"MARINE INSURANCE: THE LEGAL INSTRUMENTS GUIDING IT IN THE ECONOMIC MARKET"

*MUKUL SHARMA[1]

ABSTRACT

In framing light to the concept of Marine Insurance and its legal infrastructure, the authors here would like to enlighten the field of Marine Insurance, which is an important component of international trade and commerce, and the legal instruments guiding it. The authors will analyze the legal aspects of the Marine Insurance in India and will provide an overview and analysis of the Marine Insurance Act, 1963.

The Paper also provides the effects of Liberalization, Privatization and Globalization (1991) in the maritime industry of the country, which created a boom in the maritime transport sector. Also some important terms related to maritime law have been discussed in details along with the explanation of scope of marine insurance. The paper consists of extensive research on evolution of Legal Framework for Marine Insurance, Fundamentals of Marine Insurance Contract, Marine Insurance Policy and Marine Insurance Business as relating to Indian maritime sector and its global implications. The paper consists of in-depth research for analyzing and explaining different type of risks involved in Marine Insurance, nature of claims, different types of Marine Insurance, different principles of Marine Insurance, Loss and Abandonment with recent case laws and different types of marine policies.

[1] 5TH YEAR, B.A.LL.B (BUSINESS LAW HONS,SCHOOL OF LAW, KIIT UNIVERSITY mukulsharma2612@gmail.com

INTRODUCTION

Human life and property are always exposed to loss and damage due to its accidental nature which cannot be avoided. Wisdom of precautions is always necessary for the human life after fulfilling its basic needs. Risk can be defined as a probability or threat of damage, injury, liability, loss, or any other negative occurrence which may be caused by external or internal vulnerabilities, and that may be avoided through preemptive action.[2] To prevent such risk and to overcome it, the concept of Insurance was evolved where the parties enter into a contract whereby one party pays the premium and the other guarantees to indemnify him for any loss happened on any particular event. Insurance has been assumed as a social and economic necessity and in certain cases statutorily necessary.[3] Insurance in India is broadly classified into four types: Life insurance, Fire insurance, Marine insurance and miscellaneous insurance.[4] Trading through sea is not a new mode of trade for India. India has one of the longest coast lines in the world which connects India to other parts of the World. The remnants of a dry dock in the ancient port of Lothal in Gujarat bear evidence to this day of a flourishing sea trade between that region of India and the Persian Gulf and Arabian Sea areas.[5] In current scenario, India has the largest merchant shipping fleet among the developing countries and ranks seventeenth in the world in shipping tonnage, over 90% of the trade volume of India is done by way of marine transport[6] and the amount of import can also be determined by the step taken by Reserve Bank of India to mortgage gold to meet its balance of payments.[7]

When there is a trade through sea, there is a risk attached to it and to overcome such risk, Marine Insurance is executed. Marine insurance was started in the end of the 12th century in Italy when

[2] http://www.businessdictionary.com/definition/risk.html [Last Accessed on Aug. 20, 2014].
[3] R.N. Chaudhary, General Principal of Insurance Law, 6 (1st Edition, Central Law Publications, 2012).
[4] http://business.gov.in/manage_business/types_insurance.php [Last Accessed on Aug. 30, 2014].
[5] Proshanto K. Mukherjee, Enhancement of Maritime Law Education in the Indian Context, 3 NUJS L. REV.383 (2010), October - December, 2010.
[6] Arpita Mukherjee, India's Trade in Maritime Transport Services under the GATS Framework; Available at http://www.icrier.org/pdf/arpitam.pdf [Last Accessed on Aug. 30, 2014].
[7] http://timesofindia.indiatimes.com/business/india-business/Full-circle-India-buys-200-tons-gold-from-IMF/articleshow/5194338.cms [Last Accessed on Aug. 30, 2014].

the Chinese merchants were dispersing their shipments along with several vessels with a view to minimize the damage to the shipments.[8] Marine Insurance laws in India were subject to changes in past until the Government of India enacted the Marine Insurance Act, 1963 with an object to codify the law relating to Marine Insurance[9], which is also guided by the various clauses formulated by the Institute of London Underwriters (ILU) and the international commercial terms known as 'Inco-terms'[10].[11] In 1968, the developing nations in the UNCTAD conference, held in New Delhi, stated that the legislations made throughout the world regulating the Marine Insurance was not favourable to the developing Countries as their interest was dominated in the shipping business and for which a committee was set up by the UNCTAD to review the commercial and economic aspect of international legislations on shipping.[12]

The situation regarding shipping and marine insurance changed when the Government of India, under the leadership of Mr. Narshima Rao, Ex-Prime Minister of India, removed the trade barriers between the Indian Market and the Global Market by adopting the principles of Liberalization, Privatization, and Globalization in 1991. The Indian Government for the compliance of the GATS[13] agreement opened its service sectors, especially banking and insurance sector. LPG brought a change in the mechanism of business in all the sectors of Indian market. And when the private corporations started to operate in the insurance market in India, Government was in need of a regulator to regulate the insurance sector specifically, which will help the Government to get experts in the market to regulate in a manner favourable for all the market participants. Therefore Government of India enacted Insurance Regulatory and Development Act, 1999 with the object of establishing an Authority to protect the interests of holders of insurance policies, to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto.

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[8] J.V. Jaiswal, Law of Insurance, 1324 (Eastern Book Company, 2008).
[9] Preamble of the Marine Insurance Act, 1963.
[10] International Commercial Terms.
[11] Marine Insurance, Rai Technology University; Available at http://raitechuniversity.in/coursepack/Insurance/Marine_Insurance.pdf [Last Accessed on Aug. 22, 2014].
[12] Legal and Documentary aspects of Marine Insurance Contract, UNCTAD; Available at http://unctad.org/en/PublicationsLibrary/c4isl27rev1_en.pdf. [Last Accessed on Aug. 22, 2014].
[13] General Agreement on Trade in Services, 1994.

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IMPORTANT TERMS

MARINE INSURANCE:-

A form of insurance designed to provide coverage for the transportation of goods either on the ocean or by land, as well as damage to the waterborne instrument of conveyance and to the liability for third parties arising out of the process. The two branches of marine insurance are ocean marine and Inland marine.[14] Section 3 of the Marine Insurance Act, 1963 defines it as "a contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the assured, in a manner and to the extent thereby agreed, against marine losses, that is to say, losses incidental to marine adventure." Marine Insurance Act, 1963, in order to protect insured against the loss has expanded the definition of Marine insurance under section 4 (1) of the Act. The expansion of the term Marine Insurance by the Legislature had bought inland waters or any land risk incidental to any sea voyage under the purview of Marine Insurance.[15] Marine Insurance Contract does not only cover maritime perils, it's an insurance contract which covers the liability of consignment from warehouse to warehouse.[16]

The Hon'ble Supreme Court while determining the definition of Marine insurance in the case of *State of Orissa* v. *United India Insurance Co. Ltd.*[17], stated that the term indemnity used in defining the marine insurance is not similar as defined under the Indian Contract act and both cannot be contemplated as same, as the loss in contract of marine insurance is covered by the contract itself and such loss is not caused to the insured by the conduct of the insurer nor the conduct of any other person. Marine Insurance is contract but despite of being a contract, the

[14] http://www.irmi.com/online/insurance-glossary/terms/m/marine-insurance.aspx [Last Accessed on Aug. 24, 2014].
[15] Gaya Muzaffarpur Roadways Co. & ors. v. Ford Gloster Industries Ltd. & anr., AIR 1971 Cal 494.
[16] New India Assurance Co. Ltd. v. Hira Lal Ramesh Chand, AIR 2008 SC 2620.
[17] (1997) 5 SCC 512.

general principles of contract law are not applicable. Most of the law of marine insurance is in essence pure interpretation of the contract contained in the common form of marine policy. [18]

MARINE ADVENTURE:-

In a Marine Insurance contract, the subject-matter of the adventure is not insured but the risk of the whole adventure is insured in respect of the property exposed to the perils and not the subject-matter itself.[19] The definition of the expressions "marine insurance", "maritime adventure" and "maritime perils" contained in the Marine Insurance Act also goes to show that this Act applies only to marine insurance which is intended to indemnify the insurer against marine losses, i.e., losses incidental to marine adventure.[20] As per section 2 (d) of the Marine Insurance Act, 1963, marine adventure includes any adventure where-

i. Any insurable property which is exposed to maritime perils;
ii. The earnings or acquisition of any freight, passage money, commission, profit or other pecuniary benefit, or the security for any advances, loans, or disbursements is endangered by the exposure of insurable property to maritime perils;
iii. Any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property by reason of maritime perils.

The subject-matter of a contract of marine insurance should not only be based on a marine adventure, but it should always be a lawful adventure. An adventure becomes unlawful when its performance involves a breach of the law of a foreign country.[21]

PERILS OF THE SEA:-

[18] Gaurangi Patil, Reeling Back in History to Understanding Marine Insurance/ Protection & Indemnity Clubs (P&I), Jan. 2012, Published by Brus Chambers, Advocates & Solicitors, Mumbai, India; Available at http://www.brus.in/publications/shipping/MI.pdf [Last Accessed on Aug. 24, 2014].
[19] S. Chinnaswammy Nadar v. Home Insurance Co., 1981 ACJ 519 (SC).
[20] Indian Dyestuff Industries Ltd. & anr. v. Mehta Transport Company, AIR 1994 Bom 209.
[21] Euro Diam Ltd. v. Bathurst, (1988) 2 CA 23.

Perils of the sea have been defined as "*sea damage occurring at sea, when nobody is at fault*"[22], but this definition is not exhaustive, for damage colliding with the carrying ship is a peril of the sea.[23] It refers only to fortuitous accidents or casualties of the seas. It does not include the ordinary action of wind and waves.[24] There is no statutory definitions of Peril of the sea except the Rule 7 of the Rule of Construction but the Act has defined Maritime Perils, which means the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of sea, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, and detainments of princes and peoples, jettisons, battery and any other perils which are either of the like kind or may be designated by the policy.[25]

In *CCR Fishing Ltd*. v. *Tomenson Inc*[26], the Supreme Court of Canada attempted to define the term by stating that there is always a requirement of two elements to form a peril of sea, i.e., "fortuity" and "of the sea". In *New India Assurance Co.* v. *Andhra Fishermen Co-op Society Ltd*[27], the Hon'ble Andhra Pradesh High Court held that in case when the act which caused the loss to policy holder was not out of the peril of the sea and having a fault in the ship itself and given a Sea Worthiness certificate by the Insurer to the Policy holder, then the loss will be borne by the insurer. This pronouncement of the Judgment expanded the definition of the Peril of the sea and created a liability in the part of the insurer to verify every detail which can lead to disaster.

PRINCIPLES OF MARINE INSURANCE

The business of insurance is conducted on basis of certain fundamental principles which are applicable to all types of insurance such as life, fire, marine and other insurance contracts, with an exception of principle of indemnity, which is the life for other insurance except for life

[22] Hamilton v. Pandorf, (1887) 12 App. Cas. 518.
[23] M/s. Madgavkars Salvage & Towage Company Pvt. Ltd. v. United India Insurance Company Limited, 2014 SCC Online Bom 570.
[24] Rule 7 of the Rules for Construction of policy, First Schedule, English marine Insurance Act, 1906.
[25] § 2 (e) of the Marine Insurance Act, 1963.
[26] [1991] 1 Lloyd's Rep 89.
[27] AIR 2003 AP 231.

insurance. The important principles of insurance (also applicable to Marine Insurance) are discussed below:

A. **Principle of Co-operation**: It involves sharing of risks and uncertainties collectively on the basis of co-operation as insurance is based on the ideology of common welfare whereby this principle is based on the cooperative principle, i.e., *"One for all and all for one"*. In Insurance Business risks are covered, for which a common fund is created with the contribution of a large number of people by way of payment of premium and the fund thus generated by the people by contribution is paid to the insured person in case of maturity of risk. This way the contribution made by one for all and the contribution of all are used for compensation of any one of them.[28]

B. **Principle of Probability**: Insurance business deals with risk and there may be probability of risk which may happen or may not happen as there are uncertainties of quantum of risk. Probabilities of quantum of risk may be high or low, which determines the premium for insurance. This premium depends upon the quantum of risk and probability of risk involved in insurance contract, whereby the rate of premium will be more where the quantum of risk and its probability is more.

C. **Principle of Insurable Interest**: This is the most significant principle as well as legal requirement of a valid contract of insurance. This principle lays down that the assured must have an actual interest in the subject-matter of insurance. Any person can have an interest in the subject-matter of insurance who may be injured by the risks to which the subject-matter of insurance is exposed. For a valid contract of insurance, it is not enough that it is made with free consent of the parties competent to contract for lawful consideration, but also it is necessary that in addition to it, the insured must have insurable interest in the subject-matter of insurance. Absence of insurable interest in the subject-matter of insurance will amount to wager and it will become void as per section

[28] Anctil v. Manufacturer's Life Insurance Co., (1899) AC 604 (P.C.).

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30 of the Indian Contract Act, 1872. An insurable interest is *sui juris* and peculiar in its texture and its operation.[29] Especially in marine insurance, the question of insurable interest is more important.[30] Insurable interest is not complete ownership and insurable interest *qua* a vehicle policy is such interest in the subject-matter of insurance whereby the insured can seek to recover the monetary claim for any damage or loss to the insured vehicle.[31] The interest of the insured must exist in the case of marine insurance at the time of loss and the assured must have some relation to or concern in the subject of the insurance.[32] Insurable Interest is not synonymous with legal interest.[33] Thus an interest on an agreement to purchase is an insurable interest.[34]

D. **Principle of Utmost Good Faith**: Insurance contract is a contract of *Uberrimae Fidei*, i.e., a contract of utmost good faith, and if it is not observed by either party, the contract of insurance may be avoided by the other party in the contract. As per this principle, the contracting parties are placed under a special duty towards each other, not only to refrain from misrepresentation but to make full disclosure of all material facts within their knowledge. In *Mackenezel* v. *Conlson*[35], it has been said that there is no class of documents to which the strictest good faith is more rightly required in courts of law than policies of insurance. In *L.I.C.* v. *G.M. Channabasamma*[36], Supreme Court held that there must be complete good faith on the part of the insured. Good faith is a fundamental principle of law of insurance and is applicable to all kinds of insurance in the market. This principle was stated for the first time in *Carter* v. *Boehm*[37] by Lord Mansfield, who is said to be the father of this principle.

[29] Wamock v. Davis, 104 US 775.
[30] Dubby v. India and London Life Insurance Co., (1854) 15 CP 365; Howard v. Refugee Friendly Society, (1886) 54 LT 644.
[31] New India Assurance Co. Ltd. v. M/s T.T. Finance Ltd., AIR 2011 Del 121.
[32] New India Assurance Co. Ltd. v. B.N. Sainani, AIR 1997 SC 2938.
[33] M/s Oriental Insurance Company Ltd. v. Sham Lal Matoo, AIR 2006 J&K 103.
[34] *Id.*
[35] (1869) LR 8 Eg. 369.
[36] AIR 1991 SC 392.
[37] (1766) 3 Burr 1905.

E. **Principle of Indemnity:** The principle of indemnity is one of the most important principles in insurance contracts. As per this principle, the insurer agrees to pay no more than the actual amount of the loss suffered by the insured, in other words the insured should not make profit out of his loss. Most of the property and liability insurance contracts are contracts of indemnity. The very purpose of indemnity is to restore the insured to the same financial position on happening of loss as he enjoyed immediately prior to the loss or damage.[38]

F. **Principle of Subrogation:** The right of subrogation is said to be a corollary of the principle of indemnity.[39] It is applicable to all insurance contracts which are by their nature contracts of indemnity.[40] The doctrine of Subrogation, an equitable doctrine was derived from the system of Roman law.[41] Section 79 (1) of the Marine Insurance Act, 1963 deals with Right of Subrogation. Subrogation means substitution of one person for another. It confers upon the insurer the right to receive the benefit of such rights and remedies as the assured has against third parties in regard to the loss to the extent that the insurer has indemnified the loss and made it good.[42] The insurer is, therefore entitled to exercise whatever rights the insured possesses to recover to that extent compensation for the loss, but it must do in the name of the insured.[43]

G. **Principle of Contribution**: As doctrine of subrogation is incidence of principle of indemnity, principle of contribution is incidence of doctrine of subrogation. This rule is of ancient origin which was recognised by the Chancery Courts in *North British and Mercautile* v. *Liverpool and London Glob*[44], whereby it was held that the contribution exists where the thing is done by the same person against the same loss, and to prevent a man first of all from recovering more than the total loss occurred or if he recovers the total loss from one which he could have recovered from the other, then to make the parties contribute rateably. "Contribution is the right of the insurer who has paid a loss

[38] *Supra*, note 2 at 104.
[39] Avtar Singh, Law of Insurance, 39 (2nd edition, Eastern Book Company, 2010).
[40] Castellian v. Preston, (1883) 11 QBD 380; (1881-05) ALL ER 493; 52 LJ QB 366 (CA) at 401-402.
[41] John Edwards & Co. Ltd. v. Motor Union Insurance Co. Ltd., (1922) 128 LT 276.
[42] *Supra*, note 2 at 107.
[43] Oberai Forwarding Agencies v. New India Assurance Co. Ltd., AIR 2000 SC 855; (2000) 2 SCC 407.
[44] (1877) 3 Ch-D 569.

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under a policy, to recover a proportionate amount from other insurer who are liable for the loss".[45]

H. **Principle of *Causa Proxima*** (Proximate Cause): Another important aspect of insurance is to measure the quantum of damage from loss, which must be caused by the peril insured against, i.e., cause of loss. This principle is based upon the maxim *'causa proxima non remota spectator'*, which means that proximate and not the remote cause shall be taken into account as the cause of the loss. In *Macarthy* v. *Abel*[46], the owner of the ship insured the ship and freight separately. He abandoned the ship to the underwriters for some time due to restrictions in the port by the enemy government. When the restrictions were removed the ship owner filed a suit against the insurer for the loss of the freight. It was held in this case that the proximate cause for the loss of freight was his own act of abandonment and therefore, the insurer was not liable.

MARINE INSURANCE CONTRACT

Marine Insurance contract is a contract whereby the insurer undertakes to indemnify the assured in the manner and extent thereby agreed, against losses, i.e., losses incidental to a marine adventure.[47] Justice Blackburn, in *Lloyd* v. *Fleming*[48], defined a policy of marine insurance as a contract of indemnity against all losses occurring to the subject-matter of the policy from certain perils during the adventure.

DIFFERENT TYPES OF MARINE INSURANCE CONTRACT

1. Hull Insurance
2. Cargo Insurance
3. Freight Insurance

[45] Federation of Insurance Institute, Bombay.
[46] (1804) 7 RR 711.
[47] § 3 of the Marine Insurance Act, 1963.
[48] (1872) LR 7 QB 299, 302.

4. Liability Insurance

ESSENTIAL ELEMENTS OF MARINE INSURANCE CONTRACT

A. **Valid Contract:** Marine Insurance is a contract and therefore it has to satisfy the essential elements of a valid contract as provided in Contract Act[49], such as a proposal and its acceptance, free consent, enforceability under the Act[50], etc. In the absence of any of the essential elements of a valid contract, the contract of marine insurance becomes void.

B. ***Uberrimae Fidei* (Utmost Good Faith):** All Insurance Contracts are based on the principle of *Uberrimae Fidei*, i.e., on utmost good faith and when this is not observed by either of the parties, the contract can be avoided by the other. Sections 20[51], 21[52] and 22[53]

[49] The Indian Contract Act, 1872.
[50] *Id.*
[51] Disclosure by assured.-
(1) Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which, is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known to him. If the assured fails to make such disclosure, the insurer may avoid the contract.
(2) Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.
(3) In the absence of inquiry the following circumstances need not be disclosed, namely:-(a) any circumstance which diminishes the risk; (b) any circumstance which is known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his business as such, ought to know; (c) any circumstance as to which information is waived by the insurer; (d) any circumstance which it is superfluous to disclose by reason of any express or implied warranty.
(4) Whether any particular circumstance, which is not disclosed, be material or not is, in each case, a question of fact.
(5) The term "circumstance" includes any communication made to, or information received by, the assured.
[52] Disclosure by agent effecting insurance.- Subject to the provisions of the preceding section as to circumstances which need not be disclosed, where an insurance is effected for the assured by an agent, the agent must disclose to the insurer- (a) every material circumstance which is known to himself, and an agent to insure is deemed to know every circumstance which in the ordinary course of business ought to be known by, or to have been communicated to, him, and (b) every material circumstance which the assured is bound to disclose, unless it comes to his knowledge too late to communicate it to the agent.
[53] Representations pending Negotiation of contract.-
(1) Every material representation made by the assured or his agent to the insurer during the negotiations for the contract, and before the contract is concluded, must be true. If it be untrue the insurer may avoid the contract.
(2) A representation is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.
(3) A representation may be either as to a matter of fact, or as to a matter of expectation or belief.
(4) A representation as to a matter of fact is true, if it be substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer.
(5) A representation as to a matter of expectation or belief is true if it be made in good faith.
(6) A representation may be withdrawn or corrected before the contract is concluded.

of the Marine Act[54] are the relevant sections in context of important facts about utmost good faith.

C. **Insurable Interest:** In Marine insurance, the assured must have insurable interest at the time of the loss though he may not have been interested when the insurance was actually effected.[55]According to Section 7[56] of the Marine Insurance Act, 1963, a person has an insurable interest if he is interested in a marine adventure in the consequences of which he may benefit by the safe arrival of subject-matter of insurance or be prejudiced by its loss or damage. In respect to Marine Insurance, the following persons have insurable interest in the marine adventure:

- Agents and Shippers.
- Mortgagee of vessel to the extent of his mortgage.
- Underwriter in respect of risk underwritten.
- Owners of cargo.
- Charterers of vessels.
- Captain and crew of ship in their wages.
- Lender of money on bottomry or respondentia in respect of the loan.
- Bailee in respect of property left in custody and care.

D. **Warranties:** In a marine insurance contract, a warranty is a kind of condition. It is an undertaking by the assured that a certain thing shall be or shall not be done, or whereby he confirms or negates the existence of a particular state of facts. It may be express or implied.[57] Implied warranties are in the nature of preliminary essential conditions which

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(7) Whether a particular representation be material or not, is, in each case, a question of fact.

[54] The Marine Insurance Act, 1963.

[55] *Supra*, note 2 at 292.

[56] Insurable interest defined.-

(1) Subject to the provisions of this Act, every person has an insurable interest who is interested in a marine adventure.

(2) In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof.

[57] § 35 of the Marine Insurance Act, 1963.

must be complied with in order to render a contract of marine insurance valid and their non-compliance is fatal to the contract.[58] An express warranty is a seller's guarantee that a buyer relies on when they purchase an item which can be created by a simple statement on an advertisement or a sign.

E. **Indemnity:** The principle of indemnity is also applicable to Marine Insurance. Under this principle, the insured is entitled to claim the actual loss only, subject to a maximum of sum assured by the insurance. In current scenario, the concept of pure indemnity is replaced by commercial indemnity in marine insurance.

MARINE INSURANCE POLICIES

A. **Valued Policy:** A valued policy is a policy which specifies the agreed value of the subject-matter insured.[59] In a valued policy, the value mentioned is conclusive between the parties, unless there is a fraud whether be loss be total or partial.[60] Unless the policy otherwise provides, the value fixed by the policy is not conclusive for the purpose of determining whether there has been a constructive total loss.[61] A valued policy, resembles a wagering contract and on this ground its validity has been challenged in some cases, for example, in *Lewis* v. *Rucher*[62], when a similar argument was put forward, negativing the contention Lord Mansfield pointed out that the effect of the valuation was merely to fix the insurable value of the subject-matter of the policy 'just as the parties admitted at the trial'. The validity of the valued policies has not been questioned since then.[63] But in *Thames Mersey Insurance Co.* v. *Gunford*[64], it was held that a valued policy is not a wagering policy just because the value is excessive. In order that it may become a wagering policy it must be proved that the over-valuation is not only gross over-valuation

[58] *Supra*, note 2 at 293.
[59] § 29 (2) of the Marine Insurance Act, 1963.
[60] § 29 (3) of the Marine Insurance Act, 1963.
[61] § 29 (4) of the Marine Insurance Act, 1963.
[62] (1761) 2 Burr 1167.
[63] K.S.N. Murthy & Dr. K.V.S. Sarma, Modern Law of Insurance, 259 (4th Edition, LexisNexis Butterworths Wadhwa Nagpur, 2002).
[64] (1911) AC 129.

but it was fraudulently done.[65] The actual value is to be determined according to the rules laid down in Section 18[66] of the Marine Act[67].

B. **Unvalued Policy:** An unvalued policy is also known as Open Policy sometimes. In mercantile usage the term open policy is generally used to describe floating policies; but in law and under the statutes an open policy is denoted to describe only an unvalued policy.[68] An unvalued policy is a policy which does not specify the value of the subject-matter insured, but subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained in the manner specified in the Act.[69]

C. **Floating Policy:** This type of policies are generally taken by carriers, factors or warehousemen to cover their limited interests in the goods they carry or in their possession, when he does not know by which ship his goods will be dispatched. Such kind of policies are taken in general terms and the particulars as filled by subsequent declarations and therefore a floating policy is a policy which describes the insurance in general terms, and leaves the name or names of the ship or ships and other particulars to be defined by subsequent declaration.[70] The subsequent declaration or declarations may

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[65] *Supra*, note 62 at 260.

[66] Measure of insurable value.- Subject to any express provision or valuation in the policy, the insurable value of the subject-matter insured must be ascertained as follows:-

(1) In insurance on ship, the insurable value is the value, at the commencement of the risk, of the ship, including her outfit, provisions, and stores for the officers and crew, money advanced for seamen's wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole:

The insurable value, in the case of a steamship, includes also the machinery, boilers, and coals and engine stores if owned by the assured; in the case of a ship driven by power other than steam includes also the machinery and fuels and engine stores, if owned by the assured; and in the case of a ship engaged in a special trade, includes also the ordinary fittings requisite for that trade:

(2) In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance:

(3) In insurance on goods or merchandise, the insurable value is the prime cost of the property insured, plus the expenses of and incidental to shipping the charges of insurance upon the whole:

(4) In insurance on any other subject-matter, the insurable value is the amount at the risk of the assured when the policy attaches, plus the charges of insurance.

[67] *Supra*, note 53.

[68] *Supra*, note 64.

[69] § 30 of the Marine Insurance Act, 1963 states that "an unvalued policy is a policy which does not specify the value of the subject-matter insured, but subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained, in the manner hereinbefore explained."

[70] § 31 (1) of the Marine Insurance Act, 1963.

be made by endorsement on the policy, or in other customary manner.[71] Section 31 (3)[72] of the Marine Insurance Act, 1963 makes it clear that unless the policy otherwise provides, the declarations must be made in the order of dispatch or shipment. They must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith.

D. **Time Policy:** It is a policy where a ship is insured for a particular time, from a particular date to a particular date. Where the contract is to insure the subject-matter at and from, or from one place to another or others, the policy is called a "voyage policy", and where the contract is to insure the subject-matter for a definite period of time, the policy is called a "time policy". A contract for both voyage and time may be included in the same policy.[73] A time policy which is made for any time exceeding twelve months is invalid.[74] In time policy the contract is treated as an indivisible contract and therefore from the minute the policy attaches, the insured is entitled to indemnity for any loss that occurs during that period and the insurer is entitled to full premium.[75] In *Tyrie* v. *Fletcher*[76], it was held that if the risk has once commenced there shall be no return of premium.

E. **Voyage Policy:** Where the contract is to insure the subject-matter at and from, or from one place to another or others, the policy is called a "voyage policy".[77] A contract for both voyage and time may be included in the same policy. In a voyage policy, the risk commences at the port of departure (*terminus quo*) and ends at the port of arrival or

[71] § 31 (2) of the Marine Insurance Act, 1963.
[72] Unless the policy otherwise provides, the declarations must be made in the order of dispatch or shipment. They must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith.
[73] § 27 (1) of the Marine Insurance Act, 1963.
[74] § 27 (2) of the Marine Insurance Act, 1963.
[75] *Supra*, note 62 at 263.
[76] (1777) 2 Cowp 666.
[77] *Supra*, note 72.

destination (*terminus ad quem*). The voyage insured must be accurately described in a voyage policy, i.e., the local limit of the risk must be specified clearly.

F. **Mixed Policy:** Mixed insurance policy is a combination of voyage and time policies and covers the risk during particular voyage for a specific period of time. A contract for both voyage and time may be included in the same policy.[78]

G. **PPI Policy:** PPI policies are vogue policies, also known as wager policies. PPI stand for 'Policy Proof of Interest' and such policies are also called 'Interest or No Interest policies'. Every contract of marine insurance by way of wagering is void.[79] Though such policies are useless in the eye of law, still they are regarded as a record of an obligation not of law but of honour between the parties and are therefore termed as 'honour policies'.[80]

SCOPE OF MARINE INSURANCE

Marine Insurance policies are applicable to losses suffered against the marine adventure. The contract of marine insurance is intended to indemnify the losses caused by the marine adventure. The scope of the marine insurance contract is not restricted to the risk of the sea but also include the risk over land.[81] The Hon'ble Supreme Court in *New India Assurance Co. Ltd* v. *Hira Lal Ramesh Chand*[82], held that when a marine insurance contract includes warehouse to warehouse delivery than such contracts includes risk of inland transit also as they are incidental to the voyage of sea. The Marine insurance policy covers the building of ship, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy.[83] In case of dispute regarding the interpretation of Marine Policies or Contract, the general rule of construction is applicable which suggests that the polices should be construed

[78] *Id.*
[79] § 6 (1) of the Marine Insurance Act, 1963.
[80] *Supra*, note 62 at 264.
[81] Indian Dyestuff Industries Ltd. v. Mehta Transport Co., AIR 1994 Bom 209.
[82] AIR 2008 SC 2620.
[83] § 4 (2) of the Marine Insurance Act, 1963.

according to its true sense and meaning or we can say that the literal meaning as determined in the first place from the terms used in it; these terms should be constructed in plain, ordinary sense which can be easily understood by any common man, unless they have any peculiar meaning attached to it as per the trade or of any specific nature.[84] The marine insurance contract which is been entered by way of wagering is void and cannot be enforce before the Court of Law.[85] The marine insurance contracts in India are not restricted to the Marine Insurance Act, 1963 only, these contracts are also guided by the Rules of the Hague Convention and as they are of international character, they are also important to the marine insurance contracts and have importance in settling disputes before the Courts. The Hon'ble Madras High Court in *Hi-tech* v. *Shipping Corporation of India*[86], held that where the issue relating to period for filing of Suit was raised and addressed by the Court, the claim was made on the ground of Paragraph 3 of Rule 6 of Article III of Hague Convention[87] which suggests that "in an event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of goods or the date when the goods should have been delivered".

This particular issue was also raised before the Supreme Court in *East and West Steamship Co.* v. *S.K. Ramalingam Chettiar*[88], whereby Supreme Court interpreted the provision stating that the rule is not merely a rule of limitation, instead, it operates as extinction of the right of compensation. The Courts in various instances[89] have given effect to the Hague Convention and have shown a different scope or law regulating the marine insurance industry in India.

CONCLUSION

[84] Hart v. Standard Marine Insurance Co., (1889) 22 Q.B.D. 499, 501.
[85] § 6 of the Marine Insurance Act, 1963.
[86] (1993) 2 CPR 454.
[87] International Convention for the Unification of Certain Rules of Law relating to Bills of Lading ("Hague Rules"), and Protocol of Signature (Brussels, 25 August 1924); Available at http://www.admiraltylawguide.com/conven/haguerules1924.html [Last Accessed on Sept. 13, 2014].
[88] AIR 1960 SC 1058.
[89] Konsumex v. Anand & Co., AIR 1981 Cal 298; Union of India v. S.S. Navigation Co. Ltd., AIR 1978 Ker 136.

The paper provides a brief idea about the laws regulating and influencing the Marine Insurance sector in India, which is one of the important contributors to the growth of Indian Economy. Marine Insurance, being one of the most important features of the Marine Shipping Industry, is developing very rapidly with the development of human beings and determination of different forms of losses which can occur during a Marine Adventure. As per IRDA[90], t he Insurance sector in India contributed 5.10% to the GDP[91] of the nation in 2010-11.[92] As the nation is growing and the insurance sector is booming, the cabinet of Narendra Modi[93], the newly formed government, has approved the hike of the Foreign Direct Investment (FDI) in the insurance sector to 49% from the current level of 26% for the sake of development,[94] which has been also favoured by Life Insurance Corporation of India on 13th September, 2014.[95] This means that the investment in insurance sector would now be open to higher inflow of funds from the foreign investors which would be controlled by Foreign Investment Promotion Board under the supervision of Government of India.[96] The paper suggests that the major problem around the international transactions, even in the case of Marine Insurance, is the "Conflict of Law" or the proper law to govern the policy. Though the judiciaries around the globe had tried to resolve this issue, it is still questionable before the eyes of law. The Governments are encouraging the market players to enter into the market by providing various forms of incentives but the problem remains the same in the Industry and to resolve it, Governments should consult with the leaders in the specific Industry. IRDA[97] should take certain steps to increase the competition in the market and to maintain proper global standards, through which all the participants in the market can be benefited. As the Indian insurance market is poised for strong growth in the long run, it stands at the threshold of moving towards a stable position, delivering "stable profitable growth."

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[90] Insurance Regulatory & Development Authority established by Insurance Regulatory & Development Authority Act, 1999.
[91] Gross Domestic Product.
[92] Indian Insurance Industry at a Glance in 2011 – 2012; Report Available at http://www.indianmirror.com/indian-industries/2012/insurance-2012.html [Last Accessed on Sept. 13, 2014].
[93] Prime Minister, India.
[94] http://www.dnaindia.com/money/report-cabinet-approves-49-fdi-in-insurance-sector-to-introduce-new-bill-in-current-session-of-parliament-2004875 [Last Accessed on Sept. 2, 2014].
[95] News Report available at http://zeenews.india.com/business/news/finance/lic-favours-raising-fdi-cap-in-insurance-sector-to-49_108157.html [Last Accessed on Sept. 13, 2014].
[96] http://www.dnaindia.com/money/report-cabinet-approves-49-fdi-in-insurance-sector-to-introduce-new-bill-in-current-session-of-parliament-2004875 [Last Accessed on Sept. 2, 2014].
[97] *Supra*, note 89.