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Legal Framework for Non-Localised Damage in Multimodal Transportation: The Indian Perspective on Import

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Abstract

Containerised multimodal transport moves cargo from door to door under a single contract, but the sealed container hides the stage of the journey at which damage occurs. Where imported goods are found damaged at an inland container depot or at the consignee's premises and no stage can be identified as the cause, the loss is non-localised. This paper examines how Indian law allocates liability, proof and recourse for such loss when cargo is imported. It argues that the only Indian statutory fallback rule for non-localised loss, section 14 of the Multimodal Transportation of Goods Act, 1993, is confined by section 2(k) to carriage from India to a place abroad; that the sea-carriage statute, both in its 1925 form and as replaced by the Carriage of Goods by Sea Act, 2025, is likewise confined to carriage from Indian ports; and that an importer's rights therefore rest on the through bill of lading, general contract and bailment law, the statutes governing the Indian inland leg, and cargo insurance. Drawing on decisions of the Supreme Court and the High Courts, including *British India Steam Navigation Co v Shanmughavilas Cashew Industries*, *Patel Roadways v Birla Yamaha*, *Carborandum Universal v M G International Transports* and *Caravel Shipping Services v Premier Sea Foods Exim*, the paper identifies the gaps in applicable law, burden of proof, notice and limitation, and recourse against subcontractors. It then tests reform options against the UN Convention 1980, the UNCTAD/ICC Rules 1992 and the Rotterdam Rules 2009, and recommends a targeted amendment that extends the Act's liability provisions to cargo delivered in India, with harmonised time bars and a duty on operators to disclose transit records.

Keywords: multimodal transport; non-localised damage; import cargo; Multimodal Transportation of Goods Act 1993; recourse gap; burden of proof; India

1. Introduction

A container loaded at a factory gate in Germany, carried by road to Hamburg, by sea to an Indian port and by rail or road to an inland depot in Delhi, may pass through the hands of half a dozen performing parties under one contract with a multimodal transport operator (MTO). The commercial promise is one contract, one price and one point of responsibility.[1] The legal position is less tidy. Each mode has its own regime of liability, notice and limitation, and when the container is opened at its destination and the cargo is found damaged, nothing may show which leg is to blame. Damage of that kind is called non-localised (or unlocalised) damage.

The problem is sharper for Indian importers than for exporters. The only Indian statute that supplies a rule for non-localised damage, the Multimodal Transportation of Goods Act, 1993 (MMTG Act), is limited by

section 2(k) to carriage from a place in India to a place outside India.[2] The sea-carriage statute is limited in the same way. An importer therefore has no statute

[1]M A I H Hoeks, *Multimodal Transport Law: The Law Applicable to the Multimodal Contract for the Carriage of Goods* (2010).
[2]Multimodal Transportation of Goods Act 1993, preamble and s 2(k) (as substituted by the Multimodal Transportation of Goods (Amendment) Act 2000 with effect from 5 December 2000).

that governs the journey as a whole, and must work from a patchwork of contract terms, foreign law and Indian statutes for particular legs. This paper asks four questions:

1. What law governs an imported consignment that is damaged in transit when the stage of loss cannot be identified?
2. How do Indian courts allocate the burden of proof and apply rules on notice, limitation and forum in such disputes?
3. What recourse exists for the MTO, the cargo owner and the cargo insurer against subcontractors and other parties?
4. What reform is appropriate, in light of the international models for non-localised loss?

The study is doctrinal. It relies on statutes and on reported decisions of the Supreme Court and High Courts, uses English and United States authority only as persuasive material, and draws on the secondary literature for the conceptual framework. It is confined to loss of or damage to containerised import cargo whose stage of loss is unknown. Matters that bear on multimodal transport generally but not on that problem (armed conflict and war risks, e-commerce parcel networks, port-sector policy and environmental regulation) are left aside. The law is stated as at 12 November 2026. Two statutes on which earlier discussion of this subject relied have since been replaced: the Carriage of Goods by Sea Act, 2025 and the Bills of Lading Act, 2025 repealed the 1925 and 1856 Acts respectively, and both came into force on 10 September 2025.[3]

2. Conceptual Framework

2.1 Containerisation and the evidentiary curtain

Containerisation lets goods move between ships, trains and trucks without being unpacked, which cuts handling, pilferage and transit time. It also conceals the cargo. The shipper stuffs and seals the container; the carrier receives it on terms such as “shipper’s load, stow and count” and “said to contain”; and the consignee sees the contents only when the container is destuffed. The Kerala High Court has explained the effect of such terms: they protect a carrier who is not privy to the packing from later claims about the goods.[4] The sealed box thus draws a curtain across the whole journey. A claimant who finds internal damage behind an intact seal cannot say whether the cause was packing, a heavy sea passage, a wet quay or a rail shunt, and the carrier cannot show that the contents were sound when stuffed.

For imports the curtain is thicker, because the performing carriers and most of the transit records are abroad while the claimant is in India. The first inspection typically happens at a port or an inland container depot (ICD) or container freight station, after customs processing. In the import dispute considered below as *Carborandum*, for example, the evidence consisted of port annotations made when pallets were destuffed, a landing remarks certificate and a later independent survey. None of these records said where in the chain the damage occurred.

[3]Carriage of Goods by Sea Act 2025 (Act 19 of 2025), assent 8 August 2025, in force 10 September 2025 (S.O.
4082(E), 8 September 2025); Bills of Lading Act 2025 (Act 18 of 2025), assent 24 July 2025, in force 10 September 2025 (S.O. 4083(E)), s 6 repealing the Indian Bills of Lading Act 1856.
[4]*Caravel Shipping Services Pvt Ltd v Premier Sea Foods Exim Pvt Ltd* (2015) 5 KHC 58 (Ker), OP(C) No 522 of 2013, 8 September 2015, para 9, referring to *Container Corporation of India Ltd v Priya Dyes and Chemicals* AIR 2013 Mad 85.

2.2 Localised and non-localised loss; the liability systems

Where the stage of loss is known, most regimes apply the law governing that stage. This is the network system. Where it is not known, a fallback is needed. A uniform system applies one set of rules to the whole journey whatever the mode, and so avoids any inquiry into localisation; the UN Convention on International Multimodal Transport of Goods 1980 was designed on that model but has not entered into force. A modified network or hybrid system applies a uniform baseline but gives way to mandatory unimodal rules where loss is shown to have occurred in a particular stage; the Rotterdam Rules 2009 take this approach in article 26.[5] The MMTG Act is a hybrid on the network model: section 15 applies the law of the relevant mode to localised loss, and section 14 supplies a uniform fallback for non-localised loss. The question that runs through this paper is who bears the risk that the stage of loss cannot be proved: the claimant, the MTO, a subcontractor or the insurer.

3. The Multimodal Transportation of Goods Act, 1993

3.1 Purpose and structure

The Act was passed in 1993 (and is deemed to have come into force on 16 October 1992) "to provide for the regulation of the multimodal transportation of goods, from any place in India to a place outside India". It regulates the operator, the document and the liability regime. An MTO must be registered with the competent authority notified under the Act. An applicant must show a minimum annual turnover of fifty lakh rupees as a shipping or freight-forwarding business, and offices, agents or representatives in at least two other countries; a non-resident applicant not engaged in shipping must have a place of business in India.[6] The MTO must act as a principal and not as agent of the consignor, consignee or any carrier (s 2(m)), and may issue the multimodal transport document only after obtaining valid insurance cover (s 7, first proviso). The document may be replaced by electronic data interchange messages permitted by law (s 2(la)). Section 28 makes a contract void to the extent that it is inconsistent with the Act, and section 29 gives the Act overriding effect. Table 1 summarises the provisions that matter for this paper.

Table 1: Provisions of the MMTG Act relevant to non-localised loss

Subject	Section	Effect
Scope	s 2(k), (l)	Carriage by at least two modes under a multimodal transport contract, from a place of acceptance in India to a place of delivery outside India.
Operator	ss 2(m), 3, 4, 7	Registered MTO acting as principal; turnover and overseas-presence conditions; valid insurance before issuing the document.

Basis of liability	s 13	Liable for loss, damage or delay while the goods are in his charge unless he proves that no fault or neglect of his, his servants or agents caused or contributed to it. Goods may be treated as lost after 90 consecutive days of delay (s 13(2)).

[5]On the three systems see T Nikaki, "Bringing Multimodal Transport Law into the new century: is the uniform liability system the way forward?" (2013) 78 *Journal of Air Law and Commerce* 69; J Marin, "The Harmonization of Liability Regimes Concerning Loss of Goods During Multimodal Transport" (2012); D Dąbrowski, "The Multimodal Carrier's Liability for Non-Localized Loss" (2016) 36 *Problemy Transportu i Logistyki* 203; Hoeks (n 1).
[6]MMTG Act, ss 3 and 4(3). A certificate is valid for three years (s 4(4)).

Subject	Section	Effect
Non-localised loss	s 14	Where nature and value are undeclared and the stage of loss is unknown: the higher of 2 SDR per kg or 666.67 SDR per package or unit; 8.33 SDR per kg if the contract involves no carriage by sea or inland waterway.
Localised loss	s 15	Limit fixed by the law of the relevant mode; contrary stipulation void; MTO not liable for a cause for which the carrier is exempt under that law.
Loss of limit	s 18	Limit lost if loss resulted from an act or omission done with intent, or recklessly and with knowledge that loss would probably result.
Notice	s 20	Written notice at handover; if loss is not apparent, within six consecutive days after handover.
Time bar	s 24	No liability unless action is brought within nine months of delivery, of the date delivery was due, or of the date the goods may be treated as lost.
Forum and arbitration	ss 25, 26	Specified courts (defendant's place of business, place of contract, place of taking charge or delivery, or a place named in the document); arbitration permitted.
Override	ss 28, 29	Inconsistent contract terms void; the Act prevails over other laws.

3.2 The rules for non-localised loss

Under section 13(1) the MTO is liable for loss, damage or delay that takes place "while the consignment was in his charge", and the period of responsibility runs from taking charge to delivery (s 20A). The fault is presumed; the MTO escapes only by proving that neither he nor his servants or agents caused or contributed to the loss. Because liability attaches to the whole period of charge and not to any one leg, a claimant does not need to localise the loss to establish liability. Localisation matters only for the amount recoverable. Where the stage is unknown, section 14 caps liability at the higher of 2 SDR per kilogram of gross weight and 666.67 SDR per package or unit, or at 8.33 SDR per kilogram where the contract involves no sea or inland waterway carriage. For a container, the packages enumerated in the transport document count as the packages or units. Where the stage is known, section 15 applies the limit of the relevant mode,

and since the 2000 amendment adds that the MTO is not liable for a cause for which the carrier would be exempt under the applicable law.

Two features deserve comment. First, the figures in section 14 are the Hague-Visby limits and those of the UNCTAD/ICC Rules 1992, and not the higher figures of the 1980 Convention.[7] Second, the proviso to section 15 means that localisation can help the MTO, who may import a carrier-specific defence, whereas section 14 has no such proviso. On the text, an MTO who cannot localise the loss cannot borrow modal defences and is left with the section 13 defence of absence of fault. That is the reading that best fits the structure of sections 13 to 15. To the author's knowledge the point has not been tested in a reported Indian decision.

[7]On the instruments compare B D D Thao, "Multimodal Transport Operators' Liability Regimes under the UN Multimodal Transport Convention 1980 and UNCTAD/ICC Rules 1992: A Comparative Perspective" (2022) 11(6) *International Journal of Science and Research* 472; H M Kindred and M R Brooks, "New and improved? The UNCTAD/ICC multimodal rules reviewed" (1994) 33(3) *Transportation Journal* 5.

4. Imports: What Governs an Unlocalised Loss?

4.1 The export-only definition and its judicial treatment

Section 2(k) defines multimodal transportation as carriage by at least two different modes under a multimodal transport contract "from the place of acceptance of the goods in India to a place of delivery of the goods outside India". The preamble says the same. Registration, the document and the liability chapter all depend on that definition, because the Act regulates "multimodal transportation" and a multimodal transport contract (s 2(l)) is a contract to perform it. A through consignment from Hamburg to Delhi has its place of acceptance abroad and falls outside the definition. Parliament was concerned in 1993 with exporters, and the 2000 amendment, which rewrote sections 2(k) and 2(l), tightened the requirement of two modes but kept the India-to-abroad direction.

Two High Court decisions show how uncertain the position is. In *Caravel Shipping Services Pvt Ltd v Premier Sea Foods Exim Pvt Ltd*, an export of frozen seafood, the Kerala High Court read sections 2(k) and 2(l) together and held that a document captioned "multimodal transport document/bill of lading" was not a multimodal transport contract, because the operator had undertaken only the sea leg even though the container had travelled by road and then by sea. The Act applies only where the operator undertakes carriage by two modes.[8] In *Carborandum Universal Ltd v M G International Transports GmbH*, by contrast, the Madras High Court applied the nine-month time bar in section 24 to an import of fused aluminium oxide from Germany to Chennai, because the bill of lading was a "Negotiable FIATA Multimodal Transport Bill of Lading" and the goods had moved by road, then by sea, then by sea again.[9] The judgment does not discuss the requirement that the place of acceptance be in India. It also records that clause 17 of the bill of lading and Rule 10 of the UNCTAD/ICC Rules prescribed the same nine-month period, so the result can be explained on contractual grounds. On the text of section 2(k), the better view is that imports fall outside the Act, and that *Carborandum* is best read as giving effect to a contractual time bar. An importer who relies on the Act's limits or presumption in an import dispute takes a real risk.

4.2 The sea leg: statute applies only outward

The sea leg of an import is not governed by the Indian sea-carriage statute. The Indian Carriage of Goods by Sea Act, 1925 applied only to carriage from a port in India. The Supreme Court held so in *British India Steam Navigation Co Ltd v Shanmughavilas Cashew Industries*, where cashew nuts were shipped from East

Africa to Cochin: the Indian Act did not apply because the port of origin was not Indian, and the jurisdiction and choice-of-law clause in the bill of lading was upheld.[10] It repeated the point in *Shipping Corporation of India Ltd v Bharat Earth Movers Ltd*, holding that the Indian Act applies only to carriage from an Indian port and that the contract before it was governed by the Japanese statute.[11] The Carriage of Goods by Sea Act, 2025 gives the Hague-Visby Rules statutory force in India, but again for carriage "from any port in India to

[8]*Caravel* (n 4), paras 7 to 11 and 13. The court added that the arbitration clause in the carrier's document did not bind the plaintiff because there was no consensus on it and nothing to show the clause had been brought to the plaintiff's notice.

[9]*Carborandum Universal Ltd v M G International Transports GmbH* (2014) 5 LW 712 (Mad), Second Appeal No 6 of 2008, 30 October 2014, paras 12 to 14 and 20 to 22.

[10]*British India Steam Navigation Co Ltd v Shanmughavilas Cashew Industries* (1990) 3 SCC 481 (SC).

[11]*Shipping Corporation of India Ltd v Bharat Earth Movers Ltd* (2008) 2 SCC 79 (SC).

any other port, whether in or outside India" (s 3).[12] Inbound shipments therefore remain outside it.

The Hague or Hague-Visby Rules reach an inbound voyage only in two ways. The first is through the law of the loading state: the Hague-Visby Rules apply, by article X, to carriage from a port in a contracting state. The second is by contract, through the clause paramount in the bill of lading. The decision in *IAL Container Line (India) Ltd v Citizen International* shows the second route at work. The bill incorporated the Hague Rules and the Indian Act through its clause paramount; the Punjab and Haryana High Court held that the one-year time bar in article III rule 6 applied, treated the claim as extinguished, and dismissed a suit filed two years after delivery.[13] Whichever route applies, the Indian importer's sea-leg rights are fixed by a foreign statute or by contract, and Indian courts give effect to the parties' choice.

4.3 The Indian inland legs

If the loss can be tied to the Indian inland leg, local statutes apply. The Carriage by Road Act, 2007, which repealed the Carriers Act, 1865, makes a registered common carrier responsible for loss of or damage to a consignment (s 17), but limits its liability to a prescribed amount, which the Carriage by Road Rules 2011 fix at ten times the freight paid or payable unless a higher risk rate has been agreed (ss 10 and 11). Conditions limiting or excluding liability do not protect a carrier against loss caused by its own or its servants' negligence or criminal acts (s 12), and no suit may be brought without written notice within 180 days of the booking of the consignment (s 16).[14] Under the Railways Act, 1989 a railway administration is responsible for loss, destruction, damage or deterioration in transit from any cause except those listed in section 93, and a claim for compensation requires notice within six months of entrustment (s 106).[15]

On the burden of proof, the leading authority is *Patel Roadways Ltd v Birla Yamaha Ltd*, in which a consignment of generator sets was destroyed by fire at the carrier's godown. The Supreme Court held that the liability of a common carrier under the 1865 Act is that of an insurer, that the claimant need not prove negligence, and that the burden of showing absence of negligence is on the carrier.[16] The reasoning arose under the repealed 1865 Act. Whether it carries over unchanged to the 2007 Act, which retains a statutory responsibility of the common carrier in section 17 subject to the limits in sections 10 to 12, is an argument rather than settled law, though there is nothing in the 2007 text that points the other way.

4.4 Contract, foreign law and forum

For most of the journey an importer is left with the through bill of lading. The terms are often those of the FIATA multimodal bill or are based on the UNCTAD/ICC Rules, which supply a contractual network system with a fallback limit for unlocalised loss, and the Supreme Court enforces agreed limits. In

Bharathi Knitting Co v DHL Worldwide Express Courier, a consignor who signed the courier's consignment note was held bound by the limit of liability in

[12]Carriage of Goods by Sea Act 2025, s 3 and the Schedule.
[13]*IAL Container Line (India) Ltd v Citizen International* CR-2292-2013 (O&M), 2023:PHHC:050586 (P&H), 12 April 2023. The case concerned an export of sewing machines from India to Dubai; it is cited for the operation of the time bar through the bill's terms.
[14]Carriage by Road Act 2007, ss 10 to 12, 16 and 17; Carriage by Road Rules 2011.
[15]Railways Act 1989, ss 93 and 106.
[16]*Patel Roadways Ltd v Birla Yamaha Ltd* AIR 2000 SC 1461 (SC), 28 March 2000.

it.[17] Two consequences follow. A stipulation that section 15 would avoid in an export (one that departs from the limit of the relevant mode for localised loss) is enforceable in an import contract; and a clause choosing a foreign law or forum will be respected, as *Shanmughavilas* shows.

Arbitration clauses compound the problem. Where the seat is abroad, Part I of the Arbitration and Conciliation Act, 1996 does not apply to arbitration agreements made after 6 September 2012, so Indian courts have limited supervisory power.[18] Whether the clause binds at all depends on proof that it formed part of the contract. In *Caravel* it did not, because the carrier's unsigned document was not shown to have brought the clause to the plaintiff's notice. In *Sanco Trans Ltd v Addison and Co Ltd* the Madras High Court held a subrogated insurer bound by the arbitration clause in the multimodal bill issued to its insured.[19] The two outcomes are reconcilable on their facts, but they show that the forum for an importer's claim is fixed less by statute than by what the carrier can show was agreed. The Act's own forum rule (s 25) and arbitration provision (s 26) are not available to an importer outside section 2(k).

4.5 Right to sue, and the right defendant

The consignee's or endorsee's right to sue on a bill of lading is governed by the Bills of Lading Act, 2025, which replaced the 1856 Act; for a multimodal document under the MMTG Act, section 8 gives the consignee or endorsee the rights and liabilities of the consignor.[20] The harder question in practice is who to sue. A named local entity is often only the agent of a foreign principal. Under section 230 of the Indian Contract Act, 1872 an agent of a disclosed principal is generally not personally liable, a rule the Supreme Court applied in *Marine Container Services South Pvt Ltd v Go Go Garments*.[21] In *Carborandum* the importer and its subrogated insurer sued only the Chennai agent of the German operator, and that was one of the grounds for dismissal. For imports the MTO is usually foreign and unregistered, so the person named on the bill "for delivery apply to" may be no more than a delivery agent. An importer should identify the contracting carrier at once and sue it, or bring it in, within the shortest applicable time bar.

5. Proof and the Burden in Non-Localised Claims

5.1 The claimant's prima facie case

In any regime the consignee must show a contract of carriage, that the goods were received for carriage in apparent good order, that they were delivered damaged, the amount of loss, and timely notice. Typical evidence is a clean bill of lading, the port or ICD landing remarks, a survey report and the notice itself. In *Carborandum* the plaintiffs had the port's remarks ("cover torn", "contents falling out"), a landing remarks certificate and an independent survey. A clean

[17]*Bharathi Knitting Co v DHL Worldwide Express Courier* (1996) 4 SCC 704 (SC).
[18]*Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc* (2012) 9 SCC 552 (SC, Constitution Bench).
[19]*Sanco Trans Ltd v Addison and Co Ltd* (2009) 4 CTC 569 (Mad), CRP (PD) No 2473 of 2008, 10 July 2009. The shipment was an export from Chennai to Hamburg.
[20]Bills of Lading Act 2025; MMTG Act, s 8. A bill of lading serves as a receipt, evidence of the contract and a document of title, and the carrier undertakes to deliver in like good order and condition: *Ellerman and Bucknall Steamship Co Ltd v Sha Misrimal Bherajee* AIR 1966 SC 1892.
[21]*Marine Container Services South Pvt Ltd v Go Go Garments* (1998) 3 SCC 247 (SC), applied in *Carborandum* (n 9), paras 16 to 18.

bill is weaker than it looks for sealed containers, because "shipper's load, stow and count" and "said to contain" clauses mean the carrier does not vouch for the condition of the contents. The carrier will argue that damage inside an intact container arose from poor packing or stuffing, and the claimant must then show a cause that falls within the carrier's custody.

Under the MMTG Act the picture is clearer for exports. If the MTO does not note the apparent condition of the goods on the document, he is deemed to have accepted them in apparent good condition (s 10(2)); the document is prima facie evidence of taking charge as described; and proof to the contrary is inadmissible against a consignee or third party who acted in good faith on a negotiable document (s 11). For imports, an equivalent protection exists only if the governing rules provide it (the Hague-Visby Rules do so for a bill transferred to a third party in good faith).

5.2 Who must prove what once damage is shown

Three authorities pull in the same direction. Section 13 of the MMTG Act presumes fault and puts the burden of disproving it on the MTO. *Patel Roadways* places the burden of showing absence of negligence on a common carrier. And the UNCTAD/ICC Rules, which most import bills adopt, are built on a presumption of the operator's fault. Against these stands an observation in *Carborandum* that a subrogated insurer cannot claim from a carrier unless it establishes negligence or improper handling.[22] That observation sits uneasily with a presumption of fault. Because the suit there had already failed on limitation and on the wrong-defendant point, it is best treated as obiter. It does show, however, that a trial court may demand positive proof of negligence even where the contract is multimodal, and a claimant who cannot localise the loss will rarely be able to give it.

5.3 Who must localise

The statutory structure suggests a rule on the allocation of the localisation burden. Under sections 14 and 15 localisation is the condition for displacing the baseline: the fallback applies unless the stage of loss is known. The party who gains from localisation, whether the MTO who wants to import a carrier-specific defence or limit, or a claimant who wants a higher mode-specific limit, should have to prove it. The MTO's position is the more demanding because it already carries the burden of disproving fault under section 13. This argument draws support from the logic of the Rotterdam Rules, where the uniform baseline applies unless the loss is shown to have occurred solely in a stage governed by a mandatory unimodal instrument. It is offered here as a reading of the Indian structure and not as a holding.

5.4 Evidence that can lift the curtain

The evidence that can narrow a non-localised loss is mostly in the hands of the MTO and its subcontractors: gate-in and gate-out records, equipment interchange receipts, seal numbers and seal-check

records at each handover, terminal damage reports, and in-transit tracking and sensor data. The verified gross mass (VGM) declaration required under the SOLAS Convention since 1 July 2016 gives one further data point, since a discrepancy between declared and re-weighed mass may indicate pilferage or water ingress. Indian studies of dry-port practice report weak accountability for verifying shipper-declared data and for recording container

[22]*Carborandum* (n 9), para 2

condition.[23] Electronic tracking data can be put in evidence in Indian courts on the certificate required by section 63 of the Bharatiya Sakshya Adhiniyam, 2023. Without a duty on the MTO to disclose these records, they will usually be available to the claimant only through discovery after suit has been filed, and that may be too late to meet a nine-month bar.

6. The Recourse Gap

6.1 The MTO and its subcontractors

The recourse gap is the situation in which the MTO is liable to the cargo owner but cannot pass the loss on to the performing carrier because the stage of loss cannot be proved. [24] The gap is built into the numbers. Suppose a 10-tonne consignment is packed in forty cartons in one container. Under a section 14-type limit the MTO's ceiling is the higher of 20,000 SDR (2 SDR x 10,000 kg) and 26,666.80 SDR (666.67 SDR x 40 cartons). A trucker whose own liability is capped at ten times a freight of modest size, or a terminal operator on its own standard terms, will have a far lower limit. If the MTO cannot localise the loss, it cannot show that any of them caused it, and so it must bear the whole amount.

6.2 Insurers and subrogation

An insurer that pays the importer is subrogated to the importer's rights (Marine Insurance Act, 1963, s 79) and takes them subject to the contract terms. In *Sanco Trans* the insurer was bound by the bill's arbitration clause; in *Carborandum* the subrogated insurer failed on limitation, on suing the agent instead of the principal, and on proof of negligence. Door-to-door cargo insurance, whose transit clause runs from warehouse to warehouse, pays regardless of localisation, so the importer may be made whole while the recourse question remains open. The gap then moves to the insurer's subrogated claim and, over time, to the premium. This is an argument about incentives and not an empirical finding, but it explains why importers are often content to claim on insurance and not to litigate against carriers.

6.3 Third-party protection

Through bills of lading usually contain a Himalaya clause that extends the carrier's defences and limits to its subcontractors. The device takes its name from *Adler v Dickson*, in which the Court of Appeal held that an exemption clause in a passenger ticket did not protect the ship's master and boatswain. In *Scruttons Ltd v Midland Silicones Ltd* the House of Lords set out the conditions on which a carrier might contract as agent for a stevedore, and in *New Zealand Shipping Co v A M Satterthwaite & Co (The Eurymedon)* the Privy Council upheld a clause that met them.[25] The United States Supreme Court has applied a Himalaya clause in a through bill of lading to a rail carrier in *Norfolk Southern Railway Co v James N Kirby Pty Ltd* and in *Kawasaki Kisen Kaisha Ltd v Regal-Beloit Corp* held that the Carmack Amendment did not govern the inland rail leg of an overseas shipment made under a through bill of lading, so that the bill's own terms applied.[26] To the author's knowledge there is little reported Indian appellate authority squarely on the Himalaya clause in a multimodal import, and these decisions are

[23]G Gujar and S-K Tai, "Legal liability for container security" (2019) 4(2) *Maritime Business Review* 190.
[24]"MTO's right to redress: is an unlocalized loss really an insurmountable obstacle?" (2023), doi 10.26106/jczd-te27.
[25]*Adler v Dickson* [1955] 1 QB 158 (CA); *Scruttons Ltd v Midland Silicones Ltd* [1962] AC 446 (HL); *New Zealand Shipping Co Ltd v A M Satterthwaite & Co Ltd (The Eurymedon)* [1975] AC 154 (PC).

persuasive only. The clause matters mainly once the loss is localised; where it is not, the claimant cannot identify the subcontractor to whom the clause might be applied.

7. Notice, Limitation and Forum

An importer with a non-localised loss faces several overlapping deadlines, and the shortest of them often decides the case. Table 2 sets out the principal regimes.

Table 2: Notice and suit deadlines under the regimes that may apply to an imported consignment

Regime	Application to imports	Notice	Time bar for suit
MMTG Act 1993	Only if s 2(k) is satisfied; doubtful for imports	At handover; six consecutive days if not apparent (s 20)	Nine months (s 24)
UNCTAD/ICC Rules 1992	By incorporation in the through bill	Short written notice (Rule 9)	Nine months (Rule 10)
Hague-Visby Rules	By foreign statute at the loading port or by clause paramount; not by Indian COGSA 2025	At removal; three days if not apparent (art III r 6)	One year (art III r 6)
Carriage by Road Act 2007	Indian road leg, if localised and the carrier is a common carrier	Written notice within 180 days of booking (s 16)	No suit without notice (s 16)
Railways Act 1989	Indian rail leg, if localised	Within six months of entrustment (s 106)	Claim procedure under the Act
Through bill of lading	Always, as the primary source	As stated in the bill	As stated; nine months in *Carborandum* (cl 17)

Four points follow. First, these bars extinguish the right and are not merely procedural. The Supreme Court so held of the Hague Rules bar in *East & West Steamship Co v S K Ramalingam*, and the Madras High Court treated section 24 of the MMTG Act in the same way in *Carborandum*, where it noted that delay in such a case cannot be condoned.[27] Secondly, the contract may shorten the period below the statutory default, as the nine months in *Carborandum* did, and Indian courts enforce the shorter period. Thirdly, the 180-day period under the Carriage by Road Act runs from the booking of the consignment by the consignor, which for an import is a date the importer may not know, and which may fall before the damage can have been discovered. Fourthly, an importer should therefore plan to the shortest plausible period (nine months from delivery) and send notice at or immediately after destuffing, even before the stage of loss is known.

8. International Models and What They Offer

UN Convention 1980. The Convention adopts a uniform system with a presumed-fault basis and higher limits (920 SDR per package or 2.75 SDR per kg, and 8.33 SDR per kg where no sea

[26]*Norfolk Southern Railway Co v James N Kirby Pty Ltd* 543 US 14 (2004); *Kawasaki Kisen Kaisha Ltd v Regal-Beloit Corp* 561 US 89 (2010).
[27]*East & West Steamship Co v S K Ramalingam* AIR 1960 SC 1058 (SC), relied on in *IAL Container Line* (n 13); *Carborandum* (n 9), paras 18 and 22.

carriage is involved). It never entered into force, largely because maritime states objected to the higher limits and to the loss of traditional carrier defences.[28]

UNCTAD/ICC Rules 1992. These are contractual rules that apply only if incorporated. They follow a network system for localised loss and a fallback limit (666.67 SDR per package or 2 SDR per kg, and 8.33 SDR per kg where no sea or inland waterway carriage is involved) for unlocalised loss, with a nine-month time bar. The MMTG Act's structure and figures are close to these Rules, which is why an import bill built on them gives an importer roughly what the Act gives an exporter, but only as a matter of contract.

Rotterdam Rules 2009. The Rules are a "maritime plus" instrument. Article 26 gives way to a mandatory unimodal convention only where loss or damage occurred solely before loading or after discharge; for unlocalised loss, or loss during the sea period, the Rotterdam regime applies, with a limit of 875 SDR per package or 3 SDR per kg (art 59) and a two-year time bar (art 62). The design solves the localisation problem by placing it on the party who invokes the unimodal regime, at the price of higher uniform exposure for carriers. The Convention is not in force: on the UNCITRAL status page as consulted for this paper it had five parties (Benin, Cameroon, Congo, Spain and Togo) against the twenty required, and India is not among them.[29] For India, Rotterdam is a model for design and not a ratification option for the present.

Proportional allocation. An academic proposal in the literature on Indian dry ports, the Relative Distance and Time Index, would allocate unlocalised loss among performing parties in proportion to the distance and time each held the goods, subject to the claimant first proving that the loss occurred in transit and outside its control.[30] No legal system has adopted it. It is useful as a way of thinking about apportionment between the MTO and its subcontractors, which is where the recourse gap bites, and not as a rule for the cargo owner's claim.

9. Reform Proposals

The following proposals follow from the analysis above. They are the author's own and are put forward for discussion.

Extend the liability chapter to cargo delivered in India. Amend the preamble and section 2(k) so that the liability provisions (ss 13 to 20A and 24) apply to multimodal carriage where the place of delivery is in India as well as where the place of acceptance is. Registration should remain a condition for Indian operators, but a foreign operator who issues a through document for delivery in India should be bound by the liability chapter whether or not it is registered, since the existing registration conditions (turnover and overseas offices) were designed for Indian exporters' operators. Conflict-of-laws questions, in particular the territorial limits recognised in *Shanmughavilas*, will need drafting care.

[28]Thao (n 7); Chekap and Mardani, "An Evolution on the Multi modal Transport Carrier's Basis of

Liability: From Multi modal Transport Convention 1980 to Rotterdam Rules 2009", doi 10.22054/jplr.2020.11337.

[29]UNCITRAL, status of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (2008), consulted November 2026. For the liner-cargo view on acceptance see M Brooks and J Mackey, "Will the Rotterdam Rules Be Accepted? A Liner Cargo Interest Perspective" (2012) 35 *Dalhousie Law Journal* 267.

[30]See Gujar and Tai (n 23); G Gujar, A K Y Ng and Z Yang, "Proposed Alterations in Legal Regimes" (2018) 139.

Harmonise notice and time bars. The present mix of six days, 90 days, 180 days, six months, nine months and one year invites missed deadlines. A single one-year bar for all legs, with notice that may be given within a reasonable time after delivery and a pause in the period while the operator withholds requested records, would remove most traps.

Impose a disclosure duty on operators. On written claim, an operator should be required within a fixed period to disclose the route, the identity of each performing party, handover and seal records and any damage reports. Failure should support an adverse inference and should prevent the operator from relying on localisation to import a modal defence. This addresses the recourse gap at source.

Standardise destuffing evidence. Customs and port rules governing ICDs and container freight stations should require a joint damage report at destuffing, with photographs and seal records, which both sides may rely on. Electronic records should be admissible on the certificate under section 63 of the Bharatiya Sakshya Adhiniyam, 2023.

Clarify the burden of localisation. A provision stating that the party relying on a modal regime must prove localisation, and that unlocalised loss is governed by the section 14 baseline, would settle the argument in section 5.3.

Use the Rotterdam Rules as a design model, not a ratification target. The Convention is far from entry into force. Its limited-network technique in article 26 could inform a domestic rule for imports without waiting for it.

Practical steps for importers now. Until the law changes, importers can insure door to door, require nine-month-safe claim procedures in their logistics contracts, obtain an agreed joint survey at destuffing, identify the contracting carrier in the first notice, and send protective notices under every potentially applicable regime.

10. Conclusion

India has a statute that deals with non-localised loss, but it deals with it only for exports. For an imported container damaged at an unknown stage, section 2(k) of the MMTG Act, the 2025 sea-carriage statute and the 2025 Bills of Lading Act do not between them supply a rule for the journey as a whole. The importer's position depends on the through bill of lading, the Indian inland-leg statutes if the loss can be localised, and insurance. The decisions reviewed show the practical effect: nine-month and one-year bars extinguish claims, agents are sued in place of principals, arbitration clauses are enforced or not according to proof of agreement, and a claimant who cannot localise the loss may be asked to prove negligence that only the carrier is in a position to know about. The reforms proposed here are modest. Extending the liability chapter to cargo delivered in India, harmonising time bars, and requiring operators to disclose the records that lift the evidentiary curtain would give importers the same baseline that the Act already gives exporters,

and would narrow the recourse gap without requiring India to adopt a new convention.

References

1. *Adler v Dickson* [1955] 1 QB 158 (CA).
2. B D D Thao, *Multimodal Transport Operators' Liability Regimes under the UN Multimodal Transport Convention 1980 and UNCTAD/ICC Rules 1992: A Comparative Perspective* (2022) 11(6) *International Journal of Science and Research* 472.
3. *Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc* (2012) 9 SCC 552 (SC, Constitution Bench).
4. *Bharathi Knitting Co v DHL Worldwide Express Courier* (1996) 4 SCC 704 (SC).
5. Bills of Lading Act 1856.
6. Bills of Lading Act 2025.
7. *British India Steam Navigation Co Ltd v Shanmughavilas Cashew Industries* (1990) 3 SCC 481
8. Brooks and J Mackey, *Will the Rotterdam Rules Be Accepted? A Liner Cargo Interest Perspective,* (2012) 35 *Dalhousie Law Journal* 267.
9. *Caravel Shipping Services Pvt Ltd v Premier Sea Foods Exim Pvt Ltd* (2015) 5 KHC 58 (Ker), OP(C) No 522 of 2013.
10. *Carborandum Universal Ltd v M G International Transports GmbH* (2014) 5 LW 712 (Mad), Second Appeal No 6 of 2008, 30 October 2014, paras 12 to 14 and 20 to 22.
11. Carriage by Road Act 2007.
12. Carriage by Road Rules 2011.
13. Carriage of Goods by Sea Act 2025.
14. Chekap G N F and Mardani M, *An Evolution on the Multi modal Transport Carrier's Basis of Liability: From Multi modal Transport Convention 1980 to Rotterdam Rules 2009*, doi 10.22054/jplr.2020.11337.
15. *Container Corporation of India Ltd v Priya Dyes and Chemicals* AIR 2013 Mad 85.
16. Dąbrowski D, *The Multimodal Carrier's Liability for Non-Localized Loss* (2016) 36 *Problemy Transportu i Logistyki* 203, doi 10.18276/PTL.2016.36-21.
17. *East & West Steamship Co v S K Ramalingam* AIR 1960 SC 1058 (SC).
18. *Ellerman and Bucknall Steamship Co Ltd v Sha Misrimal Bherajee* AIR 1966 SC 1892
19. Gujar G and Tai S-K, *Legal Liability for Container Security* (2019) 4(2) *Maritime Business Review* 190, doi 10.1108/MABR-11-2018-0046.
20. Gujar G, Ng A K Y and Yang Z, *Proposed Alterations in Legal Regimes* (2018) 139, doi 10.1007/978-3-319-98134-5_7.
21. Gujar G, Tai S-K and Ng A K Y, *Liability Implications of the Rotterdam Rules for Indian Dry Ports*, doi 10.54007/ijmaf.2021.13.2.53.
22. Hoeks M A I H, *Multimodal Transport Law: The Law Applicable to the Multimodal Contract for the Carriage of Goods* (2010).
23. Hoeks M A I H, *Multimodal Transport Law: The Law Applicable to the Multimodal Contract for the Carriage of Goods* (2010).
24. *IAL Container Line (India) Ltd v Citizen International* CR-2292-2013 (O&M), 2023:PHHC:050586 (P&H), 12 April 2023.
25. *Kawasaki Kisen Kaisha Ltd v Regal-Beloit Corp* 561 US 89 (2010).

26. Kindred H M and Brooks M R, *New and Improved? The UNCTAD/ICC Multimodal Rules Reviewed* (1994) 33(3) *Transportation Journal* 5.
27. Mackey J, *Will the Rotterdam Rules Be Accepted? A Liner Cargo Interest Perspective* (2012) 35 *Dalhousie Law Journal* 267.
28. Marek Kovac, *MTO's Right to Redress: Is an Unlocalized Loss really an Insurmountable Obstacle?*, (2023), doi 10.26106/jczd-te27.
29. Marin J, *The Harmonization of Liability Regimes Concerning Loss of Goods During Multimodal Transport* (2012)
30. Marin J, *The Harmonization of Liability Regimes Concerning Loss of Goods During Multimodal Transport* (2012).
31. *Marine Container Services South Pvt Ltd v Go Go Garments* (1998) 3 SCC 247 (SC).
32. Multimodal Transportation of Goods Act 1993.
33. *New Zealand Shipping Co Ltd v A M Satterthwaite & Co Ltd (The Eurymedon)* [1975] AC 154 (PC).
34. Nikaki T, *Bringing Multimodal Transport Law into the New Century: Is the Uniform Liability System the Way Forward?* (2013) 78 *Journal of Air Law and Commerce* 69.
35. *Norfolk Southern Railway Co v James N Kirby Pty Ltd* 543 US 14 (2004).
36. *Patel Roadways Ltd v Birla Yamaha Ltd* AIR 2000 SC 1461 (SC), 28 March 2000.
37. Railways Act 1989.
38. *Sanco Trans Ltd v Addison and Co Ltd* (2009) 4 CTC 569 (Mad), CRP (PD) No 2473 of 2008.
39. *Scruttons Ltd v Midland Silicones Ltd* [1962] AC 446 (HL).
40. *Shipping Corporation of India Ltd v Bharat Earth Movers Ltd* (2008) 2 SCC 79 (SC).
41. T Nikaki, *Bringing Multimodal Transport Law into the New Century: Is the Uniform Liability System the Way Forward?* (2013) 78 *Journal of Air Law and Commerce* 69
42. Thao B D D, *Multimodal Transport Operators' Liability Regimes under the UN Multimodal Transport Convention 1980 and UNCTAD/ICC Rules 1992: A Comparative Perspective* (2022) 11(6) *International Journal of Science and Research* 472.
43. UNCITRAL, United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (2008), consulted November 2026.