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IS INDIAN MARINE INSURANCE SECTOR SUFFERING A DEFICIENCY? UNDERSTANDING THE ESSENTIAL ROLE OF PROTECTION & INDEMNITY COVERAGE IN SHIPPING & EVALUATING WHETHER INDIA NEEDS ITS INDIGENOUS P&I CLUB

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ABSTRACT

India is witnessing an expansion in the Maritime Insurance Sector corresponding to the growth of maritime trade and shipping, which is also on a steady incline. Unfortunately, this co-relation of growth is not complemented by a sturdy marine insurance framework which not only suffers from critical lapses such as reachability, acceptability and international recognition but also inconsistent Indemnity (P&I) facilities to Indian Ship Owners and more so without a dedicated Indian P&I Club. While the absence of the Protection and Indemnity facility is a commercial and market related issue, the absence of an Indian P&I Club is owing to the fact that the Insurance Act ("Act") until its most recent form current form did not allow the operation of mutual insurance associations, which are essential for P&I clubs[1]. This legal barrier necessitated amendments to the Act, which, while was a time-consuming process, especially given the political landscape and the need for legislative approval, left shipowners dependent on foreign clubs for liability coverage. This dependency resulted in inflated costs, regulatory constraints, and limited bargaining power, thereby affecting the competitiveness of the Indian shipping industry[2], however still, has made the Indian Shipowners plying international seas akin to international clubs. The absence of a dependable domestic P&I infrastructure has thrown Indian shipowners to risks such as financial vulnerabilities in cases of additional and unexpected calls, especially in cases of pollution liabilities, wreck removal, and crew claims, which are crucial aspects of maritime risk management[3]. The Government of India, through its Sagarmala 2030 vision and the executive and regulatory arm of the Ministry of Ports and Shipping, Directorate General of Shipping's (DG Shipping), aims to enhance port-based development and fortify India's maritime sector[4]. However, these initiatives risk being unfulfilled idealistically without an indigenous insurance infrastructure that encompasses comprehensive and varied risk coverage and legal clarity for shipowners. In this piece, the author critically examines the legal and economic obstacles stemming from India's marine insurance infrastructure, deficiencies that are faced by insurance companies and shipowners and the author, then, advocates for policy reforms to establish that India, while being a major seafaring nation, definitely needs strong claim management and insurance underwriting facilities and an Indian P&I policy to be recognised abroad and simultaneously impress upon audiences the probability and feasibility of an India P&I Club is negligent citing lack of volume and commercial inclination per se. The marine sector insurance

\[111] https://indiashippingnews.com/indias-pi-club-for-coastal-shipping-likely-to-start-on-domestic-waters/
[2] Sundaram, R. (2020). *Challenges in Marine Insurance and the Absence of a Domestic P&I Club in India*. Asian Maritime Review, 28(1), 87-106.
[3] Mukherjee, P., & Chatterjee, S. (2019). *The Legal Implications of Marine Insurance in India: A Comparative Study with Global Standards*. Journal of Maritime Policy & Law, 33(4), 221-245.
[4] https://sagarmala.gov.in/sites/default/files/MIV%202030%20Report.pdf

framework proposed by the author is with the intention to not only align India with global maritime best practices but also contribute to its aspirations of becoming a dominant player in international shipping. The author's proposition comes from a joint analysis of critical examination, joint analysis and extensive literature review which has helped in forming a notion that also aligns with several experts in the field.[5]

KEYWORDS: Indian Marine Insurance Market, Maritime Law, Insurance Law, Protection and Indemnity of Shipowners, Ships, Risk Management, P&I Clubs, Insurance Underwriting, Claims, Settlement, Assured, H&M. Commodities, Cargo.

[5] Banerjee, A. (2022). Maritime Insurance and Risk Management in India: A Critical Analysis. Indian Journal of Maritime Law, 45(2), 112-134.

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INTRODUCTION

Marine insurance finds its definitions in various statutes across the world, originating, of course, in Common Law, The Marine Insurance Act, 1963 **("Marine Insurance Act")** of India defines it as a contract of indemnity where the

> *'insurer agrees to compensate the insured for losses incidental to marine adventures, including those on inland waters or land risks that are part of a sea voyage.*[6]

Marine insurance is a specialised insurance configured and tailor made to protect shipowners, cargo owners, and other stakeholders in a maritime venture from financial losses arising from maritime risks and perils collectively called as a *'maritime adventure'*. Marine insurance policies are not only the one that provide coverage from inter-se claims but also cover third party claims as well. With the increasing globalisation of trade, shipping, today, faces complicated challenges such as piracy, security, geopolitical instability, climate change, and supply chain disruptions.[7] Marine insurance portrays a crucial role in mitigating these risks, to the best of the insurer's ability and to the maximum extent possible for the assured, ensuring the smooth operation of international commerce. At its fundamental form, Marine Insurance is a contract of protection offered by the insurer and accepted by the assured on the conditional payment of the Insurance Premium as consideration and the service of coverage of risks to the extent mutually accepted in the contract. Unlike, other insurance policies, maritime policies requires essentially that the policy covers each individual maritime risk, such as collision, salvage, fire, loss at sea, hull damage, machinery damage due to severe weather for it to be eligible for submission of claim in the event of an unfortunate incident. Maritime Insurance holds significance due to its prominent features for shipping; Risk Recognition & Mitigation and Financial Protection, an industry which involves high-value assets and unpredictable risks. Marine insurance ensures that stakeholders are financially protected against losses due to natural disasters, accidents, and human errors. Traditional English marine insurance policies provided by private insurers and Lloyd's of London (popularly known as the London Market) primarily covered physical damage to ships owned by shipowners (hull and machinery insurance) and cargo but excluded liabilities arising from third-party claims. These exclusions left shipowners exposed to financial risks arising from personal injury claims, pollution liabilities, wreck removal, and damage to other vessels. With a view to address this gap, shipowners in the United Kingdom began forming mutual insurance associations in the 1850s. These associations, more like a private club of shipowners that assured protection and coverage over third party liabilities to their members who joined by paying a premium. The first P&I Clubs emerged as cooperatives, where shipowners contributed funds to cover liabilities that were otherwise uninsurable. Over time, these clubs expanded in scope and became internationally recognised, covering a wide range of maritime risks[8]. P&I Clubs soon become a critical part of the shipping industry, culminating into the formation of the International Group of P&I Clubs (IGP&I) in 1899.

From the understanding of Marine insurances above, it is fairly derivable that Marine Insurance is, therefore, available in various forms A) Cargo Insurance B) Hull and Machinery and C) Protection and Indemnity. While the former types of policies **(A & B)** would cover and safeguard against losses faced by the interests on the cargo/commodity or the vessel itself, **(C)** Protection and Indemnity is a third party damage assurance which is often regarded as the most important form of coverage needed to ply the high seas. P&I

[6] Section 3 of the Marine Insurance Act, 1963
[7] https://commercial.allianz.com/news-and-insights/expert-risk-articles/shipping-red-sea-impact.html
[8] Soyer, B. (2014). Marine Insurance: Law and Practice

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coverage covers, *inter alia,* collision claims, wreck and salvage claims, pollution and spillage claims as well as allusion and rescue claims.[9] P&I Clubs are a fundamental part of the global maritime insurance framework, providing liability coverage to shipowners, charterers, and operators for risks that are typically excluded from standard hull and machinery insurance policies. These clubs operate as mutual insurance associations, meaning that members collectively share liabilities and risks.[10] The origins of P&I Clubs can be traced back to the early 18th and 19th centuries, coinciding with the growth of maritime trade and the need for more comprehensive insurance coverage. In collision case *"de Vaux x Salvador"* in 1836, today considered as a milestone case in the formative journey of P&I coverage, the English Admiralty court held that damage ensued to another vessel was not covered under a standard form of the hull policy widely used in the London market, since the cover was restricted to the insured ship only. This decision left many shipowners trading under ordinary policies uninsured against such a great risk. The market responded by extending the hull insurance to cover damage to the other ship's hull, but only to three-quarters of the damage operated through the *"running down clause"*.[11] The remaining portion of the liability was to be borne by the affected shipowner including the eventual additional amount of the insured value, which was limited to the value of the vessel and freight. Historically, the captain of the vessel would seldom be his owner or a major shareholder, and in the event of a large claim, he could even have to abandon his property to satisfy the claimants when his liability exceeded the limits of the hull insurance policy. According to most historical accounts, the formation of the P&I clubs, was decisive in the fate of the dying hull clubs. Due to several lives having been lost at sea due to famines and diseases and no particular cap on coverage of liability for the ship owner, P&I clubs saw a steady incline in adoption. Much of the prevailing law then gave unlimited claim rights to affected entities such as next of kin in case of deaths and ports in cases of damage to port properties.[12] Eventually, the Merchant Shipping Act of 1854 gave the shipowner the liberty to limit his liability to the vessel's value and freight.

In light of such incidents, additional "protection" was clearly needed to deal with the increasing liabilities, and the prominent prevailing hull clubs addressed this challenge. Insofar as-much that they did not manage to recall shipowners for hull insurance, third-party insurance regarding damage to other ships not covered under commercial hull policies and for death or injury to officers, crewmembers, passengers and others they offered. In 1855, the very first "Protection Mutual Club", the Shipowners' Mutual Protection Society, today the Britannia P&I Club, came into existence. Its operation was similar to that of the forerunner hull clubs, save that instead of providing hull cover, it only provided cover for loss of life and personal injury, damage to property, ¼-collision liability and the excess of the sum insured under the hull policy[13]. P&I Clubs have, since, evolved significantly over the centuries, shaping modern maritime risk management

Less well known about P&I Clubs is the central importance of co-operative institutionalism existing in the political-economy of the shipping industry. For, although shipping may be thought to epitomise the cut-throat competitive rationality of globalising capitalism, it is also the case that 90% of the world's merchant fleet (by tonnage) is bound into a mutual, non-profit-making structure such as the P&I club. This structure consists of the Protection and Indemnity (P&I) Clubs, in which shipowners pool their third-party liabilities. These liabilities encompass issues such as

[9] https://www.american-club.com/page/protection-indemnity-insurance
[10] https://www.igpandi.org/article/about/
[11] https://shorturl.at/t20yR (Overview of P&I Clubs @ Proinde P&I

[12] Lord Campbell's Act in 1846 gave dependants of persons killed onboard the vessel the right to pursue unlimited claims against the shipowners where such loss of life was caused by wrongful act, neglect or default of another person. The subsequent year saw the introduction of a further element of liability on the shipowners' shoulders: the Harbour, Docks and Piers Clauses Act that entitled port authorities to sue shipowners for damages caused to the port, whether negligently or not.
[13] https://britanniapandi.com/about/history/

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pollution, catastrophic damage, death or injury to crew and passengers, loss of cargo, and certain collision liabilities. The P&I Clubs, as understood, differ from commercial 'hull and machinery' underwriters, such as the Lloyd's of London syndicates, which insure the ships directly. In H&M arrangement, shipowners purchase insurance from profit-oriented companies; whereas in the P&I Clubs, shipowners enter into a mutual arrangement with all other members of the Club, wherein each shipowner serves the dual role of both insurer and insured. In P&I Clubs, however, mutuality means that each shipowner is liable to meet a share of the losses caused by themselves and all other members. This would suggest, in theory at least, that there is a mutual interest in risk minimisation. Indeed this concept was recognised by the Donaldson Report[14] investigating into the Braer oil-spill[15] which claimed that each P&I Club member has 'an interest in seeing that the claims of his fellow members are as infrequent and as small as possible'.[16] Because of this particular interest, the report went on to argue, the P&I Clubs were one of the best placed private actors to encourage higher safety and environmental performance in the shipping while also providing a form of regulation that depends upon horizontal relations of mutual interest between shipowners, rather than 'top–down' regulation from governments. In short, unlike conventional state regulation and commercial insurance, P&I Clubs have been praised to generate a 'moral economy' amongst shipowners while functioning more as a community looking out for its members thereby reducing resultant risk of negligent navigation.

Upon understanding the initial conceptualisation of P&I clubs, the highlights that the mutual assurance insurance they provide for future liabilities not covered by traditional insurance or fixed premiums bears out to be the most prominent feature that attracts shipowners. Members of the same P&I club offer protection to each other through contributed premiums. This is possible since the maritime sector, internationally, is regulated by conventions and treaties, as it forms part of international law, which unanimously and universally is understood to be followed by all moral compasses pointing to the same north. This is effective for continuance of shipping trade internationally, but it is well understood that a vessel is registered under one country, a flag state. The question of whether a P&I club is permitted to exist or needs to exist governed under a national legislation remains a question of both commercially viability and legal debate and accountability to the Flag State. This is clearly illustrated by providing two distinct examples of seafaring nations without a domestic P&I Club: Firstly, Greece, which has the one of the largest volume per tonnage of shipowners globally, does not have a dedicated P&I club for its owners. Greek shipowners rely heavily on international P&I clubs, primarily based in London, such as the UK P&I Club and the London Steam-Ship Owners' Mutual Insurance Association. The absence of a national P&I club in Greece is attributed to the robust, well-established international P&I infrastructure that provides comprehensive coverage, making the need for a domestic club less pressing. This reliance on international clubs underscores the significant role these global entities play in providing essential maritime liability coverage[17]. The success of these international P&I clubs is greatly attributed to their extensive experience, established networks, and financial stability, which are crucial for handling significant maritime claims and liabilities both predictable and unpredictable. On the other hand, India, a growing seafaring nation, did not even permit

[14] https://assets.publishing.service.gov.uk/media/54c11606e5274a15b3000015/MAIBReport_Braer-1993.pdf ||| https://api.parliament.uk/historic-hansard/commons/1994/may/17/merchant-shipping-donaldson-report
[15] https://www.bbc.com/news/uk-scotland-42577914
[16] Mutual risk: P&I insurance clubs and maritime safety and environmental performance – Paul Bennet
[17] Goulielmos, A. M. (2018). Maritime Insurance and Risk Management. Routledge

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mutual insurance until 2002[18] and only allows traditional insurance coverage. The Indian Insurance Act,1963 which did not facilitate the operation of mutual insurance associations until quite late, posed a significant barrier to the establishment of a domestic P&I club then. This lapse in legislative framework left Indian shipowners dependent on foreign P&I clubs for liability coverage, resulting in higher costs and limited bargaining power and today, due to inexperience and nascency, the attempts to float an Indian P&I are feeble.[19] Evidently, the reliance on foreign clubs exposes Indian shipowners to financial vulnerabilities, especially in cases of pollution liabilities and wreck removal.[20] For instance, the lack of a local P&I club means Indian shipowners must adhere to the terms and conditions set by foreign clubs, which may not always align with the specific needs of the Indian maritime sector. Additionally, conversion rates which are highly dependent on economic circumstances often call for unexpected rise in rates and expenses.

Furthermore, the International Group of P&I Clubs (IGP&I), established in 1899, facilitates reinsurance pooling among member clubs, ensuring that catastrophic claims can be managed effectively. The IGP&I comprises thirteen member clubs that collectively insure approximately 90% of the world's ocean-going tonnage. This cooperative model, wherein shipowners pool their third-party liabilities, is central to global maritime insurance and significantly influences maritime risk management.[21] The IGP&I's pooling agreement enhances the financial security of member clubs, ensuring that large claims, such as those arising from major oil spills or maritime accidents, can be adequately covered. For a small time shipowner, the high premium-high security may not be the need and would unnecessarily mount operational costs. Therefore, merely for their respective singular reasons, both massively seafaring nations of Greece and India are distinctly at opposite ends of the concept of the P&I Club formation.

At this juncture, one must examine whether there are any disadvantages for a P&I Club to be established for shipowners for a country like India. It is sufficiently apt to say that despite their significance, P&I Clubs, or rather its members, face several limitations and challenges; Shipowners are mandated to contribute substantial premiums **("Calls")** and may face unexpected supplementary calls (additional premiums) if there has been a substantial payout towards a claim, for example the claim that will eventually be settled for the MV Dali Collision in Baltimore[22], naturally exceeding forecasted liabilities.[23] Smaller shipowners, especially in developing economies struggle to afford P&I membership which have unpredictable *calls*. Another issue that aligns with the growing Indian sector is that P&I Clubs, once established tend to have Limited Accessibility for New and Smaller Operators since Entry into a P&I Club requires meeting strict underwriting criteria making it difficult for new shipping companies or those with a poor claims history to obtain coverage. Since India lacks a domestic P&I Club, forcing Indian shipowners to rely on foreign clubs, which leads to higher costs and regulatory challenges such as compliance to Foreign Exchange Management, RBI circulars and IRDAI Compliance under Indian law.[24] Understandably, the absence of having a seat at the P&I table, India has little or no influence to the International Market. This, while may seem a reason to actually establish a P&I Club in India, is actually one of the very pressing reasons why establishing a Club where India is not yet recognised as a seasoned player would thrust burden on the Indian stake holders of the

[18] https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081011.pdf
[19] https://www.constructionworld.in/transport-infrastructure/ports-and-shipping/indias-pi-club-plan-faces-hurdles-losing-momentum/60159
[20] Sundaram, N. (2020). The Indian Marine Insurance Market: Challenges and Opportunities. Journal of Maritime Law and Commerce, 51(3), 435-456.
[21] (IGP&I, 2021)
[22] https://www.businessinsider.com/baltimore-bridge-collapse-dali-cargo-ship-insurance-claims-costa-concordia-2024-3
[23] Soyer, B. (2014). Marine Insurance: Law and Practice
[24] Mukherjee, P. (2018). Marine Insurance in India: Challenges and Legal Perspectives. Indian Journal of Maritime Law, 35(4), 210-230

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industry. Admittedly, this, therefore, reaches to the core of the present article, that India ***does not need*** an Indian P&I Club but needs to improve, strengthen and impress its indigenous P&I facilities and insurance framework to Indian Shipowners and stakeholders. Admittedly, this would also require India to take a global political stand to amend most nations' port of entry rules to allowing Indian vessels with Indian P&I facilities and not possessing IG Club memberships. This rather easier said than done, is the infrastructural gap, more so in policy, than in legislature and infrastructure that may be considered as a reason keeping India from being a superior maritime nation. The limited acceptance of Indian insurance underwriters in the international shipping market is primarily due to regulatory constraints, lack of global affiliations, limited financial strength, slower claim settlement processes. Despite several attempts to underwrite Indian ships with a fixed premium, the truth of the transaction is that eventually the Indian P&I cover provider is nothing but broking capped fixed premiums from larger organisations which are eventually foreign based and not indigenous after all. This is nothing but raking of a grapevine one hasn't planted but is only leaning into one's garden.

Furthermore, to enhance their global acceptance, Indian insurers must integrate with international risk pools, improve regulatory compliance with global maritime insurance standards, and strengthen their financial and reinsurance capacities. By addressing these gaps, Indian insurance firms can improve their credibility and gain a stronger foothold in the international shipping insurance market. To achieve this, they should seek membership in global insurance groups, enhance compliance with international regulations, invest in financial stability and reinsurance capabilities, and establish a domestic P&I club. It is not that India as a seafaring nation has not recognised this need[25]. While that is true to the tooth, India to have its own P&I community will need eventually to have consumers of such gross volume. However, conversely, Indian marine insurance infrastructure lacks the support and reach to cater to such volume and the lacking volume has already caused the first obstacle in floating the first P&I Club.[26] The volume of tonnage is a critical factor in the viability and success of a P&I Club. High tonnage volume ensures a larger pool of premiums, which in turn provides greater financial stability and the capability to cover substantial claims. For India, increasing its tonnage volume would not only enhance its bargaining power in the international maritime insurance market but also provide the necessary foundation for establishing a robust and sustainable P&I Club. With present tonnage that India operates between inland and international waters, sustaining a P&I Club would turn out to be a gigantic task and probably will conclude in generating losses rather than catering to the requisite industry stakeholders. Upon closer introspection, the absence of a domestic P&I Club or a P&I Club originating in India is more due to the commercial inviability rather than a policy, legislative or infrastructure hollow.

CONCLUSION

Inasmuch, several compelling reasons support this conclusion that India does not need float its own club, underscores the commercial and operational prudence of relying on existing international P&I infrastructure.

Firstly, the volume of tonnage that India operates is minuscule compared to major seafaring nations. This low volume undermines the financial viability of a domestic P&I Club. High tonnage volume is crucial for ensuring a substantial pool of premiums, providing the necessary financial stability to cover significant claims. As noted, "The volume of tonnage is a critical factor in the viability and success of a P&I Club" Consequently, the limited tonnage makes it commercially unfeasible to sustain a robust domestic P&I Club.

[25] https://safety4sea.com/the-first-indian-pi-club-is-underway/

[26] https://infra.economictimes.indiatimes.com/news/ports-shipping/indias-plan-to-float-a-locally-owned-pi-club-lose-steam/112274892

Secondly, despite the amendment to the Insurance Act in 2002 allowing cooperative insurance, Indian insurance companies have been hesitant to enter the P&I sphere. This reluctance stems from concerns over potential failure, given the high risks and financial demands associated with P&I coverage. The legislative backdrop may have developed and continue to evolve to facilitate newer avenues and ideas, however, the apprehension of Indian insurers illustrates the substantial challenges in creating a successful domestic P&I entity.

Thirdly, established international P&I groups such as the IGPI, and regional counterparts like those in China and Japan, offer superior functionality and comprehensive coverage. These organizations benefit from extensive experience, well-established networks, and financial stability, which are critical for handling significant claims.

Lastly, the coverage provided by international P&I clubs is far-reaching, encompassing a wide array of maritime risks. This extensive protection ensures peace of mind for shipowners, knowing that their liabilities, ranging from pollution to personal injury claims, are comprehensively covered. The broad scope of international P&I coverage surpasses what a fledgling domestic club could offer. In conclusion, the proposition that India does not need a domestic P&I Club is well-founded. The limited volume of tonnage, legislative and commercial challenges, superior functionality of international P&I groups, and the extensive coverage they provide collectively argue against the establishment of a domestic entity. Instead, focusing on enhancing cooperation with international P&I clubs and strengthening India's maritime insurance infrastructure would be a more pragmatic and beneficial approach for Indian shipowners and stakeholders.

Therefore, analysing the policy and infrastructure scenario within the Maritime Sector in India, what is revealed is the commercial unviability of an India-based P&I Club in comparison to internationally established P&I clubs and it further reveals significant economic and operational challenges. The primary factor contributing to the unfeasibility of an Indian P&I club is the low volume of insured tonnage, which limits the club's ability to diversify risk effectively and maintain financial stability. The principle of mutuality, which underpins P&I clubs, is substantially weakened when the premium base is insufficient to sustain the inflated costs associated with maritime claims, regulatory compliance, and reinsurance. Moreover, Indian shipowners are better positioned insuring their vessels with internationally recognised P&I clubs, which provide greater financial security, superior risk distribution, and extensive global reach. The benefits of established P&I clubs include access to high-capacity reinsurance arrangements, comprehensive claims-handling expertise, and global network support, all of which enhance operational reliability for shipowners engaged in international trade.

From a legal perspective, the contractual certainty and dispute resolution mechanisms available through international P&I clubs further strengthen their attractiveness compared to a nascent domestic club. Indian shipowners benefit from well-established precedent and arbitration mechanisms within the IGP&I framework, reducing the risk of unpredictability in claims settlement. Additionally, under the Marine Insurance Act, 1963, and international conventions such as the Maritime Labour Convention, 2006, shipowners bear significant liability exposures that require the robust financial backing and expertise offered by international P&I clubs. Given these considerations, an India-based P&I club would lag behind, not due to efficiency but due to lack of opportunity and due to its inability to attract sufficient membership, since there exists a very negligible pool and achieve adequate risk pooling to provide competitive pricing and coverage. The legislative and regulatory landscape in India, while evolving, does not yet support a viable alternative that could rival the financial strength, reinsurance capacity, and

global claim settlement mechanisms of established international P&I clubs. Therefore, while the idea of an Indian P&I club may hold nationalistic appeal, its commercial viability remains doubtful in the face of market realities.

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