

APRIL - JUNE - 2019

The evolution of this line of insurance is rather slow in India. One of the early products is Public Liability Act insurance which was introduced following Bhopal gas tragedy in 1984. The Public Liability Insurance Act, 1991 was passed to provide for public liability-insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance and for matters connected therewith or incidental thereto.

outside India to raise capital, policies like D&O liability insurance policies were introduced. As the time went by and to meet the emerging market needs insurers started introducing other policies.

Liability insurance is not popular in India yet. It constitutes less than 2% of the general insurance Gross Written Premium.

Challenges and Reasons for low growth

Dependence on institutionalized

system of ex gratia compensation: One often notices that whenever there is a negligence resulting in loss to public like collapse of a bridge or building, there is clamour for exgratia payment which is

mostly conceded by the governments. Often, these amounts are paid- "without acknowledging any obligation or entitlement". This is perceived to displace the compensation function of a tort litigation and resultantly shadowing the importance of liability insurance.

Tort Deficit: Any act of omission or commission which causes loss or damage to the legally protected interest of an individual is a tort, the remedy for which is an action for damages. In India, the law of tort is not codified and is still in the process of development. India suffers from tort law deficit. While many of the areas of law relating to crimes, contracts, property, trusts, etc, have been codified, there is yet no code for torts in India. Most of the development in tort law is the contribution of the Indian Judges and lawyers mostly drawn from the British precedents & judgements. It is disappointing to note that though recommendations for an enactment on tort law were made as early as in 1886 by Sir F Pollock, who prepared a bill known as the 'Indian Civil Wrongs Bill' at the instance of the Government of India, it was never taken up for legislation.

The approach of Indian legislature to torts is summed very well by the following statement:

"Most of Dostoevsky's novels employ a nameless narrator. A person who observes in-depth but at the same time removed from the process. Sometimes he ends up becoming a part of the story he is telling while other times he does not. In India, the legislature's approach towards the development of tort law has adopted the same apathetic, removed attitude as that storyteller. And much like the storyteller it finds itself deeply involved and extricated in a predicament of its own making"

(Source: <https://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=da4a712e-da28-445a-8190-9b8367243539&txtsearch=Subject:%20Consumer>)

No contingency fee system:

Contingency fee arrangement has been one of the distinguishing features of litigation in the United States. This has significantly contributed to jurisprudence relating to compensation/liability. It transformed from an illegal practice to an essential element of the American legal system affording ability to the needy access to the courts. In the Indian context, contingency fee system is not permitted. It is invalid under Advocates Act of India, 1961 as also under the Indian Contract Act. While there are pros and cons for the contingency fee system, the absence of this system acts as a deterrent on litigation, particularly tort litigation, as most of the claimants do not have the means to afford the high costs of litigation coupled with the delays and unpredictability in dispensation of justice. In the Indian context where legal literacy is low, if contingency fee system were to be introduced, it should come with enough safeguards to avoid its misuse and exploitation of the gullible.

Emphasis on retribution and not on

restitution: The emphasis in legal system is more on retribution with criminal punishment rather than restitution with civil settlements. It is a good augury that in the recent past some enactments have started providing for consensus based settlements. One can see signs of this even if though they are faint.

Cultural distaste for suing: In the DNA of Indians, cultural distaste is embedded for suing, primarily due to the belief in divine ordainment. As they say - God has willed it .

Ignorance about liability insurance

protection: Most of the citizenry is not aware of many legal rights including the right to get compensated by the wrongdoer. Unfortunately it is a malaise affecting Indian system in various spheres and not only relating to torts. Even highly educated sections who are otherwise well informed suffer from liability insurance illiteracy.

Data Desert: There is no structured data available for launching or pricing a new product in terms of the events, costs or losses. This poses a big challenge to insurers to introduce a new product and price it properly.

Long gestation: It takes a long time to sell the idea generically and then position the brand to a prospective customer. Unless it is contract mandated, time lines are never clear increasing the unpredictability element in this process. Insurers and insurance intermediaries who focus on completion of targets would be reluctant to work on ideas/ opportunities where they cannot, with some degree of certainty, forecast business finalization dates. This is a dampener on the supply side.

Time consuming Litigation: Prolonged litigation in courts is also one of the real deterrents for pursuing legal action for damages. Any Insurance buyer expects some certainty, in terms of time frame and outcome, from the contract of insurance. When the response of the insurance policy has to depend upon the court judgments, this proves to be a dampener on the demand side.

Claims provision challenges: There could be delays in notifications and then the claims can be long tail claims. All this lead to the plenty of provisioning problems. Added to this are the legal outcomes on which Insureds do not have much control which may result in wrong reserving inviting issues from the

regulators and shareholders. It gets more complex when cross border jurisdictions are involved. This is an issue for liability insurance underwriting anywhere in the world. The challenge is to develop the right skillset for the industry. And the responsibility majorly lies with the insurance carrier community.

Opportunities - What Does the Future Hold for Inability Insurance?

Notwithstanding the daunting challenges along the way, liability insurance market is set to expand well in future due to the reasons stated below:

Legal environment: It is undergoing significant changes in the country and globally moving in the direction of holding the wrong doer responsible for his actions and liable to face consequences. Emphasis on corporate governance as reflected in many changes brought about in the Companies Act, 2013 has made D&O a known insurance policy in the corporate board rooms. Commercial Courts, Commercial Division and Commercial Appellate Division in the High Courts Act, 2015 is an important step taken by the Government to expedite the justice delivery system as regards commercial disputes and make the time lines for resolution more predictable. The Act recognises that commercial disputes require different way of handling, as its effective resolution is an important factor for the growth of investment and the overall economic and social development of a country. The Act provides for a separate set of commercial courts to be set up by State Governments at the District level to try suits and claims pertaining to commercial disputes of a value of at least ₹ 1 crore and above. The changes contemplated in the consumer protection laws are likely to make goods and services providers more accountable

which will increase demand for product liability and professional indemnity policies. Similarly the data protection legislation which is in draft bill form now is likely enhance traction for cyber insurance. Organisations are beginning to worry more about liability issues these days because of the changing legal, economic, political and social landscape.

Increasing Legal expenses: Corporate legal expenses are ballooning and this is too well known. It becomes more worrisome when cross border disputes are involved. Some of the leading Indian lawyers are known to charge approximately ₹ 30 lacs per day in addition to other expenses. Without appropriate and adequate insurance protection, it becomes difficult to withstand these expenses which would otherwise prove a burden on the insured's P&L account.

Mandatory requirements: It is a normal practice in sectors like IT industry that the principals insist on liability insurance policies like professional indemnity and commercial general liability policies to be put in place before awarding or commencement of the projects.

Globalisation of trade: Whether it relates to providing capital or purchase of services or goods, foreign investors/ buyers are keen to protect their interests by way of indemnities and also insurance covers. Culturally also, it has a rub off effect.

Supply side: Why is it Gaining the Attention of Insurance Companies?

Profitability: Historically and continuously liability insurance portfolio has been a profitable business. Facts speak for themselves.

India - Liability Insurance – Gross and Net Incurred Claims Ratio

Year	Gross Incurred Claims Ratio	Net Incurred Claims Ratio
2008-09	41.1%	37.3%
2009-10	57.6%	47.9%
2010-11	43.4%	35.2%
2011-12	44.7%	34.6%
2012-13	43.8%	40.2%
2013-14	30.2%	26.2%
2014-15	31.4%	24.3%
2015-16	40.1%	30.6%
2016-17	32.3%	27.6%
2017-18	43.5%	20.4%

(Source : GI Council Indian Non-Life Insurance Industry year book 2017-18)

Retention levels are higher: As can be seen from the chart below, the net retention ratio for liability insurance is over 60% year after year.

Portfolio/Year	2013-14	2014-15	2015-16	2016-17	2017-18
Fire	52.2%	48.5%	49.3%	44.9%	38.5%
Engg.	50.5%	48.1%	48.3%	47.2%	49.2%
Marine Cargo	72.8%	73.6%	73.2%	70.9%	69.3%
Marine Hull	23.9%	31.0%	25.9%	16.7%	25.1%
Motor OD	91.2%	90.4%	90.1%	86.8%	87.6%
Motor TP	90.2%	91.8%	92.4%	89.7%	87.6%
Aviation	19.6%	24.3%	23.6%	57.4%	31.0%
Health	88.9%	90.8%	89.6%	85.2%	79.8%
Personal accident	86.0%	86.9%	84.1%	83.4%	83.8%
Liability	69.8%	69.8%	63.7%	62.8%	62.5%
Other Misc.	59.6%	57.5%	59.4%	32.3%	32.8%
TOTAL	78.1%	78.9%	79.5%	70.2%	68.6%

(Source - General Insurance Council - 2017-18 -Statistics & Tables - Table 10)

Liability Insurance Market is Less Crowded. There is a dearth of technically talented

and trained resources to deal with all aspects underwriting and claims of this insurance. Most insurance companies and their marketing resources look at the low hanging fruit – the employee benefit and property insurance policies where it is relatively easy to talk about and gestation period is low. Liability insurance is seen as unknown area beyond their comfort zone. The number

of insurers currently actively competing is therefore relatively less.

Access to Senior Management

– Liability insurance is seen as a boardroom issue rather than a shop floor matter. At the customer site, unlike property insurance policies, the process of procurement is mostly handled and monitored by senior management.

To the representatives of insurance companies and intermediaries, this provides access to senior management thus helping gain insights into their decision making process to assess chances of winning and timelines. Access to senior management ensures better predictability of outcomes.

Opportunity to Demonstrate Skills and Commitment:

As this line of business is complex calling for multidisciplinary skills and insights, insurance industry personnel get an excellent opportunity to demonstrate their level understanding and service commitment which automatically increases chances of winning the deal and retention. Once the complexity of the business is understood, buying decisions will not be completely price driven.

Demand for liability insurance is bound to grow. As it stands currently, liability insurance buying is contract driven or event driven. But, the trend is perceptibly changing. Various legislations passed recently attempting to codify liabilities, growing stakeholder pressure, rising regulatory scrutiny & supervision, increasing customer awareness and mounting judicial activism besides globalisation of the economy in terms of foot print, revenues and financing are pushing up the demand for liability insurance. In regard to some policies like Professional indemnity, CGL and cyber insurance, liability insurance is becoming a contractual requirement.

Size of the Market: At ₹ 2005 cr. Gross written premium, liability insurance currently constitutes a paltry 1.28% of total premium in India while premium has grown by 12.9% over the period 2008-09 to 2017-18 as can be seen from the following figures.

Year	Gross written Premium (₹ In Cr.)	Premium (₹ In Cr.)	As a percentage of total premium(%)
2008-09	37323	657	1.76%
2009-10	43652	771	1.76%
2010-11	53515	900	1.68%
2011-12	68249	1087	1.59%
2012-13	74277	1187	1.59%
2013-14	83027	1362	1.64%
2014-15	90365	1367	1.51%
2015-16	102396	1942	1.89%
2016-17	134177	2141	1.59%
2017-18	156629	2005	1.28%

(Source : GI Council Indian Non-Life Insurance Industry year book 2017-18)

This percentage of 1.28% is indeed very low. In most of the developed countries the percentage is much higher. Even as per the figures of 2014, this percentage is over 16% for USA, over 14% for Australia, over 10% for UK.

As the formal economy expands, evolves and globalises, liability insurance is expected to register accelerated growth and contribute more towards to total premium. In the near future D&O insurance, General liability, Professional indemnity and Cyber insurance are likely to be the catalysts for the growth of this business.

Way Forward - What Insurance Industry Can / Ought to do?

Awareness on claims: There is a wide spread impression that in India either there are hardly any liability claims and even when the claims are reported – they are either repudiated or kept pending for long periods. This impression is clearly misplaced. Many claims have been reported and settled under various classes of insurance. Unfortunately, this information is not in public domain. Insurance industry has also not done much to disseminate information on various exposures and triggers that have resulted in claims. It is possible to

educate customers on claims without breaching any confidentiality norms. Creating awareness about the claims and giving confidence to customers providing examples of real life cases can increase traction for liability insurance. Claims executives going along with the underwriters/ sales executives for all major interactions will certainly boost the confidence in the intent and capability of the industry to settle claims. It will be a good idea to disseminate information on how claims can be prevented and handled when they occur.

Uncomplicate the policies: Insurance policies are considered difficult to read because of the small print and hard to understand because of liberal sprinkling of jargon. This is more so for liability insurance policies. One cannot wish away legalise in drafting insurance policies- time tested wordings have to be retained. But, wherever possible, attempts have to be made to uncomplicate. In the days to come, insurers need to brace themselves up to face comprehension scores and confusion audits. These would help increase trust in those seeking to simplify their offerings and add cost to those who are not bothered. It will be a good idea for the Indian insurance industry to look at Insurance Services Office (ISO) of USA and its activities and seriously consider getting similar structure in place for various objectives including policy drafting.

Offer solutions rather than policies: In order to hit the road to become more visible and increase the market share, some times insurers introduce policies without putting all building blocks in place. This is a sure recipe for failure. Insurance customers now a days are demanding complete solutions and not just policies. For example, for a cyber policy to be launched, insurers need to

put in place arrangements for checking while under writing, where necessary, the IT related processes of the insured organisation and similarly developing ability to do a forensic study if any adverse event takes place. Activities like these can very well be outsourced subject to the relevant regulations.

Training: Tell well to sell well. It is necessary for the resources with insurers or insurance intermediaries to continually update their knowledge, if they want to confidently market liability insurance. Currently, it is seen that message is more on the policy clauses without any reference to local conditions/ laws/ exposures/ claim simulations. There is a clear need to develop a comprehensive understanding of how policies operate and respond.

Coordination with industry / professional bodies: Exposure understanding and analysis is best done and becomes meaningful when engagement with the end users and relevant industry and professional bodies is continuous. This helps in proper product formulation, pricing and marketing. Generic buy in gets easy. This also leads to understanding the pain points better for conceptualising proactive risk control measures. It will be very useful to have interaction with professional bodies like Institute of Company Secretaries of India(ICSI), Institute of Chartered Accounts of India (ICAI), Institute of Actuaries of India (IAI) and Institute of Directors (IOD) etc.

Liability insurance market will grow. No doubt about it. But, for long term orderly and sustained growth, it calls for creation of market awareness, proper product formulation, prudent underwriting, prompt settlement of claims and meaningful and continuous engagement with all stakeholders. 