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## ***Navigating Uncertainty: Commencement and Duration of Risk Under India's Marine Insurance Law***

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### ***Abstract***

Insurance against unpredictable risks offers individuals a measure of security and confidence to engage in trade and development. Particularly in maritime commerce, where the journey is vulnerable to unforeseen perils, marine insurance serves as a vital mechanism for mitigating loss. As a contract grounded in the principle of utmost good faith, marine insurance protects the assured's insurable interest in the subject matter, be it cargo, hull, or vessel through various policy types as recognised under section 2(h) and Rule 15 of the Marine Insurance Act, 1963. Although the Act does not explicitly define when risk begins or ends under different marine policies, it makes implied references through sections 44 to 51, as well as in the Schedule through Rules 4 and 5. These provisions help interpret how the nature and scope of a given policy determine the moment at which risk attaches and its duration. For instance, while a time policy restricts coverage to one year (subject to certain exceptions), a voyage policy covers the insured transit irrespective of time. This paper examines the statutory framework governing commencement and duration of risk under Indian marine insurance law. It discusses the underlying principles of different policies, the role of implied statutory provisions, and the maritime perils that are typically insured. In light of India's growing reliance on sea trade, ensuring legal clarity in determining when coverage begins and ends is critical to protecting the interests of the assured and supporting the resilience of the maritime sector.

## I. HISTORICAL BACKGROUND OF MARINE INSURANCE IN INDIA

Marine Insurance, as one of the oldest forms of commercial insurance, emerged out of the fundamental need to secure maritime ventures from unpredictable perils. Historically rooted in trade and maritime expeditions, its conceptual origin can be traced back to the practice of ‘bottomry’ contracts in ancient maritime societies, agreements where a loan would be granted on a ship, to be repaid only if the voyage succeeded.<sup>1</sup>

The earliest legal recognition of insurance can be seen in the Code of Hammurabi,<sup>2</sup> which alluded to risk pooling and mutual aid arrangements. In the Indian context, concepts resembling insurance are evident in ancient texts such as the Manusmriti, Dharmashastra, and Arthashastra, where resource pooling and mutual indemnification in times of adversity are advocated.<sup>3</sup>

The formal development of marine insurance as legal discipline, however, was heavily influenced by European mercantile customs, especially those originating in England. The establishment of Lloyd’s Coffee House in London in the 17<sup>th</sup> century became a cornerstone for the evolution of marine insurance markets. This hub of maritime commerce gradually evolved into Lloyd’s of London, one of the most prominent global insurance markets. In response to the increasing complexity of maritime trade, the United Kingdom codified marine insurance law through the Marine Insurance Act, 1906, which consolidated prevailing customs and judicial precedents.<sup>4</sup>

India, as part of the British empire, inherited much of this legal structure. Marine Insurance law in India remained largely uncoded until the enactment of the Marine Insurance Act, 1963,<sup>5</sup> which closely follows the structure and substance of the UK’s 1906 Act.

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<sup>1</sup> National Insurance Company Officers Association, ‘Origin and Development of Marine Insurance’, available at <https://nicoa.in/wp-content/uploads/2016/04/MarineCargo.pdf> (Last accessed 27 May, 2025).

<sup>2</sup> Addya Mishra and Archika Agarwal, ‘Marine Insurance and Its Legal Aspects in India: Perils of Sea’, available at file:///C:/Users/Acer/Downloads/Marine\_insurance\_and\_its\_legal\_aspects\_in\_Indi-1.pdf (last visited 9 March 2025).

<sup>3</sup> The Tamil Nadu Dr. Ambedkar Law University, ‘Maritime Law’, available at [https://tndalu.ac.in/econtent/40\\_Maritime\\_Law.pdf](https://tndalu.ac.in/econtent/40_Maritime_Law.pdf) (Last accessed 30 May, 2025).

<sup>4</sup> Supra Note 1.

<sup>5</sup> The Marine Insurance Act, 1963.

The 1963 Act marks India's transition from inherited mercantile law to a structured statutory framework, tailored to domestic maritime needs.<sup>6</sup>

Under the 1963 Act, marine insurance is defined in section 3 as a contract whereby the insurer undertakes to indemnify the assured against marine losses, that is to say, losses incidental to marine adventure. The act further categorizes insurance policies into various types, including time, voyage, and mixed policies, each of which carries different implications for when risk attaches and how long it continues.

The historical trajectory of marine insurance in India illustrates a movement from informal, community-based risk sharing to formalized commercial risk management. With India's rising involvement in international trade and expanding maritime infrastructure, marine insurance remains a critical legal and economic instrument.

However, as noted by scholars, including in the Indian Journal of Defence and Maritime Laws, India's legal provisions often suffer from interpretive ambiguities and a lack of judicial engagement with evolving forms of marine risk.<sup>7</sup> Despite the codification, certain doctrines such as 'good safety', 'reasonable time', and the precise moment of risk commencement remain underdeveloped in Indian jurisprudence.

To fully realize the protective intent of the Act of 1963, there is a need not only for statutory clarity but also for judicial activism and industry awareness. As the Indian Marine Insurance sector evolves, especially with IRDAI exploring indigenous Protection and Indemnity (P&I) clubs, the historical foundations must give way to modernized interpretative frameworks that can cater to both traditional and contemporary maritime challenges.

### 1.1 Objective

The primary objective of the Marine Insurance is the protection against the unforeseen perils of sea and securing the interest of the insured by indemnifying him against all the losses that may occur in the process of the shipment of the requisite goods.

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<sup>6</sup> Supra Note 3.

<sup>7</sup> Vice Admiral Pradeep Chauhan, Commodore Debesh Lahiri, Purnima Malik (ed.), 'Maritime Perspective 2022', available at <https://maritimeindia.org/wp-content/uploads/2023/04/Public-International-Maritime-Law-2.pdf> (Last accessed 7 June 2025).

### **1.2 Essentials of the Marine Policy**

Sec.25 of the act<sup>8</sup> specifies the essentials of a maritime policy. It states that a marine policy shall consider as follows: -

- i. Name of the parties i.e. insurer and the assured or any other person who may affect insurance on behalf of assured;
- ii. Subject matter and the risk insured under the policy;
- iii. Time period and the voyage as protected under the marine insurance; and
- iv. The sum against which the subject matter is protected under the policy.

## **II. TYPES OF MARINE INSURANCE POLICIES AND THE STRUCTURE OF RISK**

Marine Insurance policies are crafted to accommodate the complex and diverse nature of maritime trade. The Act of 1963 lays down a structured approach to the type of insurance policies available under the Indian law, with key distinctions drawn between voyage, time, mixed and floating policies. Each policy type defines its own mechanism for the commencement and duration of risk, thereby determining for the commencement and duration of risk, thereby determining the point at which the insurer's liability is activated and terminated.

### **2.1 Voyage Policy**

A voyage policy insures the subject matter from a specific place to another, regardless of the time taken to complete the journey. Section 2(h) of the Act defines a voyage policy as one where the risk attaches to the subject matter only during the voyage described in the contract. The risk commences from the moment the vessel set sail and continues until it reaches the designated destination.

Importantly, under section 41 of the Act, read with Rule 4 of the schedule, the inclusion of the phrases "from" or "at and from" significantly affects the time from which the risk attaches. If the policy states "from", risk attaches when the ship actually starts the voyage.

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<sup>8</sup> Supra Note 5, sec. 25.

If the policy includes “at and from” the risk may attach immediately upon the ship’s arrival at the port in a seaworthy condition.<sup>9</sup> Section 44 to 51<sup>10</sup> further provide implied conditions for determining how risk attaches under various voyage policy situations. Notably, if a vessel departs from a location different from that specified in the policy, the insurer’s liability may not commence. This principle was upheld in *Marten v. Vestey Brothers*,<sup>11</sup> where deviation from the stipulated departure point led to the denial of coverage.

## 2.2 Time policy

Under this policy the loss is insured for a specified period i.e. one year. Whereas a ‘continuation clause’ may be added to extend the period in case the particular voyage could not be completed within the defined period. It is generally applicable to hull insurance under which a vessel is protected when it is being constructed or navigating<sup>12</sup>.

The risk under this policy is liberated from the voyage and therefore covers any voyage of the ship within the times specified under the policy. The risk insured may commence from the moment the policy is attached and continues till the time the period insured expires. Such policies are generally used for hull insurance and for protecting the interest of the ship owner. The only limitation of this policy is that it excludes certain geographical areas from protection.

Sec.27 of that act states that any policy for ensuring a particular subject matter shall not exceed the period of one year and if exceeds the definite time period shall be considered invalid for such purposes. The policy covers all the risks for that particular time period; inconsiderate of the voyage it has taken. There is an exception to Sec.27 i.e. ‘continuation policy’, wherein, the time policy shall cover the risk occurred after the specified period i.e. until the voyage is completed or the ship reaches the port.<sup>13</sup>

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9 Addya Mishra and Archika Agarwal, ‘Marine Insurance and Its Legal Aspects in India: Perils of Sea’, available at [http://ijlljs.in/wp-content/uploads/2014/12/Short\\_Article\\_Marine\\_insurance\\_and\\_its\\_legal\\_aspects\\_in\\_Indi-1.pdf](http://ijlljs.in/wp-content/uploads/2014/12/Short_Article_Marine_insurance_and_its_legal_aspects_in_Indi-1.pdf) (last visited 6 March 2025).

10 Supra Note 5, Sec. 44 to 51.

11 *Marten v. Vestey Brothers*, (1920) AC 307(HL).

12 (—), ‘Marine Insurance’, available at <https://gargicollege.in/wp-content/uploads/2020/03/Marine-Insurance.pdf> (last visited 6 March 2025).

<sup>13</sup> Supra Note 3

### **2.3 Valued and Unvalued Policy**

Value policy clearly specifies the value for which the subject matter is insured as determined by the insurer and the assured whereas the unvalued policy such value is not defined and lays down the method to ascertain its value at the time of loss<sup>14</sup>.

### **2.4 Floating Policy**

This policy consists of the general clauses such as name of the parties and declarations as to the other details are made thereafter. These policies are usually taken by the merchants who regularly use ships as a means of trade and other business transactions.

### **2.5 Mixed Policy**

This policy is a mix of both voyage and time policy wherein the subject matter may be insured for a voyage to be completed under a particular period of time.

## **III. POLICY STRUCTURE, RISK ATTACHMENT AND DURATION OF RISK**

### **3.1 Policy structure and Risk Attachment**

The structure of these policies directly affects when and how risk attaches. The distinction between voyage and time policies influences not just the duration of coverage, but also the interpretation of liability in cases of delay, deviation, or partial shipment. Marten's case<sup>15</sup> illustrates the rigidity of voyage definitions, where deviation from the named port impacted coverage.

Furthermore, judicial interpretation in Indian Courts has not consistently expanded upon these nuances, leaving ambiguity around concepts like "good safety" and "reasonable time" under Rule 5 of the Schedule. With the increasing complexity in global supply chains and the rising use of digital tracking, modern marine policies must not only reflect the traditional constructs of risk but also adapt to current trade realities. As the Indian marine insurance sector continues to expand, the articulation and execution of these policy types will play a crucial role in managing risk fairly and efficiently.

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<sup>14</sup> Avtar Singh, *Law of Insurance*, Eastern Book Company, Lucknow, 1996, p.303

<sup>15</sup> Supra Note 11.

### 3.2 Duration of Risk

Understanding when the risk attaches to the subject matter is critical in determining the liability of the insurer and the entitlement of the assured under a marine insurance policy. The provisions for determining the commencement and duration of the risk though not explicitly mentioned in the Marine insurance act, 1963, is impliedly defined under chapter- VII of the act (Sec.44-Sec.51) dealing with the provisions of the Voyage policy whereas Sec.27 defines the duration under the time policy. Duration and commencement of risk under the Marine insurance policy can be discussed under following heads

#### 3.2.1 *Duration of Risk in Goods*

For cargo insurance, the phraseology used in the policy determines the moment when the risk commences. According to Rules 4 and 5 of the Schedule, if a policy includes the clause “from the loading thereof,” the risk does not attach until the goods are physically placed on board the vessel. This means that any loss or damage occurring during the transit from the shore to the ship is not covered under such a clause. The risk continues, however, until the goods are discharged at the destination port in a customary manner and within a reasonable period of their arrival.

In *Bhatia Coal Sales Ltd v. United India Insurance Co.*,<sup>16</sup> the Supreme Court examined the scope of the “warehouse to warehouse” clause. The court found the insurer liable even though a large portion of the goods remained with the customs authority and only a part had been imported. The claim was upheld because the goods were still under the control of the assured and the risk period under the policy had not yet lapsed.<sup>17</sup> Section 4 of the Act also reinforces this by providing that marine policies may cover land- based risks that are incidental to the sea voyage.

#### 3.2.2 *Duration of Risk in Ships*

Rule 4 and 5 explicitly mentions the duration of risk for claiming the loss and determining the liability of the insured. Ships are insured under the voyage policy on the ‘from’ or ‘at and from basis’.

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<sup>16</sup> *Bhatia Coal Sales Ltd v. United India Insurance Co.*, AIR 2003 SC 526.

<sup>17</sup> *Ibid.*

- ‘From’- When a policy uses the term ‘from’, the risk does not attach until the ship actually begins its voyage. It requires physical departure from the designated port. This interpretation ensures that no coverage is provided while the ship is docked or idle before the start of the insured journey.
- ‘At and from’- Where the clause ‘at and from’ is used, the policy provides coverage from the moment the ship arrives at the specified port in a seaworthy condition. If the vessel is not present at the designated port at the time the policy is executed, the risk attaches as soon as it arrives there safely. This principle applies equally to chartered freight contracts.
- Freight Risk and Mixed Cargo- If freight is insured ‘at and from’ a named location and is payable without specific conditions, the risk attaches pro rata as the goods are shipped. When goods belonging to multiple parties are shipped together, the risk for the assured’s goods commences immediately upon loading.
- Mixed Policies- A mixed policy offers the combined advantages of both voyage and time policies. It is particularly useful in situations where the voyage duration is uncertain or prone to delay. By blending temporal and geographic conditions, it ensures comprehensive protection throughout the insured period and during the designated voyage.

These distinctions are essential for insurers and assureds alike, as a misinterpretation of when risk begins or ends could lead to denied claims or unintended liabilities.

### **3.3 Share in the Global Marine Insurance Market**

Asia continues to expand its presence in the global marine insurance sector. According to the International Union of Marine Insurance (IUMI) 2023-24 report, the region accounted for a premium volume increase from USD 31.8 billion in 2020 to approximately USD 362 billion in 2024, marking consistent growth in its contribution to global underwriting.<sup>18</sup> However, India’s marine insurance sector contributes only 1.6%-2% of the total premium income, a disproportionately small figure given the country’s expanding trade volumes and maritime

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<sup>18</sup> International Union of Marine Insurance (IUMI), ‘Facts and Figures 2024: Global Marine Insurance Premiums Report’, IUMI, available at <https://iumi.com/statistics> (Last accessed 5 June 2025).



infrastructure.<sup>19</sup> Within the Indian marine insurance landscape, cargo insurance remains the most dominant segment, accounting for a majority share of the premium volume.<sup>20</sup> Recognising the strategic need to build domestic risk capacity and reduce dependence on foreign underwriters especially in the Protection and Indemnity(P&I) segment, the Insurance Regulatory and Development Authority of India (IRDAI) has resumed consultations to establish an indigenous P&I Club. This initiative, if implemented, would align India with leading maritime nations that maintain local mutual associations for third-party liabilities and strengthen the underwriting ecosystem for marine risks.<sup>21</sup>

#### IV. FOUNDATIONAL PRINCIPLES OF MARINE INSURANCE

Marine Insurance is a contract under which the insurer (insurance company) indemnifies the assured for any loss occurred in the event of some uncertain happenings against the payment of a considerate amount (premium)<sup>22</sup>.

##### 4.1 Principles of Insurance:-

Following are the general principles on which marine insurance policy is based-

###### 4.1.1 *Principle of Indemnity*

Under this policy the insurance company may indemnify the assured against the insured (subject matter) for nothing exceeding the actual amount of loss incurred.

###### 4.1.2 *Principle of Utmost good faith*

It is the basic principle to be followed in contracting an insurance policy by both the parties. Any material particulars that may affect the interest of the parties to whom the policy applies shall be disclosed by them, in absence of which the contract may thereby be held void.

###### 4.1.3 *Principle of Subrogation*

As per this principle, the insurer takes the position of the insured and is entitled to claim the loss from the third person who has acted negligent and caused such loss as covered by the insurance policy.

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<sup>19</sup> IRDAI, 'Annual Report 2023-24', IRDAI, available at <https://irdai.gov.in> (Last accessed 5 June 2025).

<sup>20</sup> S.S. Rana & Co., 'Marine Insurance Law in India', available at <https://ssrana.in/litigation/maritime-admiralty-law/marine-insurance-law-india/> (Last accessed 2 June 2025).

<sup>21</sup> Press Trust of India, 'IRDAI to form Task Force for Indigenous P&I Club' The Economic Times (New Delhi), available at <https://economictimes.indiatimes.com> (Last accessed 1<sup>st</sup> June 2025).

<sup>22</sup> Supra Note 1

#### 4.1.4 Principle of Proximate cause

As per law, the insurer will be liable, if the loss caused by the proximate cause and is one of the perils of the sea that is insured against the marine policy. If the factor is remotely connected with the loss the he will not be liable to make good the loss to the insurer<sup>23</sup>.

#### 4.1.5 Principle of Insurable Interest-

For the insurance policy to be valid it is necessary that at the time of loss the assured must hold the interest in the subject matter.

### V. PERILS OF THE SEA SECURED UNDER THE MARINE INSURANCE

Rule 7 and 12 of the Act defines the perils of the sea. Where the former specifically deals with the sea perils later defines all other perils. 'Perils of Sea' may not include any ordinary winds but is inclusive of the unanticipated casualties occurring in the sea. In *ED Sasoon & Co. v. Western Assurance Co*<sup>24</sup>, it was held that damage to opium as a result of the water entering into the surface of the ship due to the natural decay of the ship could not be considered as sea perils.

Perils of the sea refer to anything that may occur on the surface of sea that is beyond the human control and may be an act of the god<sup>25</sup>. It includes any loss or accident i.e. shipwrecking or collision of the ship. It also covers any loss suffered due to foundering or stranding at the sea. Any damage that may occur while carrying out a necessary act for the protection of the goods shall be claimed under such policy. The insurer shall be liable to cover all types of loss and damages if the carrier proves that he acted in the best interest of the subject matter insured<sup>26</sup>. The burden to prove that the loss is in question is one of the perils secured under the policy and that the carrier has taken a bona fide action for its protection rests on the insured himself.

<sup>23</sup> D.P. Verma, 'Marine Insurance in India: Policies and Principles', available at <https://poseidon01.ssrn.com/delivery.php?ID=749025071066116016029098093020077107054019017054089075023069112097070002028085100093009030098119110060047101103076116121111014016085069007012082002006117114025127023036065062089089096113126101028012071018096005025125090100088092091100104070116091001024&EXT=pdf&INDEX=TRUE> (last visited 8 March, 2025).

<sup>24</sup> *ED Sasoon & Co. v. Western Assurance Co*, 1912 AC 431

<sup>25</sup> Tanvi Bali, 'Marine Insurance in India: The Contours of the Policies and the Risk Coverage', available at <http://14.139.58.147:8080/jspui/bitstream/123456789/137/1/24LLM12.pdf> (last visited 8 March, 2025).

<sup>26</sup> *Ibid*.

It refers to something that could not be foreseen as one of the events attached to the marine adventure to which the ship may be exposed. The damage caused by rough weather may also be covered within such term<sup>27</sup>.

## VI. CONCLUSION AND SUGGESTIONS

Marine Insurance aims at protecting the interest of the insured or the ship owner against the perils of the sea. The claim of the insured rests on the fact that the risk is attached to the subject matter. Such attachment of risk is wherein dependent on the certain conditions as may be defined in the policy. The marine insurance policy does not give an exclusive outlook of the pre-requisites conditions to be followed but may find an implicit mention in some provisions of the act. The commencement and the duration of the risk is most certainly defined in the policy itself i.e. when the parties enter into an insurance contract and depends upon the type of policy taken by the insured. The determinant factors in calculating the duration of the risk and its commencement is the 'at and from' factor under the voyage policy and the time period of one year under the time policy. The policy stands discharge when the goods reach the destination i.e. from the 'terminus a quo' to 'terminus ad qualem' and therefore any deviation of the ship from its original course or unreasonable delay may adversely affect the claim of the ship owner or assured. The act is based on the English Marine Insurance and may sometimes raise difficulties in interpretation of certain provisions. There are certain expressions under the act which the court shall attempt to define, for example- as to what may constitute as 'an unreasonable delay' under the policy to rescind the assured's claim. The act takes 'reasonable time' as a question of fact to be determined on the individual basis, but it shall seek to lay down some minimum uniform standards to describe the circumstances that may fulfill the criteria of reasonability for all the policies. Rule 3 of the act also states that the ship shall reach the place of contract in good safety; but what may satisfy this good safety barometer seeks clarity. The lack of expertise in the assessment of these risks and claim is the foremost factor affecting the growth of the marine insurance in India.

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<sup>27</sup> Supra Note 7.

Therefore these clauses should be elucidated in a more clear way so that an honest claim of the assured is not affected. Another thing that has grabbed the author's attention is that the mixed policy of insurance may serve the best interest of the assured as it may cover all the voyages for a specified time period and the risks for any period of time taken to complete the particular journey or voyage.