
MARINE INSURANCE LAW IN DEVELOPING VS DEVELOPED MARITIME NATIONS: A COMPARATIVE LEGAL ANALYSIS OF INDIA AND JAPAN

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ABSTRACT

Marine insurance is, in a way, a key legal and commercial tool to maritime states since it distributes the risks that deal with vessels, cargo, freight, liability, and marine transit, which forms the foundation of shipping, trade finance, and cross-border trade. To determine how different levels of both economic and maritime development affect the legal design, regulatory practice, and risk allocation, the paper will undertake a comparative analysis of the marine insurance law in India, a developing maritime country, and Japan, a developed maritime country. The regulatory framework in India is based on the Marine Insurance Act, 1963, along with the Insurance Act, 1938, IRDAI regulation, and the entire maritime claims framework developed in the framework of the Admiralty Act, 2017. Marine insurance in Japan is regulated by means of the Commercial Code, Insurance Act and Insurance Business Act, which lie under the supervision of the Financial Services Agency. The paper analyses the two jurisdictions about variations in the coverage and the extent of the policies, the contractual provisions that will govern the relationship between the insurers and their insured and how the policies address claims and dispute resolution. It argues that the major issues that India faces are legal-regulatory holes, the disparity of implementation, and barriers to market access, but those in Japan are sophisticated compliance costs and new risks, including cyber exposure, technology innovation, and new supervisory demands. The paper also considers the impact of economic development, maritime trade, and international legal norms to each system and uses case law and jurisprudence to discover policy lessons. It finds that in spite of the similarity between the two jurisdictions, like insurance principles, India needs to modernise, enhance enforcement, and efficiency in dispute-resolution to create a more robust marine insurance regime.

Keywords: Marine Insurances, India, Japan, Economic, Maritime, IRDAI, Commercial Code, Framework, Coverage, Developed and Developing Countries.

CHAPTER-1

INTRODUCTION

Marine insurance is a very critical part of international trade and maritime activities since it provides protection on the multitude of risk inherent in the transoceanic transport of products and ships. At that time, when globalisation of trade had become a reality and with the increasing reliance on maritime transport, the importance of marine insurance has become even greater than before. Marine insurance administers a significant portion of major national economies, which are heavily dependent on the shipping market for trade, vessel finance arrangements, port operations and logistics, as well as broader maritime commercial activity. It covers all the risks that come with it, such as: the perils of sea, cargo damage, collision liability, loss total, diversion, and piracy. Therefore, the marine insurance policy consists of some characteristics, such as insurability interest, utmost good faith, nondisclosure, warranties and conditions.

The industries help the companies to be flexible to face the risk, such as towards natural disasters, piracy, unrest, and degradation of cargo during transit. However, there is a broad range of variation between the developed and the developing economies in terms of breadth and effectiveness of marine insurance, which can be attributed to infrastructural levels, maturity of the economy, the regulatory frameworks and the market forces.

The market of marine insurance in Japan is highly sophisticated, which is determined by the fact that it belongs to the category of advanced economies and is ranked as one of the largest national economies in the world. The established marine industry of the country is supported by innovative technology and a well-developed regulatory environment, which has robust control over the local marine insurance market. The Japanese marine insurers have a very long and successful history of maritime trade and a large number of cargo ships, and therefore, they have become the first in the world to provide full coverage of ships, cargo and the third party liabilities. The insurance market in Japan is governed by a system of strict regulations, improving transparency, consumer protection and market stability, thereby creating an environment of trust and reliability among the foreign clients.

India, being a rapidly emerging country, shows a different picture. Though India has the longest coastline and its location is strategically placed in the global shipping industry, its marine insurance market is still at a developmental stage. Lack of infrastructure and immature

regulatory regimes, and limited access of the instruments in certain geographical areas, are some of the challenges that India has to face. However, the rapid expansion of the marine insurance market has been created in India due to the adoption of the following reasons: digitalisation, regulation charges, and the expansion of trade routes. The sector has been constantly evolving; although it still struggles with certain challenges that affect its realisation of the operational efficiency and global competitiveness of more developed economies.

This is a comparative study of the marine insurance sector in Japan and India that builds upon the differences between the marine insurance business in the two countries in terms of the factors affecting growth and development within the sector. The discussion points out the variations in the structure of the market, regulatory systems, and economic effects, and all those problems experienced by the insurers in the two countries. This paper also discusses the manner in which the insurance industries in these nations respond to the changing risk in the maritime industry, and it means through which they plan to expand their coverage, add value to the claims procedures and consumers' confidence. These distinctions are crucial to the dynamics of global marine insurance and ensuring the continuity and security of international trade.

CHAPTER-2

LEGAL FRAMEWORK OF MARINE INSURANCE

2.1. Conceptual Framework and Methodology

The law of marine insurance relates to the insurance contract on vessels, cargo and freight. It's a branch of law with its own system of legal principles and rules that is framed by a specific socio-economic circumstances, which overlaps with international trade law and shipping law.

A comparative analysis between India and Japan was done, as these countries are maritime countries, and they are proportionately involved in shipping and maritime trades; who are the party to the convention on the limitation of liability for maritime claims, 1976; The convention on contract for the International Carriage of Goods either wholly or partly by sea; The Convention on the Control of Harmful Anti-fouling systems on ships; and The Convention on the International Maritime satellite Organisation. The relevant laws and statutes of India and Japan need closer scrutiny. The comparative study in marine insurance law of India and Japan is done to discuss the common characteristics and to identify the differences between the

marine insurance law of the developing countries and the developed countries, and indicates sustainable growth among international trade, economy and shipping vessels.

2.2. Marine Insurance Law in India

- **Key Statutes and Authorities**

The main legislation of India that deals with Marine Insurance is the Indian Marine Insurance Act of 1963, which was based on the UK Marine Insurance Act of 1906. 16 or 27 of these Acts operate within the legislation of the respective states and union territories. Other Acts relevant to this subject that are often invoked include the Indian Contract Act, 1872, the Sales of Goods Act, 1930, the Indian Arbitration and Conciliation Act, 1996, and the Insurance Regulatory & Development Authority of India (IRDAI). Marine insurance is considered a third party in comparison to organisations that wish to provide policies, air coverages and extended coverage to obtain a license from the Insurance Service Providers Act 8(1)(b) of the Insurance Act, 1938. The controllers of insurance of many states and union territories act as adjudicating authorities to resolve disputes between the insurance companies and their customers. It regulates the compliance of different sectors in the insurance market, and also enforces rules given under the Insurance Act, 1938 (as amended), IRDAI Act and the four sets of regulations that have been made under the Insurance Act, and also the norms and guidelines that have been prescribed by the Government of India. The Administrative Wing is responsible for the administration and enforcement of the above Acts and Regulations, and has guided various Indian as well as foreign insurance and re-insurance companies in obtaining their licensing requirements. The Insurance Association of India provides advice to the IRDAI on all matters related to regulation and development as a prime advisory body for insurance companies. The change introduced an essential guideline for marine insurance business of all insurers within India and creates references to -- Basic Regulations framed under the Insurance Act, 1938 which might be relevant to the Marine insurance coverage enterprise of all insurers in India: The IRDA (Insurance Advertisements and Disclosure) Rules, 2000; The IRDA (Protection of Policyholder's Interests) Regulation, 2002; and The IRDA (Registration of Indian Insurance Corporations) Laws, 2000.¹

Judicial Process: For shaping the marine insurance law, the judiciary and courts play an

¹ Marine Insurance Act, 1963. <https://www.indiacode.nic.in/bitstream/123456789/1520/5/A1963-11.pdf>

important role. Till today, no Indian judgment has interpreted the said law. Dealing with marine insurance legislation and the complexity between the Harmonised composition of contract law and marine insurance law, they are dealt with in the Session courts, High Courts and the Supreme Court of India. It also includes the Privy Council if it comes to the colonial status of India.

- **Regulatory Environment Recent Reforms**

In order to successfully evaluate the situation of the insurance market and business, the evolution of all relevant marine laws of India and the present-day marine law must be combined into a paradigmatic structure. India, which is one of the most important trading nations, has been making meaningful progress to ensure that its marine insurance regime mirrors international norms with no other over-legislation. Years of statutory research paint a combined picture representing the developing law and its environmental outgrowths in the field of marine insurance. The current scenario of marine insurance law in India is expressed through the sectoral development review, making the analysis work all the more consistent and enhancing

2.3. Marine Insurance Law in Japan

- **Key Statutes and Authorities**

The Marine Insurance of Japan is governed by the Insurance Business Act, 19489 (IBA), the Marine Insurance Act, 1902, and its also influenced by the Ordinance for Enforcement of Insurance Business law of 1949. The Nihon Kaiun Hoken Kyokai is the Japan Marine Insurance Association, which is also the association of marine insurance companies that regulates the terms and conditions of marine and freight insurance policies. The reason for the enactment of numerous notifications is aimed at ensuring the healthy functioning of the insurance business in the country and the policyholder insurance by creating competitive and stable operations in the country.²

Marine insurance in Japan is governed by the commercial code and the civil code, with the primary regulator being the Japan Fair Trade Commission, and the secondary regulator is the

² Japanese Marine Insurance Act of 1902. <https://www.japaneselawtranslation.go.jp/en/laws/view/4293>

Financial Services Agency. All the statutes and statutes based on general terms of marine insurance in Japan and other adjudicate disputes dealt under the civil code of Japan.

In Japan, marine insurance is less colourful in judicial interpretations, unlike other common law countries, where the contribution of judicial decisions plays a major role in filling the gap of business insurance contracts.

- **Regulatory Environment and Recent Reforms**

As Japan is an island country, the country mostly uses sea transportation. For foreign insurance bodies to enter the Japanese market is difficult unless they are members of the FATF. The companies operating in Japan mostly look to local insurance bodies to take the coverage of the shipping. Japan is ranked fourth in terms of world marine insurance developed transit points.

CHAPTER-3

COMPARATIVE ANALYSIS OF MARINE INSURANCE PRACTICES

International trade and maritime activities almost rely on marine insurance. Each country has different degrees of development and different kinds of marine insurance practices, and in the same case, this paper deals with India and Japan. This paper offers a comparative analysis of two countries based on certain elements, which will be discussed here.

3.1. Coverage and Scope of Policies

INDIA

The Marine Insurance Act of 1963, which is now followed in India, is just a replica of the English Marine Insurance Act of 1906. The following are the policies that fall under the scope of marine insurance in India:

Hull Insurance: This insurance provides coverage for ships and vessels. This kind of insurance is important for all vessel owners and operators as it protects them against all the hull damage that may arise due to the perils of the sea.

Cargo Insurance: This insurance policy provides insurance to all the goods and merchandise that are transported in the whole world by sea. This also provides coverage to goods, which

includes physical loss or damage that occurred while transporting, and in some cases, coverage may be provided due to theft.

Freight Insurance: This provides cover to the loss of revenue that may be earned from the freight in case if the cargo is either lost or damaged during transportation.

Liability Insurance: Japan and India abide by the international treaties, including the International Convention on Civil Liability for Oil Pollution Damage (CLC) and the International Maritime Organisation (IMO) guidelines, which make compulsory insurance for oil spills and oil pollution liability.

However, the Marine Insurance Act lays the groundwork for the whole world, while India is developing in this sector, the insurance industry has a long way to go to reach the level of insurance in the other developed nations.

JAPAN

Japan comes under the developed maritime countries. It has a well-established practice of maritime insurance and is advanced compared to other nations, and it is governed by the Marine Insurance Act of Japan, which has a well-defined framework for both domestic and international marine transportation. The following is the coverage provided in Japan:

Hull Insurance: Like India, Japan also provides coverage for physical damage to the vessel and machinery, which is caused due to natural calamities, collisions or operational perils.

Cargo Insurance: It covers the goods and merchandise that are transported through sea, and it also includes theft, damage from weather conditions or accidents.

Liability Insurance: Like India, Japan abides by the international treaties, including the International Convention on Civil Liability for Oil Pollution Damage (CLC) and the International Maritime Organisation (IMO) guidelines, which make compulsory insurance for oil spills and oil pollution liability. Japan is appreciated for offering some additional coverages for some operations that are considered risky.³

³ International Maritime Organization (IMO). (2020). *Conventions on the Liability of Maritime Claims*. <https://www.imo.org>

Insurance Coverage for War and Strikes: The Japanese marine insurance sector provides coverage during war that most other economically developed countries don't provide. Due to which Japan holds a good position in the global shipping industry.

Japan has focused more on marine insurance as it's the number one country in the marine insurance sector due to its policies.

3.2. Conceptual Principles and Relationship Between Insurers and Insureds:

INDIA:

The relationship between the insurer and the insured in marine insurance in India is based on the following principles:

Utmost Good Faith (*uberrimae Fidei*): The Marine Insurance Act specifies that, in utmost good faith, the insurer and the insured are required to provide all related material evidence, and that any evidence which is not provided, or is provided in error, is a sufficient ground for an insurance contract to be considered as null and void.

Indemnity: The principle of indemnity applies to marine insurance in India, which means that the insured is not entitled to pay compensation for the incurred loss, and is not entitled to pay any further compensation that would result in making the insured profitable as a result of the claim.

Subrogation: once the insured has been compensated, the insurer has the right to claim from the third party who has caused the loss and has been compensated for the loss.

Proximate Cause: The proximate cause of loss is the key to determining the factors for the claims of marine insurance in India. The cause in question must relate to the insured event directly and not one step removed (storm damage, collision, etc.).

Policy Formation: The Indian insurance market is moving towards customised policy making for particular risks, although policies are mostly based on the standard formats like the Institute Hull Clauses, etc.

In India and other developing nations, the focus is more on modernising the regulatory structure and its mechanisms of enforcement, and considerable attention is directed to aligning

regulatory practices with international standards and the practices.

JAPAN:

Japan has a well-defined set of regulations, and in this way, insurance contracts have a confluence of principles that are in other countries, but some principles that are not enhanced.

Utmost Good Faith: Japan and India have similar marine insurance practices with respect to utmost good faith. However, in Japan, more emphasis is given to the standardisation in disclosures and practices that specify the contractual obligations more clearly to both parties.

Indemnity Principle: The principle of indemnity is important to Japanese marine insurance, as it is in most of the countries. However, Japan's system is more rigid than others. Japan to assess losses, use more modern methods such as real-time tracking and data analytics.

Subrogation and Salvage: The subrogation rights are well established within the legal and court systems, referring to recourse to third parties, and the industry, from Japan, convenience from advanced systems and the frameworks. The Japanese salvage claims are highly influenced by international maritime law, which is evidence of Japan's prominence in the international trade sphere.

Specificity: The insurance contract of Japan is more specific than those in developing nations. This is ascribable to the numerous global participants, which makes it necessary to include more details on risk mitigation, damage to cargo, and the management of contracts related to the global trade and commerce corridors.

There is an important degree of legal clarity and experience regarding complex and large claims in the insurer-insured relationship in Japan.

3.3. Claims Management and Mechanisms for the Resolution of Disputes

INDIA:

The claim management in marine insurance is developing in the context of the country's insufficient infrastructure and legal systems. Recently, there have been some significant changes that have occurred in the following areas:

Claims Process: The insured is obliged to communicate about the loss to the insurer. The process consists of loss evaluation, the engagement of surveyors, and the claims documentation preparation. It's the obligation of Indian insurers to comply with the provisions of the Marine Insurance Act, which is necessary for the degree of fairness in the claim process.

Dispute Resolution: In case of a marine insurance dispute, India mostly utilises civil courts. In recent years, trade-related disputes have started becoming prominent. The arbitration process in India is governed by the Indian Arbitration and Conciliation Act, which also allows parties with disputes to resolve them under the arbitration.

Regulatory Oversight: India has a growing insurance market, including marine insurance, which is governed by the Insurance Regulatory and Development Authority of India (IRDAI). However, the IRDAI has yet to fully implement and operationalise its regulatory oversight.⁴

JAPAN

Japan has a sophisticated approach towards the claims and dispute resolution.

Claim Process: As Japan has a better infrastructure and advances in processing technologies, it is able to settle the claims faster and more seamlessly. Japan have the fastest processing and better user experience, which is the result of systems that employ satellite monitoring, in addition to real-time reporting systems.

Dispute Resolution: Japan has various options, which are available for dispute resolution. . In addition to civil courts, arbitration is particularly common in disputes regarding maritime insurance in international trade. The Japan Maritime Arbitration Commission provides expedited and just arbitration for the resolution of such disputes.

Legal Frameworks and Enforcement: In Japan, a heavy process is maintained in the legal systems pertaining to the enforcement of marine insurance policies. The legal systems defining maritime claims are comprehensive, intricate, and of universal applicability.

International Cooperation: Japan is involved in many international maritime organisations and

⁴ Insurance Regulatory and Development Authority of India (IRDAI). (2022). Marine Insurance Overview. <https://www.irdai.gov.in>

treaties, which help Japan's claims processes stay in line with best practices.

CHAPTER-4

CHALLENGES IN MARINE INSURANCE

4.1. Challenges Faced by India as a Developing Maritime Nation

There is no doubt that India has an established and well-recognised marine insurance system. However, the system of marine insurance is structurally challenged, and this is an intense problem. The legal challenges do not occur due to geographical and logically limited absence of law; they occur because of an old legal framework that is out of step with a complex, digitised, and internationally integrated maritime economy. However, there are many provisions that do not fit the new underwriting and claims model.

- **Legal and Regulatory Gap**

The main challenge of India is that its marine insurance law has very few exceptions and is highly based on the traditional doctrine. As per the Marine Insurance Act of 1963, the marine insurance is viewed as a contract of utmost good faith and also allows the contract to be voided for the breach of that duty. It also maintains a strict warranty regime where a warranty “must be exactly complied with”, and from the date of the breach, the insurer is discharged from the liability. While the doctrines provide certainty, they can even work harshly in the current commercial practice, especially in cases where the relevant documentation is complex, multimodal, digital, and involves multiple intermediaries.

This raises a significant issue concerning legal policy. In modern marine trade, reliance upon electronic documentation, multi-tiered supply chains, outsourced compliance, automated declarations, expedited endorsements, etc., has become the norm. Policymaking and wording, mixed with stringent guidelines around confidentiality, will create litigation not because the insured has behaved with a lack of good faith, but because the transmission of information across the myriad players involved – banks, freight forwarders, carriers, customs brokers, and insurers is incomplete, delayed or inconsistent. Even if the statutes are silent or not clearly articulated, there is a legal gap in the substance.

Emerging risk gaps are a second. Several of the Indian marine insurance policy wordings

submitted to the IRDAI contain, among other things, the Institute Cyber Attack Exclusion Clause and the Termination of Transit Clause (Terrorism). This shows that insurers are attempting to contractually deal with cyber and terrorism risks. However, it points to a lack of evolution in the fundamentals of law that are necessary to provide a legal framework for cyber marine risks, digitally induced voyage failures, or autonomous shipping risks. The law is significantly lagging behind the market in response to new risks and is doing so through exclusions and K-contracts.

Another issue is the lack of cohesiveness in insurance law and shipping regulation. India's Directorate General of Shipping had to instruct ports in 2025 to check the P&I certificates of masters via the insurers' websites to confirm the certificates are valid for the entire duration of the vessel's stay at the port. This type of official action suggests that, for the purposes of operational enforcement, rather than compliance with insurance regulations, the reliability of certificates has become an operational enforcement issue. This is important because it is an enforcement gap where a regulator has to address the problem by verifying the genuine and up-to-date liability insurance of a vessel, which shows a fundamental issue with credibility at the interface of maritime administration and insurance law.

- **Market barriers and enforcement issues**

The marine market of India faces considerable barriers. The expansion of trade and the movement of cargo have increased the demand for marine insurance. However, considering the size of the trade ecosystem, sector penetration remains relatively low. Even market insurers from within the trade ecosystem describe how the growth of trade has not affected marine insurance penetration and how market premiums remain volatile due to fluctuating prices, aggressive competition, and changes in trade routes. A study tackling emerging economies has established that low insurance penetration not only makes businesses vulnerable to risk but also decreases the risk-bearing capacity of the entire economy.

For the practical implications of low and inconsistent penetration, the small exporters, importers, MSMEs, and traders suffer a lot. Many consider marine insurance to be an auxiliary service, as against the risk management tool. They may buy a minimal cover, which totally relies on the contract to assume the burden of risk. This results in an insurance gap, where, despite the existing cover, the protection offered is likely misinterpreted or avoided due to the cost sensitivity and lack of general legal awareness.

There are also operational challenges within the insurance processes themselves. The IRDAI approval in marine open policy wordings are complex in terms of declaration obligations, shipment-specific certificates, record inspections, warranties, age-related vessel restrictions, and premium balance stipulations. These are reasonable from the perspective of underwriting, but for the less sophisticated insured, these requirements increase compliance friction and increase the chance for technical objections on claims. Due to the heavy documentation in marine insurance, it often benefits the parties having legal superiority and administrative resources.

Enforcement weakness is yet another concern. In India, the IRDAI grievance cell does not adjudicate complaints, so her role is merely facilitative. The Insurance Ombudsman system is useful, but by the rules, she is limited to issues relating to personal lines, group insurance, and micro enterprise/sole proprietorship coverage. Larger commercial marine claims, therefore often escape the most easily accessible avenues of dispute resolution and are forced instead to consumer, if applicable, civil, or arbitration nearing greater cost, time and procedural complexity. The nature of marine insurance disputes with survey evidence, foreign carriers, port documents, freight, international clause, cause and effect, and a host of other documents often makes the enforcement of these disputes even more imposing and complex burdens.

As a country, India's challenge is much deeper than a mere “insufficient law.” It is a combination of:

- An old-fashioned statutory framework
- Harsh contractual relations concerning disclosure and warranty,
- A mix of inadequate awareness of insurance,
- A dependency on the documentation,
- Developing yet still breaking the enforcement of sea laws, and
- Easy access to the resolution of the disputes is limited to large commercial claims at sea.

4.2. Challenges Faced by Japan as a Developed Maritime Nation

Japan is a completely different case. It does not have to cope with the basic formation of a

market. It has a developed, internationally integrated marine insurance market with a developed legal and supervisory framework. The Japanese marine insurance market is a part of a multi-layered system that consists of the commercial code, the Insurance Act, the Insurance Business Act, and a collection of the detailed operational guidelines from the Financial Service Agency (FSA). Consequently, the challenge in Japan is not a lack of institutions, but rather how to govern a very advanced insurance market in a period of rapid technological and environmental change.

- **Advanced regulatory requirements**

If we compare with India, then the compliance burdens are more advanced in Japan. The Insurance Business Act, for example, is meant to protect the best interests of policyholders by ensuring sound operation of insurers and fairness in the solicitation of insurance. This means that insurers in Japan are subject to more rigorous prudential and conduct supervision than even most developing countries. In addition to pricing and settling risk, marine insurers are also required to have in place governance and internal control frameworks. The complexities of the structures are also legally profound. Article 36 of Japan's Insurance Act, for example, excludes marine insurance from the application of certain provisions, while the Commercial Code that deals with marine insurance also has its own set of specific provisions. While this duality offers sophistication, it also means that marine insurance intermediaries and insurers have to work within a more complex specialist legal regime, as opposed to a simple insurance contract regime. This can be efficient in a complex commercial ecosystem; it is likely to increase the legal and compliance burden substantially.

Insurers in Japan also have strict technological and incident-reporting requirements. FSA supervision requires insurers to report any issues with their computer systems or any cybersecurity incidents, including issues that result or could result in a delay in the payment of insurance claims. While this is appropriate in today's digitised insurance marketplace, it has the consequence that insurers must comply with operational-resilience regulations in addition to standard underwriting. A Japanese marine insurer must manage the exposure of vessels and cargo, internal digital resilience and the regulatory reporting.

In Japan, there is an extra layer in climate governance. The FSA's climate-related supervisory work now sees climate change as an issue that financial institutions, including insurance companies, manage. The agency has done scenario analysis, an office for monitoring climate

risks has been set up, and it is noted that climate risks may fall outside the traditional risk frameworks. This means that regulatory scrutiny on Japanese insurers is to evaluate and manage the risks of climate change, have an understanding of client level exposure, integrate climate change into governance and underwriting policy, and develop strategies to manage uncertainty in the medium to long term.⁵

Japan's problem is opposite to that of India. India is facing issues with gaps and problems of under-enforcement, while Japan is facing the problem of sophisticated compliance and the burden of multiple layers of laws, supervisory layers, prudential compliance, other dispute resolution (ADR) and reporting obligations, cyber reporting, and climate governance.

- **Emerging risks and innovations in marine insurance**

Japan's second significant issue is that it is at the forefront of maritime innovation. This position offers competitive benefits, but also creates uncertainty in insurance. Autonomous shipping is one case in point. Japan has already made large scale efforts in testing autonomous shipping. The DFFAS consortium successfully completed a simulated autonomous journey in the Tokyo Bay and Ise Bay region, in addition, Japanese shipping companies are investing in new autonomous navigation technology vessels. While these benefits are significant, Japan also create some challenges in marine insurance. Traditional marine insurance focuses on the aforementioned categories of master's error, crew error, collision, seaworthiness, navigational, and physical perils. However, autonomous shipping raises additional questions, who is responsible for inadequacies in software, malfunctioning sensors, erroneous algorithms, corrupted data, mistakes by shore control, and incidents of cyber navigation control?

These insurance challenges stem from the traditional marine insurance clauses that do not consider autonomous shipping scenarios. More recent academic work on autonomous shipping has noted the insufficient and inadequate addressing of cyber risks pertaining to autonomous shipping in marine insurance and regulatory frameworks. There are also insufficient and inadequately addressed cyber incidents in the typical clauses pertaining to autonomous shipping. For Japan, this is not a theoretical issue. Japan is in the process of implementing

⁵ Financial Services Agency, Japan. (2021). Climate Risk Management in Financial Institutions. <https://www.fsa.go.jp>

autonomous and digitally integrated shipping, and the ambiguity of insurance underwriting in this case becomes an imminent economic problem.

The second innovation has challenged the concerns of decarbonised vessels and the alternative fuels. In the case of Japanese maritime developments, greater focus is placed on energy-saving technologies, new propulsion systems, and low-emission shipping. However, there was a new insurance concern that arose due to the construction of greener vessels. For example, alternative fuels can alter the risks associated with fire, explosions, fuel storage, and ship machinery. The transitional retrofitting of vessels may also alter class, maintenance, surveys, warranties, and insurance. As a consequence, the insurer faced the difficult task of costing these unverified and critical engineering and operational risks, without the advantage of the extensive claims history. Then, Japan's rigorous climate risk governance complicates the situation. It places additional obligation on insurers to go beyond underwriting the engineering and operational risks, to also address the climate controls and transition pathways with respect to the insured risks and counterparties, over the policy timeframe.

Lastly, when it comes to international standards, there is no doubt that climate change is affecting even the most developed market, Japan. The materials from the FSA show the uncertainty of climate change risks. They show the absence of comprehensive data to be analysed, and the tools needed to assess data are lacking, specifically in the case of risks that cannot be described in monetary terms, the risks that are long-term, and risks that are physical in nature. Japanese financial institutions face the same challenges. They find it difficult to determine the physical risks to key operational sites, including those overseas. In marine insurance, this tendency translates to an increased burden in the underwriting of losses from typhoons, floods, and other disruptions in the supply chain, losses due to port congestion and cargo spoilage, business interruption, and catastrophe reinsurance. The more developed a market is, the more it is obliged to recognise the truth that, when it comes to marine insurance, old data is a poor predictor of future losses, regardless of the number of marine losses that have historically been recorded in that market.

CHAPTER-5

CASES

5.1. INDIAN CASES

Sea Lark Fisheries vs. United India Insurance Co. & Anr. (2008)

Court: Supreme Court of India.

Issue: the primary issue was whether a marine insurance contract carries an implied warranty of seaworthiness, and whether the insurer is liable for losses incurred due to unseaworthiness of the vessel.

Facts: A marine insurance policy has been issued to the cargo loaded onto a vessel. The cargo was lost due to the ship's unseaworthiness on the voyage. The insurer, United India Insurance, claims that the vessel was unseaworthy at the time of departure, which constituted a coverage to breach under the terms of the insurance policy; as such, they were not liable to pay for the loss.

Judgement: The Supreme Court have the decision in favour of the insurer. The court further states that the Marine Insurance Act, An Implied Warranty of Seaworthiness v. Eventuality Not Covered by Policy. The Court held that the insurer is not liable for loss resulting from the unseaworthiness of the vessel if at the time of the voyage, such a ship was still unfit to sail. In addition, the Court noted that unless a waiver is specifically agreed to, there can be no automatic waiver of the breach of seaworthiness.⁶

Significance: The court repeated that seaworthiness is an implied term in a marine insurance policy. The court also made it clear that it's the insured's responsibility to make sure that the vessel is seaworthy and that there is no liability on the part of the insurer for damages caused by the default of this situation unless there is an express agreement to waive it.

New India Assurance Co. Ltd. v. G.N. Sainani (1997)

Court: Supreme Court of India

Issue: Here, the question was whether assignment and subrogation rights under a marine insurance contract are valid and enforceable as per Section 79 of the Marine Insurance Act, 1963.

Facts: Here, the insured, G.N. Sainani, had made a marine insurance policy from New India

⁶ "Sea Lark Fisheries vs. United India Insurance Co. & Anr." (2008). Supreme Court of India.

Assurance Company. The loss took place after the insurance policy had been assigned to a third party, and the insurer disputed the assignments & validity. The insurer further changed that the assignment did not comply with the provisions of the Marine Insurance Act, and therefore, buyers & subrogation rights declined.

Judgment: The assignment & subrogation rights, as far as they relate to the marine insurance policy, were upheld by the Supreme Court of India, which reiterated that assignments are valid so long as they align with the terms of the policy. The Court explained that the right to subrogate and recover does arise once an insurer settles a claim.⁷

Significance: The judgment of the SC confirmed that marine insurance contracts do permit an assignment of policies and subrogation rights to be valid, which are fundamental principles of indemnity insurance. It also repeated that subrogation is the right of insurers to pursue third parties' responsibility for the loss to recover their claims.

5.2. JAPANESE CASES

Persian Rug Case (Tokyo High Court, 2000)

Court: Tokyo High Court (Appeal of Decision by the District Court)

Issue: The issue was whether the insurer is liable for theft of insured cargo even though the shipment violated U.S. import restrictions.

Facts: The case is about some cargo, consisting of personal effects, that was sent from Japan to the U.S. A part of the shipment was stolen while it was in transit. But the cargo contained items that violated U.S. import laws. The insurance company claimed that it was not responsible for the theft because the goods were in violation of U.S. import laws.

Judgment: The insured brought suit against the insurance company, and the Tokyo High Court ruled in favour of the insured, finding that Japanese law is not the law of the destination country (the U.S.), governing an insurance contract. The Court thus held that the insurer was liable for the loss as the contract did not explicitly violate the law of Japan, and there was no evidence that could suggest that this particular shipment went against Japanese public policy.⁸

⁷ "New India Assurance Co. Ltd. v. G.N. Sainani." (1997). Supreme Court of India.

⁸ "Persian Rug Case." (2000). Tokyo High Court.

Significance: This decision highlighted that in Japan, the validity of marine insurance contracts is subject to Japanese law and public policy regardless of whether the shipment violated the destination country's law. This case highlights the role that domestic law can play in enforcing insurance policies.

NYK Argus Cargo Liability Judgment, Tokyo High Court (2013)

Court: Tokyo High Court

Facts: here, the question was whether a cargo insurer could sue the shipper or manufacturer when dangerous cargo is not disclosed during shipment.

Facts: the Japanese cargo was not declared as hazardous material. The cargo was hazardous and resulted in loss/damage during transport. The insurer wanted to recover its losses from the shipper or manufacturer of the cargo for failing to disclose material facts regarding its hazardous nature.

Judgment: On the basis of this, the Tokyo High Court held that the cargo insurer was entitled to recover damages from the shipper or manufacturer for its non-disclosure of the dangerous character of the cargo. The Court held that the non-disclosure of such information was a violation of good faith under the contract, as it restrained the insurer's proper assessment of risks.⁹

Significance: This judgment further highlighted the doctrine of *Uberima fides*, governing marine insurance contracts under Indian law, which is akin to doctrines in other jurisdictions, including India & U.K. It also served to emphasise the necessity of full and accurate information being presented in the marine insurance sector, so as not to leave insurers dangerously exposed to risks they are unable to mitigate.

CHAPTER-6

CONCLUSION

Reviewing the comparative study of marine insurance law in the case of India as a developing maritime nation and Japan as a developed maritime nation provides first-hand information

⁹ "NYK Argus Cargo Liability Judgment." (2013). Tokyo High Court.

about the evolution and particular problems concerning the insurance frameworks in relation to the economy and the maritime activities of the country under study.

Being a developing country, India has a maritime sector that is developing quickly, and it faces the enormous challenge of updating its marine insurance regulations to cater to the increasingly complex needs of global international trade. India has a sophisticated Marine Insurance Act of 1963, which is a replica of the 1906 Marine Insurance Act of the UK. However, India suffers from a plethora of legal and regulatory voids, especially in relation to the uniformity of insurance policies and the contentious issues of claims. There is a plethora of legislative and regulatory voids in India. The challenges and problems of India's marine insurance industry are further compounded by the absence of a dominant domestic reinsurance and excessive reliance on foreign reinsurance. The weaknesses of India's marine insurance industry, such as inadequate enforcement, inadequate disclosures, and underdeveloped markets, also exacerbate these problems. Reform is taking place, for example, in the amended IRDAI regulations and the new approach to the incorporation of risks in multi-modal transport systems, but the lack of reforms and the imploding global structure of the industry has delayed the country's developmental process for a long period of time.

Contrastingly, Japan possesses an advanced and multifaceted marine insurance sector, which is strengthened by the existence of an equally advanced and comprehensive legal and regulatory framework. The Japanese marine insurance system, in conjunction with the Insurance Business Act and the Commercial Code, offers consolidated and interconnected components of marine insurance, including the optimisation of risk management, clarity in the procedures governing claims, and the provision of adequate legal frameworks for the Insured and Insurers. The sophistication of the Japanese Insurance market is indicated by Japan's use of technology and predictive data analytics and Japan's inclination towards digital solutions to evolving challenges, such as climate change and cyber risks, including the provision of insurance offers. Japan, too, faces challenges of new risks, particularly the adoption of autonomous vessels and cyber risks, which call for the continuous development of marine insurance and the associated regulatory framework.

RECOMMENDATIONS

Reforming the Regulatory Framework in India: India needs to prioritise regulatory marine insurance. This can include amending the Marine Insurance Act to include provisions that

support flexibility in addressing emerging risks, including climate change and cyber risks. Empowering the Insurance Regulatory and Development Authority of India (IRDAI) through decisive enforcement accompanied by guidelines on the licensing and operation of marine insurers would facilitate order in the market.

Domestic Capacity Development: India will require a focus on the interior of the Indian market to possess the ability to self-insure against the Global Market. Supporting endeavours of Indian Insurers to promote and/or raise their Underwriting Capacity will be made possible through a positive financial justification of monetary tools. Ensuring that India may self-insure will provide stability to the Indian Market through the Reinsurance Capabilities of the Global Market.

Technological Advancement in Risk Assessment: India, along with Japan, will need to utilise the coming of trading technologies in attempting to protect against unknown losses in the progressive movement of international trade; maritime insurance in Japan, along with India & loss of zero in underwriting, will be an accepted trade-off. Predictive Data, along with the technologies of trade, will need to provide technophiles with limited coding to prevent unknown losses through the interconnectedness of formerly independent vessels, along with cyber hijacking. Indian Underwriters will lose zero insurance, and that will be an accepted trade-off.

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