INDIAN JOURNAL OF LEGAL AFFAIRS AND RESEARCH

VOLUME 3 ISSUE 1

Peer-reviewed, open-access, refereed journal

IJLAR

+91 70421 48991
editor@ijlar.com
www.ijlar.com

DISCLAIMER

The views and opinions expressed in the articles published in the Indian Journal of Legal Affairs and Research are those of the respective authors and do not necessarily reflect the official policy or position of the IJLAR, its editorial board, or its affiliated institutions. The IJLAR assumes no responsibility for any errors or omissions in the content of the journal. The information provided in this journal is for general informational purposes only and should not be construed as legal advice. Readers are encouraged to seek professional legal counsel for specific legal issues. The IJLAR and its affiliates shall not be liable for any loss or damage arising from the use of the information contained in this journal.

Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJLAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

UNDERSTANDING THE DOCTRINE OF EXCLUDED PERILS IN MARINE INSURANCE THROUGH JUDICIAL INTERPRETATIONS – A COMPARATIVE AND CONTEMPORARY ANALYSIS

AUTHORED BY - SWETKETU DAS[1]

Abstract

'Excluded Perils' is a key concept in demarketing the scope of risk & liability under marine insurance policies. The principle of Excluded perils is incorporated in the Indian law of marine insurance i.e. the Marine Insurance Act 1963 u/S. 55, which is a direct derivative of the Section 55 of the Marine Insurance Act, 1906 which in turn derives its understanding of the principle from several judicial precedents dating back to the 1800s'. Thus judiciary, both foreign and national, have played key roles in shaping this key principle in marine insurance policies to safeguard the interest of the policy holders as well as the interest of the insurers. This article attempts to trace the Indian Judiciary's evolving understanding of the doctrine of excluded perils within the broader principle of '*uberrimae fidei*' and 'proximate cause'. The Analysis discloses a gradual judicial shift from formalist interpretations to a more purposive and commercially driven approach reflecting conjunction with evolving international jurisprudence. Comparative insights from foreign precedents are also employed to assess the synchronization of Indian law with global standards. The article also argues for a greater imperative clarity and legislative reforms to consolidate the judicial reasoning to ensure predictability in marine insurance contracts. Ultimately, this study contributes to the discourse on aligning India's marine insurance regime with international best practices under the broader canopy of maritime commercial law.

Keywords: Marine Insurance, Excluded Perils, Indian Judiciary, Comparative Maritime Law, Marine Insurance Act 1963, International Commercial Law, Contractual Interpretation

[1] Assistant Professor, School of Legal Studies, The Neotia University, Sarisa, West Bengal

1. Introduction-

Commercial cargo shipping remains the backbone of international commerce and global supply chains, and while modern shipping operations are much safer compared to earlier, different perils of the sea continue to plague shipping operations across the globe resulting in losses in millions if not billions. Marine insurance plays a significant role in safeguarding against such losses. Marine insurance assumes a crucial role in international commerce, providing financial security for maritime ventures and global supply chains. Maritime Insurance derives its legal foundations from centuries of maritime custom, evolving from early English admiralty principles to the codified regimes of the Marine Insurance Act, 1906 in the United Kingdom which later birthed a number of marine insurance laws across different jurisdiction globally[2], for example the Marine Insurance Act, 1963 in India. The laws of Marine Insurance are based on the doctrines of risk allocation, defining the scope of its coverage and providing exclusions and scope for modifications upon mutually agreed terms between the insurer and the assured. Amidst the plethora of underlying doctrines of claim settlement, the principle of excluded perils is of particular significance as it demarcates those events or instances of loss which fall outside the scope of insurer's liability thereby delineating the contours of insurable interest, proximate cause and indemnity. The principle of excluded perils is also of immense significance because while the laws of marine insurance aims to achieve an equilibrium between commercial certainty and equitable treatment of the insured, the exclusion of certain types of perils often creates an inevitable interpretive challenge for the judiciary to decide whether a loss occurred from an insured peril or one expressly excluded from the coverage. The stakes of such decisions are substantial, affecting not only the parties to the maritime insurance contract but also the stability of the broader maritime and insurance markets.

India's Marine Insurance Act, 1963 was modelled substantially on the English Marine Insurance Act, 1906, which codified principles established in earlier judicial precedents such as Ionides v. Universal Marine Insurance Co. (1863)[3] and Thames & Mersey Marine Insurance Co. v. Hamilton,

[2] Pavliha, M. (2010). Overview of Marine Insurance Law. *IMO International Maritime Law Institute* (9–10 January 2010).
[3] Ionides v Universal Marine Insurance Co, (1863) 14 C.B.(N.S.) 259

Fraser & Co. (1887)[4]. However, the transplantation of this legal framework into the Indian context occurred within a distinct judicial environment, one where courts often navigate between strict textual interpretation and equitable considerations rooted in public policy and commercial fairness. The interpretation of excluded perils under Indian law, therefore, raises complex questions such as 'should courts adhere to the strict contractual freedom inherited from English jurisprudence', or 'should they invoke broader interpretive tools that account for the socio-economic realities of Indian commerce'? This tension has been visible in decisions concerning exclusions such as risks of war, unseaworthiness, inherent vice, and wilful misconduct, where Indian judiciary have oscillated between literalism and purposive interpretation.

Despite the criticality of the doctrine of excluded perils to maritime insurance practice, there exists limited methodical analysis of how Indian judges have interpreted exclusion clauses in insurance disputes. The judicial discourse, though rich in individual rulings, lacks a unified doctrinal framework that links the interpretation of exclusions with broader principles such as '*uberrimae fidei'* (utmost good faith), 'proximate cause', and 'contractual fairness'. Moreover, global trends, particularly the reforms introduced through the United Kingdom Insurance Act, 2015 have prompted a reconsideration of long-standing doctrines such as disclosure, misrepresentation, and exclusion clauses. With the Indian maritime sector witnessing rapid growth, supported by initiatives such as 'Sagarmala'[5] and 'Maritime India Vision 2030'[6], the growth of shipping, port infrastructure, and maritime logistics dictates a robust and foreseeable insurance regime. However, inconsistent judicial interpretation of exclusion clauses undermines legal certainty and may discourage foreign investors from engaging into the Indian maritime insurance markets. By examining judicial trends, this article shall contribute to refining the predictability of risk calculation, claim settlement, and contractual negotiation in marine insurance. Furthermore, this research aims to contribute towards comparative legal discourse by highlighting how India's postcolonial judiciary has localized an inherited legal doctrine. It situates the Indian understanding within broader global developments, particularly the shift from strict textualism toward purposive

[4] *Thames & Mersey Marine Insurance Co. v. Hamilton, Fraser & Co*. (1887) 12 AC 484
[5] 'Overview of Sagarmala Programme', available at https://sagarmala.gov.in/about-sagarmala/introduction, last visited on 27th January 2026
[6] 'MARITIME INDIA VISION 2030', available at https://www.pib.gov.in/PressReleasePage.aspx?PRID=2080012&reg=3&lang=2 , last visited on 27th January 2026

interpretation, as seen in 'J. J. Lloyd Instruments Ltd v Northern Star Insurance Co Ltd.' [7] and 'Global Process Systems Inc. and Anr v. Syarikat Takaful Malaysia Berhad.'[8] This study is thus undertaken with the aim to deepen the understanding of how the Indian judiciary interprets excluded perils, a domain that remains doctrinally fragmented yet commercially critical. The analysis not only revisits traditional categories of exclusions but also situates them within the evolving realities of maritime risk and international commerce. By mapping the trajectory of judicial interpretation and aligning it with global trends, the paper seeks to contribute to the modernization and harmonization of India's marine insurance regime which is an essential step for the nation's emergence as a maritime power governed by predictable, transparent, and internationally credible legal standards.

2. Theoretical Foundations of the Doctrine of Excluded Perils

The 'doctrine of excluded perils' holds a distinct yet complex position within marine insurance jurisprudence. It demarcates the dividing line between an insurer's contractual liability under a marine insurance policy and the assured's assumption of risk. In theoretical terms, an excluded peril refers to a specific cause of loss that the policy expressly removes from the ambit of indemnity. Its significance lies in ensuring that the insurance contract, while designed to cover fortuitous risks, does not transform into a guarantee against all maritime contingencies. This chapter aims to trace the conceptual, statutory, and jurisprudential evolution of excluded perils in marine insurance law, highlighting its theoretical coherence and its interpretive challenges in both English and Indian contexts.

The conception of the doctrine of excluded perils can be traced back to 18th and 19th-century English marine insurance practices, where risk allocation was expressed through specific clauses excluding maritime losses arising from war, delay, inherent vice, or wilful misconduct *etc*. These exclusions were designed to shelter insurers from catastrophic or predictable losses that were either beyond their control or within the control of the assured. The seminal English statute, the Marine Insurance Act 1906, codified these doctrines, particularly through Sections 55 to 60 of the Act,

[7] [1987] 1 Lloyd's Rep 32
[8] [2011] UKSC 5

which delineated the proximate cause principle and specified the insurer's liability for perils insured against, subject to exclusions. Arnould described exclusions as "a means of preserving the commercial equilibrium of the policy" by ensuring that insurers only underwrite risks that are truly fortuitous.[9] The Marine Insurance Act, 1906 thus operated on two pillars *i.e.*, firstly, inclusion through the express enumeration of perils, *e.g.*, perils of the sea, fire, jettison and secondly, exclusion through specific clauses, *e.g.*, inherent vice, delay.[10] The doctrine was also conceptually linked with '*uberrimae fidei'* (utmost good faith), ensuring full disclosure of all material facts so that the insurer could accurately assess the scope of risk, excluded or accepted.[11] India's Marine Insurance Act, 1963 adopted this framework almost verbatim, reflecting the colonial continuity of British commercial law. However, Indian judicial interpretation has often departed from English orthodoxy, particularly in assessing whether a loss resulted solely from an excluded peril or from a concurrent cause partially covered under the policy.

Section. 55(2) of the Marine Insurance Act, 1963 mirrors its English counterpart by providing that, "unless the policy otherwise provides, the insurer is not liable for any loss proximately caused by delay, or by the inherent vice or nature of the subject matter insured."[12] The term 'excluded peril' is thus statutory rather than contractual. It represents the law's recognition that certain losses are inherently outside the insurer's assumption of risk which typically fall into following broad categories -

1. **Inherent Vice and Nature of Goods** – Deterioration due to natural wear and tear and the inherent qualities of the cargo.
2. **Willful Misconduct of the Assured** – Excluded under the principle that one cannot insure against one's own wrongdoing.
3. **Delay and Deviation** – Losses arising from delay in voyage or deviation from the contractual route, as such losses are foreseeable rather than fortuitous.

While the categorization may appear fairly simple the interpretive complexity arises when multiple causes contribute to the loss, some insured, others excluded. English courts have traditionally

[9] J. Gilman and R. Merkin, *Arnould's Law of Marine Insurance and Average* (19th edn, Sweet & Maxwell 2021) 212.
[10] M. Clarke, *The Law of Insurance Contracts* (8th edn, Informa Law 2020) 453.
[11] P Hodges, *Law of Marine Insurance* (Routledge 2019) 87.
[12] Section. 55(2), Marine Insurance Act, 1963

applied the principle of 'proximate cause' ("*causa proxima non remota spectatur*") to examining the dominant and effective cause.[13] However, modern jurisprudence often recognizes concurrent causation, particularly where an excluded peril operates alongside an insured one.

2.1. Theoretical Rationales: Risk Allocation and Commercial Certainty

The primary justification for excluded perils lies in the 'doctrine of risk differentiation'. Insurance, by nature, functions on the principle of mutualization of unforeseeable risks. By excluding predictable or self-induced perils, insurers maintain actuarial equilibrium and prevent moral dilemma. As Lord Diplock observed in 'J. J. Lloyd Instruments Ltd v. Northern Star Insurance Co Ltd.', "exclusions preserve the boundaries of insurable risk by ensuring that losses caused by the assured's own fault or natural decay are not indemnified."[14] From a jurisprudential standpoint, the doctrine serves both contractual and public policy functions. Contractually, it embodies the freedom of parties to allocate risk as they deem fit, subject to statutory safeguards while from a policy perspective, it prevents over-insurance and discourages negligent or fraudulent conduct by the assured.[15] In its judgement in 'Global Process Systems Inc. v Syarikat Takaful Malaysia Berhad', the UK Supreme Court reaffirmed that the identification of the proximate cause in marine insurance cases must be based on "common sense application, not rigid formulae".[16] This recognition of interpretive flexibility has influenced Indian jurisprudence also, where courts have gradually shifted from strict textualism to purposive construction.

2.2. Distinction Between Excluded Perils, Exceptions, and Warranties

At this juncture it is essential to distinguish between 'excluded perils', 'exceptions', and 'warranties', as their legal effects differ noticeably. An exclusion clause removes certain risks from coverage, whereas an exception qualifies a broader grant of coverage by limiting its scope. A warranty, on the other hand, imposes an obligation on the assured, the breach of which can discharge the insurer's liability entirely.[17] For instance, in 'Wayne Tank and Pump Co Ltd *v.* Employers Liability Assurance Corp Ltd', the Court of Appeal held that 'where a loss results from

[13] *Leyland Shipping Co Ltd v. Norwich Union Fire Insurance Society Ltd* [1918] AC 350 (HL)
[14] (1987) 1 Lloyd's Rep 32.
[15] N. Legh-Jones (*et al.*), *MacGillivray on Insurance Law* (15th edn, Sweet & Maxwell 2021) 112.
[16] [2011] UKSC 5.
[17] *Wayne Tank and Pump Co Ltd v. Employers Liability Assurance Corp Ltd* [1974] QB 57 (CA).

two concurrent causes, one being insured and the other being excluded, the insurer is not liable for the loss.'[18] This strict approach has been criticized for undermining the 'principle of proximate cause', and later decisions, including J. J. Lloyd Instruments Ltd v. Northern Star Insurance Co Ltd.'[19], have adopted a more nuanced stance by apportioning liability where causes are inseparable. Courts in India, influenced by these developments, have increasingly recognized the need to interpret exclusion clauses in light of the insurance contract's commercial purpose, for example in its judgment in 'United India Insurance Co. Ltd. *v.* Great Eastern Shipping Co. Ltd. the Supreme Court of India emphasized that 'exclusion clauses must not be read in isolation but harmonized with the contract's overall intent'.[20]

2.3. Comparative Jurisprudence and Modern Developments

In the post-modern era however, the international legal landscape of marine insurance has evolved to address modern perils such as cyber risks, autonomous shipping, and environmental hazards. Bahadoran-Baghbaderani and Shirani note that the deployment of unmanned ships introduces legal ambiguities in attributing liability, challenging the applicability of traditional categories of excluded peril.[21] Similarly, the integration of blockchain in marine insurance has transformed claims assessment, but the exclusion of algorithmic or cyber malfunction remains under-defined.[22] While the UK Insurance Act 2015 has reformed disclosure and misrepresentation rules, it has not fundamentally altered the doctrine of excluded perils. However, it reinforces the principle of transparency, which indirectly strengthens the operation of exclusion clauses by requiring accurate risk presentation. India, by contrast, continues to rely on judicial interpretation rather than statutory reform, creating inconsistencies in the application of proximate cause and exclusion clauses.

The contemporary interpretation of the 'doctrine of excluded perils,' particularly in jurisdictions like India that favor judicial interpretation over legislative change, is characterized by several

[18] *Ibid.*
[19] (1987) 1 Lloyd's Rep 32.
[20] (2007) 12 SCC 772
[21] M. Bahadoran- Baghbaderani, M. Shirani and R. Soltani, "Legal Challenges of Marine Insurance Laws in the Use of Unmanned Ships", *Modern Technologies Law Journal*, 6 (11) (2025), 319-348, https://mtlj.usc.ac.ir/article_214085.html (accessed 14 January 2026).
[22] R Alian, A Mohammadi and M Eslami, 'Blockchain in Marine Insurance: A Juridical Analysis' (2025) Modern Technologies Law Journal https://mtlj.usc.ac.ir/article_232428_en.html (accessed 14 January 2026).

emerging doctrinal difficulties. These tensions do not stem from a basic doubt about the legitimacy or existence of exclusions. Instead, the challenges arise from how courts apply these exclusions in complicated situations, specifically those involving multiple causes of loss and constantly evolving categories of risks.

A fundamental and ongoing conflict exists between the strict, literal interpretation of contractual terms and the need for commercial realism. Historically, marine insurance jurisprudence, derived from English law, mandated a rigid adherence to the literal wording of exclusion clauses, deeming them conclusive upon activation. Nevertheless, modern judicial approaches increasingly hesitate to permit exclusions to negate the commercial intent of the insurance policy, particularly when a loss results from a confluence of contributing factors.This shift is evident in decisions such as Global Process Systems Inc v Syarikat Takaful Malaysia Berhad, where the court rejected a mechanistic application of exclusions in favour of a fact-sensitive assessment of causal dominance.[23] This approach implicitly recognises that modern maritime risks rarely operate in isolation.

Closely linked to this is the challenge of concurrent causation of loss. While English courts have gradually accommodated the possibility that insured and excluded perils may operate simultaneously, sometimes permitting recovery where the insured peril remains an effective cause, Indian courts are yet to articulate a consistent doctrinal position. The prevailing tendency as seen in United India Insurance Co Ltd *v.* Great Eastern Shipping Co Ltd. has been to deny liability where an excluded peril is shown to have materially contributed to the loss, even if it was not the sole or dominant cause.[24] This approach preserves doctrinal certainty but does so at the cost of commercial fairness, particularly in cargo and hull insurance where loss scenarios are rarely attributable to any sole contributing factor.

A third challenge concerns the allocation of the burden of proof. As noted earlier, the traditional method requires the assured to establish that the loss was caused by a peril insured against, after

[23] [2011] UKSC 5
[24] *United India Insurance Co Ltd v. Great Eastern Shipping Co Ltd*, (2007) 12 SCC 772

which the insurer bears the burden of proving the applicability of an exclusion.[25] However, judicial practice worldwide often collapses this distinction, effectively requiring the assured to disprove exclusions once raised. Such an inversion risks undermining the protective rationale of insurance contracts and departs from the probabilistic reasoning endorsed in Rhesa Shipping Co (SA) *v.* Edmunds.[26]

Finally, these interpretive tensions are amplified by the emergence of new maritime risks, such as cyber incidents, automated navigation failures, and environmental liabilities. Existing exclusion categories which were designed for a pre-digital maritime economy are ill-equipped to accommodate these risks without judicial as well as legislative recalibration. As a result, courts are increasingly required to stretch traditional concepts such as inherent vice, negligence, and unseaworthiness beyond their original doctrinal contours. This process, while necessary, further exposes the limits of a purely exclusion-driven model of risk allocation.

Taken together, these patterns suggest that the doctrine of excluded perils is no longer a static boundary-setting device but a dynamic interpretive tool, one that must reconcile contractual text with commercial context, complexity of causes, and technological changes.

3. The Indian Legal & Judicial Framework on Excluded Perils

The doctrine of excluded perils constitutes a critical component of marine insurance law in India, operating at the intersection of statutory construction, contractual interpretation, and judicial reasoning. Rooted in the Marine Insurance Act, 1963, the Indian framework largely mirrors the English Marine Insurance Act of 1906, yet its application has evolved through judicial interpretation rather than legislative reform.

The Marine Insurance Act, 1963 provides the statutory foundation for excluded perils primarily through S. 55, which codifies the doctrine of proximate cause and expressly excludes 'insurer liability for losses caused by delay, inherent vice, and the wilful misconduct of the assured'.[27]

[25] Susan Hodges, *Cases and Materials on Marine Insurance Law* (Routledge 2012) 221.
[26] [1985] 1 WLR 948 (HL).
[27] Section. 55, *Marine Insurance Act, 1963*

Unlike some modern insurance statutes, the Act does not define "excluded perils" exhaustively, leaving considerable interpretive discretion to courts. Indian courts have consistently recognised that exclusions under S. 55(2) are not standalone rules but must be applied through the lens of proximate cause under S. 55(1). Consequently, the inquiry does not end with identifying the presence of an exclusion; rather, courts must determine whether such peril was the dominant and effective cause of the loss. In this context the Supreme Court has consistently affirmed that the doctrine of proximate cause under the law of marine insurance is to be applied using common sense and practical reasoning rather than technical causality tests. In United India Insurance Co Ltd v Great Eastern Shipping Co Ltd, the Court held that 'where loss is alleged to arise from unseaworthiness, the insurer bears the burden of proving not only the existence of unseaworthiness but also its causal dominance'.[28] This approach reflects a cautious judicial stance that avoids allowing insurers to rely on exclusions without satisfying stringent evidentiary thresholds. However, Indian courts have been less receptive to the doctrine of concurrent causation as developed in English law. Where an excluded peril is shown to have materially contributed to the loss, courts have frequently denied recovery, even where an insured peril also operated. This tendency reflects a preference for identifying a single proximate cause rather than accommodating multiple effective causes.

At this juncture it is imperative to examine the evolution of the judicial understanding of excluded perils envisaged under the Marine Insurance Act, 1963 to understand the far-reaching effect of the judicial pronouncements in this regard –

a. Inherent Vice –

Losses attributed to inherent vice constitute one of the most litigated exclusions in Indian marine insurance cases. Indian courts have interpreted inherent vice narrowly, requiring insurers to establish that the loss resulted from the intrinsic nature of the goods rather than external maritime risks. In National Insurance Co Ltd v Glencore Grain BV, the Supreme Court emphasised that deterioration of cargo during transit does not automatically constitute inherent vice; insurers must demonstrate that the loss would have occurred

[28] *United India Insurance Co Ltd v Great Eastern Shipping Co Ltd* (2007) 12 SCC 772.

irrespective of external conditions.[29] This decision follows the reasoning laid down in Oriental Insurance Co Ltd v Sony Cheriyan, rejecting insurer defences based on inherent vice where environmental or handling factors contributed to the loss.[30] This jurisprudence aligns with the Indian judicial trend that exclusions must be strictly construed against insurers.

b. Unseaworthiness, Wilful Misconduct, and Attribution of Fault –

Unseaworthiness occupies a complex position within Indian marine insurance law, operating at the intersection of exclusion, implied warranty, and fault. Indian courts have carefully distinguished between latent defects unknown to the assured and conditions attributable to the assured's knowledge or neglect. In United India Insurance Co Ltd v Great Eastern Shipping Co Ltd, the Supreme Court held that unseaworthiness excludes liability only where it is both causally connected to the loss and attributable to the assured.[31] Similarly in Hind Offshore Pvt. Ltd. v. IFFCO-Tokio General Insurance Co., the SC upheld that 'an insurer can repudiate liability if the vessel's, for example, structural integrity was not maintained to standard, distinguishing this from unforeseeable accidents.'[32] This dual requirement reflects judiciary's concern that insurers should not rely on retrospective assessments of seaworthiness divorced from questions of fault and causation. The same reasoning applies to judicial treatment of wilful misconduct, which is excluded only where intentional or reckless conduct on the part of the assured is established along with the proximate causal relationship between the misconduct and the resulting loss.

c. Delay and Deviation -

Section 55(2)(b) of the Marine Insurance Act 1963 expressly excludes losses caused by delay, even where delay is attributable to insured perils. Indian courts have applied this exclusion strictly, recognising delay as a non-fortuitous risk inherent in maritime trade. However, courts have also distinguished between loss caused by delay and loss occurring during delay. High Court decisions have held that 'where delay merely provides the

[29] *National Insurance Co Ltd v Glencore Grain BV* (2016) 2 SCC 682.
[30] (1999) 6 SCC 451.
[31] (2007) 12 SCC 772.
[32] *Hind Offshore (P) Ltd. v. Iffco-Tokio General Insurance Co. Ltd.,* (2023) 9 SCC 407

occasion for an insured peril to operate, exclusion may not apply'.[33] This nuanced distinction underscores judicial sensitivity to commercial realities.

Indian courts apply a strict judicial approach to excluded perils in marine insurance, consistently demanding that insurers meet a heightened burden of proof to demonstrate the causal dominance of an exclusion before liability is defeated. While this methodology fosters contractual certainty, it involves a reluctance to adopt the more flexible doctrines of concurrent causation found in other common law systems, potentially limiting the framework's adaptability to complex loss scenarios. Consequently, the Indian judiciary remains pivotal in interpreting statutory requirements within the context of commercial practice. The current legal framework thus represents a careful equilibrium: it upholds the core indemnity function of marine insurance and aligns broadly with international principles, yet maintains a unique domestic character rooted in a deliberate balance between certainty and commercial reality.

4. Comparative Perspective on the Law of Excluded Perils in Marine Insurance –

Marine insurance law, though formally domestic in character, operates within a highly internationalised commercial environment. Standard form clauses, shared underwriting practices, and transnational shipping risks have produced a body of law that is strongly comparative in orientation. The doctrine of excluded perils, in particular, has evolved through judicial engagement across common law jurisdictions. This chapter situates Indian jurisprudence on excluded perils within this broader comparative context, focusing on developments in English, Singaporean, and Australian law, and assessing the extent to which Indian courts have aligned with or diverged from these approaches.

4.1. English Law –

English marine insurance law has played a foundational role in shaping exclusion doctrine. Early authority, most notably Wayne Tank and Pump Co Ltd *v.* Employers Liability Assurance Corp Ltd, adopted a strict approach to concurrent causation, holding that where one of two proximate

[33] *Food Corporation of India v New India Assurance Co Ltd*, AIR 1994 Del 239.

causes was excluded, the insurer was not liable.[34] This approach prioritised certainty but was criticised for undermining the indemnity principle in complex loss scenarios. A significant doctrinal shift occurred with JJ Lloyd Instruments Ltd *v.* Northern Star Insurance Co Ltd., where the Court of Appeal recognised that maritime losses frequently result from multiple effective causes.[35] The Court held that recovery should not be denied merely because an excluded peril operated concurrently, provided the insured peril remained an effective cause of the loss. This reasoning was later reinforced by the UK Supreme Court in Global Process Systems Inc *v.* Syarikat Takaful Malaysia Berhad, which emphasised a "common sense" approach to causation rather than rigid causal hierarchies.[36] English law has thus moved towards a more contextual and commercially responsive understanding of excluded perils, accommodating causal complexity while preserving contractual intent.

4.2. Singapore and Australia –

Courts in Singapore have generally followed English marine insurance jurisprudence, while displaying sensitivity to regional commercial realities. In PT Bumi International Tankers v Man B&W Diesel SE (The Bunga Melati Dua), the Singapore Court of Appeal reaffirmed the centrality of proximate cause and adopted a purposive approach to exclusion clauses, stressing that policy interpretation must reflect commercial expectations.[37] Although not a marine insurance case strictly concerned with excluded perils, the decision illustrates the courts' broader interpretive philosophy. Courts in Australia have similarly adopted a contextual approach, particularly in insurance cases involving concurrent causes. While statutory frameworks differ, Australian jurisprudence demonstrates a willingness to examine the commercial purpose of insurance contracts rather than allowing exclusions to operate mechanically.[38] These approaches occupy a middle ground between English doctrinal flexibility and stricter traditional models.

[34] *Wayne Tank and Pump Co Ltd v Employers Liability Assurance Corp Ltd* [1974] QB 57 (CA).
[35] *JJ Lloyd Instruments Ltd v Northern Star Insurance Co Ltd*. [1987] 1 Lloyd's Rep 32 (CA).
[36] *Global Process Systems Inc v Syarikat Takaful Malaysia Berhad* [2011] UKSC 5.
[37] *PT Bumi International Tankers v Man B&W Diesel SE (The Bunga Melati Dua)* [2014] SGCA 24.
[38] Rob Merkin and Jenny Steele, *Insurance and the Law of Obligations* (OUP 2013) ch 7.

4.3. United States -

Marine insurance in the United States occupies a distinctive position within federal admiralty jurisdiction. While the US Supreme Court in Wilburn Boat Co v Fireman's Fund Insurance Co held that 'state law governs marine insurance contracts in the absence of established federal admiralty rules, courts have nevertheless developed relatively uniform principles governing exclusions'.[39] American courts interpret exclusion clauses strictly against insurers, particularly where exclusions undermine the fundamental purpose of marine insurance. In Lanasa Fruit Steamship & Importing Co v Universal Insurance Co, the Supreme Court held that 'inherent vice excludes liability only where the loss arises solely from the internal condition of the goods, not where external maritime perils contribute'.[40] This reasoning closely parallels English and Indian approaches to inherent vice and proximate cause. With respect to concurrent causation, US courts have demonstrated pragmatic flexibility. In St Paul Fire & Marine Insurance Co v Vest Transportation Co, the Fifth Circuit Court allowed recovery where an insured peril remained a substantial cause of loss, notwithstanding the presence of an excluded peril.[41] This reflects a policy-oriented judicial method that prioritises risk spreading and commercial expectations over formalistic causal hierarchies.

4.4. Chinese Law -

Chinese marine insurance law is governed primarily by the Insurance Law of the People's Republic of China and supplemented by judicial interpretations issued by the Supreme People's Court. Unlike common law jurisdictions, Chinese courts rely heavily on codified exclusions and authoritative judicial interpretations to resolve insurance disputes.

Chinese courts generally adopt a textual and systematic approach to exclusions. In marine insurance disputes, exclusions are enforced where clearly drafted, but courts require insurers to demonstrate a causal connection between the excluded peril and the loss. Scholarly analysis indicates that Chinese courts tend to lean towards identifying a single dominant cause, showing

[39] *Wilburn Boat Co v Fireman's Fund Insurance Co* 348 US 310 (1955).
[40] *Lanasa Fruit Steamship & Importing Co v Universal Insurance Co* 302 US 556 (1938).
[41] *St Paul Fire & Marine Insurance Co v Vest Transportation Co* 666 F2d 932 (5th Cir 1982).

limited acceptance of concurrent causation doctrines.[42] Judicial Interpretation of the Insurance Law emphasises that ambiguity in exclusion clauses must be construed against insurers, aligning Chinese law with international insurance principles.[43] However, courts exercise discretion in assessing causation, often prioritising economic loss prevention and market stability. This approach reflects China's broader regulatory objective of maintaining insurance market order rather than developing open-ended judicial doctrines.

4.5. The Indian Position -

The Indian jurisprudence on Maritime Insurance, especially in case of 'excluded perils' remains closely aligned with the statutory framework of the Marine Insurance Act, 1963, which itself mirrors the English Marine Insurance Act, 1906. Indian courts have consistently emphasised the doctrine of proximate cause and strict construction of exclusion clauses. In United India Insurance Co Ltd *v.* Great Eastern Shipping Co Ltd, the Supreme Court insisted that exclusions such as unseaworthiness must be established as the dominant cause of loss and cannot be presumed.[44] However, unlike English courts, Indian courts have been reluctant to adopt an explicit doctrine of concurrent causation. Where an excluded peril is shown to have materially contributed to the loss, recovery is often denied, even if an insured peril also operated. This approach reflects judicial caution and a preference for certainty, but it also reveals a divergence from the more flexible causation analysis now prevalent in English law. Scholarly commentary suggests that this divergence is partly attributable to legislative inertia.[45] In absence of reform comparable to the UK Insurance Act 2015, Indian courts have been constrained to operate within an inherited statutory framework, leading to incremental rather than transformative doctrinal development.

Similarly, Indian law on marine insurance occupies an intermediate position between the American and Chinese models. Like the United States, India applies common law principles of proximate cause and strict construction of exclusions. Supreme Court decisions such as United India

[42] KX Li, T Fu, L Zhu and Y Liu, 'Marine Insurance Law in China' (2007) 31 *Tulane Maritime Law Journal* 1.
[43] Supreme People's Court of the PRC, *Judicial Interpretation (II) of the Insurance Law* (2013).
[44] *United India Insurance Co Ltd v Great Eastern Shipping Co Ltd* (2007) 12 SCC 772.
[45] Malcolm Clarke and Barış Soyer, *The Insurance Act 2015: A New Regime for Commercial and Marine Insurance Law* (Informa Law 2016).

Insurance Co Ltd *v.* Great Eastern Shipping Co Ltd demonstrate insistence on insurer burden of proof and causal dominance.[46]

However, similar to Chinese precedents, Indian courts have been reluctant to adopt flexible concurrent causation doctrines. Where an excluded peril is shown to have materially contributed to the loss, recovery is frequently denied, even if an insured peril also operated. This judicial caution reflects statutory continuity with the Marine Insurance Act, 1963 and the absence of legislative reform.

Despite doctrinal divergence on causation, Indian courts have demonstrated strong alignment with international marine insurance practice through their treatment of standard form clauses. Institute Cargo Clauses and risk exclusions are routinely interpreted in accordance with international trade usage. In National Insurance Co Ltd v Glencore Grain BV, the Supreme Court expressly acknowledged the relevance of international commercial standards in construing marine insurance contracts.[47] This deference promotes uniformity and reduces jurisdictional friction, ensuring that Indian marine insurance law remains commercially intelligible within global markets.

5. Emerging Challenges and the Preparedness of the Indian Legal Regime –

The doctrine of excluded perils in Indian marine insurance law has developed within a relatively stable risk environment, largely shaped by traditional maritime hazards such as perils of the sea, inherent vice, delay, and war risks. However, contemporary maritime commerce is increasingly characterised by complex, technologically mediated, and multi-causal risks. The question however remains, whether the existing Indian legal framework, principally the Marine Insurance Act, 1963 and judicial interpretation thereunder is adequately prepared to respond to emerging challenges.

a. Technological Risks and Cyber Perils –

   One of the most significant emerging challenges in maritime operations is the rise of cyber risks, including navigation systems interference, ransomware attacks on ports, and data manipulation affecting cargo and voyage management. Such risks do not fit neatly within

[46] *United India Insurance Co Ltd v Great Eastern Shipping Co Ltd* (2007) 12 SCC 772.
[47] *National Insurance Co Ltd v Glencore Grain BV* (2016) 2 SCC 682.

traditional categories of insured or excluded perils. Standard marine policies frequently exclude cyber incidents either expressly or implicitly, leaving courts to determine whether losses are attributable to insured maritime perils or excluded technological failures. Indian marine insurance jurisprudence has yet to engage directly with cyber-related losses. The causation-centric approach adopted by Indian courts requiring identification of a dominant proximate cause may prove ill-suited to cyber incidents, which often operate as enabling rather than exclusive causes. Comparative scholarly endeavour in this area suggests that 'rigid exclusion-based causation may undermine the indemnity function of insurance in technologically complex environments'.[48]

b. Environmental Liability and Regulatory Risk –

Environmental damage and pollution-related liabilities present another area of emerging concern. International conventions addressing marine pollution have expanded the scope of potential liabilities faced by shipowners and operators. While environmental risks are often excluded or separately insured, losses arising from regulatory non-compliance or environmental damage frequently involve overlapping causes, including navigational fault, equipment failure, and external maritime conditions. Indian courts have traditionally treated exclusions such as wilful misconduct and unseaworthiness through a fault-based and causation-driven lens. However, as environmental liability increasingly arises from strict or regulatory liability regimes, the distinction between excluded misconduct and insured maritime risk may become blurred. The existing statutory framework offers limited guidance on how such risks should be allocated under marine insurance contracts.

d. Geopolitical Instability –

Geopolitical instability, sanctions regimes, and hybrid conflicts have significantly expanded the scope of risk exclusions in marine insurance. Modern geo-political risks often involve non-state actors, cyber operations, and economic sanctions rather than traditional conflict. Indian courts have historically deferred to policy wording and international trade usage when interpreting geo-political risk exclusions. While this approach promotes predictability, it also raises concerns about over-expansive exclusions that may effectively hollow out coverage for contemporary maritime operations. The preparedness of the Indian

[48] B Manopo and R Merkin, 'A Critical Analysis of Causation Rules in Marine Insurance' (2021) 6 *BESTUUR* 1.

legal regime in this area depends largely on judicial willingness to scrutinise exclusion clauses in light of commercial purpose and proportionality, rather than relying exclusively on formal categorisation of risks.

A recurring limitation of the Indian legal regime is the absence of legislative reform in marine insurance law. Unlike jurisdictions that have modernised insurance law to address evolving risks, India continues to rely on the Marine Insurance Act, 1963, which was drafted for a markedly different maritime environment. As Clarke and Soyer observe, statutory inertia places disproportionate pressure on courts to adapt doctrine incrementally through interpretation.[49] While Indian courts have demonstrated doctrinal coherence and restraint, judicial adaptation alone may be insufficient to address structurally new categories of risk. Legislative clarification on causation, concurrent causes, and modern exclusions would enhance predictability and preparedness.

The Indian legal regime governing excluded perils in marine insurance exhibits doctrinal stability and conceptual clarity, but its preparedness for emerging maritime risks remains uncertain. Technological, environmental, and geopolitical developments challenge a framework premised on traditional exclusions and singular causation. Without targeted legislative reform, Indian courts will increasingly be required to stretch existing doctrines to accommodate novel risk profiles. Ensuring preparedness will therefore depend on a calibrated combination of judicial sensitivity to commercial realities and legislative modernisation aligned with international marine insurance practice.

6. Concluding Remarks –

The doctrine of excluded perils occupies a pivotal position in marine insurance law, functioning as the principal mechanism through which contractual risk allocation is refined, limited, and judicially supervised. This study has demonstrated that, within the Indian legal framework, excluded perils are not treated as rigid contractual absolutes but as juridical constructs whose operation depends fundamentally on causation, attribution of fault, and commercial context.

[49] Malcolm Clarke and Barış Soyer, *The Insurance Act 2015: A New Regime for Commercial and Marine Insurance Law* (Informa Law 2016).

Through sustained engagement with statutory provisions, judicial precedents, and comparative jurisprudence, the article has traced how Indian courts have sought to reconcile inherited common law principles with the realities of modern maritime commerce.

A central finding of this study is that Indian marine insurance jurisprudence has developed a distinct judicial methodology grounded in proximate cause and strict construction of exclusion clauses. Supreme Court and High Court decisions consistently require insurers to establish not only the existence of an excluded peril but also its causal dominance in bringing about the loss. This approach has prevented the mechanical invocation of exclusions and preserved the indemnity function of marine insurance. At the same time, Indian courts have displayed institutional restraint in embracing more flexible 'doctrines of concurrent causation' that have gained acceptance in other common law jurisdictions. While this caution enhances certainty and predictability, it also exposes doctrinal rigidity in complex, multi-causal loss scenarios.

Overall, this study reveals that the doctrine of excluded perils in Indian marine insurance law has evolved from a static contractual exception into a dynamic judicial tool through which courts mediate between contractual autonomy, commercial certainty, and changing maritime risk profiles. While Indian courts have maintained doctrinal coherence by insisting on proximate cause and strict construction of exclusion clauses, emerging challenges such as cyber risks, environmental liabilities, and geopolitical instability, which expose the limitations of a framework rooted in traditional categories of maritime risk. The comparative analysis underscores that India occupies an intermediate position between common law flexibility and statutory restraint, benefiting from predictability but constrained by legislative inertia. In this context, the long-term effectiveness and international competitiveness of India's marine insurance regime will depend on a calibrated combination of judicial sensitivity to commercial realities and measured legislative reform addressing causation, concurrent risks, and modern exclusions, thereby ensuring that the doctrine of excluded perils continues to serve both its risk-allocation function and the evolving needs of contemporary maritime commerce.