup>Section 51

<sup>34</sup>Central Environmental Authority

<sup>35</sup>Coast Conservation Department

<sup>36</sup>Section 47

<sup>37</sup>The Island (2015). Overcoming challenges of marine pollution for healthy oceans. [online] Available at: [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=126133](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=126133) [Accessed 17 Mar. 2018].

<sup>38</sup>ibid

<sup>39</sup>International maritime organization

water management (BWM) Convention contains an environmentally protective numeric standard for the treatment of ship's ballast water before it is discharged. The BWM Convention also contains an implementation schedule for the installation of IMO member. The BWM Convention entered into force on September 8, 2017.<sup>40</sup> Until then ballast water was released without any treatments and imposing restrictions through local environmental legislation will hamper the cooperative nature of international trade activities.

Furthermore, Sri Lanka has just begun oil explorations in off-shore areas that can also create marine pollution, especially in the Mannar basin. Sri Lanka is a developing country which is on a journey to achieve many goals with respect to economy. In this regard construction of ports and the movement of ships for commercial purposes and mining of natural resources are of immense importance, even though imposing penalties and introducing regulations are necessary considering the protection of the coastal and marine areas of the country, a balance should be struck between such concerns and economic goals.

Moreover, large scale poaching in Sri Lankan waters by Indian fishermen has become a daily occurrence, where the fishermen use harmful bottom trawling methods banned in Sri Lanka, causing severe damages to the marine environment. However, like many environmental problems, marine pollution also cannot be solved by efforts taken by a single line, single agency or a ministry.<sup>41</sup>

#### IV. CRITICAL ANALYSIS ON CONTRIBUTION TO THE ENVIRONMENTAL JURISPRUDENCE IN SRI LANKA

The Sri Lankan Act of Marine pollution prevention is based on the precious International environmental principles such as precautionary principle and sustainable development. Since this is the new act enacted in the year 2008 after repealing the marine pollution prevention act of 1981, it strives to ensure the quality of environment while

focusing on economic and social development goals in more effective way.

Marine pollution occurs in two ways; land based and marine base. The main contributors to prevent, control and reduce marine pollution in both ways. Furthermore entrusting power to authority to make schemes and plans to achieve the objectives of the Act resulted in many effective schemes and plans such as National oil Spill contingency plan<sup>42</sup> contributed to strengthen the legal framework of Sri Lanka. However, due to the overlapping mandates among different authorities<sup>43</sup> has made it difficult to take straight actions regarding prevention of marine pollution. Therefore it may take considerable time and cost in implementing powers and functions vested to authority.

It is not a possible to eradicate marine pollution completely. But to mitigate the pollution, Authority is granting permits to dump any oil harmful substances or other pollutant in to the territorial waters of Sri Lanka with conditions.<sup>44</sup> In this way they attempt to ensure the protection of marine environment in an effective way for the future generation of Sri Lanka. This can be seen as a commendable contribution towards the Sri Lankan environmental jurisprudence by neutralizing it with international environmental principles such as sustainable development, precautionary principle, intergenerational equity and intra generational equity.

According to the Act Minister of Environment has discretionary powers to implement rules and regulations to prevent marine pollution, but it doesn't guarantee that person is of the Knowledge and capacity in the relevant subject. So it may result in lack of proper rules and regulations regarding the subject in parallel to the contemporary technologies.<sup>45</sup> This can be seen as a barrier for the development of environment law jurisprudence in Sri Lanka.

Making people aware about the value of marine environment, its pollution and steps to prevent, control

<sup>40</sup> Worldshipping.org. (2018). Ballast Water | World Shipping Council. [online] Available at: <http://www.worldshipping.org/industry-issues/environment/vessel-discharges/ballast-water> [Accessed 12 Mar. 2018].

<sup>41</sup> The Island (2015). Overcoming challenges of marine pollution for healthy oceans. [online] Available at: [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=126133](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=126133) [Accessed 17 Mar. 2018].

<sup>42</sup>The Island (2015). Overcoming challenges of marine pollution for healthy oceans. [online] Available at: [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=126133](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=126133) [Accessed 17 Mar. 2018].

<sup>43</sup>Such as (1)The Coast Conservation and Coastal Resources Management Department(2) Sri Lanka Coast Guard (3)The Department of Wildlife Conservation (4)The Department of Fisheries and Aquatic Resources (5)The Forest Department

<sup>44</sup>Section 24  
<sup>45</sup>Piyadasa, H. (2014). Marine environment protection from offshore oil and gas: activities in Sri Lanka. MASTER OF SCIENCE in MARITIME AFFAIRS (MARITIME SAFETY AND ENVIRONMENTAL ADMINISTRATION) :Currently Sri Lanka is lacking of an effective institution to monitor activities in marine environment of Sri Lanka - HTNI Piyadasa

and reduce the pollution, is one of the main contribution undertaken by this Act to maintain the certainty and quality of environmental law.

## V. RECOMMENDATIONS

### ‘The solution to pollution is dilution’

It is evident that there is no single obvious solution to eliminate pollution completely and at the same time comply with the country's economic goals and thus, a balance should be drawn between these conflicting interests. We suggest the following recommendations to enhance the effectiveness and efficiency of the current legal framework on prevention of marine pollution in Sri Lanka.

- There should be a co-ordination in between the powers, functions and regulations regarding the prevention of the marine pollution. It will be helpful to reduce the overlapping between the institutions.
- As the marine protection authority, it is the primary institution that is responsible for achieving objectives under the act; there should be established criteria for appointing persons who have knowledge on the relevant subjects and capacity to exercise powers under the act as board of directors.
- Minimizing the discretionary power given to the authority under s.7 when exercising its functions which may lead to abuse of power, by establishing criteria<sup>46</sup> under which circumstances such powers can be exercised.
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- Establishing a prompt mechanism to report, incidents of oil spills and other marine pollution activities will be a rapid, clear and correct way to take preventive action to the success of protecting marine environment.

## VI. CONCLUSION

The pollution of the waters in the seas directly affects the lives of the sea species as well as lives of the human health and resources indirectly. By glancing through the facts above it can be seen that the government of Sri Lanka has involved reducing the menace by implementing

Marine Pollution Act No.35 of 2008 together with Marine Environment Protection Authority, ratifying international conventions as MARPOL etc. Nonetheless evidence shows that these methods have failed in addressing the issue, the law with regard to this hypothesis should be broadened while giving practical problems a reliable solution.

## References

- i.Mepa.gov.lk. (2018). [online] Available at: <http://www.mepa.gov.lk/web/images/pdf/noscop/noscop.pdf> [Accessed 20 Mar. 2018].
- ii.Worldshipping.org. (2018). Ballast Water | World Shipping Council. [online] Available at: <http://www.worldshipping.org/industry-issues/environment/vessel-discharges/ballast-water> [Accessed 12 Mar. 2018].
- iii.Convention On The Law Of The Sea.Article 1 (4).
- iv.Marine Pollution Act No.14 of 1971 of New Zealand.6,7,8.
- v.Marine Pollution Prevention Act No.35 of 2008.
- vi.Piyadasa, H. (2014). Marine environment protection from offshore oil and gas : activities in Sri Lanka. MASTER OF SCIENCE In MARITIME AFFAIRS (MARITIME SAFETY AND ENVIRONMENTAL ADMINISTRATION).
- vii.Senaratne, A. (2015). Overcoming challenges of marine pollution for healthy oceans. [online] Ft.lk. Available at: <http://www.ft.lk/article/430261/Overcoming-challenges-of-marine-pollution-for-healthy-oceans> [Accessed 20 Mar. 2018].

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<sup>46</sup>Marine Pollution Act No.14 of 1971 of New Zealand.6,7,8.