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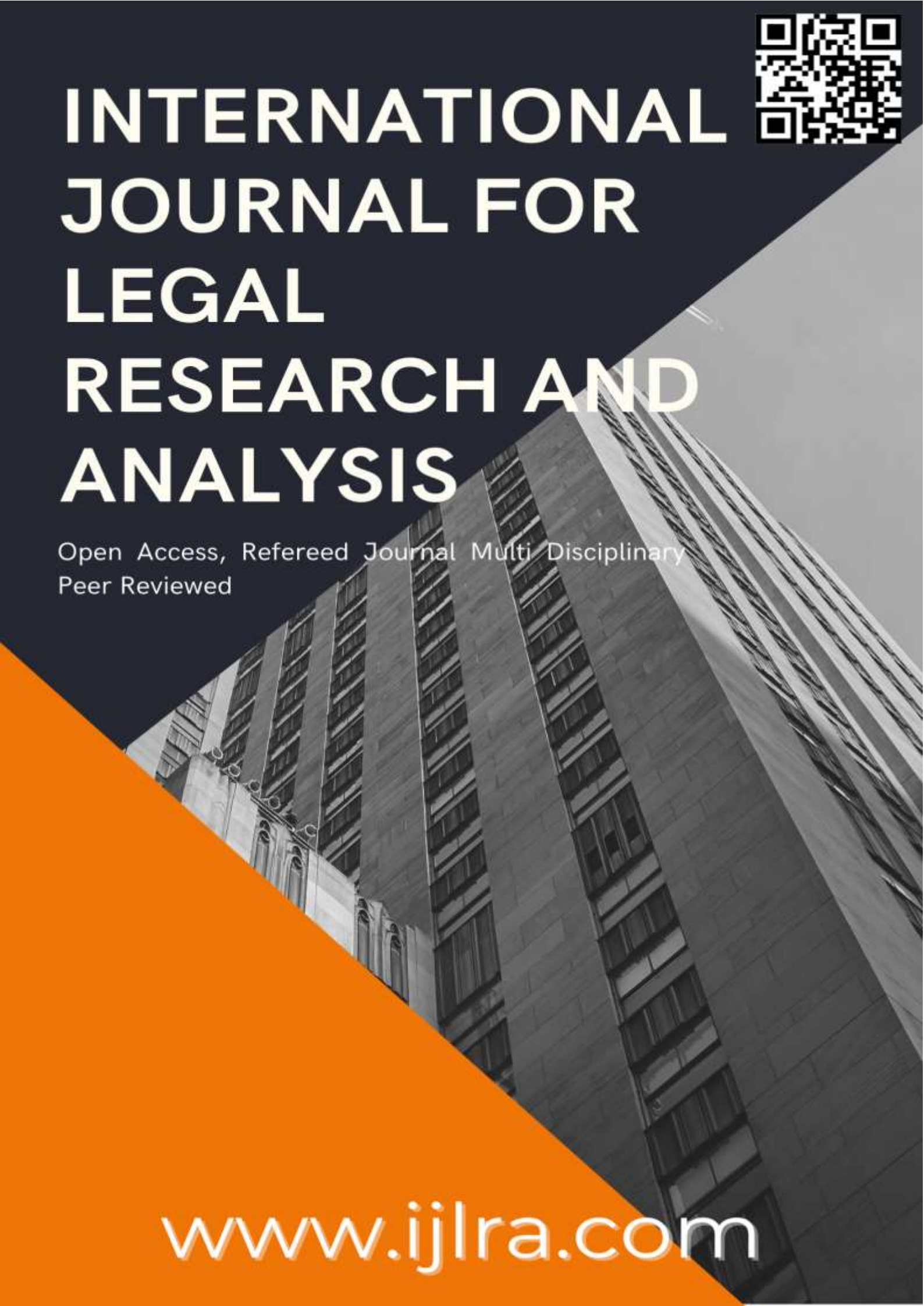

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 ISSN: 2582-6433

DEVELOPMENT OF LAWS RELATING TO MARINE INSURANCE IN INDIA

AUTHORED BY - RESHMI NAIR

Introduction

Marine insurance is an essential component of international trade, providing a safety net for enterprises that carry products over the oceans. Its origins may be traced back to ancient civilisations, where traders faced tremendous hazards when carrying their goods. The importance of marine insurance has expanded in tandem with the expansion of global trade, necessitating the creation of regulatory frameworks to govern it. This study dives into the rich history of maritime insurance, from its earliest manifestations to the formulation of regulations in the twentieth century, eventually emphasising the importance of marine insurance in contemporary business. Marine insurance in India originated from ancient risk-sharing procedures among merchants and traders. Merchants involved in marine commerce in ancient India devised informal systems to limit the dangers of piracy, natural disasters, and shipwrecks. These activities paved the way for the formalization of maritime insurance in later generations. However, contemporary maritime insurance's foundations were laid during the colonial era. British colonial control brought extensive legal frameworks that revolutionized India's maritime trade and insurance practices, eventually leading to the passage of important marine insurance legislation.

The Marine Insurance Act of 1963 is the foundation of marine insurance law in India, codifying the concepts of marine insurance and establishing a legal framework for its implementation. This Act was influenced by the United Kingdom's Marine Insurance Act of 1906, reflecting the two countries' long-standing maritime legal relationship. It sought to modernize and consolidate existing maritime insurance regulations, addressing issues such as the rights and responsibilities of parties involved, the scope of coverage, and legal redress in the case of a disagreement. Despite its inception, the Act has experienced challenges and critiques throughout the years, demanding a further review of its relevance and efficacy in today's changing business climate.

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In addition to the statutory framework, various variables influence the marine insurance environment in India, including international conventions, judicial interpretations, and the maritime industry's changing demands. As India's economy grows and worldwide trade rises, maritime insurance becomes increasingly important. However, the industry faces a number of obstacles, including regulatory ambiguity, uneven enforcement, and the need for increased stakeholder participation. These problems underscore the need for a full review of marine insurance regulations in India, with the goal of finding gaps and suggesting modifications that are consistent with current practices and international norms.

Aim

1. The purpose of this research is to examine the historical evolution of marine insurance, from ancient maritime practices influenced by Rhodian and Roman laws to the codification of modern marine insurance law, specifically the UK Marine Insurance Act of 1906. The research also tries to understand how marine insurance law ideas have influenced international trade and risk management, hence contributing to current maritime legal frameworks.
2. Analyse the legislative framework and its practical implications.
   A major goal is to examine the current legal framework governing maritime insurance in India, with an emphasis on the maritime Insurance Act of 1963 and other pertinent statutes. This review will contain an in-depth discussion of the Act's contents, scope, and underlying legal concepts. Furthermore, the research will analyse how well these regulations manage the complexities and issues that players in the marine industry confront today. This aim will provide light on the legal framework's practical ramifications and compliance with worldwide best practices.

Objectives

1) To Investigate Historical Context: Investigate the historical evolution of maritime insurance legislation in India, from ancient practices to modern rules.
2) To Analyze Legislative Framework: To examine the existing legislative framework regulating marine insurance in India, especially the Marine Insurance Act of 1963, and its implications for the business.

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Ancient Origins of Marine Insurance

The first known type of marine insurance dates back to around 3000 BC, when Chinese merchants participated in maritime commerce. These merchants were aware of the hazards connected with moving goods across water, so they distributed their cargo among many vessels. By distributing their cargo across numerous ships, they considerably decreased the possibility of catastrophic losses, demonstrating a basic risk management theory that supports contemporary insurance procedure. Bottomry, an early type of marine insurance, was a contract in which a shipowner secured a loan against the value of his ship or cargo. If the ship or cargo were lost during the journey, the borrower was released from the responsibility to return the loan. This arrangement provided traders with financial security against the dangers of maritime trade, allowing them to cross the hazardous waterways of the ancient world without continual dread of financial disaster.

Rhodian Laws

The notion of general average was developed approximately 916 BC by the Rhodians, a seafaring civilisation noted for their superior maritime rules. The general rule was that if a merchant's goods was jettisoned to keep the ship from sinking, all other merchants on board would pay to compensate the aggrieved party. This notion developed a framework of communal responsibility among merchants, encouraging collaboration and mutual aid during risky trips. The Rhodian Law established the foundations that underpin contemporary maritime insurance processes, including risk assessment, responsibility, and loss-sharing[1].

The notion of general average was developed approximately 916 BC by the Rhodians, a seafaring civilisation noted for their superior maritime rules. The general rule was that if a merchant's goods was jettisoned to keep the ship from sinking, all other merchants on board would pay to compensate the aggrieved party. This notion provided a foundation for merchants' common duty, encouraging collaboration and mutual support during risky trips.

The Lex Rhodia, as it is frequently known as, was integrated into succeeding legal codes, such as Justinian's Code and Europe's Maritime Codes throughout the Middle Ages. It inspired a number of national legislation and practices, notably the English Marine Insurance Act of 1906. The Rhodian Laws emphasised fair allocation of losses and obligations. In addition to the

[1] Edwin Welling Cady, *Cases on the Law of Insurance* (Brooklyn, New York: s.n. 1925

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general average concept, these regulations paved the way for various nautical norms that governed the allocation of losses sustained during voyages, piracy, or other sea perils[2].

The Rhodian Laws were eventually absorbed and integrated into Roman law, notably the Digest of Justinian, which formalised many of these concepts. The Roman Emperor Justinian (527-565 AD) included Rhodian ideals into his legal reforms since they were practical and widely accepted in Mediterranean trade[3]. Over time, these rules had an impact on European maritime law and the formation of contemporary marine and insurance legislation.

Roman Laws

One of Roman law's most significant contributions to marine activity was the integration of the Rhodian Laws into Roman legal processes. The Romans saw the practicality of the general average concept (where losses were shared among cargo owners) and incorporated it into their legal system. This notion was included into the Corpus Juris Civilis, namely the Digest of Justinian, a significant compendium of Roman law. When commodities were discarded to save a ship in peril, the Romans followed the idea that "the loss is to be shared by all parties involved".

Roman law allowed for a range of contracts that were necessary for sea commerce. These comprised contracts for transporting products, loans for marine undertakings (known as foenus nauticum), and agreements for ship building or maintenance. One important element was the nauticum fenus, or bottomry contract, which allowed a shipowner to borrow money for a voyage but only repay the lender if the ship successfully completed the journey. This was a method of risk sharing between merchants and financiers.

Roman law made the shipowner and captain responsible for ensuring the safety of the cargo and crew. If any negligence or failure in duty resulted in loss or damage, they could be held liable. However, if the loss occurred due to natural forces or unavoidable events (such as storms or pirate attacks), they were not held accountable.

[2] Development Of Laws Relating To Marine Insurance In India Prashanti Upadhyay, Published in Articles section of www.manupatra.com
[3] Robert D. Benedict, 'Historical Position of the Rhodian Law' (1908-1909) 18 Yale Law Journal 223.
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Under Roman law, the shipowner and captain were responsible for the cargo and crew's safety. They might be held accountable if they were negligent or failed to perform their duties, causing loss or harm. However, if the loss was caused by natural forces or unavoidable circumstances (such as storms or pirate raids), they were not held responsible.

The Roman Empire faced considerable challenges from pirates in the Mediterranean. Piracy was addressed under Roman maritime law, including the punishment of pirates and the payment of compensation to merchants for damages incurred as a result of pirate assaults. Roman naval forces were also sent to safeguard trade routes.

Although Roman law did not include formal marine insurance as we know it today, the ideas of risk sharing in nautical undertakings were obvious in ancient legal procedures, notably through bottomry and respondentia agreements. These contracts assisted merchants and shipowners in protecting their financial interests during perilous sea trips, establishing the framework for contemporary marine insurance[4].

Roman marine law served as the foundation for the development of European maritime law during the Middle Ages and beyond. The Justinian Code (or Corpus Juris Civilis), written during Emperor Justinian's reign in the sixth century AD, became the fundamental source of Roman legal thinking, incorporating maritime law concepts that affected legal systems throughout Europe. These concepts have persisted and evolved into the admiralty and marine regulations that control international commerce today

The Mediterranean.

During the Middle Ages, Italian city-states became important economic and commerce hubs due to increased marine trade. The insurance sector thrived at these ports, leading to the emergence of products like "bottomry" and "respondentia". Bottomry permitted ship owners to borrow money using the ship as collateral, while respondentia covered the cargo occasionally the ship. These contracts were antecedents of the modern marine Insurance policies. Furthermore, this was one of the important times in time. Insurance coverage was droughted to safeguard the ship itself, from construction on up[5]. Until its adventures at sea. Due to the

[4] *The Law of Tolls and Exemptions to Dissenters* (1852) 17 Law Magazine and Quarterly Review of Jurisprudence n.s. 231.
[5] Supra 2

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characteristics of each Italian city, those participating purely in Commerce and others concentrating on shipbuilding- maritime insurance followed following, and we can notice a specialisation of insurance itself.

to goods or ships.

In the absence of a way to prove otherwise, the earliest mention of an insurance policy is found in a Florentine Ordinance of 1523, the purpose of which was to insure goods in transit at sea against risks such as fire, falling or being thrown overboard, the dangers associated with marine navigation as well as other "unimaginable" dangers.

Thus, it can be observed that the phenomena that traders wanted to protect themselves does not differ fundamentally from the current situation, with the amendment that the insurable risks have multiplied and the policies have followed their course. At the same time, a fundamental difference that can be identified today is that the existence of policies with unlimited coverage ("unimaginable") are almost non-existent in modern trade, given the natural profit orientation of all insurers.

The name insurance is of Italian origin, and the word policy comes from the word. "polizza" which referred to a promise or commitment.10 The transition of maritime insurance from Italy11 to the United Kingdom, where the phenomenon had gained momentum and made London the centre of modern maritime insurance until present time, has been achieved through the Lombards. In an effort to escape the war in Italy, they took refuge in other states, taking with them the practices established in their motherland.

Marine Insurance in Ancient India

India’s geographic location made it a hub for maritime trade from ancient times. The extensive coastline along the Indian subcontinent, particularly along Gujarat, Kerala, Tamil Nadu, and Bengal, facilitated vibrant trade routes connecting India with East Africa, the Middle East, Southeast Asia, and the Far East. Ports such as Lothal (in present-day Gujarat), Muziris (in Kerala), and Tamralipti (in Bengal) were significant centres of maritime commerce. Indian traders exported spices, textiles, jewels, and other things and imported luxury items like as gold, silver, and silk. However, the risky nature of maritime trips, caused by storms, shipwrecks, and piracy, prompted the creation of risk management measures, such as proto-insurance systems. Although ancient India lacked a formal insurance system in the modern

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sense, it did have some habits and concepts that were quite similar to insurance practices today. These informal arrangements enabled merchants to secure their assets, frequently through community-based risk sharing, a forerunner to risk pools. Merchants and traders would frequently form guilds to provide mutual support in the event of loss or damage

The *Arthashastra* (circa 4th century BCE)

It is among India's first known treatises on statecraft, economics, and trading customs. The treatise, written by Kautilya, Emperor Chandragupta Maurya's counsellor, discusses a variety of issues, including taxes, government, and trade.

While the Arthashastra makes no specific mention of marine insurance, it does examine maritime trade, the hazards involved, and the state's role in regulating trade and commerce. Kautilya saw the necessity of protecting merchants and their commodities, proposing official action to combat piracy and preserve peace and order along trade routes[6]. Furthermore, the language mentions compensation for damages incurred by accidents or disasters, but does not go into detail on how this compensation works.

The Manusmriti (about 2nd century BCE to 3rd century CE), one of the oldest Hindu law writings, also discusses loss and compensation in business. It outlines the obligations of merchants, traders, and shipowners, stressing fairness and accountability in commercial transactions. Although the Manusmriti does not establish a marine insurance system, it underlines the need of justice in resolving disputes over commercial losses, particularly those generated by maritime risks[7].

The entry of European colonial powers, particularly the Portuguese in the 16th century and subsequently the British in the 17th and 18th centuries, signalled the start of more formalised insurance practices in India. The British East India Company, in particular, played an important role in establishing maritime insurance in India. British traders and firms carried with them the maritime insurance methods that had previously established in London, such as Lloyd's of London's underwriting systems.

During the colonial period, India's maritime trade developed dramatically, and marine

[6] Ioana Roxana Oltean, 'An Introduction to Marine Insurance History' (2024) 34 *AUBD*.
[7] Martin Davies, 'Marine Insurance: A Legal History' (2022) 52 *Journal of Maritime Law and Commerce* 75.

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insurance became more formalised due to British influence. The British colonial government implemented regulatory frameworks to control maritime insurance, culminating in the maritime Insurance Act of 1906 in the United Kingdom, which had ramifications for marine insurance operations throughout India.

THE MARINE INSURANCE LEGISLATIVE HISTORY OF GREAT BRITAIN

Marine insurance has played an important role in the growth of British maritime commerce since the mediaeval period. The legislative history of marine insurance in the United Kingdom is distinguished by the growth of legal frameworks designed to control and formalise a sector critical to global trade and colonial expansion[8]. Over decades, Britain evolved complex maritime insurance regulations, beginning with customary practices and progressing through substantial formal codifications, culminating in the monumental Marine Insurance Act of 1906. This Act remains the foundation of maritime insurance law not just in the United Kingdom, but also in many Commonwealth nations, including India.

1. Early origins and customary practices

   Marine insurance in Britain dates back to the mediaeval period, when marine trade between British merchants and Mediterranean countries thrived. During the 12th and 13th centuries, Italian merchants, notably those from the maritime republics of Genoa, Venice, and Pisa, brought marine insurance principles to British commerce. At the time, freight insurance arrangements were informal and mostly relied on custom. London, a major commercial centre, began to embrace these traditions.

   Marine insurance had been more formalised by the 16th century, with the first recorded policy issued in London in 1574. This time witnessed the emergence of organised marine insurance procedures, which were critical for controlling the risks connected with international trade and exploration. As British maritime power grew, marine insurance became critical for shipowners, merchants, and traders.

2. Regulation and Legal Precedents during the 18th and 19th centuries

   As the maritime insurance sector expanded, it became apparent that legal clarity and regulation were required to resolve conflicts between insurers and covered parties.

[8] Robert Merkin, *Marine Insurance Legislation* (5th edn, Informa Law from Routledge 2014).

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Early maritime insurance issues were addressed in common law courts, which frequently relied on equity and contract law concepts to determine the decision.

Carter v. Boehm (1766) was a landmark decision in which Lord Mansfield, England's Chief Justice, established the notion of greatest good faith. This case established that both the insurer and the insured must disclose any important information that may impact the risk being insured. This idea became a cornerstone of maritime insurance law and still governs insurance contracts till this day[9].

The Marine Insurance Act of 1906 The most important legislative development in British marine insurance history was the passage of the Marine Insurance Act of 1906. Drafted by Sir Mackenzie Chalmers, this Act was an effort to codify and consolidate the existing case law and statutory principles governing marine insurance. The Act was based on centuries of legal precedent, as well as customs developed by Lloyd's of London and other major players in the insurance industry.

One notable change occurred in 2015, with the passing of the Insurance Act 2015, which modifies insurance legislation in general, including marine insurance. The 2015 Act made many significant amendments, including:

A obligation on the insured to give a "fair presentation" of the risk, rather than the harsher standards of greatest good faith.

Provisions allowing insurers to decrease claims proportionally if non-disclosure or misrepresentation is uncovered, rather than cancelling the insurance completely. Changes to warranty regulations to make them less onerous for covered parties.

THE MARINE INSURANCE LEGISLATIVE HISTORY OF INDIA

The Colonial Era: Development of Marine Insurance in India

During India's colonial history, which lasted over two centuries, professional maritime insurance processes were introduced and established. The British, motivated by the need to safeguard their growing maritime trading interests, established legislative structures and institutions that affected the evolution of marine insurance in India. The marine insurance system was established to protect ships and cargo from the numerous dangers connected with sea voyages. It was primarily based on British legal precedents and business practices

[9] Derar Al-Daboubi, 'Right of Maritime Carrier to Exercise a Lien on Cargo to Secure the Right of Freight' (2022) 52 *Journal of Maritime Law and Commerce* 59.

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Establishment of British Trade in India

The British East India Company, founded in 1600, played a critical role in the expansion of maritime trade between India and Europe. By the 17th century, India was an important element of the global trade network, exporting spices, textiles, and precious stones to Europe, Africa, and Southeast Asia. To safeguard their interests, British traders employed marine insurance techniques that were common in England to cover the dangers of sea trips such as shipwrecks, piracy, and other maritime disaster.

The British brought with them the notion of maritime insurance, which was already well-established in England thanks to organisations like as Lloyd's of London, created in the late 17th century. Lloyd's played an important role in providing marine insurance coverage for ships travelling to and from Indian ports. British marine insurance firms gradually established offices in key Indian port towns such as Calcutta (now Kolkata), Bombay (now Mumbai), and Madras (now Chennai) to meet the rising demand for marine insurance.

Introduction of British Legal Principles in Marine Insurance

During the colonial period, British legal concepts and precedents influenced maritime insurance legislation in India. The British established a formal legal framework for maritime insurance, based on common law ideas developed over centuries in England.

- Several major legal principles served as the cornerstone of British maritime insurance law:
    1. Utmost Good Faith (Uberrimae Fidei): In a maritime insurance contract, both parties—the insurer and the insured—were obligated to act in good faith by reporting any significant information that may affect the insurance contract.
    2. Insurable Interest: The insured party must establish a genuine interest in the subject matter of the insurance, which is often the ship or cargo.
    3. Marine insurance contracts were indemnity agreements, which meant that the insurer would only reimburse the insured for real losses suffered.
    4. Perils of the Sea: Marine insurance policies covered a variety of risks known as "perils of the sea," which included shipwrecks, piracy, storms, and other maritime disasters.

The Marine Insurance Act of 1906 and its Extension to India

The Marine Insurance Act of 1906, introduced in British India, was the most significant

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legislative accomplishment during the colonial era. Sir Mackenzie Chalmers draughted this Act, which formalised the principles of maritime insurance that had evolved over centuries of British legal practice. The Act established a thorough legislative framework for maritime insurance and was regarded the most authoritative statement on the subject at the time.

The Effect of Colonial Legislation on Indian Marine Insurance

The adoption of British marine insurance legislation and practices during the colonial period had a long-term influence on the growth of marine insurance in India. The legal foundations established by the Marine Insurance Act of 1906 had a long-lasting impact on Indian marine insurance law. Even after India got independence in 1947, the Marine Insurance Act of 1906 remained in effect until superseded by the Indian Marine Insurance Act of 1963.

Colonial regulations gave Indian enterprises access to contemporary marine insurance products, allowing them to secure their investments in the maritime industry. However, British enterprises dominated the maritime insurance sector in colonial India, with Indian corporations playing a secondary role[10]. Only after independence, and particularly after the nationalisation of the insurance sector in 1972, did Indian corporations begin to dominate the maritime insurance market.

Current Legislative Framework for Marine Insurance in India

India's marine insurance business is managed by a well-defined legal framework that establishes clear standards for the rights, obligations, and liabilities of parties participating in marine insurance contracts. The maritime Insurance Act of 1963, which is based largely on the British Marine Insurance Act of 1906, is the primary piece of legislation governing maritime insurance in India. Since independence, India's legal system has developed to incorporate modern ideas that handle the changing dynamics of marine trade and insurance.

Marine Insurance Act of 1963

The Marine Insurance Act of 1963 is the foundation of marine insurance legislation in India. It codifies the principles of maritime insurance contracts, defines the duties of insurers and insured parties, and establishes the dispute resolution mechanism. The Act superseded the British Marine Insurance Act of 1906 and is the fundamental regulation controlling marine

[10] S. Chandrasekhar, 'Marine Insurance and Shipping Law in India: Legislative and Judicial Perspectives' (2015) 8 *Indian Journal of Law & Maritime Commerce* 15.

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insurance contracts in India[11].

The Marine Insurance Act of 1963 has many key sections, including:

1. Definition of Marine Insurance: The Act defines marine insurance as a contract where the insurer undertakes to indemnify the insured against losses incurred in relation to marine adventure, including the transportation of goods by sea, damage to vessels, and liabilities arising from maritime perils.
2. **Insurable Interest**: The Act emphasizes the principle of "insurable interest," meaning the insured must have a legal interest in the subject matter (ship or cargo) at risk. This prevents speculative insurance and ensures that only those with a legitimate interest can take out insurance policies.
3. Utmost Good Faith (Uberrimae Fidei): Marine insurance contracts are founded on the premise of utmost good faith. Both the insurer and the insured must fully disclose any important information that may alter the risk covered. Any non-disclosure or distortion of information may result in the contract being invalid.
4. Perils of the Sea: The Act defines "perils of the sea" as the major hazards covered by marine insurance policies. These include natural disasters like storms, shipwrecks, and accidents, as well as human-caused dangers like piracy, theft, and barratry.
5. Indemnity: Marine insurance contracts are indemnity contracts, which indicate that the insurer will only reimburse the insured for real losses. The insured cannot benefit from a claim, and reimbursement is restricted to the amount of insurable interest at risk.
6. Warranties: The Act allows for both express and implicit warranties in marine insurance contracts. Express guarantees are clearly specified in the policy, whereas implied promises, such as the vessel's seaworthiness, are automatically assumed and must be met by the insured.
7. Types of Loss: The Act distinguishes between "total loss" and "partial loss." Total loss happens when the insured item is fully destroyed or irreparably damaged. Partial loss refers to instances in which the insured item is damaged but not destroyed.
8. Claims and Settlement: The Act establishes standards for the claims and settlement procedures. It describes the duties of both the insurer and the insured in the case of a loss and provides deadlines for reporting claims, producing proof of damage, and paying payments.

[11] B.C. Mitra, *The Law Relating to Marine Insurance* (2nd edn, Eastern Law House 2011).

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Insurance Act of 1938 (Amendment)

In addition to the Marine Insurance Act of 1963, marine insurance in India is governed by the Insurance Act of 1938, which covers all forms of insurance, including marine insurance. This Act establishes an overarching regulatory framework for the operation of insurance businesses in India.

The Insurance Regulatory and Development Authority of India (IRDAI), founded under the Insurance Regulatory and Development Authority Act of 1999, regulates the operations of insurance firms and ensures compliance with the Insurance Act of 1938. The IRDAI supervises the marine insurance industry, establishes standards for licensing, capital sufficiency, and solvency margins, and defends policyholder interests

Types of Marine Insurance in India

India's regulatory framework provides a variety of marine insurance plans to meet the needs of diverse segments of the maritime industry[12]. The most prevalent forms of marine insurance are:

1. Hull insurance covers physical damage to a ship or vessel. Shipowners usually get hull insurance coverage to safeguard their boats against dangers such as accident, fire, or sinking.
2. Cargo insurance covers the items being carried by sea. Importers, exporters, and freight forwarders typically obtain cargo insurance to safeguard their goods from dangers during transportation.
3. Freight Insurance: Covers the freight expenses that may be lost if the products are damaged or lost during shipment. Freight insurance protects the shipper or freight forwarder.
4. Liability insurance protects the shipowner from legal responsibilities to other parties, such as injury to crew members or passengers, damage to other boats or cargo, or environmental contamination.

CONCLUSION

The evolution of marine insurance law in India is strongly steeped in the history of maritime commerce, beginning with ancient customs and progressing through the colonial era before being impacted by British laws. The maritime Insurance Act of 1963, modelled after the UK's

[12] Marine Insurance Act 1963 (India).

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Marine Insurance Act of 1906, is the foundation of India's legislative framework for maritime insurance, containing critical elements such as greatest good faith, insurable interest, and indemnification. This Act, reinforced by the Insurance Act of 1938 and governed by the IRDAI, assures that India's marine insurance market is transparent, fair, and in compliance with international standards. India's marine sector has developed dramatically in response to the changing global trade environment, with recent developments focussing on digital transformation, improved risk management, and sustainability. The congruence with international agreements such as the Hague-Visby Rules and IMO agreements assures India's continued connection to global maritime norms, protecting its interests in an increasingly linked world.

To summarize, India's marine insurance regulations, while entrenched in colonial traditions, have been modernized to meet the demands of a developing and complicated global trading scenario. The strong regulatory structure, together with increasing technology developments and environmental concerns, positioned India well to manage the maritime insurance industry's problems and possibilities, assuring resilience and adaptation in the face of future uncertainty.