



CHALLENGES IN CONTEMPORARY MARINE INSURANCE LAW

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ABSTRACT

Marine insurance is the oldest form of Insurance, which was seen in England, and it was believed to have been imported from the cities of Northern Italy, where it was believed to have begun around the 12th century. Schemes similar to marine insurance were also seen during the Aryan period. The major legislation governing marine insurance in India was developed from the English Marine Insurance Act of 1906, which is not sufficient to meet the modern-day challenges like environmental risk, cyber-attacks, piracy, climate risk, geopolitical issues, etc. Moreover, challenges also persist in enforcement, regulation inefficiencies, and interpretation ambiguities of the marine insurance laws. Legal issues like fraud, misrepresentation, subrogation complexities, jurisdictional issues, along with issues relating to compliance with the international framework are require addressing with necessary reforms in the marine insurance law. This paper examines the legal issues and gaps in the marine insurance law in India and suggests necessary regulatory and legislative reforms.

Keywords: Marine Insurance, Fraud, Misrepresentation, Cyber-attacks, Digital Technologies.

INTRODUCTION

With more than 80% of global merchandise commerce by volume being transported by water, maritime transportation is the foundation of international trade in the context of globalisation. There are risks associated with the "perils of the sea" during maritime transportation. Marine insurance serves as a tool to mitigate the possibility of monetary damage to assets like ships, cargo, or other movables during maritime transportation. Therefore, insurance plays a crucial role in international trade and is a prerequisite for conducting business internationally. Its goal is to allow ship owners, buyers, and sellers to continue running their enterprises while, to some

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extent, releasing them from the crippling financial burden of their property being lost or damaged due to different high-seas hazards.¹

The main piece of legislation governing marine insurance contracts in India is the Marine Insurance Act, 1963. But the Act, which was mostly modelled after the English Marine Insurance Act of 1906, has not changed much, leaving substantial gaps in its ability to meet contemporary risks like piracy, cyber threats, and climate-related hazards.²

The legal concerns pertaining to maritime insurance in India are examined in this paper, including regulatory inefficiencies, legislative provision ambiguities, and breaches of the highest good faith. It analyses the role of the Insurance Regulatory and Development Authority of India (IRDAI) in regulating the industry and critically looks at the difficulties presented by new risks, technological developments, and environmental shifts. Legislative reforms and conformity to international treaties like the York-Antwerp Rules are necessary, according to a comparison with international best practices.

The paper concludes with recommendations for legislative and policy reforms, including strengthening regulatory oversight, adopting digital technologies, and accounting for modern risks, which will strengthen India's marine insurance laws to deal with global competitiveness.

HISTORY AND EVOLUTION OF MARINE INSURANCE IN INDIA

The British East India Company introduced marine insurance practices in India in the 17th and 18th centuries. British insurance firms controlled the marine insurance market in India during the colonial era. These firms provided insurance to Indian traders and ship owners, but the coverage was restricted and the premiums were expensive. To safeguard their holdings, many Indian businessmen and ship owners turned to unofficial insurance programs like mutual insurance organisations.

The emergence of the first Indian marine insurance companies in the 19th century, such as the Oriental Insurance Company in 1818, was a significant landmark, beginning of the indigenous marine insurance sector. The government of India took action to encourage the expansion of the domestic insurance sector, notably Marine Cargo Insurance, following the country's

¹ Legal Aspects of Marine Insurance in India, <https://www.lawteacher.net/free-law-essays/commercial-law/legal-aspects-of-marine-insurance-law-essays.php>, accessed on 11th January, 2025

² Shivam Kumar Panday, "A Thorough Analysis of the Issues and Solutions Facing Marine Security and Marine Insurance Laws in The Twenty-First Century" 10(1) Journal of Survey in Fisheries Sciences 3088- 3094 (2023)

independence in 1947. The government created the General Insurance Corporation of India (GIC) in 1972 to oversee the non-life insurance sector, which includes marine insurance, and the Life Insurance Corporation of India in 1956 to oversee the life insurance sector.

After Indian independence in 1947, there was a growing need to have a distinct legal structure for marine insurance, separate from the British model. The Indian government enacted the Marine Insurance Act, 1963, based largely on the UK Marine Insurance Act of 1906 but adapted to Indian requirements. The purpose of the Marine Insurance Act of 1963 is to control the transactions of hull, cargo, and freight marine insurance enterprises.³ The liberalisation of the Indian insurance sector in the 1990s allowed private and foreign players into the market, boosting competition and innovation in marine insurance.

LEGAL FRAMEWORK GOVERNING MARINE INSURANCE IN INDIA

India has been an important and significant contributor to the vast international trade network that has grown over centuries, dating back to the pre-colonial period. Because of its exceptional cost-effectiveness, maritime transport has emerged as the preferred mode of global trade in the age of globalisation, facilitating the efficient and seamless movement of large quantities of goods across different parts of the globe. However, it is important to recognise various risks associated with maritime transportation, including threats from piracy and other illegal activities, as well as natural disasters like storms and choppy seas. As a result, contracts that sufficiently protect both parties are essential for both dealers and transportation businesses. From this perspective, maritime insurance becomes an important and vital part of international trade, helping to reduce the potential financial losses that come with shipping. Businesses can handle the challenges of international shipping with more assurance and security because of the safety net this insurance offers.

Due to its advantageous geographic location, surrounded by seas on three sides, it relied heavily on maritime transport to efficiently import and export a wide variety of goods and commodities. Recognising the peril of the sea, India adopted the UK Marine Insurance Act of 1906 to govern maritime insurance-related matters under British Rule. British companies like Lloyd's of London set the benchmarks for marine insurance practices. Indian maritime trade relied on policies issued by British insurers and Indian branches of British insurance firms.⁴ Since its

³ Insurance, <https://en.m.wikipedia.org/wiki/Insurance> accessed on January 12, 2025

⁴ Origin and Development of Marine Insurance, available at: <https://nicoa.in/wp-content/uploads/2016/04/MarineCargo.pdf>

independence, Indian shipping has undergone a remarkable expansion, but the Marine Insurance Act of 1963 has not gone through many reforms to meet the contemporary challenges, which have curtailed the economic growth of the country to some extent.

Overview of the Marine Insurance Act, 1963: The Marine Insurance Act, 1963, was a landmark in codifying marine insurance law in India. It provided a holistic legal framework tailored to the unique needs of India's maritime trade. It also reflected the country's efforts to assert its legal sovereignty after independence. The Act was designed to regulate marine insurance in a comprehensive manner, including defining the rights, duties, and liabilities of all parties involved in maritime insurance contracts. It aimed to provide clarity, ensure fair dealings, and support the growth of India's maritime trade sector.

The Marine Insurance Act, 1963, governs various aspects of marine insurance, including marine cargo insurance, hull insurance, freight insurance, and liability insurance. It applies to all marine insurance contracts concluded in India. The Act is divided into several chapters, covering essential elements such as the nature and scope of marine insurance, the formation and structure of marine insurance contracts, insurable interest, indemnity principles, losses, and abandonment.

EMERGING TRENDS AND FUTURE PROSPECTS OF MARINE INSURANCE

With the rapid adoption of the internet and the digitalisation of financial services, the global insurance industry has undergone a remarkable transformation. Although shipping is a specialised industry, the marine insurance industry has also embraced technological disruptions. Technology has revolutionised how claim settlement happens and has led to new products and distribution channels, customer needs, and changes in the security perception of vessel operation. Now, the biggest disruption of the 21st century - Generative AI and blockchain technology have the potential to make the insurance industry more efficient, streamlined and robust.

Although technological innovations have streamlined the marine insurance industry, it has faced several unforeseen challenges in the form of the recent resurgence of geopolitical conflicts, abrupt weather patterns and long-term changes in the climate, the risk of cybersecurity, and so on. The frequently occurring incidents have complicated the marine insurance's legal and regulatory framework.

Digitalisation and Technological Innovations: Marine insurance is a complex business which is characterised by the inherent information asymmetry between the insurer and the insured. Blockchain, being a decentralised system, can potentially remove the information asymmetry underlying the business. Any party can update their record or information immediately in the distributed ledger system, which is visible to all the stakeholders in real-time, thereby increasing transparency and efficiency.

Blockchain technology involves smart contracts that can be self-executed upon fulfilling pre-specified terms and conditions agreed upon by the parties to a contract. The use of smart contracts can minimise paperwork by digitising the contracts between the insurer and the insured.

With the advancement of cloud computing, insurers now have a vast amount of historical data, which they can use to train AI models to predict the likelihood of risky incidents. Also, they have access to real-time vessel tracking information and weather patterns, allowing them to accurately assess the risk and offer customised coverage and policies. Advanced algorithms can identify underlying patterns in the data, which will aid in distinguishing fraudulent claims. AI systems can be deployed to automate the process of claim settlement. This will significantly speed up the underwriting process by eliminating human intervention and administrative burden. Insurers such as Allianz and Lloyd's are employing AI tools to automate underwriting, reducing human error and enhancing efficiency.

Sustainability and Green Shipping: Global warming is becoming the biggest threat to humanity's survival. Climate change poses far-reaching consequences for various aspects of life, including physical, biological, human, and managed systems, with alarming future predictions. The global shipping industry, which accounts for nearly 80% of global trade, is heavily dependent on fossil fuels and contributes approximately 3% of the total greenhouse gas emissions. Moreover, due to the spillage during the transportation of cargoes, ocean water has been contaminated significantly, threatening to disturb the balance of the marine ecosystem⁵.

Recognising the severity of climate-related adverse events, the International Maritime Organisation has set an ambitious target of reducing the carbon intensity of international

⁵ Francois du Plessis, Leila Goedhals-Gerber, Joubert van Eeden, "Climate change and marine cargo insurance - A global survey of insurers' perceptions", 10 Heliyon (2024)

shipping by at least 20% by 2030 and by at least 70% by 2050, as compared to the 2008 levels.⁶. They set standards for newly designed vessels to be more energy efficient, thereby reducing carbon intensity. The IMO is considering market-based measures such as carbon pricing to incentivise the reduction of GHG emissions. This could involve levies or cap-and-trade systems. They also invest heavily in developing alternative propulsion technologies, such as wind-based propulsion and switching to alternative fuels, such as biofuels or green hydrogen. To prevent and minimise pollution from shipping, IMO has adopted the treaty MARPOL, which addresses pollution due to the spillage of hazardous substances such as oil, chemicals, and plastics.⁷.

Legal Disputes and Trends in Litigation: The rapid rise in the frequency and severity of adverse and extreme weather events in recent times has led to more marine insurance claims. Extreme weather events significantly damaged the cargo and vessels, making it the fifth biggest cause of marine insurance claims, according to Allianz Global Corporate and Speciality. In addition, there is a significant rise in the number of lost containers due to abrupt weather patterns.

Another emerging trend in marine insurance is the sharp rise in the number of claim settlements through arbitration, with many international shipping contracts now including arbitration clauses, making it the preferred method for resolving disputes. The main attraction of arbitration, which involves a neutral third party as an arbitrator to resolve disputes, is due to its wider scope covering maritime disputes, including cargo damage, charter party disputes, collisions, salvage operations, ship construction contracts, and more. The process preserves the confidentiality of sensitive business information, allows the parties to tailor the settlement process to suit their specific needs, and provides faster resolution than any litigation process. The adoption of arbitration was further fuelled by the increase in global trade since 1991. The increasing volume of international maritime trade has led to a need for a neutral and efficient dispute resolution mechanism, which arbitration provides⁸.

⁶ IMO's work to cut GHG emissions from ships, <https://www.imo.org/en/MediaCentre/HotTopics/Pages/Cutting-GHG-emissions.aspx> accessed on October 23, 2024

⁷ The International Maritime Organisation Convention for the Prevention of Pollution from Ships, 1973, annex 1

⁸ Spotlight: recent insurance litigation cases and trends in India, <https://www.lexology.com/library/detail.aspx?g=b793031a-11a9-4ccc-99fc-c1a5b3822321> accessed on January 2, 2025

LEGAL ISSUES AND CHALLENGES IN MARINE INSURANCE

Claims and Disputes: Marine Insurance claim settlement is a lengthy, complex process involving several steps. Transparency and reliability of the information produced, independence of the marine adjuster, dispute over liability and delays in the investigation are among the few challenges marring the claim settlement process.

Policy Ambiguity: Insurers often repudiate policyholders' claims by citing an alternative interpretation of any specific insurance contract clause. Ambiguity over policy terms may arise when an international shipping company holds policy insurance from domestic and international companies because relevant terms may not be defined properly. Also, there may be conflicting provisions that render coverage in one part of the policy and non-coverage in another section. In the case of *Unites India Insurance Co. Ltd. v. Levis Strauss (India) Pvt. Ltd.*⁹, the court was faced with the issue of whether the Stock Throughput Policy (STP) issued by Allianz constituted a marine policy under Indian law. The court clarified that warehouse risks combined with voyage and transit risks fall under the ambit of marine insurance, broadening the interpretation of marine policies. Hence, the STP policy issued by Allianz constituted a marine policy under Indian law. The judgment highlighted the complexities of global insurance arrangements in Indian contexts, encouraging insurers to draft clear exclusion clauses to avoid conflicts.

Dispute over Liability: In marine insurance claims, conflict often arises over liability for the damage or loss. The marine adjuster appointed by the insurer often tries to shift the onus of liability to the policyholders, as they have a financial relationship with the insurer. Some parts of the policy are written in the smallest fonts by the insurers with the intention that policyholders may overlook or not read those parts while purchasing the policy. Later, insurers highlight those parts to evade their liability, saying all these things don't fall under the policy scheme. Often, the insurer takes advantage of the ship owners' illiteracy of maritime knowledge to deny their liabilities.

In the case of *George Cohen Sons & Co. v Standard Marine Insurance Co Ltd.*¹⁰, the insurer denied the insured's claim, contending that the shipowner's failure to disclose that the ship lacked the necessary steam power to assist her steering. However, the court held that, given the

⁹ Supreme Court of India, 2nd May, 2022

¹⁰ 1925, 21 L.I.L.Rep. 30

condition of the ship, it was evident that it lacked steam power, and hence, there was no need for the insured to disclose this fact.¹¹.

Fraud and Misrepresentations: In insurance contracts, fraud can constitute any action by the insured to deliberately cause harm or loss with the intention of receiving monetary compensation from the insurer. In general contract law, there is no legal mandate to volunteer information, even though such information would be deemed highly relevant by the other party to make relevant judgments. Insurance contracts are an exception to the rule, as they are contracts uberrimae fidei (of the utmost good faith). The duty of utmost good faith reaffirms the law of misrepresentation but also imposes a duty to volunteer certain information. In case of violation of the duty, the law grants the innocent party the option to avoid the contract retrospectively.¹² The voluntary disclosure obligation could be a trap. Many policyholders, individuals and companies are unaware of their obligation to reveal information they have never been asked for, but that would affect a prudent insurer's decision. They might not understand what would influence a prudent insurer, even if they are aware that they have such a duty.

There seems to be a consensus that the insured's intention or knowledge is irrelevant in determining material misrepresentation. In the case of *Steelmet, Inc. v. Caribe Towing Corp*¹³, freight insurance coverage was extended to a carrier even though it was known to the carrier that the barge was unseaworthy. The carrier failed to inform insurers of the situation. The court argued that whether the insured's omission to notify was due to wilful ignorance, negligence, mistake, or accident has no bearing on the determination of utmost good faith.

Many times, a policyholder may be denied claims despite acting honestly and reasonably. A policyholder may fail to provide accurate or complete information due to the ambiguity of the question or his/her lack of knowledge on the subject matter. Nevertheless, the law will allow the insurer to avoid the contract.¹⁴.

¹¹ Marine Insurance Claim Disputes Unfair & Unethical Conduct by Maritime Insurance Adjusters, <https://www.offshoreinjuryfirm.com/offshore-injuries/marine-insurance-claim-disputes/> accessed on December 17, 2024

¹² Fraudulent Claims in Marine Insurance Law, <https://www.lawteacher.net/free-law-essays/contract-law/fraudulent-claims-in-marine-insurance-law-contract-law-essay.php#ftn14> accessed on Jan 9th, 2025

¹³ (1984) 747 F.2d 689

¹⁴ Law Commission and Scottish Law Commission, Insurance Contract Law: Misrepresentation, NonDisclosure and Breach of Warranty by the Insured a Summary (July, 2017)

Impact of Climate Change on Marine Insurance: Climate change is undeniably the biggest threat to the survival of our planet. With every passing day, frequent occurrences of extreme weather events such as floods, cyclones, and prolonged heat waves across the globe are exposing our inherent inability to combat nature. The global shipping industry, which accounts for 80% of the trade volume, is facing significant challenges due to rising sea levels and frequent changes in weather patterns. Ports, owing to their geographic locations, are highly vulnerable to climate change. Rising ocean levels, floods, and storms affect ports' operations and infrastructure, ultimately disrupting the global supply chain. A recent study by du Plessis in 2023¹⁵ noted a sharp rise in the number of marine insurance claims related to climate change over the past decade.

However, despite the overwhelming consensus about the future impact of climate change, the insurance industry has yet to respond fully to these changes. While many insurers acknowledge the importance of resilience to extreme weather events, some question the feasibility of addressing the root causes of climate change or distinguishing between human and natural factors. Research also highlights the varying perceptions among different insurers and the inadequacy of the current models to properly assess the potential impact of global warming and climate change.

The traditional approach of the insurers - “wait and see” is no longer adequate to effectively address the risks posed by climate change and extreme weather events, which have been termed the “new normal” by the International Union of Marine Insurance (IUMI) due to their increased frequency.

Cyber Threats in the Marine Industry: In recent times, the marine insurance industry has embraced technology and immensely benefited from being more efficient and transparent. However, growing reliance on technology means the whole system is more interconnected than ever and, hence, highly vulnerable to cyber-attacks. A recent study by scientists from NHL Stenden University in Leeuwarden, Netherlands, noted around 290 attacks across 54 countries and over 50 ships. The study also highlighted the surge in the frequency of such incidents post-COVID-19 pandemic, which has exposed the fragility of global supply chains.¹⁶. Attacks can

¹⁵ F. du Plessis, L.L. Goedhals-Gerber, J. van Eeden, “Trends in weather-related marine cargo insurance claims: a South African perspective”, 17 Journal of Transport and Supply Chain Management (2023)

¹⁶ Advanced Digital Technology Risks Maritime Shipping Cyber attacks, <https://mykn.kuehne-nagel.com/news/article/advanced-digital-technology-risks-maritime-sh-16-Dec-2024> accessed on January 10, 2025

range from phishing scams, malware, ransomware, and GPS spoofing to unauthorised access to vessel communication systems and cargo management systems, all aimed at disrupting shipping operations. Shipping companies are increasingly becoming the victims of ransomware attacks, where hackers encrypt critical systems on a ship, port, or maritime company's network and demand a ransom payment to restore access to their compromised systems.

The impact of rising cyberattacks is immense. GPS spoofing can lead to a ship navigating the wrong route, thereby significantly disrupting shipping operations, delaying shipments and halting port operations. Attacks on navigation and communication systems can compromise the safety of vessels, crews and cargo. Manipulated data can lead to collisions, groundings or other maritime accidents. Companies can face substantial financial loss due to ransom payments, loss of business and costs associated with restoring operations. The NotPetya attack on Maersk in 2017 caused a loss of around \$300 million.¹⁷ Consequences are not limited to financial losses. Companies that fall prey to the perpetrators may suffer reputational damage, losing the trust of customers and partners.

Impact of geopolitics on marine insurance: The world is more fragmented than in the past decade. The economically and politically powerful countries want to exert their dominance over their neighbours and establish their political and ideological hegemony. Also, there has been a sharp rise in trade wars in the form of tariffs and sanctions.

A more divided world also affects international trade, shipping, and thus marine insurance. For example, in March 2022, Russia's full-scale invasion of Ukraine caused widespread disruption in global supply, which was already grappling with supply disruption, port congestion and crew crises caused by the Covid-19 pandemic.¹⁸ The industry faced multiple headwinds with the loss of life and vessels in the Black Sea, disruption to trade with Russia and Ukraine, trapped vessels and the growing burden of sanctions. Approximately 2,000 seafarers who were stranded aboard vessels in Ukrainian ports faced the constant threat of attacks with little access to food or medical supplies; some of them were tragically killed. More than 100 ships were still trapped in Ukrainian ports as of May, many without crew.¹⁹ In 2023, the world witnessed another

¹⁷ Maritime Cyberthreats: A Growing Risk to Global Trade,

<https://blogs.blackberry.com/en/2024/05/cyberattack-at-sea>, accessed on January 10, 2025

¹⁸ Khanna, C, "Ukraine War Strains Shipping and Supply Chain, Risk Management", 69(5), 4-7(2022)

¹⁹ Impact of Ukraine war on global shipping, <https://commercial.allianz.com/news-and-insights/expert-risk-articles/shipping-safety-22-ukraine-war.html#:~:text=Around%20%2C000%20seafarers%20were%20thought,already%20been%20killed%20in%20attacks> accessed on January 20, 2025

brutal conflict between Hamas and Israel. Following the armed conflict between Israel and Hamas in Gaza, the Houthis, a Yemeni armed group that receives financial and military support from Iran, sought to take vengeance by targeting Israeli-linked shipping in the Bab al-Mandab Strait and launching multiple anti-ship ballistic missiles and drone boat attacks in the Red Sea from military sites in Yemen. The Red Sea crisis forced the ship owner to avoid the Suez Canal and reroute the cargo through the Cape of Good Hope, increasing the transit time and logistics cost. Moreover, increasing transit time exposed the ships to marine perils, and the number of claims made by the insured crept up.

CONCLUSION AND RECOMMENDATIONS

The main piece of legislation controlling maritime insurance in India is the Maritime Insurance Act of 1963. The Act defines terms like proximate causation, insurable interest, and uttermost good faith. However, the Act has mostly remained the same and ignores contemporary issues, including environmental dangers, cyber threats, and technological breakthroughs. Terms like perils of the sea, proximate cause, and general average often lead to disputes due to inconsistent interpretations. Misrepresentation and non-disclosure by either party frequently result in claim denials. Lengthy court processes and a lack of specialised maritime dispute resolution mechanisms lead to delays in claim settlements. Legal professionals face difficulties in deciphering intricate maritime insurance policies and handling contemporary dangers. Outdated legislative frameworks make it difficult to evaluate and price rising risks. Disparities in international trade practices result from India's maritime insurance legislation lagging behind international treaties like the Rotterdam Rules and the York-Antwerp Rules.

Policymakers must take a thorough and forward-looking approach in order to address current legal issues and fortify India's maritime insurance structure. Here are some suggestions:

Reform of the Law

Amend the Marine Insurance Act 1963: Traditionally, the principle of Utmost Good Faith imposes a duty on the insured to provide relevant information voluntarily to the insurer so that they can rightly assess risk and determine the premium. However, with the evolution of technology, insurers can gather information about the insured seamlessly. Also, concern has been raised by the insured about the insurer's misuse of the principle of Utmost Good Faith to void a contract, highlighting the failure of disclosure. To address this concern, the UK parliament introduced the UK Insurance Act of 2015 to modify the doctrine of *uberrimae fidei*

to only require a more streamlined ‘duty of fair presentation’ of the risk. Under this Act, insurers can only void a policy if the breach of disclosure was deliberate or reckless. In addition, remedies were modified from strict avoidance to the possibility that a contract could be redrafted in certain circumstances to recognise the actual risks and provide coverage, provided that new premiums were paid. This shift reflects a move towards fairness. Legislators in India should also think about whether maintaining the stringent criteria of disclosure by the assured or allowing flexibility through such a changing norm will benefit Indian policyholders and insurance businesses.²⁰

To minimise interpretational conflicts, define and standardise important contractual phrases such as proximate cause and perils of the sea.

Bring Indian Laws into Compliance with International Guidelines: The Indian Maritime sector must adhere to the International Marine Organization’s guidelines and standards about minimise the impact of the marine sector on the environment through green and sustainable shipping practices, which include increasing usage of renewable energy, reducing air emissions, optimising water usage, improving solid waste management, Zero accident safety program. Indian Legislation must develop and enforce stricter regulations to ensure that marine insurers comply with these guidelines. Monitoring insurers' compliance with climate risk management guidelines may entail routine audits, inspections, and the application of sophisticated data analytics. A more robust global insurance market can be achieved by harmonising legislation and exchanging best practices across national boundaries. In addition, to improve worldwide competitiveness, bring Indian marine insurance legislation into compliance with international agreements like the Rotterdam Rules, which establishes the liability standards for loss or damage to goods during international maritime transportation²¹, the York-Antwerp Rules, which aims to promote international uniformity by defining what constitutes a general average event and how to distribute the costs of lost or damaged cargo²².

Regulations for emerging digital technologies: Despite the preponderance of financial losses and collateral damages, the maritime industry is still under-prepared to safeguard its operations

²⁰ Daniel Stein, “Indian Marine Insurance: Insured Duties from Utmost Good Faith to Fair Presentation”, 10 LEX PORTUS, 7-15 (2024)

²¹ The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, 2008

²² YORK-ANTWERP RULES 2016, <https://comitemaritime.org/wp-content/uploads/2018/06/2016-York-Antwerp-Rules-with-Rule-XVII-correction.pdf> accessed on January 19, 2025

from cyberattacks. The marine insurer so far had excluded risk coverages arising from cyberattacks. However, in this evolving period, the insurer must recognise the threat of cyberattacks and develop comprehensive insurance products covering cyber risks. Insurers may extend their coverage by including liabilities arising from data breaches, loss of revenue from business interruptions, and legal costs. Insurers must ensure compliance with the necessary cybersecurity measures proposed by international organisations by the ship owners. To ensure that all stakeholders know the latest threats, laws should require regular cybersecurity training and certification for maritime personnel.

Handling Environmental and Climate Risks: Insurers and reinsurers are crucial in navigating the complexities and uncertainties posed by climate change-related adversities by mitigating some risks and maintaining the continuity of global supply chain operations. Legal frameworks must impose a duty on insurers to disclose their exposure to climate-related risks and their strategies for managing them. This transparency can help stakeholders make informed decisions and promote accountability.

Insurance companies must ensure that environmental liabilities, such as cleanup expenses, fines, and penalties for breaching environmental regulations, are sufficiently covered by their policies. It might be necessary for insurers to create new underwriting standards that encourage sustainable practices, including lowering premiums for ships with cleaner fuels or lower emissions. Marine insurance policies must address risks related to carbon trading markets by insuring liabilities arising from failing to meet the carbon credit obligations. As shipping companies adopt emerging technologies like hydrogen fuel cells, ammonia, and electric propulsion systems - aligning with the global sustainability norms, insurers must understand the risks and benefits associated with these technologies. Covering these new technologies may require specialised knowledge and adjustments to existing insurance policies to address potential risks and liabilities.

Product Innovation to tackle issues arising from geopolitical conflict: Amidst the rise in geopolitical conflicts in critical key sea routes such as the Suez Canal in the Middle East, the South China Sea, and the Black Sea, the insurance industry holds the key to navigating complex risk dynamics. The insurance industry can leverage its experience, historical data, and analytical tools to gain insights into the geopolitical risk dynamics. This insight can guide the building of innovative products that can support critical supply chains in times of increased territorial tension. War has long been excluded from insurance coverage. However, in response

to Russia-Ukraine war-specific coverages, arranged through cross-sector collaboration to support the safe passage of critical export and relief efforts, the insurance industry demonstrates its ability to solve the most complex challenges. This solution-oriented attitude should continue in the event of future conflicts.

Future studies in these fields may yield insightful information for insurers, legislators, and legal experts. Researchers can help create a strong and contemporary marine insurance framework that complies with international norms and supports India's expanding maritime trade by tackling these new concerns.